[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Part 474

[EERE-2025-VT-0073]

RIN 1904-AF47

Petroleum-Equivalent Fuel Economy Calculation

AGENCY: Office of Critical Minerals and Energy Innovation, Department of Energy.

ACTION: Interim final rule; request for comments.

SUMMARY: The Office of Critical Minerals and Energy Innovation (formerly the Office of Energy Efficiency and Renewable Energy) of the Department of Energy (DOE) has reviewed the petroleum-equivalency factor (PEF) for electric vehicles (EVs) used by the Environmental Protection Agency (EPA) in calculating light-duty vehicle manufacturers' compliance with the Department of Transportation's (DOT) Corporate Average Fuel Economy (CAFE) standards. DOE has determined that revisions to the PEF are necessary. DOE is first publishing a final rule that removes the fuel content factor (FCF) from the calculation of the PEF. Removal of the FCF is consistent with a United States Court of Appeals for the Eighth Circuit decision that held, among other things, that the inclusion of the FCF in the PEF calculation exceeded DOE's authority under the substantive statute. DOE will propose additional revisions to the PEF in a forthcoming notice of proposed rulemaking.

DATES: The effective date of this interim final rule is **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. DOE will accept comments, data, and information regarding this interim final rule no later than [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER***].

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov*. Follow the instructions for submitting comments.

Alternatively, interested persons may submit comments, identified by RIN 1904- AG09, by any of the following methods:

Federal eRulemaking Portal: *www.regulations.gov/docket/EERE-2025-VT-0073*. Follow the instructions for submitting comments.

Email: PEF_Comments@ee.doe.gov. Include the RIN 1904- AG09 in the subject line of the message.

Postal Mail: U.S. Department of Energy, 1904- AG09, 1000 Independence Avenue, SW., Washington, DC 20585. If possible, please submit all items on a compact disc ("CD"), in which case it is not necessary to include printed copies.

Hand Delivery/Courier: U.S. Department of Energy, Attention: Kevin Stork, 1000 Independence Avenue, SW., Washington, DC 20585. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section V, Public Participation, for details.

Docket: The docket, which includes *Federal Register* notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov*. All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at the *www.regulations.gov* webpage associated with RIN 1904- AG09. The docket webpage contains simple instructions on how to access all documents, including public comments, in the docket. See section V of this document, Public Participation, for information on how to submit comments through *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Stork, U.S. Department of Energy, Vehicle Technologies Office, EE-3V, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586-8306. Email: *PEF_Comments@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction

In 1975, Congress passed the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163. Title III of EPCA amended the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 *et. seq.*) (the Motor Vehicle Act) by mandating fuel economy standards for automobiles produced in, or imported into, the United States. This legislation, as amended, requires every

manufacturer to meet applicable specified corporate average fuel economy (CAFE) standards for their fleets of light-duty vehicles under 8,500 pounds that the manufacturer manufactures in any model year.[1] The Department of Transportation (through the National Highway Traffic Safety Administration (NHTSA)) is responsible for prescribing the CAFE standards and enforcing the penalties for failure to meet these standards. 49 U.S.C. 32902. The Environmental Protection Agency (EPA) is responsible for calculating each manufacturer's fleet CAFE value. 49 U.S.C. 32902 and 32904.

With respect to electric vehicles, EPA uses the PEF determined by DOE in the calculation of CAFE standards. DOE reviews the PEF annually and determines whether revisions are necessary based on the following factors:

> (i) The approximate electrical energy efficiency of the vehicle, considering the kind of vehicle and the mission and weight of the vehicle.
>
> (ii) The national average electrical generation and transmission efficiencies.
>
> (iii) The need of the United States to conserve all forms of energy and the relative scarcity and value to the United States of all fuel used to generate electricity.
>
> (iv) The specific patterns of use of electric vehicles compared to petroleum-fueled vehicles.

49 U.S.C. 32904(a)(2)(B).

Section 18 of the Chrysler Corporation Loan Guarantee Act of 1979 further amended the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976 by adding a new paragraph (3) to section 13(c), which directed the Secretary of Energy, in consultation with the Secretary of Transportation and the Administrator of EPA, to conduct a seven-year evaluation program of the inclusion of electric vehicles in the calculation of average fuel

[1] The relevant provisions of the CAFE program, including DOE's establishment of equivalent petroleum-based fuel economy values were transferred to Title 49 of the U.S. Code by Pub. L. 103-272 (July 5, 1984). *See* 49 U.S.C. 32901 *et seq*. The authority for DOE's establishment of equivalent petroleum-based fuel economy values was transferred to 49 U.S.C. 32904(a)(2)(B).

economy. As required by section 503(a)(3) of the Motor Vehicle Act, DOE proposed a method of calculating the petroleum-equivalent fuel economy of electric vehicles utilizing a PEF in a new 10 CFR part 474 on May 21, 1980. 45 FR 34008. The rule was finalized on April 21, 1981, and became effective May 21, 1981. 46 FR 22747. The seven-year evaluation program was completed in 1987, and the calculation of the annual petroleum equivalency factors was not extended past 1987.

DOE published a proposed rule for a permanent PEF for use in calculating petroleum-equivalent fuel economy values of electric vehicles on February 4, 1994, and obtained comments from interested parties. 59 FR 5336 (1994 NOPR). Following consideration of comments, DOE's own internal re-examination of the assumptions underlying the proposed rule, and existing regulations for other classes of alternative fuel vehicles, DOE decided to modify the PEF calculation approach proposed in 1994. The 1994 NOPR was later withdrawn, and DOE proposed a modified approach in a July 14, 1999, notice of proposed rulemaking. 64 FR 37905 (1999 NOPR). DOE published a final rule with a PEF of 82,049 Watt-hours per gallon on June 12, 2000, that amended 10 CFR part 474. 65 FR 36985 (2000 Final Rule).

On October 22, 2021, DOE received a petition for rulemaking from the Natural Resources Defense Council (NRDC) and Sierra Club requesting that DOE update its regulations at 10 CFR part 474. DOE published a notice of receipt of the petition on December 29, 2021, and solicited comment on the petition and whether DOE should proceed with a rulemaking. 86 FR 73992. In April 2023, DOE agreed that the inputs upon which the calculations and PEF values are based were outdated and that the technology and market penetration of EVs has significantly changed since the 2000 Final Rule and granted the petition from NRDC and Sierra Club. When granting the petition, DOE also published a notice of proposed rulemaking. 88 FR 21525 (April 11, 2023) (2023 NOPR).

In the 2023 NOPR, DOE proposed to update the PEF value and revise the methodology used to calculate the PEF. One of the proposed revisions was to remove the fuel content factor

(FCF) as DOE determined that the fuel content factor was not supported by the underlying statutory provisions. 88 FR 21525, 21530. However, in a final rule published on March 29, 2024, DOE elected to phase-out the FCF between Model Year (MY) 2027 and MY 2030 rather than removing it from the PEF equation as of the effective date of the final rule. 89 FR 22041, 22052 (2024 Final Rule).

On April 5, 2024, the states of Iowa, Arkansas, Florida, Idaho, Kansas, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, Texas, Utah, and the American Free Enterprise Chamber of Commerce filed a petition for review in the United States Court of Appeals for the Eighth Circuit. *Iowa, et al. v. Wright* (Case No. 24-1721 (8th Cir.)). In a September 5, 2025, opinion, the Eighth Circuit granted the petition for review, vacated the 2024 Final Rule, and remanded the proceedings to DOE. Specifically, the court ruled, among other things, that the FCF was illegal or otherwise contrary to statute. Consistent with the court's opinion and DOE's own determination in the 2023 NOPR, DOE is issuing this interim final rule to immediately remove the FCF from the PEF calculation. As noted previously, DOE will propose additional revisions to the PEF calculation in a forthcoming notice of proposed rulemaking.

II. Fuel Content Factor

A. Historical Background of the Fuel Content Factor

In the 1994 NOPR, DOE proposed a scarcity factor as an intermediate factor that used a complex approach to quantify the relative scarcity and value of all fuels used to generate electricity in the United States. 59 FR 5336, 5339; *see* 49 U.S.C. 32904(a)(2)(B)(iii). This proposed scarcity factor was based on estimates of the U.S. share of world reserves of fossil fuels and estimated rates of depletion of world reserves. The scarcity factor was derived by determining the U.S. percent and numeric share of the world reserve market and calculating the rate at which the United States is depleting each fuel source's reserves. These values were then normalized to obtain the relative scarcity value for each fuel source. 59 FR 5336, 5338–5339.

In response to the 1994 NOPR, DOE received comments that were critical of the proposed scarcity factor. After considering these comments, DOE concluded that scarcity did not appear to be of concern and should not be a guiding factor in setting the PEF value. 64 FR 37905, 37907. In the 1999 NOPR, due to concerns with assumptions and calculations used, DOE decided to replace the scarcity factor rather than attempt to refine it. After considering alternative approaches to quantifying scarcity and value, DOE determined that each of these approaches were found to have technical or policy shortcomings or internal inconsistencies. *Id.* at 37906-37907.

Instead of trying to quantify scarcity, DOE examined existing law, specifically 49 U.S.C. 32905, which prescribes procedures for determining the petroleum-equivalent fuel economy of non-EV alternative fueled vehicles. *Id.* at 37907. DOE then determined to include an FCF of 1.0/0.15 into its PEF calculation for EVs, noting that this approach would be consistent with the existing regulatory and statutory procedures for other types of alternative fuel vehicles, the approach treated manufacturers of all alternative fuel vehicles similarly, and that the calculation is relatively simple and straightforward to apply. *Id.* at 37907.

In the 2000 Final Rule, DOE stated that although it did not expressly incorporate scarcity in the 1999 NOPR, DOE added the FCF, in part, to help address scarcity issues by rewarding electric vehicles' benefits to the Nation relative to petroleum-fueled vehicles. 65 FR 36986, 36988. Specifically, DOE noted that the 1.0/0.15 factor results in a substantial adjustment to the raw calculated energy efficiency of electric vehicles, which would result in a higher petroleum-equivalent fuel economy for EVs and that manufacturers would be rewarded for adding EVs to its corporate-wide fleet. *Id.*

B. The Phaseout of the FCF in the 2024 PEF Final Rule

In the 2023 NOPR, DOE proposed removing the FCF from the PEF equation. In addition to changing EV technology and market penetration and the fact that the current PEF value

overvalues EVs in determining fleetwide CAFE compliance,[2] DOE also stated that the FCF lacks legal support. Specifically, DOE noted that the FCF is based on the same factor for non-EV alternative fuel vehicles under 49 U.S.C. 32905. However, DOE noted that section 32905 does not apply the factor to EVs. DOE concluded that although DOE sought to treat EVs the same as other alternative fuel vehicles by using the same fuel content factor, there is no basis to do so in sections 32905 or 32904.

DOE received several comments on its proposal to remove FCF from the PEF calculation. In the 2024 Final Rule, DOE decided instead to phase out the FCF starting with MY 2027 EVs through MY 2030 vehicles. DOE reasoned that other incentives and support for EVs would become more fully operative and effective over time, reducing the need for the FCF. But, in the meantime, DOE concluded that retaining and phasing out the FCF would "incentivize additional EV production" and result in petroleum conservation. *Id.*

C. Eighth Circuit Court Decision Vacating the 2024 Final Rule

On April 5, 2024, the states of Iowa, Arkansas, Florida, Idaho, Kansas, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, Texas, Utah, and the American Free Enterprise Chamber of Commerce filed a petition for review in the United States Court of Appeals for the Eighth Circuit. *Iowa, et al. v. Wright* (Case No. 24-1721 (8th Cir.)). In a September 5, 2025, opinion, the Court granted the petition for review, vacated the 2024 Final Rule, and remanded the proceedings to DOE. Specifically, the court ruled, among other things, that the FCF exceeded DOE's authority under the substantive statute.

The Court observed that when DOE adopted the 2024 Final Rule, DOE justified the retention and gradual phasing out of the FCF on 49 U.S.C. 32904(a)(2)(B)(iii). *Iowa, et al. v. Wright* (Slip Opinion 21). However, the Court determined that DOE's reading of subsection

[2] In the 2023 NOPR, DOE applied the PEF value to the then-current version of the Kia Niro EV and the similar Hyundai Kona and found that the vehicles were rated a 394.3 miles per gallon equivalent and 41.2 miles per gallon respectively. 88 FR 21525, 21530.

32904(a)(2)(B)(iii) is broad and contradicts DOE's decades-long construction of the statute because the FCF does not try to quantify the relative value of scarcity of various fuels but instead applies a flat fuel content factor. *Id*. at 21-22. Furthermore, the Court notes that DOE does not tie the 1.0/0.15 factor to the relative costs of various fuels but instead justifies the FCF as an incentive for EV production. *Id.* at 22. The Court noted the stark difference between DOE's previous interpretation of factor (iii) from the reading of subsection 32904(a)(2)(B)(iii) adopted by DOE in the 2024 Final Rule.

The Court also discussed why DOE's interpretation of subsection 32904(a)(2)(B) is not the best reading of the statute. Specifically, factor (iii) is one of four factors that DOE considers when determining the petroleum equivalency factor. The Court stated that DOE's interpretation of factor (iii) would enable DOE to set the value of the FCF at any value "so long as 'applying such a fuel content factor would in fact conserve energy.'" *Id*. However, the Court noted that "[i]f Congress aimed to empower DOE to incentivize the production of electric vehicles so long as the use of electric vehicles conserved energy overall and scarce fuels in particular, 'Congress easily could have drafted' the statute 'in that broad manner.'" *Id.* at 23; *citing National Ass'n of Mfrs. V. Dep't of Defense,* 583 U.S. 109, 128 (2018).

The Court held that "DOE exceed[ed] the boundaries of its statutory authority for the reasons discussed—the dramatic difference between DOE's current view and its previous constructions of section 32904, the broadness of the authority DOE assert[ed] by including the fuel content factor, [and] the risk of making other subsections superfluous[.]" *Id.* at 25. In short, the "fuel content factor—as currently determined and justified by the DOE—lacks statutory authority." *Id.* at 27.

III. Discussion

After the Eighth Circuit Court of Appeals vacated the 2024 Final Rule in *Iowa, et al. v. Wright*, DOE reviewed the PEF value adopted by the 2000 Final Rule to ensure consistency with

the Court's decision. For the following reasons, DOE concludes that the FCF is unlawful and, as a result, is issuing this IFR to remove the FCF from the PEF calculation.

A. Not Supported by the 49 U.S.C. 32904(a)(B)(2) Factors

In *Iowa, et al. v. Wright*, the Eighth Circuit concluded that "fuel content factor—as *currently* determined and justified by the DOE—lacks statutory authority" and vacated the 2024 Final Rule that preserved and then phased out the FCF. *Id.* (emphasis added). In this rulemaking, DOE determines that the FCF adopted by the 2000 Final Rule is not supported by section 49 U.S.C. 32904 for the same reasons the Court found the FCF, as determined and justified by DOE in the 2024 Final Rule, unlawful.

In the 1994 NOPR, DOE proposed a scarcity factor to quantify the relative scarcity and value of all fuels used to generate electricity in the United States. 59 FR 5336, 5339. However, after considering comments, in the 1999 NOPR, DOE decided to replace the scarcity factor rather than attempt to refine it. Instead of a scarcity factor that is based on the relative scarcity and value for each fuel source, DOE proposed a flat 1.0/0.15 FCF, which is based on the factor Congress set for liquid and gaseous alternative fuel in section 32905. 64 FR 37905, 37907. This marked DOE's departure from its initial interpretation of subsection 32904(a)(2)(B)(iii) and DOE abandoned its decade-long approach of attempting to quantify the relative value or scarcity of various fuels as it did in the 1981 rulemaking or the 1994 NOPR. In the 2000 Final Rule, in response to comments stating that "DOE should provide a technical basis for its application [of the 1.0/0.15 factor] to EVs, or else modify the factor accordingly," DOE failed to provide a technical basis for setting the factor at that value. 65 FR 36986, 36988. Instead, DOE stated that it replaced the proposed scarcity factor with the FCF to simplify the calculation, and to "maintain consistency with the existing regulatory treatment of other types of alternative fueled vehicles." *Id.* By adopting a flat FCF in the 2000 Final Rule, DOE contradicted its decades-long understanding that factor (iii) as requiring quantification of the relative value or scarcity of various fuels.

Additionally, in the 2000 Final Rule when DOE adopted the current FCF, DOE stated that it adopted the 1.0/0.15 FCF, in part, to help address scarcity issues by rewarding electric vehicles' benefits to the Nation relative to petroleum-fueled vehicles, in a manner consistent with the treatment of other types of alternative fueled vehicles. 65 FR 36986, 36988. Like DOE's rationale in the 2024 Final Rule, the 2000 Final Rule incorporated the FCF to incentivize manufacturers to produce more EVs. Thus, DOE interpretated subsection 32904(a)(2)(B)(iii) as enabling it to set a PEF value to incentivize the manufacture of EVs to conserve petroleum. By interpretating subsection 32904(a)(2)(B)(iii) to grant such broad authority, DOE rendered factors (i) and (ii) redundant. Similar to the Court's decision regarding the 2024 Final Rule, DOE determines that this interpretation is not the best reading of the statute.

For the reasons discussed previously, the 1.0/0.15 FCF adopted in the 2000 Final Rule is unsupported by section 32904(a)(2)(B).

B. Not Supported by the 49 U.S.C. 32905

Section 32905 also does not empower DOE to include a fuel content factor of 1.0/0.15 when calculating the petroleum-based fuel economy of EVs. In section 32905, Congress explicitly said that the "fuel economy" of alternative liquid fuel vehicles and gaseous fuel vehicles would be "based on" their "fuel content." 49 U.S.C. 32905(a), (c). Congress specifically set the "fuel content" at 1.0/0.15. *Id.* But Congress did not do so for EVs, because section 32905 explicitly excluded EVs. *Id.* 32905(a) ("Except as provided in . . . section 32904(a)(2) of this title. . . "). Instead, Congress listed specific factors for DOE to consider when determining the equivalent petroleum-based fuel economy values of EVs. 49 U.S.C. 32904(a)(2)(B).

The basis for the current fuel content factor is attached to statutory provisions not pertinent to EVs. As noted, in the 2000 Final Rule, DOE set the FCF at 1.0/0.15 because that same factor applies to non-EV alternative fuel vehicles under section 32905. However, in adopting the FCF, DOE ignored that Congress intended for liquid and gaseous alternative fuel vehicles to be treated differently from EVs. Section 32905 does not apply that factor to EVs and

instead instructs DOE to set the PEF value based on the four factors of subsection 32904(a)(2)(B). Accordingly, there is no basis in section 32905 for DOE to adopt the 1.0/0.15 FCF when calculating the petroleum-based fuel economy of EVs.

IV. Conclusion

A. Impact on PEF Values

For these aforementioned reasons, DOE removes the FCF from the PEF calculation. The PEF value is equal to the product of the values of the gasoline-equivalent energy content of electricity (Eg), the fuel content factor of 1/0.15, the petroleum-fueled accessory factor (AF), and the driving pattern factor (DPF). 65 FR 36986, 36987. This methodology is expressed in the following equation:

$$\text{PEF value} = E_g * FCF * AF * DPF$$

In the 2000 Final Rule, DOE determined that E_g is 12,307 Wh/gal, the AF for EVs that do not have petroleum-powered accessories is 1.0, the AF for EVs that have petroleum-powered accessories is 0.9, and the DPF is 1.0. *Id.* Accordingly, removing the FCF from the PEF value results in the following PEF values:

Table 1. PEF Values without FCF

EVs without petroleum-powered accessories	12,307 Wh/gal * 1.0 * 1.0	12,307 Wh/gal
EVs with petroleum-powered accessories	12,307 Wh/gal * 0.9 * 1.0	11,706 Wh./gal

E_g is determined by combining various values for the efficiency of national electricity and petroleum generation and distribution. DOE notes that the E_g adopted in the 2000 Final Rule was based on data sources, primarily monthly and annual reports from the Energy Information Administration, available in 1999. *Id.* However, the efficiency of many of these processes has improved over the last twenty years. 86 FR 73992, 73995. Specifically, the December 2021 petition noted that the average fossil-fuel electricity generation efficiency has improved and that

the generation fuel mix has changed significantly since 2000. *Id.* DOE agrees that the inputs upon which the calculations and the PEF values are outdated and have significantly changed since part 474 was revised in 2000. As stated previously, DOE will propose the additional revisions to the PEF calculation in a forthcoming notice of proposed rulemaking. DOE intends to complete this rulemaking in a timely manner so that the fully revised PEF values are available as soon as possible.

B. Section-by-Section Analysis

1. Revisions to 10 CFR 474.3

DOE is revising section 474.3(b)(1) and (2), which provides the PEF values for EVs, to reflect the removal of the FCF from the PEF calculation. Specifically, DOE is amending subparagraph (b)(1) so that the PEF value for EVs without petroleum-powered accessories installed is 12,307 Wh/gal. DOE is also amending subparagraph (b)(2) so that the PEF value for EVs with petroleum-powered accessories install is 11,706 Wh/gal.

2. Revisions to 10 CFR Part 474 Appendix A

Similarly, DOE is revising Appendix A to 10 CFR part 474 to reflect PEF values that do not include the FCF. DOE is amending Example 1 to reflect the PEF value for EVs without petroleum-powered accessories installed as 12,307 Wh/gal and Example 2 to reflect the PEF value for EVs with petroleum-powered accessories installed as 11,706 Wh/gal.

V. Public Participation

DOE will accept comments, data, and information regarding this proposed rule on or before the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will not be publicly viewable except for your first and last name(s), organization name (if any), and

submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information the disclosure of which is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *www.regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address,

telephone number, and optional mailing address. The cover letter will not be publicly viewable if it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked “confidential” including all the information believed to be confidential, and one copy of the document marked “non-confidential” that deletes the information believed to be confidential. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and will treat it according to its determination.

It is DOE's policy that all comments, including any personal information provided in the comments, may be included in the public docket, without change and as received, except for information deemed to be exempt from public disclosure.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 14192

Section 6(a) of E.O. 12866 "Regulatory Planning and Review" requires agencies to submit "significant regulatory actions" to OIRA for review. OIRA has determined that this regulatory action does constitute a "significant regulatory action" under section 3(f) of E.O. 12866. Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs ("OIRA") of the Office of Management and Budget ("OMB"). Although, OIRA has determined that this rule constitutes a "significant regulatory action," DOE notes that the Eighth Circuit Court of Appeals recently held that the FCF lacks statutory authority. Consistent with the court's decision, this IFR is amending its methodology to remove the FCF from the PEF value. Additionally, DOE notes that once calculated, the PEF has no independent effects, but serves as an input to calculations that other agencies perform. Thus, the general costs and benefits that could be attributed to this interim final rule are somewhat removed from this action, and DOE has not attempted to quantify them here.

This interim final rule has also been determined to be an "E.O. 14192 deregulatory action" under E.O. 14192, "Unleashing Prosperity Through Deregulation," 90 FR 9065 (February 6, 2025) because the PEF value is simply an input that other agencies use to determine the petroleum-based fuel economy of EVs, there are no direct costs associated with this rulemaking. In addition, as explained previously, in the 2000 Final Rule, DOE included the FCF, in part, to address scarcity, and "reward [EVs'] benefits to the Nation relative to petroleum-fueled vehicles[.]" 65 FR 36986, 36988. However, using an inflated PEF value results in overvaluing EVs when calculating the fleetwide CAFE compliance. Removing the unlawful FCF from the calculation of the PEF value will result in more affordable vehicles for American consumers. Because this interim final rule will reduce the regulatory burden on the American people, DOE concludes that this rule is an "E.O. 14192 deregulatory action."

B. Administrative Procedure Act

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, generally requires public notice and an opportunity for comment before a rule becomes effective. However, APA provides an exception to ordinary notice and comment procedures "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(3)(B). For the reasons discussed in section III, the DOE determines that regulations that include the FCF into the PEF calculation lack statutory authority and is issuing this interim final rule to remove the FCF from the PEF value.

The APA's plain language and logic confirm that a rule that repeals facially unlawful regulations meets the bar for the good cause exception because "where a regulation is unlawful under the plain language of the controlling statute. . . the agency lacks discretion and authority to retain it, even during the pendency of notice and comment proceedings[.]"[3] Because, as determined by the court, the FCF is unsupported by the statute and nothing that might emerge during the comment period can overcome the agency's non-discretionary inability to retain it, notice and comment are therefore "unnecessary" within the meaning of the APA.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, *Proper Consideration of Small Entities in Agency Rulemaking,* 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of

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[3] Office of Management and Budget, *Streamlining the Review of Deregulatory Actions*, October 21, 2025, available at *https://www.whitehouse.gov/wp-content/uploads/2025/10/M-25-36-Streamlining-the-Review-of-Deregulatory-Actions.pdf?cb=1761144575*. *See* E.O. 14219, *Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative*, 90 FR 10583 (signed Feb. 19m, 2025); Presidential Memoranda, *Directing the Repeal of Unlawful Regulations*, April 9, 2025, available at *https://www.whitehouse.gov/presidential-actions/2025/04/directing-the-repeal-of-unlawful-regulations/.*

its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. The Department has made its procedures and policies available on the Office of General Counsel's web site: *www.energy.gov/gc/office-general-counsel.*

The interim final rule revises DOE's regulations on electric vehicles regarding procedures for calculating a value for the petroleum-equivalent fuel economy of EVs for use in the CAFE program administered by DOT. Once calculated, the PEF has no independent effects, but serves as an input to calculations that other agencies perform. Because this interim final rule does not directly regulate small entities but instead only amends a factor used to calculate the average fuel economy of a manufacturer's entire fleet, DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis is required.[4] *Mid-Tex Elec. Co-Op, Inc. v. F.E.R.C.*, 773 F.2d 327 (1985). Accordingly, DOE certifies that this rule would not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis is required. DOE transmitted a certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

D. Review Under the Paperwork Reduction Act of 1995

The interim final rule does not impose new information or record keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq*).

E. Review Under the National Environmental Policy Act of 1969

DOE analyzed this regulation in accordance with the National Environmental Policy Act of 1969 ("NEPA"), DOE's NEPA implementing regulations (10 CFR part 1021), and DOE's NEPA implementing procedures published outside the Code of Federal Regulations on June 30, 2025. DOE has determined that NEPA does not apply to this action as this interim final rule

[4] DOE notes that passenger vehicle manufacturers that manufacture fewer than 10,000 vehicles per year can petition NHTSA to have alternative CAFE standards. *See* 49 U.S.C. 32902(d).

amends an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. 10 CFR part 1021, Appendix A. The interim final rule revises DOE's regulations on electric vehicles regarding procedures for calculating a value for the petroleum-equivalent fuel economy of EVs for use in the CAFE program administered by DOT. Once calculated, the PEF has no independent effects but serves as an input to calculations that other agencies perform. Because the PEF value has no independent effects, but instead only amends a factor used to calculate the average fuel economy of a manufacturer's entire fleet, amending its value will not change the environmental effect of the rule or regulation being amended.

F. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The E.O. requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The E.O. also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. *See* 65 FR 13735. DOE examined this final rule and determined that it will not preempt State law and will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of Government. No further action is required by E.O. 13132.

G. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1)

eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct, rather than a general standard and promote simplification and burden reduction. Section 3(b) of E.O. 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies its preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) specifies its retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met, or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule does meet the relevant standards of E.O. 12988.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a) and (b)). The section of UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed "significant intergovernmental mandate" and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a

statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *www.energy.gov/gc/office-general-counsel*). This rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year by State, local, and tribal governments, in the aggregate, or by the private sector, so these requirements under the Unfunded Mandates Reform Act do not apply.

I. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE concludes that it is not necessary to prepare a Family Policymaking Assessment.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this rule under the OMB and DOE guidelines and concludes that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action

under E.O. 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This rule amends a factor used to calculate CAFE compliance and is not expected to have a significant adverse effect on the supply, distribution, or use of energy. Additionally, OIRA has not designated this rule as a significant energy action. Accordingly, the requirements of E.O. 13211 do not apply.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that the Office of Information and Regulatory Affairs has determined that this rule meets the criteria set forth in 5 U.S.C. 804(2).

VII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 474

Corporate average fuel economy, Electric (motor) vehicle, Electric power, Energy conservation, Fuel economy, Motor vehicles, Research.

Signing Authority

This document of the Department of Energy was signed on February 16, 2026, by Audrey Robertson, Assistant Secretary for Energy (EERE), Office of Critical Minerals and Energy Innovation, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in

electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on February 17, 2026.

Jennifer Hartzell,
Alternate Federal Register Liaison Officer,
U.S. Department of Energy.

For the reasons stated in the preamble, DOE amends part 474 of Chapter II of Title 10 of the Code of Federal Regulations as set forth below:

PART 474—ELECTRIC AND HYBRID VEHICLE RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAM; PETROLEUM-EQUIVALENT FUEL ECONOMY CALCULATION

1. The authority citation for part 474 continues to read as follows:

Authority: 49 U.S.C. 32901 *et seq*.

§ 474.3 [Amended]

2. Amend § 474.3 as follows:

a. In (b)(1), by removing "82,049" and adding "12,307" in its place.

b. In (b)(2), by removing "73,844" and adding "11,706" in its place.

3. Revise appendix A to part 474 to read as follows:

Appendix A to Part 474 - Sample Petroleum-Equivalent Fuel Economy Calculations

Example 1: An electric vehicle is tested in accordance with Environmental Protection Agency procedures and is found to have an Urban Dynamometer Driving Schedule energy consumption value of 265 Watt-hours per mile and a Highway Fuel Economy Driving Schedule energy consumption value of 220 Watt-hours per mile. The vehicle is not equipped with any petroleum-powered accessories. The combined electrical energy consumption value is determined by averaging the Urban Dynamometer Driving Schedule energy consumption value and the Highway Fuel Economy Driving Schedule energy consumption value using weighting factors of 55 percent urban, and 45 percent highway:

combined electrical energy consumption value = (0.55 * urban) + (0.45 * highway) = (0.55 * 265) + (0.45 * 220) = 244.75 Wh/mile

Since the vehicle does not have any petroleum-powered accessories installed, the value of the petroleum equivalency factor is 12,307 Watt-hours per gallon, and the petroleum-equivalent fuel economy is:

$$\frac{12{,}307\,\frac{Wh}{gal}}{244.75\,\frac{Wh}{mile}} = 50.28\,mpg$$

Example 2: The vehicle from Example 1 is equipped with an optional diesel-fired cabin heater/defroster. For the purposes of this example, it is assumed that the electrical efficiency of the vehicle is unaffected.

Since the vehicle has a petroleum-powered accessory installed, the value of the petroleum equivalency factor is 11,706 Watt-hours per gallon, and the petroleum-equivalent fuel economy is:

$$\frac{11{,}706\,\frac{Wh}{gal}}{244.75\,\frac{Wh}{mile}} = 45.26\,mpg$$

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