Alliance for Automotive Innovation

Comments To Department of Energy on

Petroleum-Equivalent Fuel Economy Calculation
Interim Final Rule; request for comments

Docket ID No. EERE-2025-VT-0073
RIN 1904-AF47

March 23, 2026

Alliance for Automotive Innovation (Auto Innovators)[1] submits these comments in response to the Department of Energy (DOE) interim final rule "Petroleum-Equivalent Fuel Economy Calculation" (2026 PEF IFR).[2]

While an interim final rule is appropriate under the Administrative Procedure Act (APA) in some circumstances, this particular rule fails to give meaning to a statutory requirement and does not meet Congressional intent. The 2026 PEF IFR should therefore be withdrawn, and DOE should proceed to the notice and comment rulemaking described in the 2026 PEF IFR to fully consider all requirements.[3]

Background

Under 49 U.S.C. § 32904(a)(2)(B), the Secretary of Energy is required to establish equivalent petroleum based fuel economy values for electric vehicles for the purposes of including such vehicles in the calculation of a manufacturer's average fuel economy. In so doing, the Secretary must review those values each year and determine and propose necessary revisions based on four 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

[1] Auto Innovators represents the full auto industry, including the manufacturers producing most vehicles sold in the U.S., equipment suppliers, battery producers, semiconductor makers, technology companies, and autonomous vehicle developers. Our mission is to work with policymakers to realize a cleaner, safer, and smarter transportation future and to ensure a healthy and competitive auto industry that supports U.S. economic and national security. Representing over 5 percent of the country's GDP, responsible for supporting nearly 11 million jobs, and driving $1.5 trillion in annual economic activity, the automotive industry is the nation's largest manufacturing sector.

[2] U.S. Department of Energy. Petroleum-Equivalent Fuel Economy Calculation. Interim final rule. 91 *Fed. Reg.* 7810 (Feb. 19, 2026). Hereinafter "2026 PEF IFR."

[3] *Id.* at 7810. "DOE will propose additional revisions to the PEF in a forthcoming notice of proposed rulemaking."

and the relative scarcity and value to the United States of all fuel used to generate electricity; and (iv) the specific patterns of use of electric vehicles compared to petroleum-fueled vehicles.

DOE promulgated such rules in 1981[4] and 2000[5] (the 1981 PEF Rule and 2000 PEF Rule, respectively). Those rules engendered no legal challenges.

In 2024, EPA promulgated a new PEF rule (the 2024 PEF Rule),[6] revising the 2000 Rule. The 2024 Rule was challenged by a group of states and American Free Enterprise Chamber of Commerce, and was subsequently vacated and remanded to DOE in *Iowa v. Wright* (154 F.4th 918 (8th Cir. 2025) (*Iowa*). The court found that "The part of DOE's final rule that preserves and then phases out the fuel content factor – as currently determined and justified by DOE – lacks statutory authority." *Id.* At 946. The court also determined that "DOE violated notice-and comment procedures in [the cumulative aspect of the cumulative equivalent fuel economy of electricity] portion of the rulemaking." *Id.* at 950. Subsequently, DOE reestablished the 2000 PEF Rule through a direct final rule issued in early 2026 (January 2026 PEF Rule).[7]

Despite having already implemented the *Iowa* decision via the January 2026 PEF Rule, DOE now asserts an urgent need to modify that rule without notice and comment in a manner inconsistent with *Iowa*, that fails to meet one of the statutory factors, and that does not meet Congressional intent.

DOE has not met the "good cause" exception for an interim final rule.

Under the Administrative Procedure Act (APA), an agency contemplating the adoption of a final rule must give public notice of the proposed rule, allow for public comments and testimony, and fully consider the comments submitted. Only after going through this important process can an agency finalize the rule and require regulated parties to comply with it. 5 U.S.C. § 553.

The APA does provide some limited exceptions to this general rule, one of which applies where "the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable,

---

[4] Department of Energy. Electric and Hybrid Vehicle Research, Development, and Demonstration Program; Equivalent Petroleum-Based Fuel Economy Calculation. Final rule. 46 *Fed. Reg.* 22747 (Apr. 21, 1981).

[5] Department of Energy. Electric and Hybrid Vehicle Research, Development, and Demonstration Program; Petroleum-Equivalent Fuel Economy Calculation. Final rule. 65 *Fed. Reg.* 36986 (Jun. 12, 2000).

[6] Department of Energy. Petroleum-Equivalent Fuel Economy Calculation. Final rule. 89 *Fed. Reg.* 22041 (Mar. 29, 2024).

[7] Department of Energy. Petroleum-Equivalent Fuel Economy Calculation. Final rule, technical amendment. 91 *Fed. Reg.* 553 (Jan. 8, 2026).

unnecessary, or contrary to the public interest." *Id.,* § 553(b)(3)(B). In that case, the agency can issue an interim final rule that becomes effective before public notice and comment.

Auto Innovators agrees that there may be circumstances where it is necessary for an agency to take swift action to finalize a rule prior to notice and comment because of exigent circumstances and the need to provide immediate regulatory relief. This, however, is not such a circumstance.

The ostensible basis for this interim final rule is a cursory statement that because of the decision by the 8th Circuit in *Iowa,* the current PEF regulations "lack statutory authority" and that new rulemaking is necessary to correct the error. 91 *Fed. Reg.* at 7,815. However, the foundational justification offered by the agency does not match the action here. DOE states in the preamble that "the APA's plain language and logic confirm that ***a rule that repeals facially unlawful regulations*** meets the bar for the good cause exception." *Id.* (emphasis added). But here, DOE is not merely repealing the 2024 final rule that the *Iowa* court invalidated (indeed, the agency already did so earlier this year). Rather, the agency is setting an entirely new PEF value.

Moreover, DOE's conclusory statement that comment is unnecessary here because "the FCF [fuel content factor] is unsupported by the statute and nothing that might emerge during the comment period can overcome the agency's nondiscretionary inability to retain it," does not support the good cause exception. As discussed in greater detail below, simply issuing a revised PEF by excising the fuel content factor from the 2000 rule does not comply with the statute. Rather, DOE is required to determine whether the elimination of the FCF necessitates other adjustments to the PEF to ensure that all provisions of EPCA are effectuated. That cannot be done by an interim final rule, but rather through full notice-and-comment rulemaking.

The IFR is inconsistent with the 8th Circuit's Decision in *Iowa.*

In *Iowa,* the court vacated and remanded the 2024 PEF Rule. The court did not vacate the 2000 PEF rule, remand the 2000 PEF Rule to DOE for further reconsideration, or otherwise order DOE to take any action on the 2000 PEF Rule. Consequently, amending the January 2026 PEF Rule (which is effectively the 2000 PEF Rule) rule via an interim final rule is inappropriate.

DOE has already taken steps to implement the *Iowa* court's decision by directly issuing a rule that revokes the 2024 rule—the rule that was vacated in *Iowa*. Consequently, the agency has already complied with the *Iowa* court's mandate. Moreover, to the extent that DOE has determined that the 2000 PEF Rule suffers from the same legal flaw as the 2024 PEF Rule, the proper remedy would be a rescission of that rule in its entirely—just as the 2024 rule was rescinded. Notably, DOE purports to do something entirely different, which is to rescind just a

portion of the 2000 PEF Rule without considering what the impact of its doing so would be on the rest of the rule.

The IFR fails to give effect to 49 U.S.C. § 32904(a)(2)(B)(iii).

When establishing a petroleum-equivalent fuel economy value, DOE must base the factor, in part, on "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." 49 U.S.C. 32904(a)(2)(B)(iii). In the 2000 PEF Rule, which the 2026 PEF IFR effectively amends, DOE included the fuel content factor "in part, to help address scarcity issued by rewarding electric vehicles' benefits to the Nation relative to petroleum-fueled vehicles."[8]

This is evident from the NOPR supporting the 2000 PEF rule. There, DOE explains that it adopted the fuel content factor and made it part of the PEF calculation in an effort to effectuate 49 U.S.C. § 32904(a)(2)(B)(iii). DOE adopted this measure in lieu of prior methodologies to consider this factor—*i.e.*, the "scarcity factor," a reserves-based approach, and a market price approach.[9] Rather than adopting one of these alternatives, DOE went with the fuel content factor because it was "consistent with existing regulatory and statutory procedures," "it provides a similar treatment to manufacturers of all types of alternative fuel vehicles," and for the sake of simplicity and directness.

The important point here is that the fuel content factor was part and parcel to the agency's implementation of the factors specified by Congress in 49 U.S.C. § 32904(a)(2)(B). If, in the 2000 rulemaking, DOE had fully effectuated the statutory factors in Section 32904(a)(2)(B) and thereafter grafted the fuel content factor on top of it, then perhaps an interim final rule simply stripping the fuel content factor from the calculation would be appropriate. But that is not what DOE did there. By stripping the fuel content factor without finding another method to implement 32904(a)(2)(B)(iii), DOE is failing to give full effect to the statute. That is why a full notice and comment rulemaking process is necessary here.

DOE further errs by not reconsidering the other statutorily required factors for the PEF.

DOE is required to "review those [equivalent petroleum based fuel economy] values each year and determine and propose necessary revisions based on the [enumerated] factors." 49 U.S.C. § 32904(a)(2)(B). In issuing the IFR without such review of factors beyond the fuel content factor, DOE has ignored its duty to review each of the factors and to "propose" necessary revisions.

---

[8] 88 *Fed. Reg.* 21528 (Apr. 11, 2023).

[9] 64 *Fed. Reg.* 37907 (Jul. 14, 1999).

DOE's statement that it "will propose additional revisions to the PEF in a forthcoming notice of proposed rulemaking"[10] is insufficient and untimely.

DOE's failure to give meaning to all of its statutory requirements in the IFR also exemplifies why this rulemaking should have followed the Administrative Procedure Act's full notice and comment rulemaking procedures. If the 2000 PEF Rule (as restored by the January 2026 PEF Rule) was so flawed as to require reconsideration of a portion of it almost 26 years after it was promulgated, so too should other aspects of the 2000 rule be reviewed concurrently.

The appropriate course for DOE to take is to withdraw the IFR and to propose revisions to the reestablished 2000 PEF Rule as a cohesive whole.

The PEF should result in an imputed fuel economy for electric vehicles (EVs) higher than that of internal combustion engine vehicles (ICEVs), but under the 2026 PEF IFR it does not.

Battery electric vehicles and plug-in hybrid electric vehicles (electric vehicles) operating on stored electricity do not directly consume any petroleum. Strictly speaking, their fuel economy in terms of miles per gallon of petroleum fuel consumed is infinite. Indirect petroleum consumption through the generation of electricity is also de minimis. However, under 49 U.S.C. § 32904(a)(2)(B), Congress requires more than just consideration of petroleum consumption in setting a petroleum-equivalent fuel economy value.

Yet Congress still intended some compliance incentive for EVs. DOE recognized this statutory purpose in its 1980 proposal.[11] "The intent of this legislation is to provide an incentive for vehicle manufacturers to produce electric vehicles by including the expected high equivalent fuel economy of these vehicles in the CAFE calculation and thereby to accelerate the early commercialization of electric vehicles."[12]

The commercialization of EVs remains in its early stages. Between 2020 and 2023, EV sales grew from 2% U.S. market share to about 10%. Since then, EV market share has remained stable at about 9-10%, but dipping as low as 5.5% in November 2025 following the rescission of federal consumer purchase and commercial lease incentives.

By simply excising the fuel content factor and failing to reconsider other factors such as improvements in the national average electrical generation efficiency since 2000, the 2026 PEF

---

[10] 2026 PEF IFR (*supra* note 2) at 7810.

[11] Department of Energy. Electric and Hybrid Vehicle Research, Development, and Demonstration Program; Equivalent Petroleum-Based Fuel Economy Calculation. Proposed rule. 45 *Fed. Reg.* 34008 (May 21, 1980).

[12] *Id.* at 34009.

IFR fails to recognize the superior efficiency of EVs. In fact, the IFR yields EV fuel economies similar to those of ICEVs.

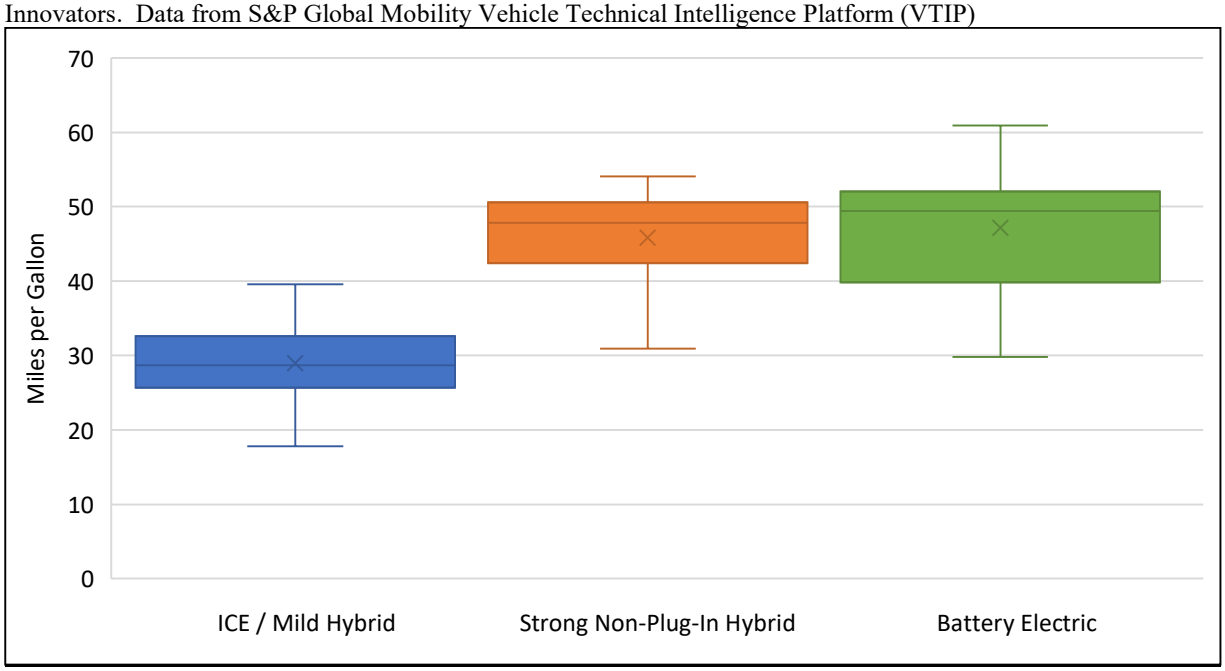
Figure 1 demonstrates this effect for model year 2025 D-segment utility vehicles classified as non-passenger automobiles (light trucks) for the purposes of the National Highway Traffic Safety Administration (NHTSA) Corporate Average Fuel Economy (CAFE) regulations.[13] Under the 2026 PEF IFR, the interquartile range of the battery electric vehicle (BEV) fuel economies completely encompasses the interquartile range of strong non-plug-in hybrid electric vehicles, and the highest fuel economy ICEVs have similar fuel economy to the first quartile BEVs.

Although 49 U.S.C. § 32904(a)(2)(iii) may not permit DOE to "*artificially* inflate" the fuel economy of EVs (as noted in *Iowa*),[14] the statute still includes a requirement for DOE to consider "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." Indeed, consistent with the underlying purpose of EPCA, DOE has historically set a PEF value that results in a high equivalent fuel economy for EVs relative to their gasoline counterparts in the CAFE calculation. By setting a PEF that results in electric vehicle fuel economy no higher than non-electrified vehicles instead of one with a relatively high equivalent fuel economy, DOE fails to meet the intent of the statutory requirements.

[13] D-segment size utility vehicles classified as trucks are currently the largest vehicle segment by sales in the U.S. Within this segment, data compiled by S&P Global Mobility in its Vehicle Technical Intelligence Platform (VTIP) includes 127 variants of conventional internal combustion engine vehicles, 16 variants of non-plug-in strong hybrid electric vehicles, 19 variants of plug-in hybrid electric vehicles, and 52 variants of battery electric vehicles.

[14] *Iowa,* 154 F.4th at 945 (emphasis added).

Figure 1: Comparison of the fuel economy of model year 2025 conventional internal combustion engine, strong non-plug-in hybrid, and battery electric D-segment sport utility vehicle variants classified as light-duty trucks using the IFR PEF. Not sales weighted. Mean shown as "x", interquartile range as a box, median as a line, and minimum/maximum data excluding any outliers as whiskers below or above the box, respectively. Graphic by Auto Innovators. Data from S&P Global Mobility Vehicle Technical Intelligence Platform (VTIP)



Conclusion

In the case of this interim final rule, DOE should withdraw the 2026 PEF IFR because of its legal deficiencies and instead proceed to a notice of proposed rulemaking. Such a proposal should consider all statutory requirements and result in a PEF that is consistent with those requirements and Congressional intent to reflect the relatively high efficiency of electric vehicles.