



ZERO EMISSION  
TRANSPORTATION  
ASSOCIATION

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US Department of Energy

Docket Management Facility

1904 – AG 09

1000 Independence Avenue SW

Washington DC 20585

Re Docket Number EERE 2025 VT – 0073 Interim Final Rule

Petroleum Equivalent Fuel Economy Calculation RIN 1904- AG 09

Zero Emission Trade Association (ZETA) is an industry backed by a coalition of over 60 members advocating 100% electric vehicle (EV) sales. ZETA is committed to enacting policies that drive EV adoption, create hundreds of thousands of jobs, dramatically improve public health, and significantly reduce emissions. Our coalition spans the entire EV supply chain and includes vehicle manufacturers and network operators, battery manufacturers, recyclers, electricity providers, and critical minerals producers, among others.

We thank the Department of Energy for the opportunity to comment on its interim final rule (IFR) that removes the Fuel Content Factor (FCF) from the calculation of the Petroleum Equivalency Factor (PEF) used by EPA in calculating light duty vehicle manufacturers' compliance with DOTs Corporate Average Fuel Economy (CAFE) standards. The IFR suffers from several fundamental flaws, including that it is legally invalid.

- I. THE IFR VIOLATES THE APA BECAUSE DOE FAILED TO FOLLOW REQUIRED PROCESS AND ALSO CONSTITUTES ARBITRARY AND CAPRICIOUS AGENCY DECISIONMAKING BECAUSE IT RELIES ON GROSSLY OUTDATED INFORMATION

The IFR violates the Administrative Procedure Act (APA) because the agency has not demonstrated good cause to skip notice and comment procedures on a technically complex rulemaking. 5 USC § 553(b)(3). The APA requires that a court “hold unlawful” an

agency action that doesn't follow the required procedure. 5 U.S.C. § 706(2)(D). The IFR has not followed proper APA procedure and is invalid.

The IFR also violates the APA because it relies on grossly outdated information from several decades ago and therefore constitutes arbitrary and capricious agency decision-making. 5 USC 706 (2)(A). As DOE is aware, current information is available and reflects very different circumstances that would support a significantly different value. The APA requires a reviewing court to set aside the IFR as arbitrary and capricious for DOE's failure to utilize updated information.

## II. THE DOE HAS ALREADY DETERMINED THAT THE PEF IS OUTDATED AND MUST BE REVISED

The IFR correctly states that

“[i]n 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”

See [88 FR 21525](#) (April 11, 2023).

The IFR further

“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. . . . 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.”

Nevertheless, the IFR sets the PEF as 12,307 Wh/gal -- the exact value originally established in the 2000 Final Rule that DOE determined is outdated and understated in the 2023 Notice.

Although the Eighth Circuit in *Iowa v. Wright*, No 24-1721 (2025) overturned the 2024 rulemaking that established the FCF, the court did not disturb DOE's prior determination in

2023 that the PEF was outdated and needs to be revised. The Eighth Circuit’s decision prohibits DOE from applying an FCF when it calculates an accurate PEF for today’s EVs. But DOE does not have authority under *Iowa v. Wright* or any other law or regulation to issue a rule that establishes a PEF that DOE acknowledges is outdated and understated to remain in effect for an indefinite period while DOE calculates a new PEF.

### III. DOE HAS NOT PERFORMED THE REQUIRED ANNUAL REVIEW SINCE 2000

Finally, DOE is statutorily obligated to develop and issue a PEF based on various statutory factors and “review those values each year and determine and propose necessary revisions.” 49 USC § 32904 (a)(2)(B). The factors that must be considered annually are as follows:

- (i) (i) the approximate electrical energy efficiency of the vehicle and (ii) the national average electrical generation and transmission efficiencies; (iii) the need of the US to conserve all forms of energy and the relative scarcity and value to the US of all fuel used to generate electricity; (iv) the specific patterns of usage of electrical vehicles compared to petroleum – fueled vehicles.

Despite this requirement to revisit the PEF annually, DOE has directed automakers to use the PEF calculated in 2000 and failed to perform the mandated annual review. Accordingly, the PEF in the IFR is invalid.

### BACKGROUND

The PEF rule is used to generate an electric vehicle’s MPGe value and applies to EVs under 8500 lbs. The PEF is a calculation that converts the efficiency of an electric vehicle into a fuel economy equivalent. The MPGe value is used by NHTSA in determining CAFE standard compliance. In the IFR, DOE sets the PEF at 12,307 Watt Hrs/U.S. Gallon based on the calculations in the rule issued back in 2000.

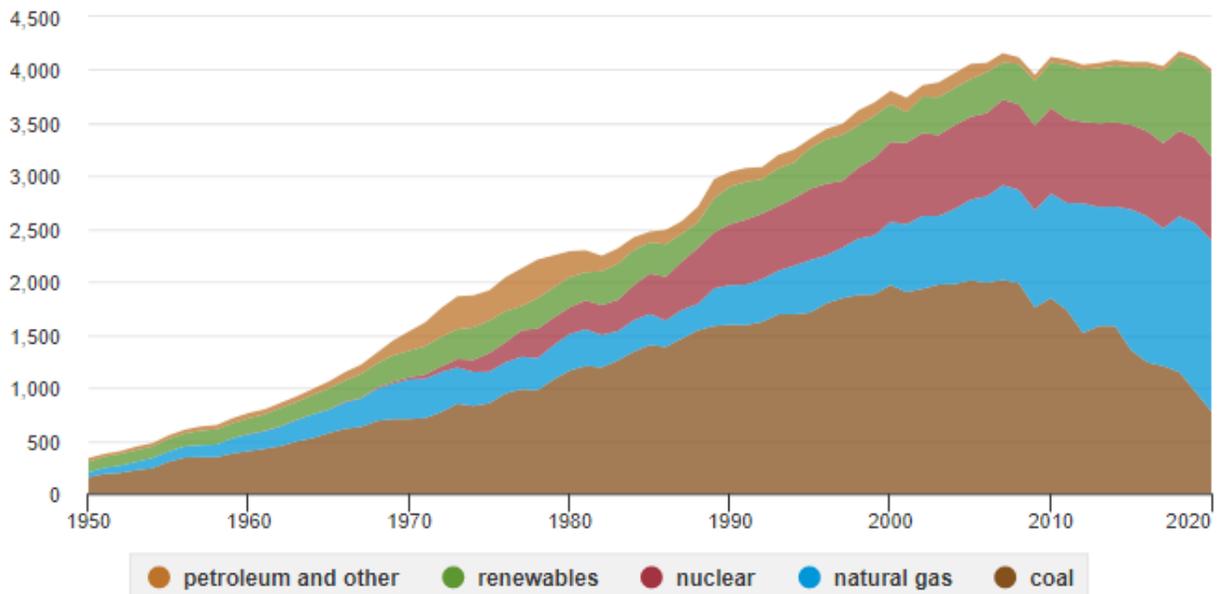
#### SUMMARY OF PEF SINCE 2000

PEF Policy Era	Years Governed	Watt Hrs/U.S. Gallon
Original -2000	Prior to MY 2027	82,049
Biden Proposal – FCF phaseout	MY 2027- 2031	79,989-28,996
2026 DOE Interim Final Rule	MY 2027	12,307

## U.S. electricity generation by major energy source, 1950-2020



billion kilowatthours

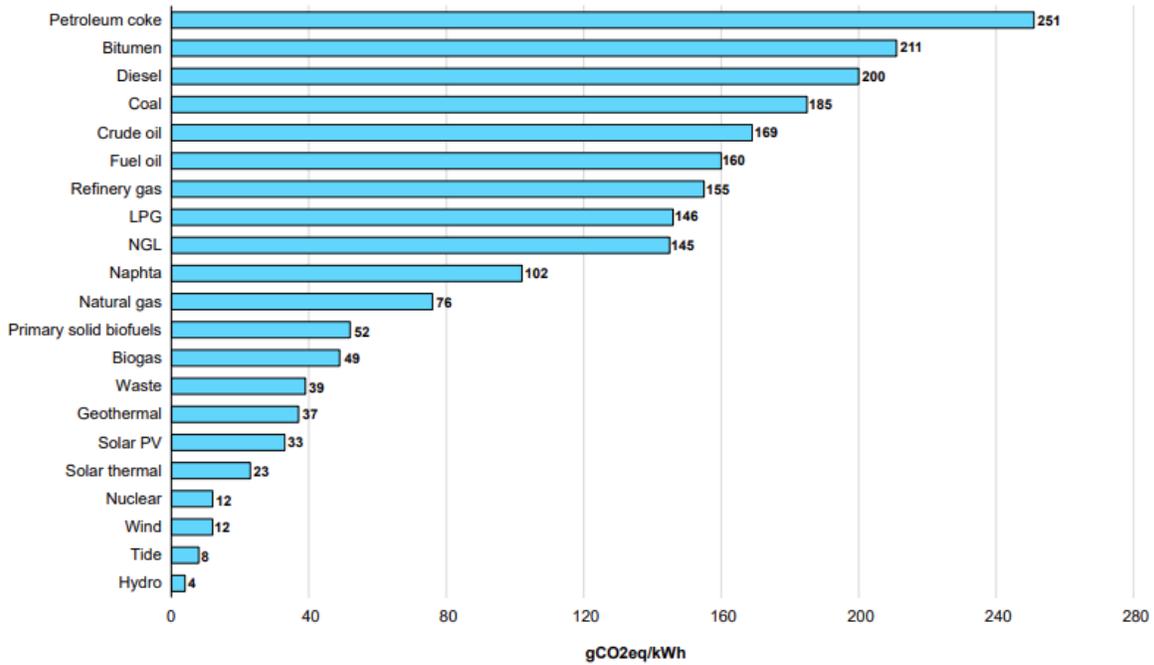


Note: Electricity generation from utility-scale facilities.

Source: U.S. Energy Information Administration, *Monthly Energy Review*, Table 7.2a, January 2021 and *Electric Power Monthly*, February 2021, preliminary data for 2020

The 12,307 Wh/gal value under the 2000 baseline is not representative of current grid conditions. The chart above reflects a coal heavy grid in 2000 with significantly higher emissions. At the time the rule was finalized, coal accounted for a much smaller share of US generation, and emissions from natural gas, hydro, nuclear, solar and wind were markedly lower. <https://www.epa.gov/green-power-markets/us-electricity-grid-markets>.

**Total upstream electricity generation emission factors - global central tendencies - year 2022**



The chart above captures relative emission factors which when combined with updated generation -mix data shows that the gasoline-equivalent energy content of electricity should be significantly higher than the 2000 value of 12,307 Wh/gal.

[https://iea.blob.core.windows.net/assets/3ff59090-1420-4e74-9069-a90602e56bf3/IEAupstreamlifecycleemissionfactors\\_2024.pdf](https://iea.blob.core.windows.net/assets/3ff59090-1420-4e74-9069-a90602e56bf3/IEAupstreamlifecycleemissionfactors_2024.pdf)

With such a significant decrease in coal burning for electricity generation since 2000, an accurate Wh/gal equivalence value would be significantly higher than that proposed by the IFR based on even the current year’s energy mix alone – and without projecting into the future. The existing value of 12,307 WH/gal based on 2000 data is grossly outdated due to today’s cleaner generation mix. DOE is legally required to calculate the PEF based on current conditions using the identified factors.

## CONCLUSION

The IFR does not provide an accurate value for the PEF as it is based on outdated data from more than twenty years ago. DOE must conduct an updated review using scientifically reliable data. Further, the IFR has been adopted in violation of the APA as it did not undergo required notice and comment. Finally, DOE has not performed the statutorily required annual review for many years and must do so in order to adopt a lawful PEF.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'AG', written in a cursive style.

Albert Gore

ZETA