



August 29, 2026

Submitted electronically via www.regulations.gov

The Honorable Lee M. Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: *Proposed Rule—Amendments and Nonconformance Penalties for Model Year 2027 and Later Heavy-Duty Highway Engines and Amendments to Inducement Provisions for SCR-Equipped Diesel Engines; 91 Fed. Reg. 43,154 (July 14, 2026); RIN 2060-AW83; FRL 12756-01-OAR; Docket No. EPA-HQ-OAR-2026-0728*

Dear Administrator Zeldin:

The Energy Marketers of America (“EMA”) appreciates the opportunity to comment on the Environmental Protection Agency’s (“EPA” or “the Agency”) proposed amendments to selective catalytic reduction (“SCR”) inducement requirements for systems using diesel exhaust fluid (“DEF”) (the “proposed rule”).¹ EMA supports targeted relief from false DEF faults, unreliable sensors, and severe derates that unnecessarily strand trucks, coaches, farm equipment, and construction machinery. EMA does not oppose replacing severe or rapidly escalating derates with better diagnostics, longer cure periods, and less restrictive inducement schedules. EMA takes no position in these comments on the proposed warranty, useful-life, or nonconformance-penalty provisions except where EPA’s treatment of those provisions exposes omissions in the Agency’s analysis of the SCR inducement amendments.

EMA is a federation of 48 state and regional trade associations representing family-owned and independently operated energy marketers throughout the United States. EMA members supply approximately 80 percent of all finished motor and heating fuel products sold nationwide, including diesel fuel, renewable diesel, biodiesel blends, gasoline, biofuels, heating fuel, jet fuel, kerosene, and lubricating oils. Energy marketers represented by EMA own and operate approximately 60,000 retail motor fuel stations, supply motor fuels to an additional 40,000 stations, and deliver heating fuel to more than five million homes and businesses. Many EMA members also store, transport, and retail DEF as an essential complement to on-road and off-road diesel service.

Executive Summary

- EPA should preserve and formalize the core protections in its August 2025 and March 2026 guidance, including extended cure periods and approved NOx-sensor alternatives, and allow those measures time to reach the in-use fleet.

¹Amendments and Nonconformance Penalties for Model Year 2027 and Later Heavy-Duty Highway Engines and Amendments to Inducement Provisions for SCR-Equipped Diesel Engines, 91 Fed. Reg. 43,154 (July 14, 2026) (the proposed rule).

- EMA objects to eliminating every performance-based inducement because the record does not establish that visible and audible notifications will produce refill, repair, and anti-tampering behavior comparable to a modest, graduated inducement.
- EPA has proposed its least frequent notification schedule for precisely the two conditions—DEF quality and tampering—in which the operator has the least incentive to correct, and downstream marketers have the most at stake.
- EMA members have made investments in DEF storage, dispensing, and quality programs in reliance on the framework EPA adopted in 2023, and that reliance requires a reasoned response before the framework is withdrawn.
- If EPA proceeds, it should adopt a narrow backstop — no performance restriction for unconfirmed sensor, wiring, communications, or other component faults, but a delayed and modest inducement for a reliably confirmed empty tank, confirmed non-DEF fluid or operation below EPA’s final quality trigger, or actual tampering.
- EPA should select MY 2031 as the transition year and prohibit early adoption and should move to an earlier year only on published evidence demonstrating comparable compliance behavior.
- EPA should protect ISO 22241 and API-certified DEF as the commercial product standard and make clear that a lower engine-detection threshold does not redefine substandard fluid as marketable DEF.
- EPA should place the February 2026 manufacturer submissions in the rulemaking docket and evaluate downstream effects on small DEF marketers, rural availability, pricing, existing investment, nonroad customers, and mixed-model-year fleets before finalizing the rule.

I. EMA Supports the Existing Targeted Fixes and Objects to Replacing Them Prematurely

Operator frustration has been driven substantially by unreliable hardware, urea-quality-sensor failures, diagnostic systems that can mistake component faults for tampering, and inducement schedules that provide insufficient time to diagnose and repair a fault. Those are serious engineering and implementation problems. They do not establish that DEF or SCR has failed as an emissions-control strategy.

EPA has already adopted measures directed to those problems. Its August 2025 guidance permits substantially longer periods before severe performance restrictions. In February 2026, EPA required major manufacturers to submit DEF-system failure information. Its March 2026 guidance confirms that manufacturers may use NOx-sensor and other surrogate strategies instead of traditional urea-quality sensors, including approved software updates for in-use engines.² Implementation has begun, but EPA has not allowed sufficient time—or published sufficient in-use data—to determine how extensively these measures have been deployed or how effectively they have reduced false faults, unnecessary repairs, and severe derates.

EMA therefore supports preserving and formalizing the core protections reflected in the August 2025 and March 2026 guidance. EPA should maintain an enforceable approval path for manufacturers to deploy software updates, NOx-sensor strategies, calibrated warning schedules, and longer cure periods on new and in-use engines. That is the most constructive and immediately available means of protecting operators without discarding the compliance backstop that helped make DEF use routine.

²See EPA, The Trump EPA’s Actions on DEF: Timeline of How We Got Here (July 2026); EPA, Revised Guidance for Light Duty Vehicles, Heavy-Duty Diesel Engines and Nonroad Compression-Ignition Engines Using Selective Catalyst Reduction Technologies, IACD-2025-10 (Aug. 11, 2025); EPA, DEF Quality Monitoring Using Alternate Sensor Technologies, IACD-2026-05 (Mar. 26, 2026); 91 Fed. Reg. at 43,196-98.

EMA specifically objects to replacing mandatory derates with notifications no later than MY 2029—and permitting manufacturers to transition earlier—before EPA has evaluated its existing corrective measures. EPA itself asks whether the transition should instead occur in MY 2030 or MY 2031.³ EMA recommends that EPA select MY 2031 and prohibit early adoption. If EPA wishes to preserve the option of an earlier transition, it should condition that option on first publishing evidence that notifications provide reasonable assurance of DEF replenishment, timely repair, and deterrence of tampering.

II. EPA Has Not Supplied an Adequate Record or Reasoned Explanation for a Complete Reversal

This rulemaking is governed by Clean Air Act section 307(d). EMA raises each concern and requested alternative in these comments as a specific objection to the proposed rule. Section 307(d)(7)(B) generally permits judicial review only of objections raised with reasonable specificity during the public-comment period.⁴ EMA objects that the proposed elimination of all compliance-related performance derates lacks an adequate evidentiary record, fails to account for the factual premises of the 2023 rule, inadequately evaluates reasonable alternatives, disregards the reliance interests of downstream DEF marketers, and fails to consider important downstream and small-business consequences.

In 2023, EPA codified a graduated derate schedule to demonstrate that operators would be reasonably likely to maintain a consistent supply of quality DEF and address tampering. The Agency simultaneously reduced the severity of earlier inducement approaches, extended the time before final inducement, required validation and prompt clearing after correction, and expanded access to generic scan tools.⁵ The proposed rule would now eliminate the performance component of that framework before the regulated MY 2027 requirements have even taken effect.

An agency may change policy, but it must acknowledge the change, examine the relevant data, and provide a reasoned explanation. When the new policy disregards factual findings or serious reliance interests underlying the prior policy, those matters require a reasoned response. *Motor Vehicle Manufacturers Ass’n v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 42–43 (1983); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009). EPA has acknowledged the change, but the present record does not establish that notifications will perform the functions for which the Agency adopted derates in 2023.

The reliance here by EMA members are concrete and belong to parties outside the regulated class. As described in Part VI below, EMA members committed capital to bulk DEF storage, dedicated dispensers, quality-control programs, transportation assets, and customer education against a federal framework in which the use of conforming DEF was not optional. Those investments are not recoverable if throughput becomes irregular at marginal locations. EPA has not identified, weighed, or responded to that reliance interest anywhere in the proposed rule, and EMA objects that a final rule may not lawfully disregard it.

EPA relies in part on studies of audible seatbelt reminders. The analogy is incomplete in two respects. First, fastening a seatbelt is an immediate, cost-free act performed inside the vehicle; correcting a DEF-

³91 Fed. Reg. at 43,200 (Request for Comment C-33).

⁴42 U.S.C. § 7607(d)(7)(B).

⁵91 Fed. Reg. at 43,196-97; see also Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards, 88 Fed. Reg. 4,296, 4,377 (Jan. 24, 2023) (identifying performance of critical maintenance, deterrence of SCR tampering, and reduction of false inducements as governing principles); 40 C.F.R. §§ 1036.111, 1036.115(f).

quality, sensor, wiring, catalyst, or dosing-system condition may require diagnostics, parts, a service appointment, and days of lead time.

Second, a seatbelt reminder addresses a risk borne by the driver personally, whereas the consequence of ignoring a DEF alert falls almost entirely on third parties in the form of excess NO_x. Notification is at its weakest precisely where the operator internalizes none of the cost. EPA itself recognizes that diagnostic systems can have difficulty distinguishing tampering from faulty components, and the Agency concedes that it cannot currently determine how the proposed audible schedule would change operator behavior relative to the 2023 rule.⁶ Those concessions do not support replacing every performance backstop nationwide.

EMA further objects that EPA has not adequately assessed the proposed 90-second warning schedule. Commercial drivers operate in a warning-rich environment, and repetitive warnings that have no operational consequence may be ignored, disabled, or treated like a check-engine light that can await a convenient stop. EPA should not extrapolate from passenger-car seatbelt studies without heavy-duty, nonroad, and mixed-fleet evidence. At minimum, EPA should require standardized durable alerts, event and service logging adequate to assess behavior, a defined post-implementation review, and authority to restore an appropriate backstop if the alerts prove ineffective.

III. A Narrow, Confirmed-Condition Backstop Is the Better Alternative

EMA does not ask EPA to preserve severe 5-mph limitations, rapid limp-mode schedules, shutdowns, or no-restart conditions. EPA expressly requests comment on retaining only one or two modest derate steps, including a schedule comparable to the August 2025 guidance.⁷ EMA supports that narrower alternative.

The final rule should first distinguish operator-correctable conditions from faults outside the operator's control. Sensor failures, open-circuit faults, wiring or communications faults, and unconfirmed surrogate readings should produce diagnostics and alerts—not performance restrictions. A modest performance inducement should arise only after adequate warning and a reliable confirmation of one of three conditions: (1) continued operation with an empty DEF tank; (2) confirmed non-DEF fluid or operation below EPA's final regulatory quality trigger; or (3) actual tampering, catalyst removal, or defeat of SCR-related hardware. Any restriction should be delayed, graduated, sufficient to allow safe travel to DEF or service, and self-clear promptly after correction.

That approach fits distinctions EPA already draws. The proposal preserves manufacturer discretion to apply derates needed to prevent catastrophic engine or aftertreatment damage, including damage associated with lack of DEF.⁸ It also provides that any optional vehicle-speed reduction be applied gradually rather than abruptly. EPA therefore already accepts both that a performance restriction remains appropriate when a condition is reliable and the harm serious, and that a graduated restriction is the right design when one is imposed. EMA's requested backstop applies the same logic to a limited set of confirmed compliance conditions while excluding the false and ambiguous faults responsible for operator frustration.

IV. Removing Every Compliance Derate Would Weaken the Practical Deterrent to Tampering

Tampering is not peripheral to the inducement framework. The 2023 rule and the current proposal identify DEF supply, DEF quality, and tampering as the core triggering concerns. EPA continues to maintain an enforcement program against aftermarket defeat devices. A notification-only regime

⁶91 Fed. Reg. at 43,198-200, 43,210.

⁷Id. at 43,200 (Request for Comment C-30).

⁸Id. at 43,200 (Request for Comment C-32); id. at 43,228 (proposed 40 C.F.R. § 1036.111(f)(1)(iii)).

removes the immediate in-vehicle consequence for an operator who intentionally deletes SCR hardware, substitutes non-DEF fluid, or otherwise defeats the system.

The proposed notification schedules make that problem worse rather than better. For low-DEF level, EPA proposes an escalating sequence beginning several hours before depletion and repeating at increasing frequency after the tank empties. For DEF quality and tampering-related failures, EPA proposes a less frequent audible schedule.⁹ That allocation is inverted. A low-DEF level is the condition an operator is most likely to correct without any prompting at all, because the remedy is inexpensive, widely available, and obviously necessary. Confirmed off-specification fluid and tampering are the conditions in which the operator may have an affirmative economic incentive not to correct. EPA has assigned its weakest signal to the two failure modes that most directly threaten SCR performance, warranty integrity, and the competitive position of marketers who sell conforming product. EMA objects to that allocation and asks EPA to reverse it in any final notification schedule.

EMA members that invest in compliant DEF storage, quality control, and dispensing compete with operators and businesses that may avoid DEF costs through unlawful deletion or tampering. The final rule should not reward that behavior. EMA objects that EPA has not demonstrated that warnings alone will deter intentional conduct, and EPA has not quantified the possible emissions consequences of ineffective SCR operation attributable to low DEF, low-quality fluid, or component-level tampering.¹⁰ A limited confirmed-tampering inducement is therefore necessary unless EPA supplies a comparably effective alternative.

V. Preserve Commercial DEF Quality Standards and Product Integrity

EMA supports reducing false quality faults, including use of NOx-sensor or other approved surrogate measurements. At the same time, the final rule should preserve a clear distinction between the commercial DEF specification and the engine's lowest regulatory detection threshold. ISO 22241-1:2019 defines DEF as a 32.5-percent urea solution, and engine manufacturers predominantly recommend DEF meeting that standard. The API DEF Certification Program provides a market-facing mechanism for identifying licensed fluid meeting applicable quality requirements.¹¹

EPA proposes an engine trigger below 20 mass percent urea and recognizes that compensation algorithms may maintain dosing with diluted fluid. That engine-operability threshold should not be understood to redefine compliant commercial DEF or to bless heavily diluted fluid as a saleable product. EPA should expressly retain ISO 22241 as the commercial product benchmark, preserve manufacturer warranty protections tied to conforming fluid, and clarify that the regulatory trigger is solely an engine-control threshold. EPA should also require reliable confirmation before any performance restriction, so ordinary variation, bubbles after refill, sensor drift, or other false readings do not recreate the problem EPA is attempting to solve.

VI. EPA Must Consider Downstream Marketers, Nonroad Customers, and Market Fragmentation

EMA members have spent some 15 years building the downstream DEF supply chain through investments in bulk tanks, dedicated dispensers, pumps, storage, quality programs, transportation, and customer education. EPA itself finds that DEF is now widely available nationwide, including through

⁹Id. at 43,199-200 & Table V-1 (proposed notification schedules for low DEF level and for DEF quality and tampering-related failures).

¹⁰Id. at 43,210.

¹¹ISO 22241-1:2019, Diesel Engines—NOx Reduction Agent AUS 32—Part 1: Quality Requirements; 91 Fed. Reg. at 43,202; American Petroleum Institute, Diesel Exhaust Fluid Certification Program, <https://www.api.org/products-and-services/diesel-exhaust-fluid>.

dedicated dispensing pumps at fueling stations.¹² That outcome rests in part on a stable expectation that operators will replenish quality DEF and maintain working SCR systems. It is the reliance interest described in Part II above.

The proposal may not eliminate DEF demand, because SCR systems will continue to require DEF. It may nevertheless make refill behavior and throughput less predictable, particularly at lower-volume rural and farm-serving locations. Mixed fleets will compound the problem — MY 2010–2028 engines may operate under performance inducements while MY 2029 and later engines may provide notifications alone. Lower or less predictable throughput can increase unit costs and make continued investment less attractive at marginal locations. EPA should evaluate that risk rather than assume that current availability proves future infrastructure effects will be zero.

EPA's Regulatory Flexibility Act analysis considers only engine and vehicle manufacturers, alternative-fuel converters, and commercial importers. It states that the inducement amendments affect only diesel-engine manufacturers and that none are small businesses.¹³ EMA objects that this framing omits family-owned downstream DEF marketers that may experience reduced throughput, stranded or underutilized investment, and increased per-gallon costs. A certification under 5 U.S.C. § 605(b) must rest on a factual basis, and EMA places contrary information in the record going to that basis. Even if EPA concludes that these entities are not directly regulated for RFA purposes, EPA must address their reasonably foreseeable economic effects in its broader rulemaking analysis and explain why those effects do not warrant a delayed or graduated alternative.

The nonroad market requires separate treatment. Agricultural and construction equipment may operate seasonally, in extreme cold, far from service facilities, or without an operator continuously present to hear an audible warning. EPA specifically requests comment on effective notification methods for unattended equipment. The final rule should require an operator-interface warning plus an appropriate remote or telematics notification where technically feasible, provide longer cure periods, and evaluate nonroad behavior separately rather than assume that a highway schedule will transfer unchanged.

EPA should also consider potential market fragmentation. If California or another jurisdiction lawfully applies different requirements to any category of engines or equipment, or if manufacturers adopt materially different voluntary strategies, interstate marketers will serve a fragmented engine population without controlling which vehicles arrive at a dispenser. EPA should use its certification and guidance authority to promote nationally uniform terminology, symbols, alert schedules, and transition information to the maximum extent authorized by law.

VII. EPA's Emissions and Cost Analysis Leaves Material Questions Unanswered

EPA expressly states that it has not projected an emissions impact from removing SCR derates and cannot quantify how warnings will affect low DEF, low-quality DEF, component-level tampering, or improper dosing.¹⁴ That omission is not the product of an inability to quantify. EPA's Draft Regulatory Impact Analysis projects that the proposed action as a whole will increase national heavy-duty NO_x emissions relative to the no-action case by 30,626 short tons in 2030, 39,819 tons in 2040, 37,917 tons in 2045, and 36,673 tons in 2055, and estimates net present-value cost savings of \$12 billion at a 3-percent discount rate, reflecting \$37 billion in warranty savings offset by \$25 billion in additional operating costs.¹⁵ Those figures principally concern other elements of the proposed rule and EMA does not attribute them to the inducement amendments. They demonstrate, however, that

¹²91 Fed. Reg. at 43,198.

¹³Id. at 43,219; EPA, Draft Regulatory Impact Analysis, EPA-420-D-26-002, at 78-79 (July 2026).

¹⁴91 Fed. Reg. at 43,210.

¹⁵EPA, Draft Regulatory Impact Analysis, EPA-420-D-26-002, Tables ES-1 and ES-3, at 1-2 (July 2026).

EPA quantified the consequences it wished to rely upon while leaving unquantified the compliance behavior on which the inducement amendments depend.

The economic analysis likewise assigns no quantified value to downstream DEF infrastructure, retailer investment, availability at marginal locations, or the competitive effects of tampering. EMA objects that EPA cannot reasonably treat the operational savings as established while leaving the corresponding compliance behavior, emissions consequences, and downstream costs unexamined.

EMA further objects that the information EPA collected from manufacturers in February 2026 concerning DEF-system failures does not appear in the rulemaking docket in a form available for public comment. Clean Air Act section 307(d)(3) requires that the factual data on which a proposed rule is based be placed in the docket at the time of proposal. 42 U.S.C. § 7607(d)(3). If EPA is relying on those submissions, they must be disclosed and made available for comment. If EPA is not relying on them, the absence of that evidence from the record confirms the inadequacy described in Part II.

EMA urges EPA to obtain and disclose additional information before finalizing the rule. Relevant information includes manufacturer deployment rates for the 2025 and 2026 guidance; false-fault and derate incidence before and after software updates; refill and repair behavior following alerts; tampering rates; the number and geographic distribution of dedicated DEF dispensers; representative capital and maintenance costs; annual throughput at rural, highway, and farm-serving locations; and nonroad DEF demand. EMA will supplement the docket with member information if additional data become available within any period permitted by the Agency.

VIII. Requested Agency Action

- Preserve and formalize the core protections in the August 2025 and March 2026 guidance, including an enforceable path for approved software updates, NOx-sensor strategies, calibrated warnings, and longer cure periods for new and in-use engines.
- Select MY 2031 as the transition year for any alert-only system and prohibit early adoption. Any earlier transition should be conditioned on published evidence showing comparable refill, repair, and anti-tampering behavior.
- Retain no performance restriction for unconfirmed sensor, wiring, communications, or component faults, but preserve a delayed and modest inducement for a reliably confirmed empty tank, confirmed non-DEF fluid or operation below EPA's final regulatory quality trigger, or actual tampering.
- Revise the proposed notification schedules so that confirmed DEF-quality and tampering conditions receive alerts at least as frequent and as conspicuous as those proposed for low DEF level.
- Prohibit severe speed restrictions, shutdowns, and no-restart conditions for compliance inducements, except where necessary to prevent genuine engine or aftertreatment damage, and require prompt self-clearing after correction.
- Preserve ISO 22241 as the commercial DEF quality benchmark and clarify that a lower engine-detection threshold does not redefine substandard fluid as marketable DEF.
- Require standardized durable warnings, appropriate event and service logging, and a defined post-implementation review sufficient to evaluate operator response, circumvention, tampering, and emissions performance.
- Place the February 2026 manufacturer DEF-system failure submissions in the rulemaking docket and provide an opportunity to comment on them.

- Evaluate downstream DEF availability, pricing, investment, rural and farm markets, and small-business effects, including impacts omitted from EPA's RFA and economic analyses, and respond to the reliance interests of downstream marketers.
- Adopt separate implementation provisions for highway and nonroad applications, including effective notification methods for unattended equipment and nationally uniform transition information.

Conclusion

EMA shares the Administration's concern with equipment that strands operators because a sensor or component failed. Better diagnostics, approved software updates, alternative sensing strategies, longer cure periods, and the elimination of severe nuisance derates are appropriate responses. The present record does not, however, justify eliminating every performance-based compliance backstop before those targeted corrections have been implemented and evaluated.

EPA should preserve the liquid-fuels and emissions success represented by DEF and SCR while correcting genuine operational failures. A delayed transition, a narrow confirmed-condition inducement, uniform and durable warnings, strong commercial DEF-quality standards, and a complete analysis of downstream effects would protect operators without weakening refill discipline, product integrity, or the DEF infrastructure on which highway and nonroad customers depend.

EMA looks forward to working with the Agency on an evidence-based final rule.

Respectfully submitted,



Rob Underwood
President

cc: Jeffrey L. Leiter, Esq.
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