

Proposal for amendment to UN Global Technical Regulation No. 15

Submitted by the Clean Air Association

The text reproduced below was prepared by members of the Clean Air Association. This document aims to amend the definition of a "defeat device" in UN GTR No. 15. The modifications to the current text of the Regulation are marked in bold for new or strikethrough for deleted characters.

I. Proposal

Paragraph 3.5.7., amend to read:

- "3.5.7. "Defeat device" means any element of design which senses temperature, vehicle speed, engine rotational speed, drive gear, manifold vacuum or any other parameter for the purpose of activating, modulating, delaying or deactivating the operation of any part of the emission control system that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use. Such an element of design may not be considered a defeat device if:
- (a) The need for the device is justified in terms of protecting the engine against **immediate** damage or accident and for safe operation of the vehicle; or
 - (b) The device does not function beyond the requirements of engine starting; or
 - (c) Conditions are substantially included in the Type 1 test procedures."

II. Justification

1. The current text of the Regulation at paragraph 3.5.7 is similar to and drawn from the text of Regulation No. 83 at paragraph 2.16. Under this regime, several manufacturers of automobiles incorporated unlawful defeat devices in vehicles with Compression Ignition (CI) engines. A widespread justification for the use of defeat devices was and is being advanced by manufacturers by reference to paragraph 3.5.7 (a) or provisions based thereon. Manufacturers have sought, and succeeded with varying degrees of success, to convince national authorities that the prevention of delayed or gradual damage fell within the ambit of the exception of paragraph 3.5.7 (a) or provisions based thereon. Such an interpretation runs contrary to the purpose of the provision and objectives of the WP.29.

2. The purpose of the amendment is:

- (a) To ensure and promote a high level of protection for the environment and human health. The underlying purpose of paragraph 3.5.7, when read in conjunction with paragraph 5.3.4, is to ensure a high level of protection for the environment and human health. In making clear and encouraging the proper application of these provisions, this amendment furthers the aims sought to be achieved through paragraphs 3.5.7 and 5.3.4 of the Regulation.
- (b) To ensure and promote consumer confidence in the quality of vehicles subject to UN GTR No. 15. Given the widespread use of defeat devices (justified or otherwise) in the preceding years, consumer confidence in regulatory regime's ability to conform with its underlying purpose has dwindled. This amendment makes clear and encourages the proper application of the text of the Regulation with respect to defeat devices. In doing so, consumers will be more confident in proper application of the provision.
- (c) To promote legal certainty. It is recognised that it is for the members of the WP.29 to interpret the provisions of Regulations at a national level.

However, it is critical that Regulations of the WP.29 are clear and precise. The addition of the term "immediate" as an adjective to the term "damage" in subparagraph (a) to section 3.5.7 would make it clear that delayed or gradual damage to the engine does not justify the use of a defeat device.
