

# Auction Houses May Be Liable for Illegal Importation of Uncertified Vehicles and Engines

- This Compliance Advisory advises auction houses that they may be subject to enforcement and penalties under the Clean Air Act for importing, or causing to be imported, uncertified vehicles, engines, and equipment and includes suggested steps for auction houses to take to ensure due diligence and compliance.
- EPA is concerned that, by facilitating the introduction of uncertified vehicles, engines, or equipment, auction houses may be violating the prohibitions against the importation of uncertified vehicles, engines, and equipment in the Clean Air Act.
- EPA is increasing its efforts with U.S. Customs and Border Protection to stop illegal vehicles, engines, and equipment at the ports and requiring exportation, in addition to pursuing all available administrative, civil, and criminal remedies available for those violations.

## I. The Law Prohibits Importing Uncertified Vehicles and Engines

Section 203(a)(1) of the Clean Air Act (CAA) and its federal regulations (40 C.F.R. § 1068.101(b)(5)) prohibit any person from importing into the United States any "new" motor vehicle or new motor vehicle engine, unless it is certified by the U.S. Environmental Protection Agency (EPA) or is exempt. Anyone violating paragraph (b)(5) of the regulation is deemed to be a manufacturer under paragraph (a)(1) and is prohibited from selling, offering for sale, or introducing or delivering into commerce in the United States those engines or equipment.

Clean Air Act § 216(3) defines "new" to include, with respect to imported vehicles or engines, all vehicles and engines that were manufactured after the date on which the EPA started regulating that type of vehicle or engine. Clean Air Act regulations specify that the definition of new is broad for imported engines and equipment. Uncertified engines and equipment, including used engines and equipment, are generally considered to be "new" when imported. For example, nonroad diesel engines became regulated under the Clean Air Act between 2008 and 2012. That means if you import an uncertified 2015 nonroad engine it is a violation, even though it may not seem new in the usual sense of that word.

The Clean Air Act does not define "importer" or "importation", and it defines "person" broadly in Section 302(e) to include both individuals and businesses. In enforcing Section 203 of the Clean Air Act, EPA

generally looks to the U.S. Customs and Border Protection's "importer of record" to identify responsible persons. But the Agency also has the discretion to pursue persons, including auction houses, for illegal importation where the facts indicate that they directed, encouraged, promoted, or facilitated the importation of prohibited vehicles and engines.

Keep this in mind, according to section 203 and 40 C.F.R. § 1068.101(c), if you cause someone to commit a prohibited act, you are in violation of that prohibition. A person has caused importation to occur where the particular efforts or influence of the person contributes to, leads to, or results in the importation. For example, contractual or other business relationships with persons involved in producing, importing, or selling uncertified engines and equipment could be evidence of causing a violation.

# II. Violating the Law is Costly

Violation of the importation prohibitions of Clean Air Act § 203 may result in civil penalties. As of January 6, 2023, a person may be liable for a maximum civil penalty of \$55,808 per engine or piece of equipment in violation. 40 C.F.R. § 19.4.

### III. Illegal Imports Harm Air Quality and Public Health

Roughly half of the air pollution in the United States is caused by on-road and nonroad engines. These mobile sources of air pollution include cars, trucks, and buses, as well as the wide range of gasoline and diesel engines found in nonroad equipment used in construction, agriculture, and lawn and garden equipment, in dirt bikes, and used as marine engines.

Depending on their configuration, uncertified vehicles and engines can emit harmful air pollutants at levels that are significantly higher than vehicles and engines certified by the EPA as meeting Clean Air Act standards. These pollutants include particulate matter, volatile organic compounds (VOC), air toxics, and oxides of nitrogen (NOx). Increased emissions, such as those resulting from the illegal importation of uncertified vehicles and engines, have been linked to environmental problems such as smog, and they present a serious threat to public health, including increased risk of:

- Premature death in people with heart or lung disease
- Nonfatal heart attacks
- Irregular heartbeat
- Aggravated asthma
- Decreased lung function
- Increased respiratory symptoms, such as irritation of the airways, coughing or difficulty breathing

For more pollutant information visit EPA's Smog, Soot, and Other Air Pollution from Transportation website.

## **IV. Due Diligence Suggestions**

To avoid liability under the importation prohibitions, the EPA suggests that auction houses do their due diligence in confirming whether a vehicle or engine is properly certified. The EPA's due diligence suggestions follow on the next page.

EMISSION CONTROL INFORMATION Engine Manufacturer Name <u>&amp; Trademark!</u>	
Engine Displacement: 12.3 L	Date of Manufacture: 31 February, 2024
Emission Control System: DOC, DPF, SCR	ULTRA LOW SULFUR DIESEL FUEL ONLY
USEFUL LIFE: 8,000	HOURS OR 10 YEARS
THIS ENGINE COMPLIES WITH U.S. EPA REGU	ILATIONS FOR 2024 NONROAD DIESEL ENGINES.

#### Example format of an Emission Control Information label showing EPA certification information.

#### A. Check For Manufacturer Emissions Label

The Clean Air Act requires emissions labels for certified vehicles and engines. EPA's "Emission Control Information" label contains the manufacturer's name, trademark, and an unconditional statement of compliance with EPA emission regulations (see pictured above). As a precaution against liability under federal or state law, we suggest that auction houses include pictures of the EPA labels for all listed vehicles, engines, and equipment and not sell products that are not properly labeled as required by the Clean Air Act.

For agricultural and construction equipment, in general, the emissions label should be located somewhere on the block of the engine. If the label is not visible or difficult to access, there should be a secondary emissions label somewhere on the piece of equipment - usually inside the engine compartment itself. For instructions on how to locate the emissions label on different types of equipment and vehicles, please visit: https://www.epa.gov/importing-vehicles-and-engines/locating-vehicle-emissions-label.

The Emission Control Label will identify the engine family. A family is the basic unit that the EPA uses to identify a group of vehicles or engines for certification and compliance purposes. A family name is a 12-character code that identifies all parts of that particular engine, including its model year and its volume size/displacement.

- To see what a typical engine family looks like, visit EPA's <u>Locating the Vehicle Emissions Label web</u> page.
- To verify whether an engine family is correct or up to date, visit EPA's <u>Annual Certification Data for</u> <u>Vehicles, Engines, and Equipment web page</u>.

If the manufacturer's emissions label indicates that it is certified for use outside of the United States, it is invalid for importation into the U.S.

#### B. Utilize 1-800 Numbers, Websites, and Cell Phone Applications

To confirm whether an engine or piece of equipment is certified, auction houses can also turn to the 1-800 numbers, websites, or cell phone applications that are run by the manufacturer. For example, many manufacturers have developed applications that allows users to retrieve emission details and related certificates by searching the engine or machine serial number. Auction houses can use these apps to determine an engine or piece of equipment's compliance status. EPA suggests that auction houses keep documentation of this information.

#### C. Collect Documentation for Used Vehicles and Engines

The Clean Air Act prohibits the importation of new motor vehicles and engines that are manufactured after the effective date of a regulation applicable to such vehicle or engine. However, if an importer claims that an engine or piece of equipment is not subject to Clean Air Act standards because it was both manufactured before the effective date of the applicable regulations and already placed into service, 40 C.F.R. § 1068.360(c) mandates that the importer "must provide clear and convincing evidence that it has already been placed into service. Such evidence must generally include, but not be limited to, documentary evidence of purchase and maintenance history and visible wear that is consistent with the reported manufacture date." If you do not satisfactorily demonstrate that the engine or equipment has already been placed into service, then the applicable standards will apply.

# V. Ask Questions or Submit Tips

If you would like to ask questions regarding imports or if you have questions concerning a specific label, engine, or piece of equipment, you can email <u>imports@epa.gov</u>. Or, to submit tips, please visit EPA's <u>Report</u> <u>a Violation website</u>.

# VI. Benefits of EPA's Self-Disclosure Policies

Regulated entities of any size who voluntarily discover, promptly disclose, expeditiously correct, and take steps to prevent recurrence of potential violations may be eligible for a reduction or elimination of any civil penalties that otherwise might apply. Most violations can be disclosed and processed via the EPA's centralized web-based "<u>eDisclosure Portal</u>."

To learn more about the EPA's violation disclosure policies, including conditions for eligibility, please review the EPA's <u>Audit Policy web page</u>.

Many states also offer incentives for self-policing. Please check with the appropriate state agency for more information.

## **VII. For More Information**

EPA maintains an extensive <u>list of mobile source air enforcement policy and guidance</u> <u>documents</u>, which includes a 2019 policy titled "<u>Expedited Settlement Agreement Program for</u> <u>Clean Air Act Vehicle and Engine Violations – Imports</u>," that established an expedited resolution process for some claims concerning illegal importations of vehicles and engines for certain firsttime violators.

#### Disclaimer

This Compliance Advisory addresses select provisions of EPA legal requirements using plain language. Nothing in this Compliance Advisory is meant to replace or revise any EPA regulatory provisions, policies, parts of the Code of Federal Regulations, the *Federal Register*, or the Clean Air Act.