

**BEFORE THE
U.S. DEPARTMENT OF ENERGY
Washington, D.C. 20585**

In the Matter of:)
)
Philips Lighting Electronics N. A.) Case Number: 2012-SE-2605
(fluorescent lamp ballasts))
)

Issued: August 31, 2012

NOTICE OF NONCOMPLIANCE DETERMINATION

Fluorescent lamp ballasts are covered products subject to federal energy conservation standards as described in 42 U.S.C. §§ 6292(a)(13), 6295(g) and 10 C.F.R. § 430.32(m). Manufacturers and private labelers are prohibited from distributing covered products that do not comply with the applicable conservation standards. 10 C.F.R. § 429.102(a)(6); 42 U.S.C. § 6302(a)(5).

In February of this year, Philips Lighting Electronics N. A. (“Philips”) submitted certification report CCMS # 9935, certifying that fluorescent lamp ballast basic model VEL-1S40-SC was not in compliance with the applicable energy conservation standards. Philips notified the U.S. Department of Energy (“DOE”) that Philips had distributed in commerce fluorescent lamp ballast basic model VEL-1S40-SC, which has a ballast efficacy factor of less than 2.29. Specifically, after DOE issued a Request for Data, Philips provided test data showing that Philips’ own testing resulted in a maximum certified ballast efficacy factor of 2.26 when operated with one F40T12 general service fluorescent lamp. A fluorescent lamp ballast designed for use in connection with a F40T12 lamp must have a ballast efficacy factor of at least 2.29.

FINDINGS

Based on the facts stated above, DOE has determined that Philips fluorescent lamp ballast basic model VEL-1S40-SC does not comply with the applicable federal energy conservation standards.

MANDATORY ACTIONS BY PHILIPS

In light of the above findings, Philips must take the following steps in accordance with 10 C.F.R. § 429.114(a):

- (1) Immediately cease distribution in commerce in the United States of all units of basic model VEL-1S40-SC;
- (2) Provide immediate written notification of this noncompliance determination to all persons in the United States to whom Philips has distributed units of basic model VEL-1S40-SC in the past three years;

(3) Provide to DOE within 15 calendar days of the date of this Notice a copy of the written notification required by paragraph (2) and a list of the parties Philips notified; and

(4) Provide to DOE within 30 calendar days of the date of this Notice any and all records, reports, and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of units of basic model VEL-1S40-SC in the United States in the past three years.

The responses required by paragraphs (3) and (4) must be dated, signed, and notarized. The person signing the response must attest the following: "I declare under penalty of perjury that the statements contained in this response are true, correct, and complete."

If you claim that any of the information sought by this Notice constitutes confidential commercial material within the meaning of 5 U.S.C. § 552(b)(4), or is protected from disclosure pursuant to 18 U.S.C. § 1905, you must (1) provide one complete and full copy and one copy with the confidential information deleted and (2) submit supporting information together with the materials that are the subject of the confidentiality request. *See* 10 C.F.R. § 429.7. Failure to adhere to these procedures will result in a rejection of your request for confidential treatment.

OPTIONAL ACTIONS BY PHILIPS

In addition to the mandatory steps listed above that Philips must complete, Philips may elect to modify basic model VEL-1S40-SC to bring it into compliance with the applicable standard. A modified basic model shall be treated as a new basic model under the regulations and must be certified in accordance with the provisions of 10 C.F.R. Part 429. Prior to distribution in commerce in the United States, Philips must provide to DOE test data demonstrating that the modified basic model complies with the applicable standard. All units must be tested in accordance with DOE regulations, and Philips shall bear the costs of all such testing that is conducted.

If, after this testing, DOE determines that the modified basic model complies with the applicable standard, DOE shall issue a notice of allowance to permit Philips to resume the distribution of the modified basic model in the United States. Until DOE determines that the modified basic model complies with the applicable standard, no units may be sold or otherwise distributed by Philips in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

If Philips fails to cease immediately the distribution in the United States of all units of basic model VEL-1S40-SC, this letter serves as notice that DOE will seek a judicial order within 30 calendar days to restrain further distribution. If, however, Philips provides DOE with a satisfactory statement within that 30-day period detailing the steps that Philips will take to ensure that units of the noncompliant basic model will no longer be distributed in commerce in the United States, DOE may elect to defer seeking such an order until a more appropriate time, if needed.

The distribution of any units of a noncompliant basic model, including during any manufacturer-initiated testing as described above, may result in DOE seeking all appropriate legal remedies available under federal law, including injunctive relief and civil penalties with respect to each unit of the basic model distributed in violation of federal law.



Timothy G. Lynch
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Litigation and Enforcement