

NOTICE

Distribution in commerce of a covered product that does not meet the energy conservation standards is a violation subject to civil penalty, regardless of the issuance of this Notice. If Kichler continues to distribute in commerce the subject models, DOE may assess a higher civil penalty for units sold after the date of this Notice.

MANDATORY ACTION BY KICHLER

In light of the above findings, Kichler must, within 30 calendar days of the date of this Notice, provide to DOE records sufficient to show the number of units of the subject models that Kichler distributed in commerce on or after January 21, 2020, categorized by year. 10 C.F.R. § 429.114(a). This includes all units that remain in Kichler's inventory that were manufactured (including importation) on or after January 21, 2020. You may send those records to the undersigned attorney via electronic mail at dion.casey@hq.doe.gov.

If Kichler claims 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, Kichler 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 any request for confidential treatment.

OPTIONAL ACTIONS BY KICHLER

In addition to the mandatory steps listed above that Kichler must complete, Kichler may elect to modify the subject models to bring them into compliance with the applicable energy conservation standards. A modified basic model shall be treated as a new basic model under the applicable regulations and must be certified in accordance with the provisions of 10 C.F.R. Part 429. In addition to satisfying all requirements of Part 429, any individual models within the basic model must be assigned a new model number, and Kichler also must maintain, and provide to DOE upon request, records that demonstrate that modifications have been made to all units of the new basic model prior to distributing them in commerce. Kichler also must provide to DOE test data demonstrating that the new basic model complies with the applicable energy conservation standard prior to distributing it in commerce.³ All units must be tested in accordance with DOE regulations, and Kichler shall bear the costs of all such testing that is conducted.

If, after this testing, DOE determines that the new basic model complies with the applicable energy conservation standard, DOE shall issue a Notice of Allowance to permit Kichler to resume distribution in commerce of the new basic model.

³ DOE may require that an independent, third-party testing facility perform this testing.

CONSEQUENCES FOR CONTINUING TO DISTRIBUTE THE SUBJECT MODEL

Should Kichler fail to cease immediately the distribution in commerce of all units of the subject models, this letter serves as notice that DOE may seek a judicial order within 30 calendar days to restrain further distribution. If, however, Kichler provides DOE with a satisfactory statement within that 30-day period detailing the steps that Kichler will take to ensure that units of the subject models will no longer be distributed in commerce, 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 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.

Dion Casey
Deputy Assistant General Counsel
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Phone: 240-798-1204

Certificate of Service

This is to certify that on September 9, 2024, the undersigned served the designated copy of the Notice of Noncompliance Determination issued in DOE Case Numbers 2024-SE-32046, 2024-SE-32047, 2024-SE-32049, and 2024-SE-32050 on the party listed below in the manner indicated.

Tyler O'Connor
Counsel for Kichler Lighting LLC
TOConnor@crowell.com

PDF copy by email

Dion Casey
Deputy Assistant General Counsel