

**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))
)

NOTICE OF PROPOSED CIVIL PENALTY

Date issued: November 29, 2012

Number of alleged violations: **7,498**
Maximum possible assessment: **\$1,499,600**
Proposed civil penalty: **\$1,499,600**

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, alleges that Philips Lighting Electronics N. A. (“Philips”) has violated certain provisions of the Energy Policy and Conservation Act, 42 U.S.C. § 6291 *et seq.* (“the Act”), and 10 C.F.R. Parts 429 and 430.

Specifically, DOE alleges:

1. A fluorescent lamp ballast is a “covered product” as defined in 42 U.S.C. § 6292(a)(13) and 10 C.F.R. § 430.2;
2. Effective July 1, 2005, each fluorescent lamp ballast sold by the manufacturer that is designed (a) for use in connection with a F40T12 lamp and to operate (b) at a nominal input voltage of 120 or 277 volts and (c) with an input current frequency of 60 Hertz must have a ballast efficacy factor of at least 2.29. 10 C.F.R. § 430.32(m)(3);
3. Philips manufactures or has manufactured¹ fluorescent lamp ballast basic model VEL-1S40-SC, which is designed to operate at a nominal input voltage of 120 or 277 volts with an input current frequency of 60 Hertz;
4. Philips has distributed fluorescent lamp ballast basic model VEL-1S40-SC in commerce in the United States;
5. Philips fluorescent lamp ballast basic model VEL-1S40-SC is not in conformity with the applicable energy conservation standard. After DOE issued a Request for Data, Philips

¹ “Manufacture” means to manufacture, produce, assemble or import. 42 U.S.C. § 6291(16).

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, which is less than the required 2.29; and

6. Since January 1, 2010, Philips sold in the United States 7,498 units of basic model VEL-1S40-SC that did not meet the applicable energy conservation standard.

The following information is provided in question and answer format to help explain Philips's legal obligations and options.

What do I do now?

DOE is offering a settlement of \$82,478 if you submit the signed Compromise Agreement and pay the fine within thirty (30) days of the date of an Adopting Order adopting the Compromise Agreement.

If you do not choose to settle the case, DOE may seek the maximum penalty authorized by law (\$1,499,600). You have other options as described below.

What are my other options?

If you do *not* agree to DOE's settlement offer, then you must select Option 1 or Option 2 below within thirty (30) calendar days of the date of this Notice.

Option 1: You may elect to have DOE issue an order assessing a civil penalty. Failure to pay the assessed penalty within sixty (60) calendar days of the order assessing such penalty will result in referral of the case to a U.S. District Court for an order affirming the assessment of the civil penalty. The District Court has the authority to review the law and the facts *de novo*.

Option 2: You may elect to have DOE refer this matter to an Administrative Law Judge ("ALJ") for an agency hearing on the record. Upon a finding of violation by the ALJ, DOE will issue an order assessing a civil penalty. This order may be appealed to the appropriate U.S. Court of Appeals.

When must I respond?

You must submit the signed Compromise Agreement within thirty (30) calendar days of the date of this Notice to pay the lowest penalty. If you do not wish to settle AND you wish to choose Option 1 as described above, you must notify DOE of your selection of Option 1 within thirty (30) calendar days of the date of this Notice. Otherwise, if you do not settle the case, DOE will refer the case to an ALJ as described in Option 2.

How should I submit my response?

To assure timely receipt, DOE strongly encourages you to submit your response by e-mail, fax, or an express delivery service. DOE accepts scanned images of signed documents (such as PDFs). Responses may be sent by any of the following methods:

By email to: christina.studt@hq.doe.gov

By fax to: (202) 586-3274

By private carrier to: Christina Studd
Trial Attorney
U.S. Department of Energy
Office of the General Counsel (GC-32)
1000 Independence Ave., SW
Washington, DC 20585

What happens if I fail to respond?

If you fail to respond within thirty (30) calendar days of the date of this Notice, or by the time of any extension granted by DOE, DOE will refer the case to an ALJ for a full administrative hearing (Option 2, above).

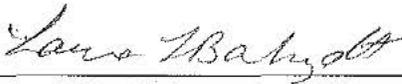
What should I include in my response?

- 1) If you wish to accept DOE's settlement offer, you should submit the signed Compromise Agreement. If you do not wish to accept DOE's settlement offer, you should specify if you wish to elect Option 1; otherwise, DOE will proceed with Option 2, as described above.
- 2) Provide your Taxpayer Identification Number (TIN). The Debt Collection Improvement Act ("DCIA") requires all federal agencies to obtain the TIN in any case that may give rise to a debt to the government.

How did DOE calculate the maximum possible assessment?

Federal law sets a maximum civil penalty for each unit of a covered product that does not meet an applicable energy or water conservation standard that is distributed in commerce in the U.S. The maximum penalty is \$200 per unit. 10 C.F.R. § 429.120. DOE has calculated a maximum penalty of \$200 per unit for 7,498 units distributed in commerce in the United States beginning in 2010. DOE is not pursuing potential violations in 2009 at this time. If the case goes to hearing, this number would be adjusted to include violations before 2010 and any additional information obtained.

Issued by:



Laura L. Barhydt
Assistant General Counsel for
Enforcement