



CONSUMER PRODUCT SAFETY COMMISSION

(CPSA Docket No. 16-C0001)

Philips Lighting North America Corporation, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission

ACTION: Notice

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of 16 C.F.R. § 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Philips Lighting North America Corporation containing a civil penalty in the amount of two million dollars (\$2,000,000), within thirty (30) days of service of the Commission's final Order accepting the Settlement Agreement.¹

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by (insert date that is 15 calendar days from publication date).

¹ The Commission voted (4-1) to provisionally accept the Settlement Agreement and Order regarding Philips Lighting North America Corporation. Chairman Kaye, Commissioner Adler, Commissioner Robinson and Commissioner Mohorovic voted to provisionally accept the Settlement Agreement and Order. Commissioner Buerkle voted to reject the Settlement Agreement and Order.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 16-C0001, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814-4408.

FOR FURTHER INFORMATION CONTACT: Amy S. Colvin, Attorney, Office of the General Counsel, Division of Enforcement and Information, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-7639. SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

November 23, 2015

Todd A. Stevenson

Secretary

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

In the Matter of:)	
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PHILIPS LIGHTING)	CPSC Docket No.: 16-C0001
NORTH AMERICA CORPORATION)	
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SETTLEMENT AGREEMENT

1. In accordance with the Consumer Product Safety Act, 15 U.S.C. §§ 2051–2089 (“CPSA”) and 16 C.F.R. § 1118.20, Philips Lighting North America Corporation (“Philips”), and the United States Consumer Product Safety Commission (“Commission”), through its staff, hereby enter into this Settlement Agreement (“Agreement”). The Agreement, and the incorporated attached Order, resolve staff’s charges set forth below.

THE PARTIES

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for the enforcement of, the CPSA, 15 U.S.C. §§ 2051–2089. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16 C.F.R. § 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. Philips is a corporation, organized and existing under the laws of the state of Delaware, with its principal corporate offices located in Somerset, New Jersey.

STAFF CHARGES

4. Between March 2007 and July 2011, grocery and home center stores nationwide, online retailers, and professional electrical distributors sold in the United States approximately 1.86 million EnergySaver (a/k/a “Marathon” or “Marathon Classic”) compact fluorescent lamps enclosed inside glass envelopes (“Lamps”). Philips manufactured the Lamps.

5. The Lamps are a “consumer product” that was “distributed in commerce” as those terms are defined or used in sections 3(a)(5) and (8) of the CPSA, 15 U.S.C. § 2052(a)(5) and (8). Philips is a “manufacturer” of the Lamps, as such term is defined in section 3(a)(11) of the CPSA, 15 U.S.C. § 2052(a)(11).

6. The Lamps are defective and create an unreasonable risk of serious injury or death because the glue that attaches the glass outer envelope to the body of the Lamp can fail, allowing the glass envelope to fall and strike persons and objects below. This poses a laceration hazard to consumers.

7. Philips received numerous reports that glass envelopes separated or were loose, including 10 reports of lacerations and seven reports of property damage.

8. In response to these incident reports, Philips implemented multiple design changes to remedy the defect and unreasonable risk of serious injury or death associated with the Lamps.

9. Despite having information of a defect and the unreasonable risk of serious injury or death associated with the Lamps, Philips did not notify the Commission immediately of such defect or risk, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. § 2064(b)(3) and (4).

10. Because the information in Philips's possession constituted actual and presumed knowledge, Philips knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4), as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

11. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Philips is subject to civil penalties for its knowing violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

RESPONSE OF PHILIPS

12. Philips' settlement of this matter does not constitute an admission that Philips knew that the Lamps were defective and created an unreasonable risk of serious injury or death pursuant to section 15(a) of the CPSA, 15 U.S.C. § 2064(a), or that Philips knowingly violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. § 2064(b). In particular, Philips notes that the ten reported injuries were minor, requiring no medical attention.

AGREEMENT OF THE PARTIES

13. Under the CPSA, the Commission has jurisdiction over the matter involving the Lamps and over Philips.

14. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Philips or a determination by the Commission that Philips violated the CPSA's reporting requirements.

15. In settlement of staff's charges as set forth in paragraphs 4 through 11 above, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, Philips shall pay a civil penalty in the amount

of two million dollars (\$2,000,000) within thirty (30) calendar days after receiving service of the Commission's final Order accepting the Agreement. All payments to be made under the Agreement shall constitute debts owing to the United States and shall be made by electronic wire transfer to the United States via: <http://www.pay.gov> for allocation to and credit against the payment obligations of Philips under this Agreement. Failure to make such payment by the date specified in the Commission's final Order shall constitute Default.

16. All unpaid amounts, if any, due and owing under the Agreement shall constitute a debt due and immediately owing by Philips to the United States, and interest shall accrue and be paid by Philips at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b) from the date of Default until all amounts due have been paid in full (hereinafter "Default Payment Amount" and "Default Interest Balance"). Philips shall consent to a Consent Judgment in the amount of the Default Payment Amount and Default Interest Balance; and the United States, at its sole option, may collect the entire Default Payment Amount and Default Interest Balance, or exercise any other rights granted by law or in equity, including, but not limited to, referring such matters for private collection, and Philips agrees not to contest, and hereby waives and discharges any defenses to, any collection action undertaken by the United States or its agents or contractors pursuant to this paragraph. Philips shall pay the United States all reasonable costs of collection and enforcement under this paragraph, respectively, including reasonable attorney's fees and expenses.

17. After staff receives this Agreement executed on behalf of Philips, staff shall promptly submit the Agreement to the Commission for provisional acceptance.

Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the *Federal Register*, in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date the Agreement is published in the *Federal Register*, in accordance with 16 C.F.R. § 1118.20(f).

18. This Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and it is subject to the provisions of 16 C.F.R. § 1118.20(h). Upon the later of: (i) Commission's final acceptance of this Agreement and service of the accepted Agreement upon Philips, and (ii) the date of issuance of the final Order, this Agreement shall be in full force and effect and shall be binding upon the parties.

19. Effective upon the later of: (i) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon Philips, and (ii) and the date of issuance of the final Order, for good and valuable consideration, Philips hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in this Agreement: (i) an administrative or judicial hearing; (ii) judicial review or other challenge or contest of the Commission's actions; (iii) a determination by the Commission of whether Philips failed to comply with the CPSA and the underlying regulations; (iv) a statement of findings of fact and conclusions of law; and (v) any claims under the Equal Access to Justice Act.

20. Philips shall implement, maintain, and enforce a system of internal controls and procedures designed to ensure that, with respect to all consumer products, as that term is defined or used in section 3(a)(5) of the CPSA, 15 U.S.C. § 2052(a)(5) (“consumer products”), imported, manufactured, distributed, or sold by Philips in the United States:

- a. information required to be disclosed by Philips to the Commission is recorded, processed, and reported in accordance with applicable law;
- b. all reporting made to the Commission is timely, truthful, complete, accurate, and in accordance with applicable law; and
- c. prompt disclosure is made to Philips’s management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to affect adversely, in any material respect, Philips’s ability to record, process, and report to the Commission in accordance with applicable law.

21. Philips shall implement and maintain a compliance program designed to ensure compliance with the CPSA and regulations enforced by the Commission with respect to any consumer product imported, manufactured, distributed, or sold by Philips in the United States, and which, at a minimum, shall contain the following elements:

- a. written standards and policies;
- b. written procedures that provide for the appropriate forwarding to compliance personnel of all information that may relate to, or impact, CPSA compliance, including all reports and complaints involving

consumer products, whether an injury is referenced or not, and corresponding engineering analyses and risk assessments;

- c. a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary;
- d. effective communication of company compliance-related policies and procedures regarding the CPSA to all applicable employees through training programs or otherwise;
- e. Philips senior management responsibility for CPSA compliance and accountability for violations of the statutes and regulations enforced by the Commission;
- f. Philips board oversight of CPSA compliance; and
- g. retention of all CPSA compliance-related records for at least five (5) years, and availability of such records to staff upon reasonable request.

22. Upon reasonable request of staff, Philips shall provide written documentation of its improvements, processes, and controls, including, but not limited to, the effective dates of such improvements, processes, and controls as set forth in paragraphs 20 through 21 above. Philips shall cooperate fully and truthfully with staff and shall make available all information, materials, and personnel deemed necessary by staff to evaluate Philips's compliance with the terms of the Agreement.

23. The parties acknowledge and agree that the Commission may publicize the terms of the Agreement and the Order.

24. Philips represents that the Agreement: (i) is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever; (ii) has been duly authorized; and (iii) constitutes the valid and binding obligation of Philips, enforceable against Philips in accordance with its terms. Philips will not directly or indirectly receive any reimbursement, indemnification, insurance-related payment, or other payment in connection with the civil penalty to be paid by Philips pursuant to the Agreement and Order. The individuals signing the Agreement on behalf of Philips represent and warrant that they are duly authorized by Philips to execute the Agreement.

25. The signatories represent that they are authorized to execute this Agreement.

26. The Agreement is governed by the laws of the United States.

27. The Agreement and the Order shall apply to, and be binding upon, Philips and each of its successors, transferees, and assigns, and a violation of the Agreement or Order may subject Philips, and each of its successors, transferees, and assigns, to appropriate legal action.

28. The Agreement and the Order constitute the complete agreement between the parties on the subject matter contained therein.

29. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties and shall not, therefore, be construed against any party for that reason in any subsequent dispute.

30. The Agreement may not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 C.F.R. § 1118.20(h). The Agreement may be executed in counterparts.

31. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Philips agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

(continued on next page)

Philips Lighting North America Corporation

Dated: November 9, 2015

By: _____
Michael L. Manning
Vice President and General Counsel
Philips Lighting North America Corporation
3000 Minuteman Road
Andover, MA 01810

Dated: November 9, 2015

By: _____
Kathleen M. Sanzo
Counsel to Philips Lighting North America Corporation
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue NW
Washington, DC 20004

U.S. CONSUMER PRODUCT SAFETY
COMMISSION

Stephanie Tsacoumis
General Counsel

Mary T. Boyle
Deputy General Counsel

Melissa V. Hampshire
Assistant General Counsel

Dated: November 10, 2015

By: _____
Amy S. Colvin
Attorney
Division of Enforcement and Information
Office of the General Counsel

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

In the Matter of:)	
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PHILIPS LIGHTING)	CPSC Docket No.: 16-C0001
NORTH AMERICA CORPORATION)	
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ORDER

Upon consideration of the Settlement Agreement entered into between Philips Lighting North America Corporation (“Philips”), and the U.S. Consumer Product Safety Commission (“Commission”), and the Commission having jurisdiction over the subject matter and over Philips, and it appearing that the Settlement Agreement and the Order are in the public interest, it is:

ORDERED that the Settlement Agreement be, and is, hereby, accepted; and it is **FURTHER ORDERED** that Philips shall comply with the terms of the Settlement Agreement and shall pay a civil penalty in the amount of two million dollars (\$2,000,000) within thirty (30) days after service of the Commission’s final Order accepting the Settlement Agreement. The payment shall be made by electronic wire transfer to the Commission via: <http://www.pay.gov>. Upon the failure of Philips to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Philips at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b). If Philips fails to make such payment or to comply in full with any other provision of the

Settlement Agreement, such conduct will be considered a violation of the Settlement Agreement and Order.

Provisionally accepted and provisional Order issued on the 23th day of November, 2015.

BY ORDER OF THE COMMISSION:

Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission

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