



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

This document has been electronically
approved and signed.

DATE: May 15, 2019

BALLOT VOTE SHEET

TO: The Commission
Alberta E. Mills, Secretary

THROUGH: Mary T. Boyle, Executive Director
Patricia M. Hanz, General Counsel

FROM: Patricia M. Pollitzer, Assistant General Counsel
David M. DiMatteo, Attorney, OGC

SUBJECT: Draft Federal Register Notice: Draft "Statement of Policy on Enforcement Discretion Regarding General Conformity Certificates for the Requirements of the Refrigerator Safety Act"

BALLOT VOTE DUE: Tuesday, May 21, 2019

CPSC staff is forwarding a memorandum to the Commission, recommending that the Commission issue a statement of policy of enforcement discretion regarding household refrigerators that bear a safety certification mark indicating compliance with UL Standard 60335-2-24. The Office of the General Counsel is providing a draft *Federal Register* notice for the Commission's consideration.

Please indicate your vote on the following options:

- I. Approve publication of the attached notice in the *Federal Register*, as drafted.

(Signature)

(Date)

II. Approve publication of the attached notice in the *Federal Register*, with the specified changes.

(Signature)

(Date)

III. Do not approve publication of the attached notice in the *Federal Register*.

(Signature)

(Date)

IV. Take other action specified below.

(Signature)

(Date)

Attachment: Draft *Federal Register* Notice: “Statement of Policy on Enforcement Discretion Regarding General Conformity Certificates for the Requirements of the Refrigerator Safety Act”

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR 1750

**Statement of Policy on Enforcement Discretion Regarding General Conformity Certificates
for the Requirements of the Refrigerator Safety Act**

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Statement of enforcement policy.

SUMMARY: The Consumer Product Safety Commission (CPSC) is issuing a Statement of Policy regarding the CPSC's enforcement of the requirement for a general conformity assessment certificate regarding CPSC's standard for household refrigerators. CPSC will not enforce the requirements to issue a general certificate of conformity for household refrigerators if the product displays an appropriate safety certification mark indicating compliance.

DATES: Effective [**Insert date of publication in the *Federal Register***].

FOR FURTHER INFORMATION CONTACT: Troy W. Whitfield, Lead Compliance Officer, the Office of Compliance and Field Operations, U.S. Consumer Product Safety Commission, 4330 East West Hwy., Bethesda, MD 20814; telephone: 301-504-7548; email: twhitfield@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

1. Refrigerator Safety Act and Implementing Regulation

The Refrigerator Safety Act (RSA) was enacted on August 2, 1956 to prevent deaths of young children who could become trapped inside of a household refrigerator and suffocate. 15 U.S.C. 1211-14. When the RSA was enacted, household refrigerators

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were typically equipped with external latches that held the refrigerator door shut when not in use.

To prevent accidental entrapment of children, the RSA requires household refrigerators to have a device that enables the household refrigerator door to be opened easily from the inside. The regulation implementing the RSA, 16 CFR part 1750, describes in detail the requirements and minimum releasing forces for household refrigerators. Part 1750 applies to household refrigerators manufactured and introduced into interstate commerce after October 30, 1958. The regulation requires devices to allow household refrigerators to be opened from the inside while the household refrigerator is in its normal operating position. This is accomplished by applying an outwardly directed force to the inside of the door, or by rotating a knob, similar to a conventional doorknob, that meets certain activation force requirements. The device must function automatically, and it must work whether or not the refrigerator has electrical power. Normal use of the product must not affect compliance with the anti-entrapment requirement.

2. Voluntary Standard for Refrigerators

The current voluntary standard for refrigerator safety is Underwriters Laboratories Standard 60335-2-24 (UL 60335-2-24), *Household and Similar Electrical Appliances – Safety – Part 2-24: Particular Requirements for Refrigerating Appliances, Ice-Cream Appliances and Ice-Makers*. UL 60335-2-24 includes the entrapment protection requirements of 16 CFR part 1750 for household refrigerators sold in the United States.

The 2017 Edition of the *National Electrical Code*[®] (NEC[®]) requires all appliances operating at 50 volts or more to be listed, which means that all refrigerators must be certified to the requirements of UL 60335-2-24. Although compliance with the NEC[®] is not a

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federal requirement, the *NEC*[®] has been widely adopted by states and local jurisdictions.¹ Because failure to comply with the *NEC*[®] would limit market share, due to restrictions on where the products could be installed, and because manufacturers would expose themselves to additional liability if their products do not meet the applicable voluntary standards, it is likely that all refrigerators have been certified for compliance with UL 60335-2-24.

3. Requirement for General Conformity Certificate

Section 14(a)(1) of the Consumer Product Safety Act (CPSA), as amended by the Consumer Product Safety Improvement Act (CPSIA), requires that all manufacturers of consumer products “subject to a consumer product safety rule under this Act or similar rule, ban, standard, or regulation under any other Act enforced by the Commission” and that are imported or distributed in commerce, must issue a general certificate of conformity (GCC) certifying that “based on a test of each product or upon a reasonable testing program, that such product complies with all rules, bans, standards, or regulations applicable to the product.” 15 U.S.C. 2063(a)(1).

4. CPSC Request for Comments on Burden Reduction

In 2017, CPSC published a *Federal Register* notice asking for suggestions from stakeholders on ways to reduce regulatory burdens.² In response, the Association of Home Appliance Manufacturers (AHAM) requested that CPSC issue a statement of enforcement discretion indicating that CPSC would not enforce the requirements to issue a GCC for household refrigerators if the product complied with the requirements of the

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<https://www.nema.org/Technical/FieldReps/Documents/Adoption%20of%20the%20National%20Electrical%20Code%20by%20State%20or%20local%20jurisdiction.pdf>

² <https://www.federalregister.gov/documents/2018/03/01/2018-04129/commission-agenda-and-priorities-notice-of-hearing>

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RSA and if the product displayed a safety certification mark indicating compliance with UL 60335-2-24.

B. Rationale for Enforcement Discretion

1. Market Survey

In February 2019, CPSC staff conducted a limited market survey to determine the number of household refrigerators for retail sale that displayed a safety certification mark. Staff found that 38 of 38 household refrigerators surveyed displayed a safety certification mark, indicating that 100 percent of household refrigerators surveyed were certified to comply with UL 60335-2-24, and therefore, the entrapment prevention requirements of the RSA as well.

2. Incident Data

CPSC staff searched the Consumer Product Safety Risk Management System (CPSRMS) and the Medical Examiners and Coroners Alert Project (MECAP) databases for the period covering January 1, 2000 to January 31, 2019, and found no entrapment deaths involving household refrigerators. CPSC staff searched the non-fatal reports in CPSRMS, using keyword search due to the large amount data, for the period covering January 1, 2000 to January 31, 2019 and found one entrapment incident within the scope of the RSA in June of 2000, which resulted in no injuries. In that incident, a 2-year-old male, apparently unaided, climbed into a refrigerator and the door closed behind him, but he was found before suffering any injury.

CPSC staff also searched the National Electronic Injury Surveillance System (NEISS) database for the period covering January 1, 2000 to December 31, 2017, using a

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keyword search due to the large amount data, and found no entrapment deaths or injuries involving household refrigerators.

3. Compliance Activity

CPSC Compliance staff reviewed the Section 15 (Defects) Dynamic Case Management system (DCM), the legacy files database, and the Integrated Field System (IFS) database. There were a total of 73 refrigerator cases in the Section 15 database dating back to 1974. These cases concerned electrical issues, overheating components, component part failures, and refrigerant leaks. Staff found no cases that involved entrapment in household refrigerators. Thus, CPSC has not had any enforcement cases or recalls of household refrigerators related to noncompliance with the RSA since enforcement of the RSA was transferred to CPSC in 1973.

4. Safety Mark

Safety certification bodies, such as UL, authorize a product to bear their safety certification or listing mark based on a determination by the certification body that the product meets widely accepted standards.³ Household refrigerators display a safety certification mark indicating that the product meets the entrapment safety requirements in UL 60335-2-24, which include the entrapment safety requirements in the RSA. Several certification bodies issue safety certification marks indicating compliance with UL 60335-2-24. We are aware of UL, the CSA Group that issues the CSA safety certification mark, and Intertek, which issues the ETL safety certification mark⁴ as examples of acceptable safety certification marks demonstrating compliance with UL

³ <https://www.ul.com/marks/ul-listing-and-classification-marks/promotion-and-advertising-guidelines/specific-guidelines-and-rules/>

⁴ <http://www.intertek.com/marks/etl/>

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60335-2-24. However, for purposes of this enforcement policy, the Commission will accept a safety certification mark from any Nationally Recognized Testing Laboratory that is listed by the Occupational Safety and Health Administration as meeting the requirements under 29 CFR § 1910.7,⁵ and if UL 60335-2-24 is one the Recognized Testing Standards as an indication that the refrigerator meets the RSA and 16 CFR part 1750.

Certification bodies prohibit display of their safety certification marks on products that they have not determined meet UL 60335-2-24. Products that display the certification mark are certified to meet the entrapment requirements in the RSA and 16 CFR part 1750. This safety certification mark is readily visible to CPSC staff, U.S. Customs and Border Protection, retailers, and consumers, because it is prominently displayed on the product. Because it is industry practice to certify household refrigerators to UL 60335-2-24, household refrigerators will be tested to the requirements in the RSA and 16 CFR part 1750.

5. Cost of Issuing GCC for the Refrigerator Safety Act

To produce and distribute GCCs, manufacturers and importers incur some costs. The manufacturer or importer must collect the information that is required to be on the certificate. The certificate incorporating this information must be generated and furnished to each distributor or retailer (and to the Commission, if requested), and the certificate must be retained on file for each model manufactured or imported. In addition to the direct costs associated with generating and distributing each certificate, manufacturers and importers: (1) need to develop internal procedures to ensure that the

⁵ <https://www.osha.gov/dts/otpca/nrtl/nrtllist.html>

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necessary information is sent to employees who are responsible for generating the certificates and the employees responsible for distributing the certificates; (2) these procedures must be reviewed to ensure that they will result in compliance with the legal requirements for the content and distribution of general conformity certificates; and (3) the employees must be provided guidance or training for following these procedures.

CPSC staff estimates the cost of issuing and distributing a GCC per model would be \$51.75 to \$103.50 per model. The costs in question are incurred solely to issue a GCC, which provides the same entrapment prevention compliance information as the safety certification mark.

6. Conclusion

As discussed above, the following information indicates that household refrigerators bearing a safety certification mark will meet the entrapment prevention requirements of the RSA:

- review of CPSC's databases covering the past 20 years found no reported refrigerator-entrapment fatalities;
- CPSC has not had any recalls or compliance cases since taking over the RSA in 1973; and
- staff's limited market survey indicates a high level of compliance with the voluntary standard, and indicates that refrigerators that bear a listing mark to UL 60335-2-24 will meet the entrapment prevention requirements of the RSA.

This statement of policy could reduce costs manufacturers and importers incur when issuing and distributing a GCC, while maintaining the safety protection the RSA provides. Thus, a safety certification mark indicating compliance with UL 60335-2-24 is

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an appropriate proxy for a GCC indicating compliance with RSA and 16 CFR part 1750. Therefore, the Commission determines that enforcement of the requirement for issuance of a GCC for household refrigerators is unnecessary because when the household refrigerators bear an appropriate safety certification mark that indicates compliance with UL 60335-2-24, the safety certification mark also indicates that the product will be compliant with the CPSC mandatory requirements for household refrigerators.

C. Statement of Enforcement Policy

The Commission is exercising the following enforcement discretion: Effective **[Insert date of publication in the *Federal Register*]**, the Commission will not pursue compliance or enforcement actions against manufacturers, importers or private labelers of household refrigerators for failure to issue, provide, or make available to the Commission a GCC, as required by 15 U.S.C. 2063(a)(1), provided that the product bears an appropriate safety certification mark indicating compliance with UL Standard 60335-2-24. Household refrigerators must still comply with all requirements under the RSA and 16 CFR part 1750. Failure to comply with the RSA and 16 CFR part 1750 will still subject the products to enforcement action.

This statement of policy, and the enforcement discretion described here, is limited to certificates required for the RSA and 16 CFR part 1750. If a household refrigerator does not bear an appropriate safety mark indicating compliance with UL Standard 60335-2-24, none of this policy, the enforcement discretion described in this policy, nor the implications of such enforcement discretion shall apply. Any misrepresentation or omission regarding a household refrigerator bearing a safety mark indicating compliance with UL Standard 60335-2-24 could subject the firm to compliance or enforcement action and potential civil and/or criminal penalties. Should the Commission become aware of

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unsafe products entering the market as a result of this statement of policy, it reserves the right to withdraw the policy prospectively with no less than 90 days' notice. This policy is not a binding rule and does not change any person's right, duties, or obligations under any statutes administered by the CPSC.

Dated: _____

Alberta E. Mills, Secretary
Consumer Product Safety Commission



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
BETHESDA, MD 20814

This document has been electronically
approved and signed.

MEMORANDUM

May 15, 2019

TO: The Commission

THROUGH: Mary T. Boyle, Executive Director
Patricia M. Hanz, General Counsel

FROM: George A. Borlase, Ph.D., Assistant Executive Director
Office of Hazard Identification and Reduction

Perry Sharpless, Senior Mechanical Engineer
Directorate for Laboratory Sciences

SUBJECT: Staff Recommendation on Statement of Policy for Enforcement Discretion
Regarding General Conformity Certificates for Household Refrigerators

Background

Congress enacted the Refrigerator Safety Act (RSA) (Pub. L. No. 84-930; 15 U.S.C. §§ 1211-14) on August 2, 1956. The regulation was published in the Code of Federal Regulations as 16 CFR part 1750. Congress passed the RSA due to deaths, typically of young children at play, who became trapped inside a refrigerator and suffocated. When the statute was enacted, refrigerators were typically equipped with external latches that held the refrigerator door closed when not in use. Refrigerators of that era were not required to be equipped with any means to open the door from the inside. Consequently, a person who became trapped inside of a refrigerator could not free themselves and died by asphyxiation.

To reduce the likelihood of suffocation inside of a refrigerator, 16 CFR part 1750 requires refrigerators to be equipped with certain devices that enable the refrigerator door to be opened from the inside. In addition, the statute places a 15-pound limit on the amount of force required to open the door when it is pushed outwards from the inside. To meet the requirements of the RSA, the device(s) must allow the refrigerator door to be opened easily from the inside, and the device(s) must work whether the power supply for the refrigerator is on or off.

Congress enacted the Consumer Product Safety Improvement Act (CPSIA) on August 14, 2008 (Pub. L. 110-314). CPSIA Section 102 (a)(1)(A)(1)(A) requires, in part, that manufacturers issue a General Certificate of Conformity (GCC), certifying that “based on a test of each product or upon a reasonable testing program, that such product complies with all rules, bans, standards, or regulations applicable to the product . . .” The RSA and the regulations issued under it are the only CPSC requirements that apply specifically to household refrigerators.

Thus, refrigerator manufacturers must issue a GCC only to show that their products conform to the applicable requirements of the RSA and 16 CFR part 1750.

Consensus standard organizations have continued to develop requirements applicable to household refrigerators. The consensus standard most applicable to household refrigerators, Underwriters Laboratories (UL) 60335-2-24 - *Household and Similar Electrical Appliances – Safety – Part 2-24: Particular Requirements for Refrigerating Appliances, Ice-Cream Appliances and Ice-Makers*, includes the federal anti-entrapment requirements. The UL standard has additional anti-entrapment requirements beyond those of the federal requirements. For example, the anti-entrapment provisions of UL 60335-2-24 include the door opening force requirements specified in the RSA, but applies the door opening force requirement to drawers above a certain minimum size, and to freezers as well.¹

The *National Electrical Code*[®] (*NEC*[®]) was updated in 2017 to require that appliances operating at 50 volts or more be “listed.” As described below, “listed” means that the product has been tested and found to be compliant with the applicable consensus standards and regulations. Although compliance with the *NEC*[®] is not a federal requirement, the *NEC*[®] has been widely adopted by states and local jurisdictions.² Because failure to comply with the *NEC*[®] would limit market share, due to restrictions on where the products could be installed, and because manufacturers would expose themselves to additional liability if their products do not meet the applicable voluntary standards, it is likely that all household refrigerators are certified to comply with UL 60335-2-24.

Additionally in 2017, CPSC published a *Federal Register* notice asking for suggestions to reduce regulatory burden.³ The Association of Home Appliance Manufacturers (AHAM) requested that CPSC issue a notice of enforcement discretion indicating that CPSC would not enforce the requirements to issue a GCC for household refrigerators if the product complied with the requirements of the RSA, and if the product displayed a safety certification mark indicating compliance with UL 60335-2-24.

Discussion

For a safety certification body, such as UL, to authorize a product to bear its safety certification, or listing, mark, and thus become “listed,” the product must meet widely accepted standards that are relevant to the particular product. Compliance with the relevant product safety standards is determined by an independent safety certification body. Certification bodies perform an initial assessment of the product, and perform routine follow-up testing on the product, to assure that the product continues to meet the requirements to which it was originally certified. The certification body allows manufacturers that meet the applicable product safety standards to place the certification body’s trademarked listing mark on the product. Certification bodies typically specify the manner in

¹ UL 60335-2-24 clauses 22.112 and 22.115.

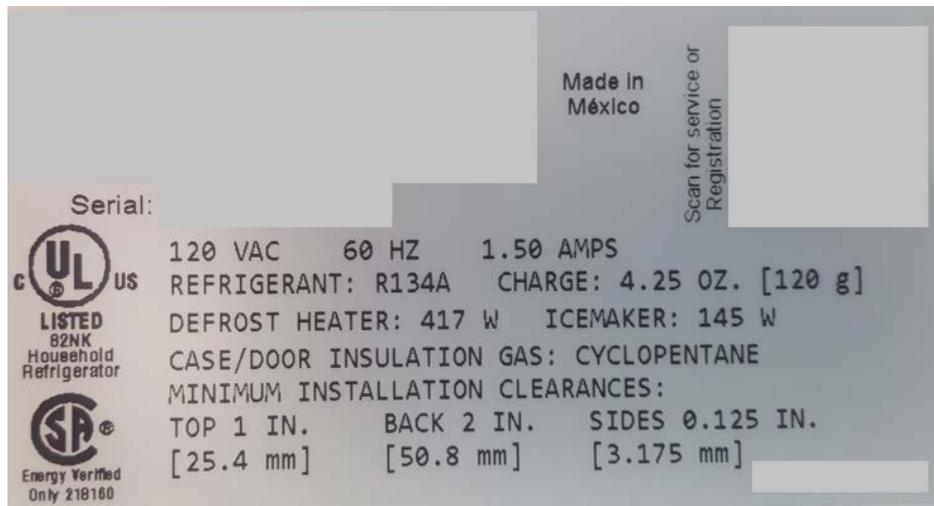
²

<https://www.nema.org/Technical/FieldReps/Documents/Adoption%20of%20the%20National%20Electrical%20Code%20by%20State%20or%20local%20jurisdiction.pdf>

³ <https://www.federalregister.gov/documents/2018/03/01/2018-04129/commission-agenda-and-priorities-notice-of-hearing>

which the listing mark may be displayed or used for marketing purposes.⁴ Because a listing mark shows compliance with voluntary standards, manufacturers typically display the listing mark where it is easily visible to consumers, often on the data plate for the product.

Photograph 1 shows a redacted example of a UL safety certification mark displayed on the data plate of a household refrigerator. Safety certification marks indicate compliance with the relevant standard.



Photograph 1. Example Household Refrigerator Data Plate.

Although UL is one of the more widely recognized certification organizations, there are other organizations, such as CSA Group, which issues the CSA safety certification mark,⁵ and Intertek, which issues the ETL safety certification mark.⁶ UL, CSA, and Intertek can all issue safety certification marks indicating compliance with UL 60335-2-24. However, if the Commission determines that safety certification marks may be used to allow enforcement discretion on the issuance of GCCs for household refrigerators, staff recommends that CPSC recognize a safety certification mark from any Nationally Recognized Testing Laboratory (NRTL) that is listed by the Occupational Safety and Health Administration as meeting the requirements under 29 CFR § 1910.7, if UL 60335-2-24 is one of the NRTLs Recognized Testing Standards.⁷

Recognition as an NRTL indicates that OSHA acknowledges that an organization has the necessary qualifications to perform safety testing and certification of the specific products covered within its scope of recognition. Such recognition provides reasonable assurance that products certified by an

⁴ <https://www.ul.com/marks/ul-listing-and-classification-marks/promotion-and-advertising-guidelines/specific-guidelines-and-rules/>

⁵ <https://www.csagroup.org/testing-certification/marks-labels/csa-marks-labels-north-america/>

⁶ <http://www.intertek.com/marks/etl/>

⁷ <https://www.osha.gov/dts/otpca/nrtl/nrtllist.html>

NRTL comply with all applicable regulations for that product. From the OSHA website description of an NRTL:

A Nationally Recognized Testing Laboratory (NRTL) is a private-sector organization that OSHA has recognized as meeting the legal requirements in 29 CFR 1910.7 to perform testing and certification of products using consensus based test standards.

These requirements are:

- The capability to test and evaluate equipment for conformance with appropriate test standards;
- Adequate controls for the identification of certified products, conducting follow-up inspections of actual production;
- Complete independence from users (*i.e.*, employers subject to the tested equipment requirements) and from any manufacturers or vendors of the certified products; and
- Effective procedures for producing its findings and for handling complaints and disputes.

An organization must have the necessary capability as a product safety testing laboratory and as a product certification body to receive OSHA recognition as an NRTL.

To determine whether a safety certification mark may be used to indicate that a household refrigerator is compliant with the applicable federal requirements, it is necessary to consider the information required for GCCs and for listing marks. The information provided by a GCC and the information provided by a listing mark are discussed below.

General Certificate of Conformity

A GCC must include the following information:⁸

1. Identification of the product covered by the certificate
2. Citation to each consumer product safety regulation to which the product is being certified
3. Identification of the importer or domestic manufacturer certifying compliance of the product
4. Contact information for the individual maintaining records of test results
5. Date and place where the product was manufactured
6. Provide the date(s) and place when the product was tested for compliance with the consumer product safety rule(s) cited above
7. Identification of any third party laboratory on whose testing the certificate depends.

The GCC assists CPSC staff in the event that the agency initiates a product safety investigation or other compliance action. Information contained in the GCC helps staff to identify the exact product involved, the applicable regulations to which the product is subject, and generally provides information that is useful in the event of a recall. GCCs are provided by the manufacturer or importer, who must provide a reasonable means for distributors or retailers to access the certificate.

⁸ <https://www.cpsc.gov/Business--Manufacturing/Testing-Certification/General-Certificate-of-Conformity-GCC/>

“Reasonable means” may include furnishing a paper copy of the certificate, or providing online access to the certificate.

Listing Mark

Listing marks, also called safety certification marks, indicate that the associated product has been verified by an independent third party accredited laboratory to be in compliance with the safety standards and regulations applicable to that product. However, compared to the information that is required by the GCC, the listing mark itself provides only the name of the third party laboratory that certified the product. For refrigerators, the primary value of the listing mark to CPSC and to consumers is that it indicates that the product meets the entrapment safety requirements in UL 60335-2-24, which includes the entrapment safety requirements in the RSA. A refrigerator could not obtain a certification mark to UL 60335-2-24 if the product did not meet the entrapment prevention requirements of the RSA.

Although the listing mark does not provide all of the information that is required in a GCC, much of the information exists on the product labels. UL 60335-1 section 7 requires that products bear the listing mark and bear a data plate that identifies the product, the manufacturer, and the serial number of the product, all of which have been redacted in photograph 1. Thus, CPSC could obtain information that is required by the GCC in the event that a compliance action is necessary, based on the information that is typically provided with the product, or that can be readily obtained from the certification body. Certification bodies provide to the public information about the products that they list. UL, for example, provides a listing of all of the products bearing the UL safety certification mark at: <https://iq.ulprospector.com/en/>.⁹ It should be noted the CPSC previously issued enforcement discretion guidance for adult wearing apparel, which is sold without the information that is available on a data plate, or a safety certification mark.¹⁰

Market Survey

In February 2019, CPSC staff conducted a limited market survey to determine the number of household refrigerators that displayed a safety certification mark at retail sale. Staff found that all of the 38 refrigerators examined displayed a safety certification mark. Thus, 100 percent of those refrigerators were certified to comply with entrapment prevention requirements that meet or exceed the entrapment prevention requirements of the RSA.

Death and Incident Data

CPSC staff searched the fatal reports in the Consumer Product Safety Risk Management System (CPSRMS) for the period covering January 1, 2000 to January 31, 2019 and found no entrapment deaths that are within the scope of the RSA. CPSC staff searched the nonfatal reports in CPSRMS, using keyword search due to the large amount data, for the period covering January 1, 2000 to

⁹ This site provides access to active UL certifications and there is no subscription fee required. However users must first enter some basic identification information and create a personal log-in with a username and password.

¹⁰ <https://www.cpsc.gov/Newsroom/News-Releases/2016/CPSC-Approves-Adult-Apparel-Enforcement-Discretion-to-Reduce-Paperwork-Requirement-on-Businesses/>

January 31, 2019, and found one entrapment incident within the scope of the RSA in June 2000, which resulted in no injuries. In that incident, a 2-year-old male, apparently unaided, climbed into a refrigerator and the door closed behind him, but he was found before suffering any injury.

CPSC staff also searched the National Electronic Injury Surveillance System (NEISS) database for the period covering January 1, 2000 to December 31, 2017, using a keyword search given the large amount data. Staff found no deaths or injuries within the scope of the RSA.

CPSC staff searched the CPSRMS and the Medical Examiners and Coroners Alert Project (MECAP) databases for the period covering January 1, 2000 to January 31, 2019 and found no entrapment deaths that are within the scope of the RSA.

Prior Compliance Activity

CPSC Compliance staff reviewed the Section 15 (Defects) Dynamic Case Management system (DCM), the legacy files database, and the Integrated Field System (IFS) database. There were a total of 73 refrigerator cases in the Section 15 database dating back to 1974 dealing with electrical issues, overheating components, component part failures, and refrigerant leaks. Staff found no cases that were within the scope of the RSA. Thus, CPSC has not had any enforcement cases or recalls of refrigerators related to non-compliance with the Refrigerator Safety Act since the enforcement function of the statute was transferred to CPSC in 1973.

GCC Cost Under the Refrigerator Safety Act

Manufacturers and importers incur costs to produce and distribute a GCC. The manufacturer or importer must collect the information that is required to be on the certificate, which includes the identity of the issuer of the certificate, the date and place where the product was manufactured, the date and place where the product was tested, and contact information for all parties, including the person responsible for maintaining records of test results. The certificate incorporating this information must be generated and furnished to each distributor or retailer (and to the Commission, if requested) and retained on file. This must be done for each model manufactured or imported. In addition to the direct costs associated with generating and distributing each certificate, manufacturers and importers need to develop internal procedures to ensure that the necessary information is sent to employees responsible for generating the certificates and to employees responsible for distributing the certificates. These procedures must be reviewed to ensure that they will result in compliance with the legal requirements for the content and distribution of GCCs. Finally, the employees must be provided guidance or training for following these procedures.

In estimating the recordkeeping and reporting burden under the Paperwork Reduction Act, CPSC staff estimates that it takes an average of 1.5 hours to prepare, distribute, and file a GCC.¹¹ The labor required is likely a mix of management and professional employees and office workers. The average

¹¹ These estimates are based on public comments that have been received by the Commission over the last 10 years concerning the recordkeeping burdens associated with different requirements. The actual estimates have ranged from as little as 15 minutes to several hours per model.

compensation for management and professional workers in goods-producing industries is \$69.00 hour, and the average compensation for sales and office workers in goods-producing industries is \$34.50 per hour.¹² Using the estimate of 1.5 hours to generate and distribute a GCC, the cost of a GCC per model would be between \$51.75 and \$103.50. This estimate is less than the estimate of the shipment-weighted average cost of \$483 per model provided by AHAM via email on February 15, 2019. Reportedly, the AHAM-derived cost includes administrative costs, certificate generation, database and record-retention costs associated with the GCC, labeling costs, customer service center costs, and internal guidance documents for training employees specifically on the GCC requirements. However, because we do not have the data or the methodology used by AHAM in producing its estimate, staff cannot judge whether the actual cost is closer to the estimate based on the CPSC assumptions, or to AHAM's estimate. Regardless, the costs in question are incurred solely to issue a GCC, which provides the same entrapment prevention compliance information as the safety certification mark.

CPSC Staff Analysis

CPSC staff believes the issuance of GCCs for household refrigerators that bear a safety certification mark does not provide additional safety to consumers, because staff's review found that refrigerators that bear a safety certification mark comply with requirements that meet or exceed the federal entrapment requirements. Display of safety certification marks on products that do not meet the relevant standards is prohibited by the certification bodies, so only products that have been found to meet the entrapment requirements in the RSA would bear a safety certification mark. This safety certification mark is readily visible to CPSC staff, U.S. Customs and Border Protection, retailers, and consumers, because it is prominently displayed on the product. Issuing a GCC, as noted in the cost section above, is estimated to be between \$50 and \$100. If the Commission applies enforcement discretion regarding the GCCs, refrigerators would continue to be subject to the requirements in the RSA and 16 CFR part 1750. Failure to comply with the applicable requirements in the RSA and 16 CFR part 1750 will still subject manufacturers, distributors, and importers of household refrigerators to enforcement action.

Summary

Recapping the significant items discussed above:

1. There are no reported in-scope fatalities or injuries since at least January 1, 2000.
2. CPSC has not had any recalls or compliances cases involving refrigerators since 1974.
3. Staff conducted a limited market survey that indicates a high level of compliance with the consensus standard, UL 60335-2-24.
4. Compliance with UL 60335-2-24 is required by the NEC.[®]
5. Refrigerators that bear a listing mark to UL 60335-2-24 have been certified to meet the entrapment prevention requirements of the RSA.

¹² Bureau of Labor Statistics (BLS) Employer Costs for Employee Compensation (ECEC) data for December 2018 (published in March 2019).

Staff Recommendation

Staff recommends that the Commission issue a *Federal Register* (FR) notice with CPSC's statement of policy of enforcement discretion regarding household refrigerators that meet the requirements of the RSA, and that display a safety certification mark provided by an OSHA-recognized testing laboratory that indicates that the product meets the requirements of UL 60335-2-24, but who do not furnish a GCC with their product.

Failure to comply with the applicable requirements in 16 CFR part 1750 will still subject manufacturers, distributors, and importers of household refrigerators to enforcement action. The Commission could reserve the right to withdraw the policy prospectively with no less than 90 days' notice, if the Commission becomes aware of unsafe products entering the market as a result of the statement of policy. OGC has prepared a draft FR notice for Commission consideration containing a statement of enforcement policy for GCCs for household refrigerators covered under the RSA.