



Ballot Vote Sheet

TO: The Commission
Alberta E. Mills, Secretary

DATE: September 25, 2024

THROUGH: Jessica L. Rich, General Counsel
Austin C. Schlick, Executive Director
Daniel R. Vice, Assistant General Counsel, Regulatory Affairs

FROM: Mary A. House, Attorney, Regulatory Affairs

SUBJECT: Petition Requesting Rulemaking to Amend the Requirement for a “Keep Out of Reach” Icon on Button Cell or Coin Battery Packaging

BALLOT VOTE DUE: October 1, 2024

Staff is forwarding to the Commission a briefing memorandum (Staff Briefing Memo) assessing a November 1, 2023, petition from Elliott Alexander (Petitioner), President of Micropower Battery Company, a company that packages button cell and coin batteries on behalf of battery manufacturers (the Petition). The Petition requests a change to the September 21, 2023, final rule implementing Reese’s Law which, in part, requires labeling of button cell or coin battery packaging (labeling rule). 88 Fed. Reg. 65,296. As of the effective date of the labeling final rule, September 21, 2024, packages of button cell or coin batteries are required to contain a full warning label which includes an 8 mm “Keep Out of Reach” icon. See 16 C.F.R. § 1263.4(b)(1). If space prohibits the full warning label, the package instead must be marked with a 20 mm in diameter “Keep Out of Reach” icon, with that icon placed alone on the principal display panel, in lieu of the full warning. See 16 C.F.R. § 1263.4(b)(2).

The Petition requests that the Commission allow an alternative to the 20mm “Keep Out of Reach” icon when space does not allow for the full warning label -- either an icon smaller than 20 mm scaled to the size of the package or the words “Keep Away from Children” on the front of battery packaging. On January 29, 2024, the Commission published a notice in the *Federal Register* requesting comments on the Petition. 89 Fed. Reg. 5,438. The public comment period closed on March 29, 2024, and CPSC received 12 comments, including two duplicate comments.

Staff’s Briefing Memo summarizes and responds to the comments, assesses the Petition request, and recommends that the Commission deny the Petition.

Please indicate your vote on the following options:

U.S. Consumer Product
Safety Commission
4330 East-West Highway
Bethesda, MD 20814

National Product Testing
and Evaluation Center
5 Research Place
Rockville, MD 20850

- I. Deny the Petition, and direct staff to draft a letter of denial to the Petitioner.

(Signature)

(Date)

- II. Grant the Petition and direct staff to begin developing a notice of proposed rulemaking or an advance notice of proposed rulemaking to revise the battery package labeling requirements in § 1263.4(b)(2) of the Safety Standard for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries.

(Signature)

(Date)

- III. Defer the Petition.

(Signature)

(Date)

- IV. Take other action as specified below.

(Signature)

(Date)

Attachment: Staff Briefing Memorandum: Petition Requesting Rulemaking to Amend the Requirement for a "Keep Out of Reach" Icon on Button Cell or Coin Battery Packaging



Memorandum

TO: The Commission
Alberta E. Mills, Secretary

DATE: September 25, 2024

THROUGH: Jessica L. Rich, General Counsel
Austin C. Schlick, Executive Director
DeWane Ray, Deputy Executive Director, Safety Operations

FROM: Duane E. Boniface, Assistant Executive Director
Office of Hazard Identification and Reduction

Daniel Taxier, Project Manager
Division of Mechanical and Combustion Engineering,
Directorate for Engineering Sciences

Jill Hurley, Engineering Psychologist
Division of Human Factors, Directorate for Engineering Sciences

Mark Bailey, Economist
Directorate for Economic Analysis

SUBJECT: Petition Requesting Rulemaking to Amend the Requirement for a “Keep Out of Reach”
Icon on Button Cell or Coin Battery Packaging

I. Introduction

On September 21, 2023, the U.S. Consumer Product Safety Commission (CPSC) published in the *Federal Register* a final rule implementing Reese’s Law which, in part, requires labeling of button cell or coin battery package (labeling rule). 88 Fed. Reg. 65,296. The labeling rule was finalized as proposed with regard to the “Keep Out of Reach” icon. 88 Fed. Reg. 8,692 (Feb. 9, 2023).

Specifically, as of the effective date of the labeling final rule, September 21, 2024, packages of button cell or coin batteries are required to contain a full warning label that includes an 8 mm “Keep Out of Reach” icon. See 16 C.F.R. § 1263.4(b)(1). Alternately, if space prohibits the full warning label, the package instead must be marked with a 20 mm in diameter “Keep Out of Reach” icon on the principal display panel. See 16 C.F.R. § 1263.4(b)(2).

On November 1, 2023, the Commission received a petition from Elliott Alexander (Petitioner), President of Micropower Battery Company, a company that packages button cell and coin batteries on behalf of battery manufacturers (Petition, CP 24-2).¹ The Petition concerns the alternative requirement to display

¹ The Petition, along with supporting and related material, can be found at: <https://www.regulations.gov/docket/CPSC-2024-0004/document>.

a 20 mm icon and requests instead that the Commission allow an icon smaller than 20 mm scaled to the size of the package or allow the words “Keep Away from Children” on the front of battery packaging.

On January 29, 2024, the Commission published a notice in the *Federal Register* requesting comments on the Petition. 89 Fed. Reg. 5,438. The public comment period closed on March 29, 2024, and CPSC received 12 comments, including 2 duplicate comments. This memorandum provides staff’s recommendation for addressing to the Petition, as well staff’s response to comments.² As described below, staff recommends denying the Petition.

II. Description of the Petition

The Petition requests that the Commission modify the labeling rule for button cell and coin battery packaging to allow for a smaller “Keep out of Reach” icon when space does not allow the full warning on the principal display panel.³ The Petition suggests the labeling rule allow a minimum icon size of 8 mm, and a scaled icon depending on the size of the packaging, up to a 20 mm icon. The Petition states that common retail packaging for button cell and coin batteries does not allow space for a 20 mm icon on the principal display panel and includes example images of existing battery packaging to demonstrate space limitations.

The Petition also states that asymmetrical battery layouts, as demonstrated in the rulemaking, are not possible without different packaging machinery, which assertedly is prohibitively expensive for small businesses to purchase, costing more than \$1.2 million per production line. The Petition states that packaging using existing equipment is only cost-effective using a symmetrical layout, which also ensures that batteries remain in the most secure child-resistant packaging where batteries are placed equal distance to the edge of packaging. Petitioner states that child-resistant packaging for an asymmetric layout requires more expensive processes and equipment to accomplish a secure package. The Petition also questions why an additional “Keep out of Reach” icon is necessary when batteries 16 mm and larger already include the same icon on each battery, which is visible through the packaging.

The Petition states that existing packaging has been made child-resistant, but if a 20 mm icon is required on the front of the package, manufacturers collectively will be required to spend millions of dollars to change the packaging and equipment to accommodate a larger package size, which the Petition states is not desired in the market. The Petition asserts that under the labeling rule, prices for tear strip packaging will increase by 20 percent or more.

The Petition requests an amendment to the final labeling rule to allow “Keep out of Reach” icons to be between 8 to 20 mm, depending on the packaging, or to allow the words “Keep Away from Children” on the front of battery packaging. In a December 28, 2023, letter to Commission staff (Follow-Up Letter), the Petitioner explains why he believes packaging cannot be reconfigured to remove one battery to allow space for a 20 mm icon on the principal display panel, and provides a proposed amended Table 1 to Paragraph (a)(7) of 16 C.F.R. § 1263.4 that includes a sliding scale for the “Keep out of Reach” icon size which ranges from 7 to 40 mm.

² Staff provides this briefing memorandum in a shortened format because the Commission’s rulemaking to implement Reese’s Law provides substantial supporting information for the labeling requirements and is referenced accordingly.

³ See footnote 1.

III. Product and Hazard Description

Generally, button cell batteries are small, disposable, single-cell batteries that range from 5 mm to 32 mm (0.2 inches to 1.3 inches) in diameter and are 1 mm to 6 mm (0.04 inches to 0.24 inches) in thickness (See Figure 1). Common anode materials are zinc or lithium while common cathode materials are manganese dioxide, silver oxide, carbon monofluoride, cupric oxide, or oxygen from the air.⁴ Button cell batteries tend to be manganese dioxide (alkaline) (1.5 volt) or silver oxide (1.55 volt). Lithium coin batteries, also shown in Figure 1, were originally developed as a 3-volt power source for low-drain and battery-backup applications because of their high-energy density, correspondingly small size, and long shelf life. Lithium coin batteries are commonly approximately 20 mm (0.787 inch) in diameter.







		
LR44 button cell, 11.6mm (0.45 inch) diameter, 5.4 mm (0.21 inch) thick	LR754 button cell, 7.9 mm (0.31 inch) diameter, 5.4 mm (0.21 inch) thick	LR626 button cell, 6.8 mm (0.26 inch) diameter, 2.6 mm (0.10 inch) thick
		
CR2032, 20 mm (0.787 inch) diameter	CR2025, 20 mm (0.787 inch) diameter	CR2450, 24 mm (0.945 inch) diameter

Figure 1. Example Button Cell and Coin Cell Batteries

Button cell or coin batteries can cause serious injuries or death when they are ingested and become stuck in the esophagus. Injuries include esophageal burns and perforations, vocal cord paralysis, and fistulas created by burning through the esophagus and surrounding tissues creating a connection between the esophagus and the trachea or blood vessels. Serious injury can also result from button cell or coin batteries inserted into the nose and ear, including septal perforation, decreased structural support of the nose, and hearing loss. Children can potentially gain access to button cell or coin batteries from battery packaging and be exposed to the hazard. Per the Reese's Law Notice of Proposed Rulemaking (NPR), six out of 112 fatal and nonfatal incident narratives in the Consumer Product Risk Management System (CPSRMS) refer to loose batteries or battery packaging hazards, and staff estimates that at least 7 percent of National Electronic Injury Surveillance System (NEISS) incidents involve loose batteries or batteries liberated from the packaging. 88 Fed. Reg. 8,692, 8,699. Staff's January 11, 2023, NPR Briefing Package and labeling NPR contain additional information on the hazard and staff's analysis of the incident data.⁵ *Id.*

IV. Labeling Rule Requirements for Button Cell and Coin Battery Packaging

The purpose of Reese's Law is to "eliminate or adequately reduce the risk of injury from button or coin cell battery ingestion by children that are 6 years of age or younger during reasonably foreseeable use or

⁴ Anodes and cathodes are the positive or negative posts of a battery. The different materials allow the battery to lose or gain electrons dependent on the intended function.

⁵ The January 11, 2023, Staff Briefing Package: Draft Proposed Rule to Establish a Safety Standard and Notification Requirements for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries (Staff's Reese's Law NPR Briefing Package), is available at: <https://www.cpsc.gov/s3fs-public/NoticeofProposedRulemakingSafetyStandardandNotificationRequirementsforButtonCellorCoinBatteriesandConsumerProductsContainingSuchBatteries.pdf?VersionId=kDinNeydtkkt3T8RRtzN4u1GTXPJpEI>.

misuse conditions.” 15 U.S.C. 2056e(a)(1). Section 2(a) of Reese’s Law requires warning labels on the packaging of button cell or coin batteries which shall:

- (1) Clearly identify the hazard of ingestion; and
- (2) Instruct consumers, as practicable, to keep new and used batteries out of the reach of children, to seek immediate medical attention if a battery is ingested, and to follow any other consensus medical advice.

15 U.S.C. §2056e(a)(2). Pursuant to Reese’s Law, on September 21, 2023, the Commission published a Safety Standard for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries, codified at 16 C.F.R. part 1263. 88 Fed. Reg. 65,296 (battery package labeling); 88 Fed. Reg. 65,274 (consumer products). CPSC finalized battery package labeling requirements with several modifications from the NPR based on the public comments. 88 Fed. Reg. 8,692 (Feb. 9, 2023). The Commission developed these requirements because existing labeling requirements in voluntary standards were assessed to be inadequate to meet the warning label requirements for battery packaging in section 2 of Reese’s Law. 88 Fed. Reg. 65,299.

The NPR proposed that packages of button cell or coin batteries contain on the principal display panel a warning label with text required to meet Reese’s Law, and a “Keep out of Reach” icon. Figure 3, 88 Fed. Reg. 65,298-99. The NPR proposed the size of the text to be calculated based on a Table 1 in the regulation text, and the icon to be a minimum of 8 mm in diameter. However, the NPR stated that if space prohibits the full warning with the “Keep out of Reach” icon in accordance with the text formatting requirements, then the packaging is alternatively required to use the “Keep out of Reach” icon on the principal display panel and the warning text must be placed on the secondary display panel, as shown in Figure 4 of the NPR. In this instance, the icon must be at least 20 mm (0.79 in.) in diameter for visibility. *Id.*

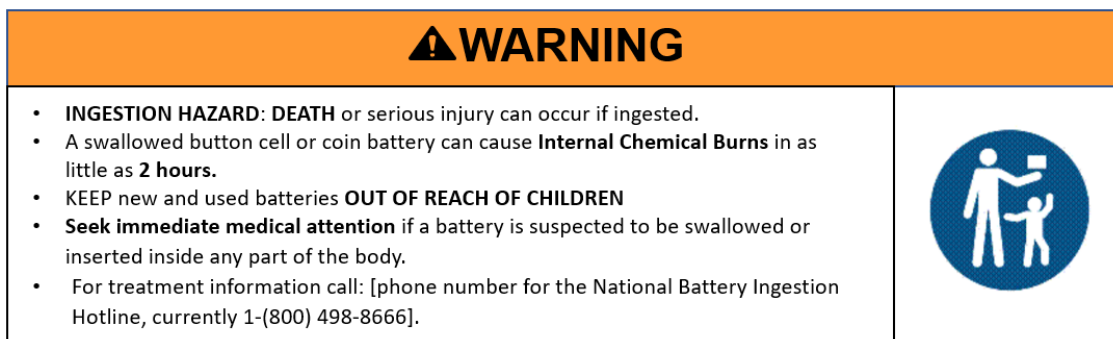


Figure 2. Example Battery Packaging Warning (Part 1263, Figure 1 to Paragraph (b)(1))

The Commission received several comments on the proposed 20 mm size of the “Keep out of Reach” icon during the comment period, stating similar concerns as those identified in the Petition, including that the front of existing battery packaging is not large enough to accommodate a 20 mm icon. See Comment Summaries A and B, 88 Fed. Reg. at 65,300. However, informed by staff’s review of existing button battery packaging, the Commission did not make any changes in the final rule based on these comments. The labeling rule was finalized as proposed with regard to the 20 mm icon size requirement for the icon-only “Keep out of Reach” warning on the principal display panel. 16 C.F.R. § 1263.4(b)(2). Consistent with staff’s analysis in Tab H of Staff’s Final Rule Briefing Package,⁶ the Commission certified

⁶ See the August 31, 2023, Staff Briefing Package: Draft Final Rule to Establish a Safety Standard for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries (Staff’s Final Rule Briefing Package), available at:

that the labeling rule would not have a significant impact on a substantial number of small businesses. 88 Fed. Reg. 65,302.

Similar to the comments addressed in the final labeling rule, the Petition requests the labeling rule allow a smaller icon to be used on some button cell or coin battery packages.

V. Response to Comments

CPSC received 12 comments on the Petition, including two comments that were duplicated in the record. Commenters included consumers, battery manufacturers (Maxwell, Duracell, Murata), and a battery packager (Cellpac). The battery manufacturers and battery packager generally supported the Petition and an option for a smaller “Keep out of Reach” icon. Consumer response was mixed, with some supporting the existing icon and others supporting a scaling option. Below we summarize and respond to the comments.

Comments in Response to Questions Posed in the Notice of Petition

- A. *Whether the Petition presents any issues or evidence that could not have been presented to the Commission during the comment period on the notice of proposed rulemaking, prior to adoption of the final rule establishing the requirement for a 20 mm “Keep out of Reach” icon.*

Comment 1: One commenter, a law student, stated that the Petitioner was sufficiently notified of the 20 mm icon requirement; additionally, the commenter noted that that, within the comment period, several commenters on the NPR had expressed cost concerns with increased packaging sizes required to accommodate larger warning labels.

Response 1: Staff agrees with the commenter that the size of the icon that is the subject of the Petition was discussed in the NPR, and several comments to the NPR also addressed the issue. The Commission responded to these comments in the labeling rule. Comment Summaries A and B. 88 Fed. Reg. 65,300. Staff anticipated a one-time cost associated with upgrading the packaging in Tab H of the Staff’s Final Rule Briefing Package, but assessed that the cost would be low on a per unit basis as the change is a one-time cost that will be spread across millions of units.⁷ Staff’s evaluation of the facts, costs, and legal requirements has not changed since the Commission published the labeling rule on September 21, 2023.

- B. *Whether, if a 20 mm “Keep out of Reach” icon in sticker format is used on the outside of battery packaging, including over a packaged battery, to meet the requirements of the current rule, the permanency of such a sticker should be tested in accordance with the permanency test in UL 4200A or another standard, and whether such a sticker could be a cost effective way to meet the product safety requirement for small packages.*

Comment 2: One commenter, a law student, stated that this alternative method of compliance with the rule is not listed anywhere in the rule and therefore should not be offered as an alternative method of compliance. The commenter also expressed concerns that warnings may not be considered conspicuous if they are not a permanent feature and can be removed.

Response 2: Staff agree with the commenter’s concerns that warnings on stickers may not be considered conspicuous if the stickers are removable and would therefore not meet the requirements in

<https://www.cpsc.gov/s3fs-public/Reeses-Law-Implementation-Commission-Determination-Regarding-UL-4200A-2023-and-Draft-DFR-for-Button-Cell-or-Coin-Batteries-and-2-Draft-FR-to-Amend-Part-1263--Labeling-Requirements-for-Button-Cell-or-Coin-Batte.pdf?VersionId=PyTbnom1OemA3BWl9Z1IONZTlyqbctW>.

⁷ *Id.*

Reese's Law. Staff do not share the same concern about permanent stickers but would like to see further evidence of the efficacy of a permanency test when performed on stickers placed on battery packaging before fully supporting such stickers as a potential low-cost solution to the issue raised by the Petitioner. However, stickers or boards placed on the inside of battery packaging (*i.e.*, between the battery and the plastic packaging cover) could be effective and are unlikely to be tampered with by consumers until the packaging is opened. Due to the child resistant packaging requirements in Reese's Law, unintended opening of button cell or coin battery packaging is considered very unlikely. Staff conclude that stickers or boards placed inside button cell or battery packaging could be used to comply with the existing labeling requirements of the Commission's regulations implementing Reese's Law.

Comments on Other Topics

C. Comments on Icon Size and Cost

Comment 3: Three consumers expressed concerns with the potential cost of the existing requirement for a 20 mm diameter "Keep out of Reach" icon. Two of these consumers supported implementing a scaling icon. Three consumers supported the existing requirement. Three battery manufacturers (Duracell, Maxell, Murata) and one battery packaging manufacturer (Cellpac) supported alternatives to the existing requirement that would allow a smaller icon: Duracell supported a scaling icon; Maxell suggested replacing the icon with text; Murata suggested aligning the icon size with IEC 60086-4 (6 mm by 6 mm up to 10 mm by 10 mm); and Cellpac generally supported allowing a smaller icon. Manufacturers cited the following reasons for allowing a smaller icon on packaging where the 20 mm icon will not fit: increased costs associated with new packaging manufacturing equipment and a larger pack size; costs associated with testing the new packaging to 16 C.F.R. § 1700.20;⁸ and potential costs for retailers to store and display any new packaging of a different size. Cellpac stated that the requirement could require replacement of \$1.5 million in automated packaging equipment. Duracell stated that they will have to increase some packaging sizes and change the battery placement on some cards to accommodate the 20 mm icon.

Response 3: Staff agrees that the 20 mm icon requirement could result in additional costs to manufacturers and consumers if the icon does not fit on existing battery packaging, or the packager chooses not to or is unable to use a sticker or board inside the packaging, as discussed in Response 2. However, the Commission already considered the size and cost of the "Keep Out of Reach" icon in Comment response B in the labeling rule, which states that the 20 mm icon is "feasible and likely to get the attention of the consumer," and "is sufficiently large to be visible to most consumers, and sufficiently small to fit on existing battery packaging." 88 Fed. Reg. 65,300.

In considering these comments again, staff prepared additional examples of battery packaging demonstrating such packaging can be modified to accommodate the 20 mm icon, as well as examples of packaging that can fit the icon without modification. Figure 2 shows examples of modifications to packaging referred to by the Petitioner, with 1-inch by 2-inch tearaway strips. The left example shows tearaway strips that originally fit two small button cell batteries and have been modified to fit one battery and the 20 mm icon. The right example shows a sticker or board containing the 20 mm icon placed between the coin cell battery and the outer packaging. Staff expects such changes to cost manufacturers less than or equal to the amount to change the battery placement, or layout, on the packaging. Furthermore, these changes avoid increasing the packaging size. In some cases, these changes would cause consumers to receive fewer button batteries per tearaway strip. Manufacturers that wish to provide the same number of batteries per strip without altering the overall packaging size

⁸ 16 C.F.R. § 1700.20 contains the test procedure for special packaging, also known as child resistant packaging.

may consider changes to the strip size (*i.e.*, fewer perforations and/or perforations in different locations) and the battery layout on the packaging.

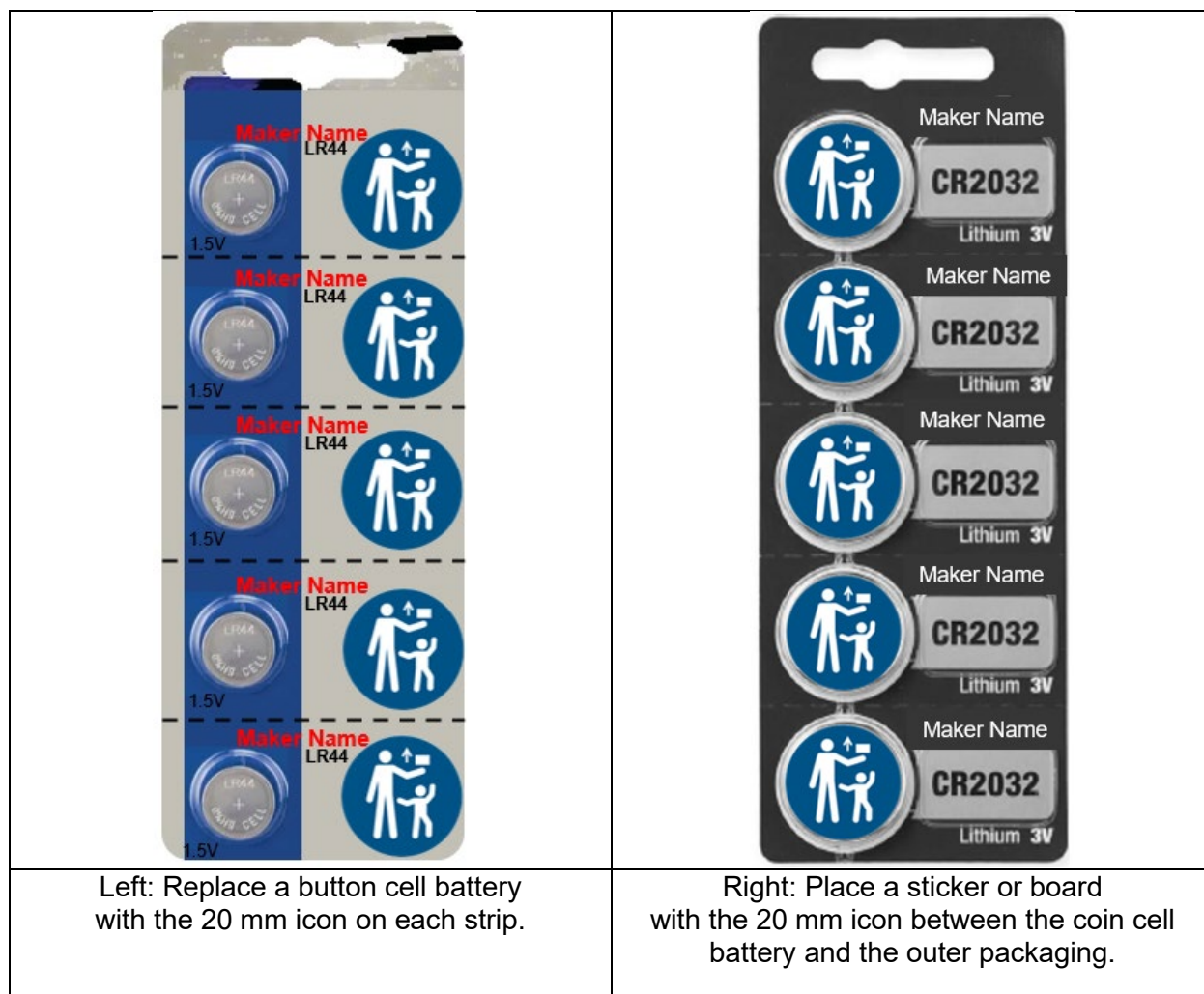


Figure 3. Example Modifications to Tearaway Button Cell and Coin Battery Packaging

Figure 3 shows examples of button cell or coin battery packaging that can accommodate the 20 mm “Keep Out of Reach” icon without changes.⁹ These examples already contain a version of the “Keep Out of Reach” icon with a diameter smaller than 20 mm. The diameter of the icon must be increased to at least 20 mm to meet the labeling rule. For some packaging configurations, this can be accomplished without moving the icon; for other packaging configurations, the icon may need to be moved elsewhere on the front of the packaging. Staff is confident that these cosmetic changes can be accomplished at very little cost.

⁹ Manufacturers utilizing large packaging with a large amount of empty space should evaluate whether the full warning can fit in accordance with 16 C.F.R. § 1263.4(b)(1).



Figure 4. Example Button Cell or Coin Battery Packaging which can Accommodate the 20 mm “Keep out of Reach Icon”

A “Keep Out of Reach” icon that scales with packaging size (such as that recommended by the Petitioner) or battery size would allow small battery packaging designs to fit the icon without substantive changes, and would allow the icon to maintain similar visibility as the batteries contained in the packaging. However, the 20 mm icon is possible and likely to get the attention of the consumer, and a scaling icon does not reduce the risk of injury associated with children obtaining button cell or coin batteries from battery packaging. Therefore, staff recommends not pursuing this option.

D. Comments on Alternative Warning Requirements

Comment 4: Maxell supported requiring a short textual warning (such as “WARNING: Keep out of reach of children”) in place of the icon. Murata supported allowing some warning statements to be made available digitally and via QR code on the secondary display panel to save space.

Response 4: The current requirement for warnings on button cell or coin battery packaging allows the 20 mm diameter “Keep Out of Reach” icon to be placed on the front of the packaging in place of the primary warning if there is not enough space for the primary warning. Per comment response A on the labeling rule, manufacturers may voluntarily include text to clarify the icon’s meaning. Replacing the icon with text could use the same or greater area as the icon but may allow manufacturers greater flexibility in choosing how to use that space. Staff are concerned that replacing the icon with text could reduce the likelihood that consumers will notice the warning, and therefore do not recommend pursuing this option.

Staff does not agree that the information in the warning label or other warning statements required in 16 C.F.R. § 1263.4 should be allowed to be replaced and made available only digitally and via QR code on the secondary display panel, as not all consumers have easy access to the internet or are comfortable using QR codes. Staff concludes that to have the intended effect of providing warnings and safety information to consumers, the warning language must be included physically along with the product in a prominent place on the packaging, without the consumer having to take additional action to see the warning. However, 16 C.F.R. part 1263 does not prohibit manufacturers and importers from

supplementing the physical warnings with digital warnings, and additional safety information can be provided digitally and via QR code.

VI. Commission Options

Applicable provisions of the Commission's regulation on petitions state that when considering whether to grant or deny a petition, the Commission considers:

- (1) Whether the product that is the subject of the petition presents an unreasonable risk of injury;
- (2) Whether a rule is reasonably necessary to eliminate or reduce the risk of injury; and
- (3) Whether failure to initiate rulemaking would expose the petitioner or other consumers to the risk of injury the petitioner alleges the product presents.

16 C.F.R. §1051.9(a). The petition regulations also state that when considering these factors, the Commission will consider the petition in relation to the agency's priorities as stated in the CPSC's Policy on Establishing Priorities and the Commission's resources available for rulemaking. 16 C.F.R. §1051.9(b).

A. Options

Options for Commission action to address the Petition include:

1. Grant the Petition

The Commission may direct staff to develop an advance notice of proposed rulemaking (ANPR) or a notice of proposed rulemaking (NPR) under the authority in section 2(g) of Reese's Law to amend the requirement for a "Keep Out of Reach" icon on button cell or coin battery packaging. Granting the Petition and initiating a rulemaking, however, does not mean that the Commission would necessarily issue a rule in the specific form requested in the Petition.

2. Deny the Petition

The Commission may deny the Petition and/or direct additional action, such as directing staff to continue work on battery package labeling requirements within the context of the relevant voluntary standards. Currently, no one voluntary standard addresses all of the labeling requirements in § 1263.4.

3. Defer Decision on the Petition

The Commission could defer its decision on the Petition and, for instance, direct staff to continue to work on voluntary standards, and direct rulemaking when the battery package labeling voluntary standards meet the requirements of Reese's Law.

B. Staff Recommendation

Staff recommends Option 2, denying the Petition to amend the size requirement for a "Keep Out of Reach" icon on button cell or coin battery packaging. The existing labeling rule in § 1263.4 meets the requirements of Reese's Law and is intended to eliminate or adequately reduce the risk of injury from button cell or coin battery ingestion by children that are 6 years of age or younger, during reasonably foreseeable use or misuse conditions. Accordingly, revising part 1263 as requested in the Petition is not needed to eliminate or reduce the risk of injury associated with battery ingestion by children. Because the existing rule's 20 mm icon requirement meets the labeling requirements in Reese's Law, failure to initiate rulemaking does not expose children to a risk of injury. In the labeling rule, the Commission specifically considered the 20 mm icon, reviewed comments similar to those received on the Petition, and

finalized a 20 mm icon requirement. Manufacturers were given a one-year effective date to meet the requirements of the rule. Accordingly, based on the labeling rule and the public comments on this Petition, the current requirement for the 20 mm icon in the labeling rule is possible, likely to get the attention of the consumer, and informs the consumer to keep button cell and coin batteries away from children, as required by Reese's Law. Granting the Petition would require using agency resources to conduct a rulemaking to revise the just issued rule and is not needed to eliminate or reduce the risk of injury associated with ingestion of button cell or coin batteries. While a revised labeling rule could potentially offer some economic relief to button cell or coin battery manufacturers, the public comments do not offer substantial evidence as to the magnitude of that relief, and the Commission's petition regulation focuses on reducing the risk of injury to consumers and agency resources. Battery packagers have compliance options that require less equipment to be replaced or modified compared to changing the packaging size, including use of stickers or boards inside the packaging, fewer batteries in each package, or altering battery placement on existing packaging.

In sum, staff assesses that the 20 mm diameter "Keep Out of Reach" icon meets the battery package labeling requirements in Reese's Law because it is sufficiently large to be identified by consumers and to inform them to keep button cell or coin batteries out of reach of children. A 20 mm icon is possible to place on existing packaging with minor modifications. Accordingly, staff recommends denying the Petition.