



Ballot Vote Sheet

TO: The Commission
 Alberta E. Mills, Secretary

THROUGH: Austin C. Schlick, General Counsel
 DeWane Ray, Acting Executive Director

FROM: Daniel R. Vice, Assistant General Counsel, Regulatory Affairs
 Mary A. House, Attorney, Regulatory Affairs

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

DATE: January 10, 2024

BALLOT VOTE DUE: January 17, 2024

On November 1, 2023, the Commission received a petition from Elliott Alexander (Petitioner), President of Micropower Battery Company. The petition requests that the Commission initiate rulemaking to amend the button battery final rule under Reese’s Law, codified in 2023 at 16 C.F.R. part 1263, to reduce the size of the “Keep out of Reach” icon that is required to be on the front panel of button and coin cell battery packaging when insufficient space exists for a full warning label. Alternatively, the petition seeks allowance of the words “Keep Away from Children” on the front of battery packaging.

The Petitioner primarily alleges that the existing packaging formats cannot accommodate the required 20 mm icon, and small businesses cannot afford the new equipment required to allow a 20 mm icon. On December 28, 2023, the Petitioner submitted a letter addressing icon placement options and proposing “Keep out of Reach” icon sizes ranging from 7 to 40 mm based on packaging size.

Because the petition meets the minimum requirements for a petition under the Commission’s regulations at 16 C.F.R. part 1051, the Office of the General Counsel (OGC) has docketed the petition. Staff recommends that the Commission publish the attached draft *Federal Register* notice to seek comment on the proposals in the petition and in Petitioner’s December 28 letter.

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

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR part 1263

[Docket No. CPSC-2024-XXXX]

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

AGENCY: Consumer Product Safety Commission.

ACTION: Request for comment on petition for rulemaking.

SUMMARY: The U.S. Consumer Product Safety Commission (Commission or CPSC) received a petition requesting an amendment to its rule on button cell or coin battery packaging to allow for a smaller “Keep out of Reach” icon on the principal display panel for packages of button cell or coin batteries (Petition). The Commission invites written comments concerning this Petition.

DATES: Submit comments by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit comments, identified by Docket No. CPSC–2024–XXXX, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by e-mail, except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal.

Mail/Hand Delivery/Courier/Confidential Written Submissions: Submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-7479. If

you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may e-mail them to: cpsc-os@cpsc.gov.

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: <https://www.regulations.gov>. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/confidential written submissions.

Docket: For access to the docket to read background documents or comments received, go to: <https://www.regulations.gov>, and insert the docket number, CPSC–2024–XXXX, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Alberta E. Mills, Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: 301-504-7479; cpsc-os@cpsc.gov.

SUPPLEMENTARY INFORMATION:

On September 21, 2023, as part of its implementation of Reese’s Law (Pub. L. 117–171, 15 U.S.C. 2056e), the Commission published a Safety Standard for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries, codified at 16 CFR part 1263. 88 FR 65296 (battery package labeling); 88 FR 65274 (consumer products).¹ As proposed in the notice of

¹ The requirements for battery package labeling were published separately from the requirements for consumer products that contain or use button cell or coin batteries because the Commission adopted battery compartment requirements for consumer products from ANSI/UL 4200A, *Standard for Safety for Products Incorporating Button*

proposed rulemaking (88 FR 8692 (Feb. 9, 2023)), the final rule for battery package labeling requires that packages of button cell or coin batteries contain on their principal display panel a warning label with text required to meet Reese’s Law, and a “Keep out of Reach” icon at least 8 mm in diameter. However, if space prohibits the full warning with the “Keep out of Reach” icon in accordance with the text formatting requirements, 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. In this instance, the icon must be at least 20 mm (0.79 in.) in diameter for visibility. 16 CFR 1263.4(b)(2).

On November 1, 2023, the Commission received a petition from Elliott Alexander (Petitioner), President of Micropower Battery Company. The Petition requests the Commission to modify the rule for battery package labeling to allow for a smaller “Keep out of Reach” icon when space prohibits the full warning on the principal display panel, suggesting a minimum icon size of 8 mm, and allowing a scaled icon depending on the size of the packaging up to a 20 mm icon. The Petition includes example images of existing battery packaging to demonstrate space limitations. The Petition alleges that existing packaging has been made child-resistant, but if a 20 mm icon is required on the front of the package, then manufacturers will collectively be required to spend millions of dollars on production of larger packages and different package configurations. The Petition also questions why an additional “Keep out of Reach” icon is necessary on the front packaging when batteries 16 mm and larger already include the same icon on each battery, which is visible through the packaging.

The Petition requests an amendment to the final rule to allow “Keep out of Reach” icons on the primary display panel to be between 8 to 20 mm, depending on the packaging, and

Batteries or Coin Cell Batteries, approved on August 30, 2023 (UL 4200A–2023), which does not address battery package labeling.

alternatively 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 further explains why he believes battery packaging cannot be reconfigured to allow space for a 20 mm icon on the principal display panel, and provides a proposed sliding scale for “Keep out of Reach” icon sizes from 7 to 40 mm.

The Petition and the Follow-Up Letter are available at: <http://www.regulations.gov>, under Docket No. CPSC-2024-XXXX, Supporting and Related Materials. Alternatively, interested parties may obtain a copy of the Petition and the Follow-Up Letter by writing or calling the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301-504-7479; cpsc-os@cpsc.gov. The Commission seeks comment on all aspects of the Petition and the Follow-Up Letter, including:

- 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. *See* Comment Summaries A and B, 88 FR at 65300 (noting comments stating similar concerns to those identified in the Petition); and
- 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.

Dated:

Alberta E. Mills, Secretary
Consumer Product Safety Commission