



Ballot Vote Sheet

TO: The Commission
Alberta E. Mills, Secretary

THROUGH: Austin C. Schlick, General Counsel
Jason K. Levine, Executive Director

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

SUBJECT: Paperwork Reduction Act Notice: Testing and Labeling of Non-Children's Products
Containing or Designed to Use Button Cell or Coin Batteries and Labeling of Button Cell or
Coin Battery Packaging

DATE: March 29, 2023

BALLOT VOTE DUE: Tuesday, April 4, 2023

On February 9, 2023, the Commission published a notice of proposed rulemaking (NPR) to establish testing and labeling requirements for consumer products that contain or are designed to use button cell or coin batteries, and for the labeling of button cell or coin battery packaging. 88 *Fed. Reg.* 8,692. The NPR estimated the burden associated with these requirements for children's products, but did not include an estimated burden for testing and labeling of non-children's products or for labeling button cell or coin battery packaging. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of the General Counsel is providing for the Commission's consideration the attached draft *Federal Register* notice requesting comment on a proposed collection of information for Testing and Labeling of Non-Children's Products Containing or Designed to Use Button Cell or Coin Batteries and Labeling of Button Cell or Battery Packaging. If the notice is approved and published, CPSC staff will consider the responsive comments received before requesting a control number for this collection of information from the Office of Management and Budget (OMB).

Please indicate your vote on the following options:

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

(Signature)

(Date)

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

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: Agency Information Collection Activities; Proposed Collection; Comment Request; Testing and Labeling of Non-Children's Products Containing or Designed to Use Button Cell or Coin Batteries and Labeling of Button Cell or Coin Battery Packaging

BILLING CODE 6355-01-P

CONSUMER PRODUCT SAFETY COMMISSION

CPSC Docket No. 2023-0004

Agency Information Collection Activities; Proposed Collection; Comment Request; Testing and Labeling of Non-Children's Products Containing or Designed to Use Button Cell or Coin Batteries and Labeling of Button Cell or Coin Battery Packaging

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: On February 9, 2023, the Consumer Product Safety Commission (CPSC or Commission) published a notice of proposed rulemaking (NPR) to establish testing and labeling requirements for consumer products that contain or are designed to use button cell or coin batteries, and for the labeling of button cell or coin battery packaging. The NPR estimated the burden associated with these requirements for children's products, but did not include an estimated burden for testing and labeling of non-children's products or for labeling button cell or coin battery packaging. As required by the Paperwork Reduction Act of 1995, the CPSC requests comments on a proposed collection of information for Testing and Labeling of Non-Children's Products Containing or Designed to Use Button Cell or Coin Batteries and Labeling of Button Cell or Battery Packaging. CPSC will consider all comments received in response to this notice before requesting a control number for this collection of information from the Office of Management and Budget (OMB).

DATES: Submit written or electronic comments on the collection of information by **[insert date 60 days after date of publication in the FEDERAL REGISTER]**.

ADDRESSES: You can submit comments, identified by Docket No. CPSC-2023-0004, by any of the following methods:

Electronic Submissions: CPSC encourages you to 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 electronic mail (e-mail), except as described below.

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>; insert the docket number, CPSC-2023-0004, into the “Search” box; and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Cynthia Gillham, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504-7791, or by e-mail to: cgillham@cpsc.gov.

SUPPLEMENTARY INFORMATION: The proposed rule to establish a Safety Standard and Notification Requirements for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries (88 FR 8692 (Feb. 9, 2023)), to be codified at 16 CFR part 1263, contains information collection requirements that are subject to public comment and review by OMB under the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501–3521). The NPR proposed to expand the collection of information for Testing and Certification of Children’s Products (OMB Control No. 3041-0159) to include testing and labeling of children’s products containing button cell or coin batteries (88 FR at 8717-19), but did not include burden estimates for a new collection of information for non-children’s products. In this notice we provide the estimated burden associated with the testing and labeling of non-children’s products, and for labeling of button cell and coin battery packaging. Under the PRA, an agency must publish the following information:

- A title for the collection of information;
- A summary of the collection of information;
- A brief description of the need for the information and the proposed use of the information;
- A description of the likely respondents and proposed frequency of response to the collection of information;
- An estimate of the burden that will result from the collection of information; and
- Notice that comments may be submitted to OMB.

44 U.S.C. 3507(a)(1)(D). In accordance with this requirement, the Commission provides the following information:

Title: Testing and Labeling of Non-Children's Products Containing or Designed to Use Button Cell or Coin Batteries and Labeling of Button Cell or Coin Battery Packaging.

Type of Review: New collection of information for testing and labeling of non-children's products containing or designed to use button cell or coin batteries and labeling of button cell or coin battery packaging, as provided in the NPR to establish 16 CFR part 1263, which includes: (1) testing of non-children's products containing or designed to use button cell or coin batteries, including creating a general certificate of conformity (GCC); (2) labeling requirements for non-children's products and for button cell or coin battery packaging, including, as applicable, warnings on battery compartments, product packaging, accompanying written materials (*i.e.*, instructions, manuals, hangtags, or inserts)) and websites; and (3) recordkeeping requirements.

General Description of Collection:

Summary, Need, and Use of Information: Based on the requirements in Reese's Law, 15 U.S.C. 2056e(a) and (b), and section 27(e) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2076(e), the proposed rule prescribes performance requirements for child-resistant battery compartments on children's and non-children's consumer products that contain or are designed to use button cell or coin batteries, and warning requirements for button cell and coin battery packaging, consumer product packaging, consumer products, accompanying written materials such as instructions, manuals, inserts, or hangtags, and sales websites. These performance and labeling requirements are intended to reduce or eliminate injuries and deaths associated with children 6 years old and younger ingesting button cell or coin batteries. This collection of information is solely for non-children's consumer products, meaning (1) products that contain or

are designed to use button cell or coin batteries and *are not* designed or intended primarily for children 12 years old or younger, and (2) labeling of packages of button cell or coin batteries. 15 U.S.C. 2052(a)(2); 16 CFR part 1200.

In addition to the testing and labeling requirements in the proposed rule, section 14(a) of the CPSA requires that manufacturers (including importers) of non-children's products subject to a rule issue a general certificate of conformity. GCCs certify the products as being compliant with applicable regulations and must be based on a test of each product or a reasonable testing program. Unlike children's products, products that have GCCs are not required to undergo third party testing. Section 14(g) and 16 CFR part 1110 state the requirements for GCCs. Among other requirements, each certificate must identify the manufacturer issuing the certificate, any laboratory conducting testing on which the certificate depends, the date and place of manufacture, the date and place where the product was tested, each party's name, full mailing address, and telephone number, and contact information for the individual responsible for maintaining records of test results. The certificates must be in English. The certificates must be furnished to each distributor or retailer of the product and to the CPSC, if requested.

Respondents and Frequency: Respondents include manufacturers and importers of non-children's products that contain or are designed to use button cell or coin batteries, and manufacturers and importers of packages of button cell or coin batteries. Manufacturers and importers must comply with the information collection requirements when non-children's products that contain or use button cell or coin batteries, and packages of button cell or coin batteries, are manufactured or imported after the effective date of the proposed 16 CFR part 1263.

Estimated Burden: CPSC has estimated the respondents' burden in hours, and the estimated labor costs to the respondents.

Estimate of Respondent Burden: The hourly reporting burden imposed on firms that manufacture or import non-children's products that contain button cell or coin batteries, and firms that manufacture or import button cell or coin batteries, includes the time and cost to create and maintain records related to testing of consumer products (including issuing a GCC); product labeling, including required warning labels on, as applicable: consumer product battery compartments, product packaging, accompanying written materials (*i.e.*, instructions, manuals, inserts, or hangtags), and point of sale notices including for websites offering the sale of button cell or coin batteries.

Table 1: Estimated Annual Respondent Burden

Burden Type	Respondents	Frequency of Response	Hours per Response	Annual Burden (hours)	Annual Burden (costs)
Labeling	15,363	2	1	30,726	\$1,332,586.62
Testing	15,363	2	3	92,178	\$3,997,759.86
Recordkeeping	15,363	2	1	30,726	\$1,332,586.62
Total Burden				153,630	\$6,662,933.10

Based on available data from the U.S. Census Bureau, CPSC estimates that there are 15,363 firms supplying non-children's consumer products to the United States that contain or are designed to use button cell or coin batteries, or that manufacture or import button cell or coin batteries.¹ Staff assumes that, on average, each manufacturer or importer has two product models that must be tested, labeled, and certified, annually. We estimate 3 hours per product to conduct required testing of battery compartments and to issue a GCC, and 1 hour to create and maintain records. Note that for button cell or battery packaging that requires only labeling

¹ These estimates include data available for NAICS subsector 335912 – primary battery manufacturing, though not all battery manufacturers would be impacted by the proposed rule.

pursuant to the NPR, and not product testing, this is an over-estimate.² We estimate that the burden to update required product labeling is about 1 hour per product. Accordingly, as shown in Table 1, the total annual burden is 153,630 hours. Using the total compensation for all sales and office workers in goods-producing private industries of \$43.37 per hour,³ the total estimated annual burden on firms supplying non-children's products to comply with the rule is \$6.67 million annually (153,630 hours x \$43.37 = \$6,662,933.10).

The product labeling burden estimate is the largest reasonably possible, assuming every manufacturer (including importer) of consumer products containing or designed to use button cell or coin batteries, and every manufacturer (including importer) of button cell or coin batteries, has to modify four product labels (battery compartment, packaging, accompanying written materials, and websites) per product. This is likely an over-estimate. Based on staff's review of non-children's products that contain or are designed to use button cell or coin batteries, and battery packaging, many of these products already contain some type of warning on the product labels. Accordingly, CPSC staff believes it possible that the burden to modify product labels could be very low.

Under the OMB's regulations (5 CFR 1320.3(b)(2)), the time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the "normal course of their activities" are excluded from the burden estimate where the disclosure activities required to comply are "usual and customary." If warning statements on battery compartments, product packaging, and instructions/manuals is usual and customary for

² Testing of button cell or coin battery packaging is not required by the proposed rule, but is required by section 3 of Reese's Law. Notes to 15 U.S.C. 2056e. This burden estimate is an over-estimate likely large enough to also encompass testing of battery packaging, but such testing is a statutory requirement not included in the rulemaking.

³ U.S. Bureau of Labor Statistics, "Employer Costs for Employee Compensation," total compensation for private industry workers in goods producing industries, Sept. 2022: https://www.bls.gov/news.release/archives/ecec_12152022.pdf.

non-children's products that contain or are designed to use button cell or coin batteries, then any burden associated with warning labels would be "usual and customary" and not within the definition of "burden" under the OMB's regulations. We request comments on this potential estimate of no burden for product labeling, including the preliminary analysis that the largest possible burden estimate for the proposed standard to require product labeling is 30,726 hours at a cost of \$1,332,586.62 annually.

Labor Cost of Respondent Burden. According to the U.S. Bureau of Labor Statistics (BLS), Employer Costs for Employee Compensation, the total compensation cost per hour worked for all private industry workers was \$43.37 (September 2022, https://www.bls.gov/news.release/archives/ecec_12152022.pdf). Based on this analysis, CPSC estimates that the labor required to respond would impose a cost to industry of approximately \$6,662,933.10 annually (153,630 hours x \$43.37 = \$6,662,933.10).

Cost to the Federal Government. The estimated annual cost of the information collection requirements to the Federal Government is approximately \$4,448, which includes 60 staff hours to examine and evaluate the information, as needed, for CPSC's compliance activities. This is based on a GS-12, step 5 level salaried employee. The average hourly wage rate for a mid-level salaried GS-12 employee in the Washington, DC metropolitan area (effective as of January 2023) is \$51.15 (GS-12, step 5). This represents 69.0 percent of total compensation (U.S. Bureau of Labor Statistics, "Employer Costs for Employee Compensation," September 2022, Table 2., percentage of wages and salaries for all civilian management, professional, and related employees: https://www.bls.gov/news.release/archives/ecec_12152022.pdf). Adding an additional 31.0 percent for benefits brings average annual compensation for a mid-level salaried

GS-12 employee to \$74.13 per hour. Assuming that approximately 60 hours will be required annually, this results in an annual cost of \$4,448 (\$74.13 per hour × 60 hours = \$ 4,447.8).

Comments. CPSC requests that interested parties submit comments regarding this proposed information collection (see the **ADDRESSES** section at the beginning of this notice).

Pursuant to 44 U.S.C. 3506(c)(2)(A), the Commission specifically invites comments on:

- whether the proposed collection of information is necessary for the proper performance of CPSC's functions, including whether the information will have practical utility;
- the accuracy of CPSC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- ways to enhance the quality, utility, and clarity of the information the Commission proposes to collect;
- ways to reduce the burden of the collection of information on respondents, including the use of automated collection techniques when appropriate, and other forms of information technology;
- the estimated burden hours associated with labels and hang tags, including any alternative estimates; and
- the estimated respondent cost other than burden hour cost.

Dated: _____

Alberta E. Mills, Secretary
Consumer Product Safety Commission