



Release Date: March 8, 2023

## **U.S. Consumer Product Safety Commission Announces It Will Exercise Enforcement Discretion Under Reese’s Law for Zinc-air Button and Coin Cell Batteries Used in Hearing Aids until March 8, 2024** *Agency cites possible shortages and low risk of serious injury*

To ensure uninterrupted access to batteries used for hearing aids and other hearing assistance technologies, the U.S. Consumer Product Safety Commission (CPSC) is announcing it will exercise enforcement discretion for packages of zinc-air button cell or coin batteries subject to the requirements of Child-Resistant Packaging for Button Cell or Coin Batteries, section 3 of Reese’s Law, Pub. L. 117–171, and will not enforce these requirements for one year until March 8, 2024.

Section 3 of Reese’s Law (codified at 15 U.S.C. § 2056e note) requires that all button cell or coin batteries<sup>1</sup> be packaged in accordance with the Poison Prevention Packaging Act (PPPA) and its implementing regulations, 16 C.F.R. part 1700, or another test method the Commission may specify in the future.

Most non-rechargeable hearing aids use zinc-air button cell or coin batteries, which fall within the scope of Reese’s Law. CPSC has been advised that challenges in manufacturing new packaging for zinc-air button cell or coin batteries are affecting production. This disruption in supply could create a market shortage that negatively impacts many consumers who rely on these batteries for hearing aids or other hearing assistance technologies to perform basic life activities.<sup>2</sup>

Moreover, as part of the agency’s pending rulemaking under section 2 of Reese’s Law, the Commission specifically considered the ingestion hazard presented by zinc-air button cell or coin batteries in consumer products and noted that ingestion risks associated with this technology appear to be low. Specifically, zinc-air batteries require air to create a current and as such ingested zinc-air batteries do not pose the same risks of chemical or hydroxide burns present in batteries using other technologies. Accordingly, the Commission’s recently proposed rule to implement section 2 would exempt zinc-air button cell or coin batteries from the rule’s performance and labeling requirements. 88 Fed. Reg. 8692 (Feb. 9, 2023).

Based on these factors, staff has recommended that the Commission exercise enforcement discretion with respect to these batteries for one year.

The above considerations have led the Commission to instruct the Office of Compliance and Field Operations to exercise enforcement discretion under section 3 of Reese’s Law for separately

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<sup>1</sup> The statute defines button cell or coin battery as “a single cell battery with a diameter greater than the height of the battery; or . . . any other battery, regardless of the technology used to produce an electrical charge, that is determined by the Commission to pose an ingestion hazard.”

<sup>2</sup> See <https://www.regulations.gov/search?filter=cpsc-2023-0004> for examples of communications received.

packaged zinc-air button cell or coin batteries, for one year.

The Commission intends to track closely industry's progress toward achieving compliance with section 3 of Reese's law for zinc-air batteries. We expect that the same parties that have advocated for suspension of enforcement will be equally forthcoming in assisting our monitoring. NEMA, for example, represented when seeking relief that it is "the leading U.S. trade group representing nearly 325 electrical equipment manufacturers," including battery manufacturers. Accordingly, we expect NEMA to provide CPSC staff periodic updates not less than every 90 days, including progress reports regarding the ability of its members to comply with their obligations under section 3. Additionally, NEMA may coordinate individual filings by its members to preserve the confidentiality of any sensitive business information. Other parties who have sought this enforcement relief should be similarly forthcoming. The Commission will consider failure to provide satisfactory updates on progress toward compliance as a factor in determining whether to terminate the forbearance from enforcement before the end of the one-year period.

This enforcement discretion does not extend to button cell or coin batteries using other technologies. The Commission will continue to review information regarding health and safety risks associated with zinc-air button or coin cell batteries, including any reports of injuries or death and all comments submitted in response to the Notice of Proposed Rulemaking implementing section 2 of Reese's Law. All manufacturers are reminded of their obligations under Section 15(b) of the CPSA to report relevant incidents related to button and coin cell batteries, including those covered by this enforcement discretion.

If information arises that warrants a change to this enforcement discretion, the Commission may issue revised guidance, which could include ceasing enforcement discretion.