

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

AMERICAN WATCH ASSOCIATION, INC.,

Petitioner,

v.

UNITED STATES CONSUMER PRODUCT
SAFETY COMMISSION,

Respondent.

No. 23-1322

PETITION FOR REVIEW

Pursuant to 15 U.S.C. §§ 2056, 2056e, 2060(a) and (c), 5 U.S.C. § 702, Federal Rule of Appellate Procedure 15, and D.C. Circuit Rule 15, Petitioner American Watch Association, Inc., hereby petitions this Court for review of the United States Consumer Product Safety Commission's final rule entitled *Safety Standard for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries*, 88 Fed. Reg. 65,274 (Sept. 21, 2023). The rule establishes certain safety standards for consumer products containing button cell or coin batteries. The rule has an effective date of October 23, 2023. A copy of the rule is attached to this petition as Exhibit A.

Respectfully submitted,

/s/ Thomas Brugato

Thomas Brugato

Matthew J. Glover

COVINGTON & BURLING LLP

One CityCenter

850 Tenth Street, NW

Washington, DC 20001-4956

(202) 662-5515

tbrugato@cov.com

mglover@cov.com

Attorneys for Petitioner

American Watch Association, Inc.

November 20, 2023

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1(a) and D.C. Circuit Rule 26.1, the American Watch Association, Inc. states that it is a nonprofit corporation representing the world's most well-known watch brands and related organizations. It seeks to protect the rights and interests of its member companies, while providing customers with watches that are safe, functional, and high quality. It has no parent company, and no publicly held company has a 10% or greater ownership interest. The American Watch Association, Inc. is a trade association for purposes of Circuit Rule 26.1(b).

Respectfully submitted,

/s/ Thomas Brugato

Thomas Brugato

Attorney for Petitioner

American Watch Association, Inc.

November 20, 2023

CERTIFICATE OF SERVICE

I certify that on this 20th day of November 2023, I sent copies of the foregoing Petition for Review to the following parties in the manner indicated:

By first class mail and electronic mail

Alberta Mills
Secretary
U.S. Consumer Products Safety Commission
4330 East West Highway
Bethesda, MD 20814
AMills@cpsc.gov

By first class mail

Merrick B. Garland
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Pursuant to 15 U.S.C. § 2060(a), Federal Rule of Appellate Procedure 15(c) and D.C. Circuit Rule 15(a), the Clerk of Court is respectfully requested to transmit this petition to the United States Consumer Product Safety Commission and to the Attorney General of the United States.

Respectfully submitted,

/s/ Thomas Brugato
Thomas Brugato

Attorney for Petitioner
American Watch Association, Inc.

November 20, 2023

EXHIBIT A

**CONSUMER PRODUCT SAFETY
COMMISSION**

16 CFR Parts 1112 and 1263

[CPSC Docket No. 2023–0004]

**Safety Standard for Button Cell or Coin
Batteries and Consumer Products
Containing Such Batteries**

AGENCY: Consumer Product Safety
Commission.

ACTION: Direct final rule.

SUMMARY: In February 2023, as required by Reese’s Law, the U.S. Consumer Product Safety Commission (CPSC or Commission) issued a notice of proposed rulemaking (NPR) to eliminate or adequately reduce the risk of injury from ingestion of button cell or coin batteries by children six years old and younger. In the NPR the Commission preliminarily determined that no existing voluntary standard met the requirements in Reese’s Law at that time. In this document, however, the Commission determines that one voluntary standard, substantially revised since publication of the NPR, now meets the requirements in Reese’s Law with respect to performance and labeling requirements for consumer products containing button cell or coin batteries. Reese’s Law states that after a determination of sufficiency by the Commission, such a qualifying voluntary standard is treated as a consumer product safety rule. The Commission is publishing this determination, as required by Reese’s Law, as well as a direct final rule to incorporate the voluntary standard by reference into our regulations. Consumer products subject to performance and labeling requirements in this direct final rule must be tested and certified as compliant with the direct final rule.

DATES:

Effective date: The direct final rule is effective October 23, 2023, unless the Commission receives a significant adverse comment by October 5, 2023. If the Commission receives such a comment, we will publish a document in the **Federal Register** withdrawing this direct final rule before its effective date.

Compliance and enforcement dates: Third party testing and certification of children’s products subject to this rule is not required until on or after December 20, 2023. Consumer products containing button cell or coin batteries that are manufactured or imported after October 23, 2023, must comply with this direct final rule. However, in recognition of limited testing

availability and for the avoidance of hardship, the Commission is granting a 180-day transitional period of enforcement discretion from September 21, 2023, through March 19, 2024.

Incorporation by reference: The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of October 23, 2023.

ADDRESSES: Submit comments, identified by Docket No. CPSC–2023–0004, 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 electronic mail (email), 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 email 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–2023–0004, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT:

William Cusey, Small Business Ombudsman, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814;

telephone 301–504–7945; email: SBO@CPSC.gov.

SUPPLEMENTARY INFORMATION: On

February 9, 2023, pursuant to section 2 of Reese’s Law (Pub. L. 117–171, 15 U.S.C. 2056e), the Commission published an NPR to establish a Safety Standard and Notification Requirements for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries.¹ 88 FR 8692. As required by section 2(a) of Reese’s Law, the NPR contained performance and labeling requirements for consumer products containing button cell or coin batteries² and labeling requirements for button cell and coin battery packaging. See 15 U.S.C. 2056e(a). The NPR also proposed to require notification of additional point-of-sale performance and technical data related to the safety of button cell or coin batteries using the Commission’s authority under section 27(e) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2076(e). 88 FR 8709. Based on staff’s assessment of existing voluntary standards, the Commission preliminarily determined in the NPR that no voluntary standard in existence at that time met the performance or labeling requirements of section 2 of Reese’s Law, and requested comment on that preliminary finding. 88 FR 8702, 8705. The Commission received 38 comments during a 30-day comment period ending in March 2023; four of the comments were duplicates. CPSC received two late-filed comments; one is out-of-scope for this rulemaking. We also received nine comments in response to an April 11, 2023 Paperwork Reduction Act (PRA) notice. 88 FR 21652. Tab A of Staff’s Final Rule Briefing Package³ and section III of this

¹ To implement Reese’s Law, on September 8, 2023, the Commission voted (4–0) to publish this determination and a direct final rule to incorporate by reference, UL 4200A–2023, approved August 30, 2023, as the mandatory standard for consumer products containing button cell or coin batteries, with changes. The Chair, and Commissioners Trumpka and Feldman, issued statements in connection with their vote. Statements and an explanation of the Commission’s changes are available at: <https://www.cpsc.gov/s3fs-public/BCA-Reese-s-Law-Implementation-UL-4200A-2023-DFR-for-Button-Cell-or-Coin-Batteries-and-Draft-FR-to-Amend-Part-1263.pdf?VersionId=V56MNzyWaiXqZQIKCyOIRtjl9lcoFit>.

² Reese’s Law defines the phrase “consumer product containing button cell or coin batteries” as “a consumer product containing or designed to use one or more button cell or coin batteries, regardless of whether such batteries are intended to be replaced by the consumer or are included with the product or sold separately.” Notes to 15 U.S.C. 2056e.

³ The information in this Commission determination and direct final rule is based on information and analysis provided in 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

preamble summarize and respond to the comments CPSC received.

After consideration of the comments and the relevant existing voluntary standards, the Commission determines that a recent revision of ANSI/UL 4200A, *Standard for Safety for Products Incorporating Button Batteries or Coin Cell Batteries*, published on August 30, 2023 (UL 4200A–2023), does meet the performance and labeling requirements in section 2(a) of Reese’s Law with respect to consumer products containing button cell or coin batteries. 15 U.S.C. 2056e(a) and (d). Accordingly, under section 2(e) of Reese’s Law, UL 4200A–2023 is treated as a consumer product safety rule promulgated under section 9 of the CPSA (15 U.S.C. 2058) as of the date of the Commission’s determination.⁴ 15 U.S.C. 2056e(e). The Commission is publishing this determination in the **Federal Register**, as required by Reese’s Law. 15 U.S.C. 2056e(d)(2).

This notification of the Commission’s determination includes a direct final rule (DFR) to incorporate by reference UL 4200A–2023 into the Code of Federal Regulations as the mandatory consumer product safety rule for consumer products containing button cell or coin batteries. Consistent with the Administrative Procedure Act (APA), 5 U.S.C. 553, the DFR has an effective date of 30 days after publication. Further, in recognition of limited testing availability the Commission is granting a 180-day

Batteries (Staff’s Final Rule Briefing Package), available at: <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=PyTbnom1OemA3BWl9Z11ONzTlyqbcthW>, and on 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 NPR Briefing Package), available at: <https://www.cpsc.gov/s3fs-public/NoticeofProposedRulemakingSafetyStandardandNotificationRequirementsforButtonCellorCoinBatteriesandConsumerProductsContainingSuchBatteries.pdf?VersionId=kDinNeydktk3T8RRtzN4u1GTXPRjpeL>.

⁴ Reese’s Law states that if the Commission makes a determination with respect to a voluntary standard, the requirements of such voluntary standard shall be treated as a consumer product safety rule promulgated under section 9 of the CPSA (15 U.S.C. 2058) beginning on the later of either (A) the date of the Commission’s determination with respect to the voluntary standard described; or (B) the effective date contained in the voluntary standard. UL 4200A–2023 does not contain an “effective date,” and the Commission is making this determination after publication of the UL 4200A–2023 standard. Accordingly, the later of the two dates in section (e)(2) of Reese’s Law (15 U.S.C. 2056e(e)(2)) is the date of the Commission’s determination.

transitional period of enforcement discretion, to begin September 21, 2023.

The Commission is issuing a separate final rule, published elsewhere in this issue of the **Federal Register**, to establish labeling requirements for button cell or coin battery packaging as required by Reese’s Law, because such products are not within the scope of UL 4200A–2023. 15 U.S.C. 2056e(d)(1). Currently the Commission is not finalizing the proposed requirements in the NPR for consumer notification of performance and technical data under section 27(e) of the CPSA; although, the UL 4200A–2023 revision includes some of the notification requirements proposed in the NPR. The name of the rule to be codified in 16 CFR part 1263 reflects this change by removing the phrase “and Notification Requirements”; the rule is now entitled “Safety Standard for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries.”

I. Statutory and Regulatory Background

A. Reese’s Law

President Biden signed Reese’s Law on August 16, 2022. 15 U.S.C. 2056e. The purpose of Reese’s Law is to protect children six years old and younger against hazards associated with the ingestion of button cell or coin batteries. Section 5 of Reese’s Law broadly defines a “button cell or coin battery” as “(A) a single cell battery with a diameter greater than the height of the battery; or (B) any other battery, regardless of the technology used to produce an electrical charge, that is determined by the Commission to pose an ingestion hazard.”⁵ Thus, the definition of a consumer product with an in-scope battery depends on the shape of the battery (which contributes to the ingestion-related risk) and, as stated in part (B), whether the battery otherwise is associated with an ingestion hazard, which is consistent with the stated purpose in section 2(a)(1) of Reese’s Law.⁶ 15 U.S.C. 2056e(a)(1).

Section 2(a)(1) of Reese’s Law mandates that a rule must include performance requirements for button cell or coin battery compartments on

⁵ The definitions in section 5 of Reese’s Law are codified in the Notes to 15 U.S.C. 2056e.

⁶ This direct final rule focuses on addressing button cell and coin batteries under part (A) of the definition because other batteries where the diameter is less than the height, such as AAA cylindrical batteries, do not pose the same type or degree of ingestion hazard as button cell or coin batteries. If CPSC becomes aware of a serious ingestion hazard associated with another battery type that is not adequately addressed by voluntary standards, section 2(g) of Reese’s Law allows the Commission to undertake additional rulemaking to address the hazard. 15 U.S.C. 2056e(g).

consumer products to secure them in a manner that eliminates or adequately reduces the risk of injury from the ingestion of button cell or coin batteries by children who are six years old or younger, during reasonably foreseeable use or misuse of the product. 15 U.S.C. 2056e(a)(1).

Section 2(a)(2) of Reese’s Law mandates warning label requirements in a rule. Warnings are required:

- On the packaging of button cell or coin batteries (15 U.S.C. 2056e(a)(2)(A));
- On the packaging of consumer products containing button cell or coin batteries (15 U.S.C. 2056e(a)(2)(A));
- In any literature, such as a user manual, that accompanies a consumer product containing button cell or coin batteries (15 U.S.C. 2056e(a)(2)(B));
- As practicable, directly on a consumer product that contains button cell or coin batteries in a manner visible to the consumer upon installation or replacement of the button cell or coin battery (15 U.S.C. 2056e(a)(2)(C)(i));
- As practicable, in the case of a product for which the battery is not intended to be replaced or installed by the consumer, directly on the consumer product in a manner that is visible to the consumer upon access to the battery compartment, except that if it is impracticable to label the product, this information shall be placed on the packaging or instructions (15 U.S.C. 2056e(a)(2)(C)(ii)).

Warning labels required by section 2(b) of Reese’s Law must (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(b).

To address ingestion of button cell or coin batteries, section 2(a) of Reese’s Law requires the Commission to publish a final consumer product safety standard for button cell or coin batteries, and consumer products containing button cell or coin batteries, not later than 1 year after the date of enactment. 15 U.S.C. 2056e(a). However, if the Commission determines before promulgating a rule that an existing voluntary standard meets the performance and labeling requirements in section 2(a) of Reese’s Law, then under section 2(d)(1) of Reese’s Law the requirement for the Commission to promulgate a rule does not apply. 15 U.S.C. 2056e(d)(1). Instead, the Commission must publish such determination of a voluntary standard’s sufficiency in the **Federal Register**. 15 U.S.C. 2056e(d)(2). As set forth in section IV of this preamble, the

Commission determines that UL 4200A–2023 meets the performance and labeling requirements in section 2(a) of Reese’s Law with respect to consumer products containing button cell or coin batteries.

Section 2(e) of Reese’s Law states that the requirements of a voluntary standard the Commission determines to meet section 2(a) of Reese’s Law shall be treated as a consumer product safety rule promulgated under section 9 of the CPSA (15 U.S.C. 2058) beginning on the date that is the later of either the date the Commission makes the determination under section 2(d), or the effective date in the voluntary standard. 15 U.S.C. 2056e(e)(2). The UL standard does not include an “effective date.” Rather, UL standards are published when approved through a consensus process by a majority vote that meets UL’s procedural requirements.⁷ Publication of UL 4200A–2023 occurred before publication of the Commission’s determination, and therefore the date of this publication is the relevant effective date for purposes of section 2(e)(2) of Reese’s Law.

The Commission makes the determination that UL 4200A–2023 meets the requirements of section 2(a) of Reese’s Law with respect to

performance and labeling requirements for consumer products that contain button cell or coin batteries; therefore, by operation of law, UL 4200A–2023 is a consumer product safety rule as of the date of this determination. 15 U.S.C. 2056e(e)(2).⁸ The Commission additionally is codifying UL 4200A–2023 into a regulation, and the effective date of the DFR is 30 days from publication, as described in section VII of this preamble. As noted, the Commission is granting a 180-day transitional period of enforcement discretion.

Section 2(f)(1) of Reese’s Law establishes a process for subsequent revision of a voluntary standard the Commission has adopted as a mandatory standard under section 2(d). In addition, section 2(g) of Reese’s Law provides that any time after a voluntary standard is treated as a consumer product safety rule under section 2(e), or a revised voluntary standard becomes enforceable as a consumer product safety rule under section 2(f), the Commission may initiate a rulemaking in accordance with 5 U.S.C 553 to modify the requirements of the standard or revised standard. 15 U.S.C. 2056e(g).

Section 4 of Reese’s Law specifically exempts from the performance and

labeling requirements in section 2 of the law, any toy product⁹ that is in compliance with the battery accessibility and labeling requirements in 16 CFR part 1250, Safety Standard Mandating ASTM F963 for Toys. Notes to 15 U.S.C. 2056e. However, children’s products that contain button cell or coin batteries and that are not a “toy product,” are required to meet the performance and labeling requirements in this final rule. An example of such products would be children’s apparel, such as shoes, that light up and use a button cell or coin battery as a power source.¹⁰

B. Description of the NPR

The NPR proposed a rule to address the battery ingestion hazard for children six years of age or younger. The NPR explained that children access button batteries from consumer products that are powered by the batteries, either directly from the battery compartment or because the batteries have escaped from the compartment. 88 FR 8698–99. CPSC has not identified any additional hazard patterns since the NPR. Figure 1 provides examples of button cell and coin batteries, and Figure 2 shows a few examples of consumer products that contain button cell or coin batteries.

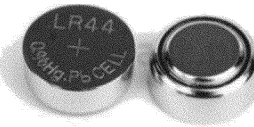



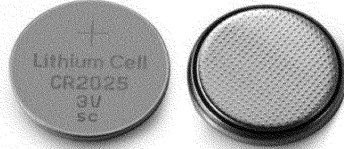
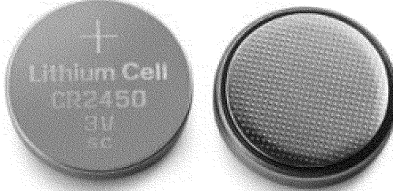
		
LR44 button cell, 11.6mm (0.45 inch) diameter x 5.4mm (0.21 inch) thick	LR754 button cell, 7.9 mm (0.31 inch) diameter, 5.4mm (0.21 inch) thick	LR626 button cell, 6.8 mm (0.26 inch) diameter, 2.6mm (0.10 inch) thick
		
CR2032, 20mm (0.787 inch) diameter	CR2025, 20mm (0.787 inch) diameter	CR2450, 24mm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

Figure 1. Example button cell and coin batteries.

⁷ See ULSE ANSI Accredited Procedures, Approved December 2, 2022, available at: https://ulstandards.ul.com/wp-content/uploads/2023/03/ULSEANSIAccreditedProcedures_20221202.pdf.

⁸ UL 4200A–2023 does not, however, address labeling of battery packaging. Accordingly, in a separate document published elsewhere in this issue of the **Federal Register**, the Commission is

finalizing a rule to require labeling on button cell or coin battery packaging. Notes to 15 U.S.C. 2056e.

⁹ Consistent with 16 CFR part 1250, a “toy product” is defined as “any object designed, manufactured, or marketed as a plaything for children under 14 years of age.” Notes to 15 U.S.C. 2056e.

¹⁰ Section 3 of Reese’s Law requires special packaging for button cell or coin batteries. These requirements, codified in the Notes to 15 U.S.C. 2056e, are self-implementing, and do not require CPSC to issue a rule. Section 3 of Reese’s Law was effective by operation of the statute on February 12, 2023.



Figure 2. Example products that use button cell or coin batteries.

In accordance with section 2 of Reese’s Law, the NPR contained performance and labeling requirements for consumer products that contain button cell or coin batteries.

Performance requirements: As required by Reese’s Law, the NPR proposed that consumer products containing button cell or coin batteries require the battery to be secured in a manner that would eliminate or adequately reduce the risk of injury from the ingestion hazard to children during reasonably foreseeable use or misuse conditions. In developing the NPR, the Commission drew upon requirements stated in:

- UL 4200A–2020, *Standard for Safety for Products Incorporating Button or Coin Cell Batteries of Lithium Technologies* (UL 4200A–2020);
- ASTM F963–17 *Standard Consumer Safety Specification for Toy Safety* (ASTM F963);
- Voluntary standards referenced by Australian F2020L01656, including:
 - IEC 62368–1:2018 *Audio/video, information and communication technology equipment-Part 1: Safety requirements* (IEC 62368–1);
 - IEC 62115:2017 *International Standard for Electric Toys—Safety* (IEC 62115);
 - AS/NZS 60065:2018 *Audio, video and similar electronic apparatus—Safety requirements* (AS/NZS 60065:2018); and
 - AS/NZS 60598.1:2017 *Luminaires Part 1: General requirements and tests* (AS/NZS 60598.1:2017).

Table 7 of the NPR summarized the Commission’s analysis of the performance requirements in these voluntary standards. 88 FR 8701. Based on the analysis in Tab D of Staff’s NPR Briefing Package, the Commission preliminarily concluded that none of these voluntary standards alone contained performance requirements that are adequate to address the

requirements in Reese’s Law. 88 FR 8701–02. Therefore, to address the performance requirements mandated in Reese’s Law, the proposed performance requirements in CPSC’s NPR differed from the requirements in the voluntary standards in several ways, including:

- Broader scope to match the scope of products covered by Reese’s Law;
 - Clarification that a locking mechanism requiring two simultaneous and independent actions does not include actions that can be combined into one single action by a single finger or digit, to address poor locking mechanism designs observed in testing;
 - Addition of the compression test from the ASTM F963–17 toy standard, codified in 16 CFR part 1250, to address children pressing on areas of the battery compartment not directly impacted by the drop test;
 - Requirement that all products, including products weighing more than 18 kg, be subjected to 10 drops;
 - Addition of the torque and tensile tests from the toy standard to address a child grabbing and twisting or pulling on parts of the battery enclosure or tearing apart soft goods with fingers or teeth.
- 88 FR 8702–04. Tables 8 and 9 in the NPR, 88 FR 8702, summarized CPSC’s proposed performance requirements for consumer products with replaceable and non-replaceable button cell or coin batteries.

Warning label requirements: For consumer products containing button cell or coin batteries, Reese’s Law requires warnings on:

- The packaging of consumer products;
- Accompanying literature; and
- Consumer products, as practicable.

15 U.S.C. 2056e(a)(2). Reese’s Law also requires warnings on packaging of button cell or coin batteries. *Id.* Warning statements must clearly identify the hazard of ingestion and instruct

consumers, as practicable, to keep new and used batteries out of the reach of children, seek immediate medical attention if a battery is ingested, and follow any other consensus medical advice. 15 U.S.C. 2056e(b).

The NPR assessed warning requirements in several voluntary standards, and preliminarily concluded that none of the voluntary standards were adequate to meet the requirements in Reese’s Law. Tab C of Staff’s NPR Briefing Package; 88 FR 8704–05. Tables 10 and 11 in the NPR summarized the Commission’s assessment of the warning label requirements in voluntary standards, in relation to the requirements of Reese’s Law. 88 FR 8705.

Because none of the voluntary standards met the requirements in Reese’s Law at the time of the NPR, the Commission proposed warning requirements for the packaging of consumer products containing button cell or coin batteries, accompanying literature, and, as practicable, consumer products. 88 FR 8706–09. The NPR also proposed warning requirements for the packaging of button cell or coin batteries, which are being established by the Commission in a separate final rule. 88 FR 8706–07.¹¹

II. Assessment of Performance and Labeling Requirements in UL 4200A–2023

Several pertinent voluntary standards have been revised since the NPR published on February 9, 2023. IEC 62368–1 published a new edition

¹¹ The NPR additionally proposed to require point-of-sale warnings of the ingestion hazard and other battery safety information under section 27(e) of the CPSA to improve safety communication to consumers to address the unreasonable risk of injury and death to children from ingesting or inserting button cell or coin batteries into the body, and other hazards. 88 FR 8709–11. The Commission is not finalizing proposed requirements under section 27(e) of the CPSA at this time.

(Edition 4, or IEC 62368–1:2023) in May 2023. In January 2023, ASTM balloted a revision to the battery compartment construction requirements in ASTM F963. In April 2023, UL balloted a revised version of UL 4200A, which was further revised and reballoted in July 2023, and comment responses were recirculated in August 2023. UL published its most recent revisions on August 30, 2023, as UL 4200A–2023.

Tab E of Staff’s Final Rule Briefing Package contains staff’s detailed assessment of ASTM F963, UL 62368–1, and the revised IEC 62368–1:2023. Based on staff’s updated assessment of ASTM F963, UL 62368–1, and IEC 62368–1:2023, the Commission cannot determine that any of these standards is adequate to meet the requirements in section 2(a) of Reese’s Law. However, for the reasons stated below and further elaborated in Tab E of Staff’s

Final Rule Briefing Package, the Commission determines that UL 4200A–2023 meets the performance and labeling requirements in section 2(a) of Reese’s Law as applied to consumer products containing button cell or coin batteries. Table 1a summarizes CPSC’s evaluation of the performance requirements in the updated voluntary standards.

TABLE 1a—ASSESSMENT OF EXISTING VOLUNTARY STANDARDS’ PERFORMANCE REQUIREMENTS FOR BUTTON CELL OR COIN BATTERIES

		UL 4200A–2023	ASTM F963 (Ballot)	UL 62368–1	IEC 62368–1:2023	IEC 62115
Scope	Battery Chemistry Type	Any *	Any	Any	Any	Any. Electronic Toys.
	Product Type	Any	Toys	Audio/Visual Equipment.	Audio/Visual Equipment.	
Construction Performance	Opens with Tool	A	A	A	A	A.
	Captive screws	A	A	I	A	A.
	Threaded attachment requirements.	A .....	.....	I	A.	
	Opens with two independent and simultaneous movements.	A	O	I	I	O.
	Accessibility	A	A	A	A	A.
Use and Abuse	Pre-conditioning in oven	A .....	.....	A	A.	
	Open/close and remove/install battery/screw(s) 10 times.	A .....	.....	A	A	I.
	Drop test—based on product weight/type.	A	I	I	I	I.
	Drop test—based on age grading.	O	I	O	O	O.
	Impact Test	A .....	.....	A	A	I.
	Crush Test (big surface area).	A .....	.....	A	A.	
	Torque Test	A	A.	.....	.....	A.
	Tension Test	A	A .....	.....	.....	A.
	Tension Test—Seams	A	A .....	.....	.....	A.
	Compression Test (little surface area).	A	A	I	I.	
	Accessibility Probe Compliance Test.	A	I	I	I	A.
	Securement (non-removable batteries).	A	O	O	O	O.

* Excludes zinc-air batteries, which are not known to be used in consumer products.
 Blank—Does not address requirements, I—Inadequately addresses requirements, A—Adequately addresses requirements, O—Otherwise adequately addresses requirements.

Table 1b, below, summarizes CPSC’s assessment of warning label requirements for consumer products containing button cell or coin batteries in existing voluntary standards.

TABLE 1b—ASSESSMENT OF EXISTING VOLUNTARY STANDARDS’ LABELING REQUIREMENTS FOR CONSUMER PRODUCTS CONTAINING BUTTON CELL OR COIN BATTERIES

		ASTM F963 (Ballot)	UL 4200A–2023	ASTM F2999–19	ASTM F2923–20	IEC 62115	UL 62368–1
Scope	Battery Chemistry Type	All	All *	All	All	All	All. Audio/Visual Equipment.
	Product Type	Toys	All	Jewelry	Children’s Jewelry.	Toys	
Labeling	On Consumer Product Packaging.	I	A .....	.....	.....	I.	
	n instructions or accompanying literature.	I	A .....	.....	.....	I	I.

TABLE 1b—ASSESSMENT OF EXISTING VOLUNTARY STANDARDS’ LABELING REQUIREMENTS FOR CONSUMER PRODUCTS CONTAINING BUTTON CELL OR COIN BATTERIES—Continued

	ASTM F963 (Ballot)	UL 4200A–2023	ASTM F2999–19	ASTM F2923–20	IEC 62115	UL 62368–1
On consumer product	A .....	.....	.....	.....	I.

* Excludes zinc-air batteries, which are not known to be used in consumer products.
 Blank—Does not address requirements, I—Inadequately addresses requirements, A—Adequately addresses requirements.

Although, as reflected in these tables, UL 4200A–23 satisfies all performance requirements of Reese’s law section 2(a), and the law’s requirements for labeling of consumer products that contain button cell or coin batteries, this UL standard does not address labeling of battery packaging, for which Reese’s Law also has requirements.

Below, we address in detail two significant aspects in which the former UL 4200A–2020 fell short of Reese’s Law’s requirements, but that the recent revisions to the standard—as we interpret them—do address adequately.

A. Captive Screw Exceptions

Section 5.6 of UL 4200A–2020 included an exception from the requirement for fasteners to remain captive to the battery enclosure for large panel doors on large devices, which are not likely to be discarded or left off the equipment. The Commission did not include such captive screw exception in the NPR and stated that the range of products to which that exception would apply is unclear. 88 FR 8703.

Section 5.6 of UL 4200A–2023 contains a revised requirement for captive screws. Two related exceptions exist for the requirement, both of which apply only to products containing button cell or coin batteries that are not intended to be replaced by the consumer, and where there are instructions and warnings that clearly state the battery is not to be replaced by the consumer. The first exception applies to products containing button cell or coin batteries “that can only be accessed through the removal of multiple enclosures or panels using a tool.” The second captive screw exception applies to “products only to be opened by a professional service center (where children are not present).”

Regarding the first exception, products designed and labeled to not have the battery replaced by the consumer provide the consumer with less incentive or need to access a button cell or coin battery compartment. The requirement to remove multiple enclosures or panels to reach a button cell or coin battery provides an extra layer of protection that prevents

immediate access to batteries, even if screws to those panels are lost or discarded. CPSC is unaware of ingestion incidents involving access to button cell or coin batteries through multiple enclosures on consumer products. Products that might fit into the first exception include desktop and laptop computers, with batteries that frequently last longer than the product itself.

The second exception applies to products “only to be opened by a professional service center (where children are not present).” The text of the UL 4200A–2023 does not further explain this exception. We think it plain, however, that to avoid undermining the safety purpose of the captive screw requirement, the design of the consumer product, as well as its warning language and literature, must be consistent with professional-only access to the battery compartment. Accordingly, we interpret the professional service center exception for captive screws to only apply to consumer products with design and construction characteristics that are inconsistent with consumers accessing the batteries at home, for example by having a battery compartment that cannot be opened with a common household tool such as a straight-blade screwdriver, Phillips screwdriver, pliers, or a coin. For example, watch battery compartments that require a special professional tool to open would not require captive screws. However, watch battery compartments secured only with a straight blade or Phillips screw would not qualify for this captive screw exception, because such a product could be opened by consumers in their homes with readily available household tools.

B. Drop Test Requirements

To address the accidental liberation of button cell or coin batteries from consumer products, UL 4200A–2020 called for “portable” products to be dropped a total of three cycles in testing, and “hand-held” products a total of 10 cycles. In the NPR, the Commission proposed to require all products within the scope of the rule to be subject to 10 drop cycles. 88 FR 8713.

After reviewing the comments received on the NPR (which are discussed in section III below), the Commission agrees that it is appropriate to distinguish between products that are “portable” and those that are “handheld,” provided those definitions are clear and able to be applied consistently. See Tab E of Staff’s Final Rule Briefing Package.

Section 4.3A of UL 4200A–2023 now defines “hand-held product” to mean a product that is “reasonably foreseeable to be used or misused when being held in one or both hands.” This category includes only “[p]roducts specifically designed to be carried easily, with a mass not exceeding 4.5 kg (10 lbs).” Section 4.4 of UL 4200A–2023 revises the definition for “portable device” to mean a “device that is reasonably foreseeable to be routinely carried or lifted as part of its use or misuse but not operated during transit with a mass not exceeding 18 kg (39.7 lb).” The Commission concludes that these definitions reasonably distinguish between handheld consumer products that are likely to be handled often and dropped frequently (such as a television remote control, for example), and other products that are moveable but not routinely handheld. The 10-drop requirement applies to the former, while a 3-drop requirement applies to the latter. The Commission determines that this framework in UL 4200A–2023 meets the requirements for Reese’s Law section 2(a).

III. Comments on the NPR

CPSC received 38 comments during the comment period (four were duplicates), from February 9 through March 13, 2023, and two late-filed comments (one is out-of-scope for this rulemaking). Also, CPSC received nine comments on a separate PRA notice estimating the burden of the proposed rule. Commenters included medical professionals, standards development associations, consumers, consumer advocates, retail and manufacturing associations, and battery and consumer product manufacturers.

Thirty-three commenters generally supported the safety purpose and scope of Reese’s Law. Commenters noted the

potential deadly risk of injury associated with ingestion and insertion of button cell and coin batteries and their ubiquitous use in many different types of consumer products that are accessible to young children. Medical professionals informed the Commission regarding the difficulty in diagnosing an unwitnessed button cell or coin battery ingestion that requires prompt removal of the battery to prevent life-threatening esophageal burns and soft tissue damage, because the symptoms can mimic other health issues such as colds or upset stomach. Commenters generally supported the development of strong performance and labeling requirements for consumer products to prevent the ingestion hazard, as most button cell or coin battery ingestion incidents involve batteries obtained from consumer products.

Many commenters suggested that the CPSC find one of the reviewed voluntary standards adequate to meet Reese's Law requirements and to adopt a voluntary standard for the rule. Because many of the comments received are relevant to the Commission's favorable determination on the UL 4200A-23 voluntary standard, we summarize and respond to them here.

Comments in Response to Questions on Performance Requirements

A. Whether any consumer products (as opposed to medical devices, such as hearing aids) contain zinc-air button cell or coin batteries, and whether such products should be required to meet the performance requirements for battery compartments on consumer products.

Comment 1: Other than use in hearing aids, a medical device, no commenters identify any consumer products using zinc-air button cell or coin batteries. An international battery trade association and a coalition of medical and consumer organizations (American Academy of Pediatrics, Consumer Reports, Public Citizen, Consumer Federation of America, Kids In Danger, and U.S. Public Interest Research Group) state that they are unaware of any consumer products (as defined in section 3 of the CPSA, 15 U.S.C. 2052(a)(5)) using zinc-air batteries. The coalition of medical and consumer organizations state that the Commission should reserve the ability to take further action regarding zinc-air button cell and coin batteries.

Response 1: Because the Commission is not aware of any consumer products that contain zinc-air button cell or coin batteries and commenters did not submit information regarding such products, and because such batteries present a low risk of causing an

ingestion hazard as described in Tab C of Staff's Final Rule Briefing Package, the NPR proposed that zinc-air button cell or coin batteries, and products that use such batteries, should not be subject to the performance requirements in the final rule. Section 1.2 of UL 4200A-2023 contains a similar zinc-air battery exception.

B. Whether any voluntary standard meets the performance and labeling requirements of Reese's Law.

Comment 2: Multiple commenters argue for Commission determinations that various voluntary standards satisfy the requirements of section 2(a) of Reese's Law. Five commenters (The Toy Association, Retail Industry Leaders Association (RILA), Permanent European Horological Committee (CPHE), Federation of the Swiss Watch Industry (FH), and American Watch Association (AWA)) recommend that CPSC accept the voluntary standard ASTM F963 as adequate to address the risk of ingestion by children. The commenters generally state that ASTM F963 adequately fulfills the objectives of Reese's Law, and that no data exists to suggest that the standard creates an accessibility hazard for products containing button cell or coin batteries that comply with the standard. However, a coalition of medical and consumer organizations recommend that the ASTM toy standard subcommittee incorporate some of CPSC's proposed requirements, such as improving testing for fastener retention and threading to avoid stripped screw holes and other possible scenarios that might lend access to the batteries.

Five commenters (Garmin International Inc. (Garmin), CPHE, FH, AWA, and TechNet) recommend that CPSC accept the voluntary standard UL 4200A as adequate to address the risk of child ingestion. Four commenters (Japan Electronics and Information Technology Industries Association (JEITA), Consumer Technology Association (CTA), TechNet, and Information Technology Industry Council (ITI)) further state that CPSC should accept IEC 62368-1 or UL 62368-1 as adequate to address the risk of injury for products within the scope of that standard. The Battery Association of Japan (BAJ), Duracell, Energizer, and the National Electrical Manufacturers Association (NEMA) state that CPSC should accept IEC 60086 or ANSI C18 standards as adequate for battery package labeling requirements. Finally, the Power Tool Institute states that the Commission should work with voluntary standards organizations to improve and codify a voluntary standard.

Response 2: Reese's Law states that the Commission can rely on a voluntary standard, rather than drafting and implementing a rule for covered products, if the Commission determines that: (A) the voluntary standard meets the requirements for a standard promulgated under subsection (a) with respect to the products; and (B) the voluntary standard is in effect at the time of the determination, or will be in effect not later than 180 days after August 16, 2022 (February 12, 2023). 15 U.S.C. 2056e(d)(1). The Commission finds that UL 4200A-2023 meets the requirements of Reese's Law. As set forth in Staff's Final Rule Briefing Package and summarized in Tables 1a and 1b, however, the Commission does not find that any other voluntary standard, as described by the commenters, is adequate to meet the requirements of Reese's Law or to address the risk of injury from child ingestion.

Tabs D and E of Staff's Final Rule Briefing Package discuss staff's updated assessments of the voluntary standards based on feedback received from public comments. None of the commenters provide sufficient analysis, critique, or justification for the Commission to make a determination that any voluntary standard, other than UL 4200A-2023, meets the performance or labeling requirements in Reese's Law.

C. Whether the requirements for accessibility of battery compartments should incorporate test methods commonly used on toy products, such as the torque and tensile tests for parts of the product that can be gripped by a child's fingers or teeth, or a tensile test for pliable materials.

Comment 3: Two commenters (Landsdowne Labs and a coalition of medical and consumer organizations) support the incorporation of test methods commonly used on toy products.

Response 3: Incorporating test methods such as torque and tensile tests for parts of a consumer product that can be gripped by a child's fingers or teeth, or a tensile test for pliable materials, decreases the likelihood of children gaining access to button cell or coin batteries. Based on staff's assessment of these test methods in the ASTM F963 toy standard, the Commission determines that their inclusion in UL 4200A-2023 adequately tests the durability and integrity of battery compartments in products with pliable materials, such as shirts and greeting cards that light up or make sound using batteries. The Commission agrees with the commenters that these requirements will eliminate or adequately reduce the

risk of ingestion in pliable products, as required by Reese's Law.

D. For consumer products that use button cell or coin batteries and have large panel doors, what consumer products have such doors, and should the Commission exclude large panel doors from the requirement for captive screws; why or why not (*i.e.*, why does a large panel door represent a different risk of injury from battery access without using captive screws than a smaller battery compartment door does)?

Comment 4: Three commenters (UL Solutions, CTA, and ITI) state that the large panel door exemption from the captive screw requirement exists for products—like desktop computers which commonly use coin batteries on the motherboards to provide backup power—where the panel forms part of system enclosure which is not intended to be opened regularly by the consumer. The commenters state that consumers are unlikely to leave off or discard screws for these large panel doors. ITI notes that UL 62368–1 states that captive screws are for batteries that need to be replaced regularly.

Response 4: Section 5.6 of UL 4200A–2023 states that products containing button cell or coin batteries with large panel doors are excepted from the captive screw requirement as long as the batteries are not intended to be replaced by the consumer. The intent of the captive screw requirement is to prevent consumers from discarding screws securing battery enclosures after battery replacement during the product's lifetime. For products requiring battery replacement, consumers foreseeably may discard the screws to make replacing the batteries easier, without appreciating the battery ingestion hazard; or consumers may lose the screw and think the product is safe to use without properly securing the battery compartment. However, as explained in section II.A of this preamble, if a product's battery is not meant to be replaced, consumers are unlikely to open large panel doors to access the battery; therefore, requiring captive screws is not reasonably necessary to address the ingestion hazard in Reese's Law.

Exception 1 in section 5.6 of UL 4200A–2023 provides that captive screws are not required for products containing button cell or coin batteries that are not intended to be replaced by the consumer, and that products containing such batteries that can only be accessed through the removal of multiple enclosures or panels using a tool do not need captive screws. UL 4200A–2023 also requires that to meet

the exception, such products must have instructions and warnings that clearly state the battery is not to be replaced by the consumer. Such products must also meet use and abuse testing requirements. The Commission determines that the requirements for multiple enclosures in UL 4200A–2023, which can include large panel doors, are adequate to meet the requirements in section 2(a) of Reese's Law.

E. Whether a double-action locking mechanism used to secure battery compartment enclosures, meaning those mechanisms that rely on two independent and simultaneous hand movements to open (versus a screw, for example), should be allowed to secure button cell or coin battery compartments.

Comment 5: Two commenters (RILA and The Toy Association) provide comments on whether double-action locking mechanisms, which are more accurately described as “multi-action” locking mechanisms to reflect that there can be more than two motions, should be allowed to secure button cell or coin battery compartments. RILA supports including the option for multi-action locking mechanisms, especially for products where it may not be feasible to secure battery compartments with an enclosure that requires a tool. The Toy Association opines that multi-action locking mechanisms are susceptible to be opened by applying forces in a single action or for one or both mechanisms to be disengaged, reducing the safety or efficacy of the mechanism. The Toy Association also comments that multi-action locking mechanisms may present a “false positive” to the consumer, appearing to be closed but susceptible to opening upon product operation.

Response 5: We agree with RILA that multi-action locking mechanisms can be a safe and effective alternative method to securing battery enclosures. Many products that use button cell or coin batteries are small and sometimes may not have enough space in the design to incorporate a screw to secure the battery enclosure. Therefore, providing multi-action locks as an alternative provides industry with some flexibility for designing their products in a safe manner. Staff's review of consumer products demonstrates a variety of different multi-action locking mechanisms that can be effective.

Moreover, both the NPR and UL 4200A–2023 address the Toy Association's concerns. To address incidents involving multi-action locks that could be opened with a single action, and to ensure consistent and reliable testing, the NPR specified that “[t]he movements to open cannot be

combinable to a single movement with a single finger or digit.” 88 FR 8721. Section 5.5(b) of UL 4200A–2023 also contains this language to clarify requirements for multi-action locking mechanisms. Because the actions must be simultaneous, the first action must be maintained while the second and successive actions are completed for the lock to open. If the design of the mechanism allows the battery compartment to open when the first action disengages, the battery compartment does not comply with the requirements of UL 4200A–2023. Therefore, the requirements of the UL standard and this DFR are intended to prevent the scenario envisioned by the Toy Association.

Additionally, regarding the Toy Association's comment on multi-action locking mechanisms presenting a “false positive” in which they appear to be closed, this scenario may occur in both multi-action locking enclosures and enclosures secured via screws or other fasteners. After replacing the battery, consumers may inadvertently neglect to screw or retighten a fastener, leaving the enclosure ineffective. To decrease this risk for all products, regardless of their battery compartment securement design, UL 4200A–2023 requires that all products containing a button cell or coin battery include warnings in product instructions to ensure proper securement of the battery enclosure.

Comment 6: Four commenters (coalition of medical and consumer organizations, CTA, the Consumer Safety Consultancy (CSC), and Mark Strauch) recommend adding tests to prove the effectiveness of multi-action locking mechanisms because, for example, locking mechanisms requiring a push and turn could be opened accidentally. CTA opines that specifying independent hand movements cannot be combinable to a single movement is redundant, because if the end point of the first movement is the starting point of the second movement, then the movements would not be independent. CSC recommends that the requirement for multi-action locking mechanisms be revised to require independent and sequential motions rather than independent and simultaneous motions as proposed in the NPR. Strauch comments that the NPR's clarification that “[t]he movements to open cannot be combinable to a single movement with a single finger or digit” is unnecessary and is an enforcement issue rather than an issue with the standard.

Response 6: Multi-action locking mechanisms that secure button cell or coin battery compartments are adequate

to prevent access to children, so long as the actions cannot be combinable into one single action. Through testing, CPSC staff identified multiple products that were designed with the intent of requiring two independent actions to open the battery compartment that could be defeated by applying a single force to disengage the lock and expose the battery. Accordingly, the NPR included an additional clarification specifying, “[t]he movements to open cannot be combinable to a single movement with a single finger or digit.” This requirement addresses the concerns from the coalition of medical and consumer organizations’ comment that locking mechanisms that require a push and turn could be accidentally opened.

The Commission disagrees with commenters that a final rule should require independent sequential actions, rather than simultaneous actions, because sequential actions can be achieved more easily than simultaneous actions. The requirement for at least two independent and simultaneous actions allows for sequential actions, so long as the first action is held by the consumer while the second action occurs. Independent sequential actions, by contrast, would not require that the first action be held by the consumer while the second action occurs for the battery compartment to open, making the scenario of a child accidentally opening the battery compartment more likely.

UL 4200A–2023, as incorporated into this DFR, requires two independent *and simultaneous* movements that cannot be combined into a single movement. This requirement adequately addresses the risk of opening by young children or inadvertent action by older consumers, and provides testing laboratories with clearer criterion for assessing the adequacy of multi-action locking mechanisms.

F. Whether the proposed secureness test based on UL 4200A–2020 is sufficient to address reasonably foreseeable use and abuse of consumer products containing non-removable batteries.

Comment 7: ITI asked for clarification on how the secureness test is applied to products, questioning whether the force application per the secureness test is to the exterior battery enclosure or to the battery itself.

Response 7: Under § 1263.3(f) of the NPR’s proposed rule, the secureness test was applicable only to button cell or coin batteries that are accessible based on proposed § 1263.3(d), which specifies removing “any part of the battery compartment enclosure that can be opened or removed without a tool or

that can be opened or removed with anything less than two independent and simultaneous movements.”

Section 6.4 in UL 4200A–2023 contains a similar requirement. After removing any components, testers should apply an accessibility probe to any opening of the battery compartment. If the probe makes contact with any battery, the battery is considered accessible, and the secureness test applies a force, directed outwards, using the test hook on the battery itself at all points where an application of a force is possible. This step is intended to demonstrate that the battery cannot be liberated from the product.

Comment 8: The CTA and ITI comment that the NPR incorrectly states that UL 4200A–2020 and IEC 62368–1 do not require abuse testing for products with button cell or coin batteries “that are held fully captive by soldering, fasteners, or any equivalent means.” The commenters explain that UL 62368–1 requires robustness tests for solid safeguards which address accessibility of other hazards such as shock, fire, mechanical, and burn. The commenters state that these requirements are independent of the button cell or coin batteries because they are general requirements for all solid enclosures or barriers.

Response 8: The commenters are correct. UL 62368–1 requires all products containing solid safeguards to comply with the standard’s relevant robustness tests, which include a steady force test (*i.e.*, small surface compression test), drop test, impact test, and other abuse tests based on the specific construction materials (such as glass or thermoplastic). These tests are required regardless of whether the product contains a button cell or coin battery. CPSC staff considered these comments in its revised appraisal of UL 62368–1 and concluded that the securement test was otherwise adequately addressed with other requirements in the standard. See Briefing Memorandum of Staff’s Final Rule Briefing Package.

CPSC’s proposed rule required products with non-removable button cell or coin batteries that are secured to the product via soldering, fasteners, or equivalent means to comply with the secureness test in § 1263.3(f), and not to the abuse testing in § 1263.3(e). UL 4200A–2023 requires that button cell or coin batteries held fully captive by the use of soldering, fasteners such as rivets, or equivalent means must pass the secureness test in section 6.4 of UL 4200A–2023. This requirement is similar to the NPR’s approach and is

adequate to meet the requirements in Reese’s Law.

G. Whether Test Probe 11 of the Standard for Protection of Persons and Equipment by Enclosures—Probes for Verification, IEC 61032, is adequate to verify accessibility of a button cell or coin battery in a battery compartment.

Comment 9: Three commenters (CTA, ITI, and UL Solutions) recommend applying a 45 N force application with Test Probe 11 per UL 62368–1 and UL 4200A–2020 to determine whether a battery can be liberated from a consumer product by children up to age six. CTA and ITI opine that the 50 N force in the NPR’s proposed rule, which was based on IEC 62115, is intended for a scope of children up to 14 years old, and is too great because Reese’s law is intended to protect children up to age six. Furthermore, they state the lack of incidents involving products certified to the 45 N requirement is evidence of adequacy. UL Solutions opines that the toy standard containing the 50 N force, IEC 62115, was developed based on the expectation that toys are continually used by children over its lifetime; whereas UL 4200A–2020 was developed assuming that children would likely come into contact with in-scope products, but not continually over the product’s lifetime.

Response 9: Section 6.3.5.1 of UL 4200A–2023 requires the higher force of 50 N based on requirements in IEC 62115 and IEC 61032. We disagree that the 45 N test in UL 4200A–2020 is adequate because the standard was developed for products that are not continuously used by children over a product’s lifetime. The 50 N compliance test accounts for reasonable, foreseeable use and abuse over the course of a product’s lifetime, presuming that most consumer products are likely to be accessible to children. Indeed, most of the incident data for button cell and coin battery ingestions involve batteries liberated from consumer products by children, including products that are not intended to be used by children. UL 4200A–2023 now relies upon the test probe in IEC 61032, which specifies a force of 50 N. This higher force will adequately protect against children accessing button cell or coin batteries from consumer products during reasonably foreseeable use and misuse conditions, as required by Reese’s Law.

H. Whether there are any additional performance requirements that should be considered, either for specific types of products, or in general.

Comment 10: A coalition of medical and consumer organizations recommends adding a test to prove the effectiveness of multi-action locks. They

add that small, disc-shaped products that require a push and turn double-action can be mimicked by a child putting their hand on the product, putting the product on the floor, and then turning.

Response 10: As explained in response to comments five and six, we agree that some multi-action locking mechanisms can be defeated by applying a single force, effectively combining the two motions of a double-action lock. For this reason, the proposed rule and UL 4200A–2023 clarify that “[t]he movements to open cannot be combinable to a single movement with a single finger or digit.” Based on staff’s testing and review of consumer products, the Commission finds this clarification adequate for test laboratories to determine the effectiveness of multi-action lock designs without additional testing.

Comment 11: Two commenters (a consumer and CTA) discuss the requirement for twist-on enclosures requiring a minimum of 90° rotation to remove. The consumer commenter recommended that a 90° rotation is insufficient whereas CTA considers this requirement adequate.

Response 11: The requirement for minimum rotation angle for twist-on enclosures is based on a requirement in section 5.5(a) of UL 4200A–2020. This requirement is maintained in section 5.5(a) of UL 4300A–2023. Based on staff’s testing and the lack of more stringent requirements in any other standards, CPSC does not have any data to support a greater rotation angle to prevent children ages six years and younger from accessing the button cell or coin battery. Accordingly, the Commission finds the 90° rotation angle requirement as set forth in UL 4200A–2023 compliant with Reese’s Law section 2(a).

I. Whether one or more performance requirements should be based on IEC 62368–1, in addition to, or instead of, performance requirements based on UL 4200A–2020.

Comment 12: Two commenters (ITI and Garmin) discuss the fastener torque requirements based on Table 20 of UL 60065. ITI comments that the torque requirements in § 1263.3(e)(1)(ii) for fasteners based on Table 20 of the *Standard for Audio, Video and Similar Electronic Apparatus—Safety Requirements*, UL 60065, are outdated and superseded by Table 37 of the *Standard for Safety: Audio/Video, Information and Communication Technology Equipment—Part 1: Safety Requirements*, UL 62368–1. Garmin comments that the fastener torque requirements from Table 20 of UL 60065

do not consider small fasteners that cannot withstand the specified torque values.

Response 12: Commission staff advises that Table 20 of UL 60065 is superseded by Table 37 of UL 62368–1 as noted by ITI and Garmin, and recommends updating this reference table. While UL 4200A–2023 does not include this update, the comments do not suggest that this constitutes a failure to satisfy the requirements of Reese’s Law. Further, we disagree with Garmin’s position that Table 20 of UL 60065 (and similarly Table 37 of UL 62368–1) do not account for small fasteners. The torque values in these tables are dependent on the size of the fasteners, with the lowest torque requirement of 0.4 Nm for fasteners up to 2.8 mm in diameter. As discussed in Tab D of Staff’s NPR Briefing Package, fasteners that do not meet the minimum required torque often fail the preconditioning and abuse tests and therefore are inadequate to secure battery compartments and reduce the battery ingestion risk to children.

J. Whether the proposed performance requirements are needed and are likely to eliminate or adequately reduce the ingestion hazard associated with access to button cell or coin batteries from consumer products.

Comment 13: Three commenters (CPHE, FH, and AWA) opine that watches present a significantly lower risk than other products containing button cell or coin batteries. These commenters recommend imposing different requirements for accessing the battery for products designed to be opened by consumers versus those intended to be opened only by professionals. The commenters state that most watches are intended to be opened by professionals because watches cannot be opened without the use of special tool that is not commercially available; therefore, the risk that screws or the battery cover could be lost or discarded by consumers does not exist.

Moreover, the commenters opine that the NPR’s proposed securement requirements are not feasible for watches because of the limited space within the product to implement more complex designs. The Switzerland Federal Department of Economic Affairs, Education and Research (Switzerland) similarly asks why the NPR does not differentiate the requirements for the removal or replacement of the button cell or coin batteries by the consumer themselves from removal by professionals.

Response 14: The NPR proposed that watches would be required to comply

with the requirements of § 1263.3(b) for removable batteries, which requires (1) twist-on covers with minimum torque of 0.5 Nm to open and a minimum angle of rotation of 90°, or (2) fasteners must engage a minimum of two full threads and be held captive to the closure. We agree, however, with the commenters that products containing button cell or coin batteries that require a special tool to access, and can only be replaced by professionals, should have different requirements for battery accessibility than products with consumer-replaceable batteries. In particular, because the risk of discarding or losing an enclosure screw is low for products intended to only be opened by professionals, it is not reasonably necessary to impose a captive screw/fastener requirement for such products to reduce the risk of injury to young children.

Unlike the NPR, UL 4200A–2023 contains different requirements for products with battery compartments only intended to be opened by a professional service center where children are not present. As explained in section II.A of this preamble, CPSC interprets UL 4200A–2023 consistent with its purpose, so that battery compartments intended to only be opened by a professional service center must have both appropriate labeling and inability for the battery compartment to be opened using a common household tool, such as a straight-blade screwdriver, a Phillips screwdriver, pliers, or a coin. Battery compartments that cannot be opened with a common household tool and have warnings stating that the battery is not to be replaced by the consumer are less likely to be opened by a consumer, and therefore do not need to have captive screws to address the ingestion hazard. At the same time, products intended to be opened only by professionals can be opened through reasonable, foreseeable use and abuse, exposing the button cell or coin battery. Accordingly, UL 4200A–2023 reasonably requires use and abuse testing for these products, to reduce the risk of children under six years old accessing a battery from a battery compartment.

Comment 15: JEITA requests an exemption from the scope of the rule implementing Reese’s Law for products that use button cell or coin batteries that are not intended to be replaced by the user or cannot be removed (*i.e.*, user-inaccessible). JEITA notes that IEC 62368–1 does not apply tests and warning label requirements if button cell or coin batteries cannot be removed because such products do not present a battery ingestion risk.

Response 15: Reese’s Law defines “consumer products containing button cell or coin batteries” as “a consumer product containing or designed to use one or more button cell or coin batteries, regardless of whether such batteries are intended to be replaced by the consumer or are included with the product or sold separately.” Notes to 15 U.S.C. 2056e. Therefore, the Commission’s implementing rule must address batteries that are not intended for consumer replacement. Moreover, we disagree with JEITA that all products containing button cell or coin batteries that are not intended to be replaced are adequately safe under Reese’s Law. Consumer products may experience use and abuse during the product’s life that may result in batteries becoming dislodged or otherwise accessible to children, even if the batteries are not intended to be user replaceable. For example, incident narratives collected by CPSC describe products without replaceable batteries that fall apart when dropped. See Footnote 1 in Tab A of Staff’s Final Rule Briefing Package.

Comment 16: Two commenters (CTA and ITI) recommend that a drop test with three repetitions is adequate for some products. While the commenters state that they agree that ten total drops, as proposed in the NPR, are appropriate for hand-held products such as remote controls, they recommend that three drops are adequate for other portable products such as equipment that is transportable but not intended to be held in hand while in use.

Response 16: As explained in section II.B. above, we agree that requiring ten drops for all consumer products is not reasonably necessary to reduce the risk of button battery access to children. UL 4200A–2023 requires a different number of repetitions for the drop test, based on whether a product is considered “hand-held” or “portable.” Per UL 4200A–2023’s drop test requirements, portable products are dropped three times and hand-held products are dropped ten times. The Commission finds that the approach taken in UL 4200A–2023 is reasonable and adequately protective under Reese’s Law.

Comments in Response to Questions on Marking and Labeling Requirements

K. Whether staff’s assessment [in section V.F of the NPR preamble] that virtually all consumer products can accommodate either the full warning or one of the scaled icons is accurate.

Comment 17: Four commenters (The Toy Association, CTA, ITI, and RILA) do not support on-product warning labels, citing limitations due to small product size. Other concerns presented

by commenters pertain to textured surfaces, product material, or unspecified “other” limitations. The Toy Association asserts that labeling requirements will add significant costs in terms of timing, tooling, and molding. Four commenters (JEITA, CTA, Household & Commercial Products Association (HCPA), and ITI) request exemptions from on-product labeling where button cell or coin batteries are not accessible and not intended to be replaced by the consumer.

Response 17: Reese’s Law requires that, where practicable, warning labels be placed directly on a consumer product in a manner that is visible to the consumer upon installation or replacement of the battery. Even for products with non-replaceable batteries, Reese’s Law requires warning labels to be placed in a manner that is visible upon access to the battery compartment, where practicable. As summarized in Table 1b above, UL 4200A–2023 satisfies Reese’s Law’s requirements for warning labels on consumer products and consumer product packaging.

L. Whether the internationally recognized safety alert symbol, as shown in yellow color, indicating the presence of a button cell or coin battery, should be required on all consumer products containing such batteries.

Comment 18: A coalition of medical and consumer organizations, RILA, and Landsdowne Labs support on-products alert symbols as some consumers are not aware that the product uses a button cell or coin battery. JEITA and ITI propose products that do not have user accessible batteries be exempt from requiring an alert. Garmin does not support the use of a color for alert symbol on the product.

Response 18: Reese’s Law requires products containing button cell or coin batteries not intended for consumer replacement to have a warning label on the consumer product in a manner that is visible to the consumer upon access to the battery “as practicable.” 15 U.S.C. 2056e(a)(2)(C)(ii). If it is impracticable to label the product, this information must be placed on the packaging or instructions. *Id.* Section 7 of UL 4200A–2023 meets these requirements. The Commission’s NPR proposed an alternative to the on-product warning label to increase the visibility that a product contains a button cell or coin battery and likelihood for all products to feature an alert where it otherwise may not be practicable. However, based on the comments, the proposed yellow color may not be clear or appropriate in all cases. Section 7B of UL 4200A–2023 does not require use of the yellow color

unless the label already uses more than one color.

Comments in Response to Questions on Other Topics Posed in the NPR

M. Whether a later or an earlier effective date would be appropriate to comply with the proposed requirements and to provide specific information to support such a later or an earlier effective date.

Comment 19: Commenters differed in their recommendations for an effective date for a final rule of the Commission, from the proposed 180 days (consumer advocates) to up to 3 years (manufacturer associations). A few commenters provided detailed timelines of the necessary activities (product redesign, testing, certification sourcing, supply chain management, etc.) which ranged from 12 months to 36 months in total. A commenter also contended that additional time is required to accredit third party laboratories for a large variety of product types. Energizer and NEMA request that battery manufacturers be allowed to sell through their existing stocks of child-resistant packaging and labels that were purchased to comply with section 3 of Reese’s Law.

Response 19: Because the Commission determines that UL 4200A–2023, which is currently effective as a voluntary standard, meets the performance and labeling requirements in section 2(a) of Reese’s Law with regard to consumer products containing button cell and coin batteries, section 2(e) of Reese’s Law states that UL 4200A–2023 is treated as a consumer product safety rule as of the date of the Commission’s determination. 15 U.S.C. 2056e(d) and (e). However, because the Commission is codifying its incorporation of UL 4200A–2023 in the Code of Federal Regulations, the DFR provides a 30-day effective date for that new rule. As noted, moreover, the Commission is granting a 180-day transitional period of enforcement discretion.

N. In the initial regulatory flexibility analysis (IRFA), the number of small firms impacted and expected cost impact on small firms (as a percentage of annual revenue) of the proposed rule.

Comment 20: One firm commented that staff’s estimate of a testing cost of \$150 to \$350 is too low and that a quote received by the firm to perform similar tests exceeded staff’s estimate by more than \$1,650 per sample tested. The firm stated this would pose a substantial burden to the firm as they do not possess the necessary skill set or expertise to mitigate these costs by

developing a reasonable testing program in lieu of performing third party testing.

Response 20: The Commission's determination regarding UL 4200A–2023 is not required to be done through notice and comment rulemaking, and thus we have no requirement to provide a final regulatory flexibility analysis (FRFA) for this DFR. Nevertheless, staff collected an additional price quotation from an accredited test laboratory and revised the estimated testing cost from \$150 to \$350 per sample to \$150 to \$460 per sample, as presented in Tab F of Staff's Final Rule Briefing Package. Staff's revised estimate is lower than the estimate provided by the commenter, which we do not find credible as a representative cost.

Comment 21: One firm (Nite Ize) commented that CPSC failed to account for potential costs related to patent filing and enforcement. The firm expressed concern that current product patents for novel product lines would need new filings to provide robust intellectual property protection.

Response 21: CPSC has not been provided with sufficient information to assess whether current consumer product patents would lose any or all value due to the implementation of Reese's Law, or whether a new patent filing would be required to legally enforce intellectual property rights. We note, however, that a new patent filing could provide a longer period of protection, which could mitigate any loss in the value of prior patents.

Comment 22: Nite Ize and the Toy Association state that the IRFA's cost per product line estimates for research, development, and retooling are too low as CPSC failed to account for product lines that require unique solutions.

Response 22: While a FRFA is not required, commenters do not provide specific alternative cost estimates or justification of their view.

Comments Addressing Other Issues

O. International regulations.

Comment 23: Garmin and RILA support harmonization with Australia's regulations addressing performance and labeling requirements for products containing button cell or coin batteries.

Response 23: Reese's Law requires the Commission to promulgate a rule that contains a performance standard that will eliminate or adequately reduce the risk of injury from button cell or coin battery ingestion and warning labels. Reese's Law allows the Commission to rely on a voluntary standard if it determines that a voluntary standard would meet the performance and labeling requirements for a standard issued under section 2(a) of Reese's

Law. 15 U.S.C. 2056e(d)(1). The Australia regulation is not a voluntary standard. However, for the NPR, CPSC staff reviewed the voluntary standards referenced by the Australian regulation, and the Commission preliminarily determined that none of those standards met the requirements of Reese's Law. Tabs D and E of Staff's Final Rule Briefing Package, and section II of this preamble, contain updated assessments of the voluntary standards, including UL 4200A–2023, which is adequate to meet the performance and labeling requirements in section 2(a) of Reese's Law.

P. Silver-oxide battery chemistries.

Comment 24: CPHE, FH, AWA, and Renata SA state that silver-oxide button cell and coin batteries should be excluded from a Commission rule implementing Reese's Law because of a lack of fatal incident data with these batteries and children's inability to access these batteries in watches. Duracell states that silver-oxide batteries should contain different warnings than lithium batteries because they are lower voltage. Switzerland asks whether silver oxide batteries could be excluded from the rule.

Response 24: As reviewed in Tab C of Staff's Final Rule Briefing Package, Jatana *et. al.* (2017) found in testing using an animal model that silver-oxide button or coin cell batteries caused severe esophageal injuries. Based on the medical literature, staff does not recommend excepting silver-oxide batteries from the scope of the final rule, and UL 4200A–2023 does not contain such an exception.

Q. Firearm accessories and other household products containing button cell or coin batteries.

Comment 25: Bushnell states that firearm accessories appear to be subject to the proposed requirements, and that the firearm itself is intended to act as the battery door or cover for these products.

Response 25: Modular consumer products or component parts of consumer products containing button cell or coin batteries, like the firearm accessories described by the commenter, must meet the same requirements as other consumer products, independent of their intended use. Modular consumer products can be attached to or installed by a consumer on other products to change the host product's design or capabilities. A modular consumer product, however, could foreseeably remain unattached from the product(s) it is designed to complement. To eliminate or adequately reduce the risk of injury from battery ingestion, these products must independently

meet the performance requirements in the final rule, to prevent unintended access to button cell or coin batteries by children.

Comment 26: A consumer safety consultant (Mary Toro) and RILA state that some products containing button cell or coin batteries are made of fragile materials (such as glass or ceramic materials) that are likely to break during the proposed testing protocol. RILA states that the testing proposed in the NPR is not appropriate for these products, and that alternative test methods should be allowed for such products.

Response 26: The performance requirements in UL 4200A–2023 are likely to cause products made of materials like glass or ceramic to break. Because it is also reasonably foreseeable that a glass or ceramic product may break if knocked to the ground or dropped, which could make accessible to a child a button cell or coin battery contained inside, the button cell or coin battery could be further contained in a battery compartment that meets the requirements of the final rule. The manufacturer can test its product to ensure the product meets the requirements of the final rule, or use in its product a battery compartment that has already been tested or certified to the requirements, as allowed by 16 CFR part 1109.

R. "Try Me" buttons.

Comment 27: A consumer asks for clarification whether "Try Me" buttons containing button cell or coin batteries, that are used only in stores and not intended for sale, are within the scope of the final rule. UL Solutions states that products can incorporate "Try Me" buttons in retail displays or as part of product packaging, and their disposal should be addressed.

Response 27: "Try Me" buttons are within the scope of the final rule because they are consumer products that are used by consumers. Purchase of a product is unnecessary to be considered a "consumer product" under CPSC's jurisdiction. 15 U.S.C. 2052(a)(5) (stating, *inter alia*, that a consumer product is for "the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise."). Consumers, including children, are subject to hazards associated with "Try Me" buttons. "Try Me" buttons may experience drops, impacts, and other patterns of use and abuse similar to any other product within the scope of the final rule and are therefore subject to the rule. In fact, CPSC is aware of at least

one incident involving a coin battery from a “Try Me” button.¹²

S. Use of color in the requirements for marking and labeling.

Comment 28: Several commenters (JEITA, Duracell, Garmin, HCPA, and CTA) state that the use of color on packing, instructions, or manuals, and on some consumer products, would be challenging and add costs to the manufacturing and printing process, particularly for those materials that do not already incorporate color. Duracell and Technet also stress that various product safety standards (e.g., ASTM F963, ANSI C18.3, or ANSI Z535 series) do not mandate the use of colors and accept black and white printing or contrasting colors to the background. Commenters state, however, that if color is used for the signal panel, then colors should conform to ANSI Z535.1 safety colors that correspond to the safety message. The Toy Association and RILA state that the use of color may not be reasonable to print on certain product materials, for example, colored or textured plastics.

Response 28: Applying color to some materials (e.g., consumer product packaging, manuals, or other collateral material) that do not already contain color may present a burden to some manufacturers. UL 4200A–2023 requires the use of color when the subject materials already use printed color processing; otherwise, the use of black and white or contrasting colors is acceptable. The use of color is not specified in Reese’s Law; thus this variation from the NPR does not conflict with the statute and is safety neutral because the label or icon will visually align with other information on the display while ensuring that it is noticeable due to its contrast or color.

T. Text size, icons, and alternative symbols for marking and labeling.

Comment 29: Renata Batteries, ITI, The Toy Association, RILA, BAJ, and Duracell express cost concerns with increased packaging sizes required to accommodate larger warning labels and font sizes, especially for small products. Another commenter states that the minimum letter size requirements for packaging warnings may make other warnings on product packaging less prominent.

Response 29: The NPR proposed that font size requirements for both on-product and on-packaging warning labels be determined based on the size of the principal display panel (generally the front face) of the package or the product display panel (such as the

surface area on, near, or in the battery compartment). Reese’s Law requires that warning labels clearly identify the hazard of ingestion, and this requirement is met when warning labels are displayed prominently on the principal display panel. For very large products or packages with principal display panels exceeding 400 inch², the required letter size could be larger than standard font sizes usually referenced in other standards.

UL 4200A–2023 contains the same size requirements set forth in the NPR. The minimum letter size is comparable to font sizes in other standards, and therefore of similar prominence when displayed on the same panel. The largest packaging will have ample room for additional warnings that are of comparable size to the requirements in the NPR. This level of prominence is appropriate to inform consumers which products contain button cell or coin batteries and to adequately reduce the risk of injury from ingestion.

Comment 30: A consumer (Fo Xu) asks how to determine the size of the text for consumer products and its packaging and whether it is acceptable to use smaller size labels on the consumer products. Energizer requests clarification whether CPSC will identify the surface size for which the alternative on-product label can be used, or whether manufacturers can use reasonable judgement.

Response 30: The NPR proposed that consumer products be durably and indelibly marked with a warning label on the product display panel that alerts the consumer of the presence of a button cell or coin battery. “Product display panel” was defined in proposed § 1263.2(f). The NPR proposed that text size be determined based on table 1 in the regulation text, or if on a sticker label, using the minimum size requirements in § 1263.4(a)(7). UL 4200A–23 incorporates these requirements from the NPR. The minimum text size is dependent on the size of the principal display panel or the product display panel. Manufacturers can use alternative on-product labels in situations where the full label does not fit in the measured product display panel area, as described in UL 4200A–2023.

Comment 31: The Toy Association recommends that for consumer product packaging and instructions, the “Keep Out of Reach” icon be changed to the safety alert symbol for coin batteries because the intent of the icon is not to keep the consumer product away from children.

Response 31: We agree with the commenter. Some products that contain

button cell or coin batteries are intended for use by children, so using the “Keep Out of Reach” icon on those products may confuse consumers by appearing to instruct caregivers to keep the product, rather than the battery, away from children. To prevent consumer confusion, UL 4200A–2023 provides the option of replacing the “Keep Out of Reach” icon on consumer product packaging, as well as instructions, with the safety alert symbol to indicate “Warning: Contains Coin Battery.”

Accordingly, manufacturers will have a choice based on the product’s intended user. See Tab D of Staff’s Final Rule Briefing Package for a more detailed discussion of this issue.

Comment 32: CTA states that in the NPR the proposed symbol for “Warning: Contains Coin Battery” has a different aspect ratio and is rotated farther than the internationally accepted symbols for coin and button cell batteries and that the symbol should match internationally recognized symbols.

Response 32: While UL 4200A–2023 includes the icon from the NPR, the button cell or coin battery portion of the symbol can be replaced with other internationally recognized symbols in ISO 7000–W0001 and IEC 60417–6367, to have consistency.

U. Tolerances for values specified in the proposed rule.

Comment 33: ITI comments that the proposed rule did not include tolerances for its specified values and opines that the purpose of tolerances is to give reasonable allowances (e.g., manufacturability and testability) that will not have a significant impact on test results. The commenter contends that eliminating tolerances could force unnecessary retesting or could make it impractical to apply the test without custom test equipment. ITI recommends including tolerances in the rule that align with voluntary standards.

Response 33: Because the Commission is incorporating by reference UL 4200A–2023 as the mandatory standard, tolerances as stated in the UL standard are included in the final rule.

V. Warning label permanency.

Comment 34: RILA states that the permanency requirement for warning labels in the NPR is unclear. One commenter recommends on-product permanency be tested in accordance with the test requirements in UL 62368–1, section F.3.9.

Response 34: We agree with the commenter that on-product warning label permanence should comply with the test requirements in UL 62368–1: F.3.9. This test evaluates the legibility of printed or screened markings and

¹² See Footnote 6 in Tab A of the Staff’s Final Rule Briefing Package.

ensures adhesive labels cannot be easily removeable by hand. Section 7D of UL 4200A–2023 includes requirements for label permanence. All warning statements or icons shall be prominent, legible, easily discernable under normal lighting conditions, and permanently marked; and printed and screened markings are tested in accordance with the label permanence test method adapted from UL 62368–1, section F.3.10 (consistent with the requirements in UL 62368–1: F.3.9).

W. CPSC’s statutory authority.

Comment 35: The AWA filed a late comment stating that certain parts of the NPR’s proposed rule relating to securement of battery compartments constitute design or construction standards, which are not allowed by the CPSA or Reese’s Law.

Response 35: To meet the performance requirements in UL 4200A–2023 for securement of battery compartments, manufacturers may choose to use either any type of fastener that requires a tool of the manufacturers’ choice, or a multi-action locking mechanism. The market already employs many different battery compartment enclosure designs that depend on the size, shape, and materials of the consumer product. For example, remote controls include battery compartments that are either secured with screws or that slide out of the base (and typically require two independent and simultaneous actions to do so); many garage door openers require a tool to open but do not use screws or twist-on access covers; and battery compartments in light-up clothing are frequently stitched into the clothing.

Additionally, the UL 4200A–2023 performance requirements specify that battery compartments for replaceable batteries using screws or fasteners are to remain captive to the battery compartment door, cover, or closure when loosened. These performance requirements do not specify how the manufacturer must design the battery compartment to ensure the screw or fastener remains captive. Many possible solutions exist, including a retaining washer, a press fit cap, a tether, or other means.

X. Product categories.

Comment 36: In response to the April 11, 2023 **Federal Register** notice requesting comment on the Paperwork Reduction Act (PRA) burden associated with non-children’s products subject to the proposed rule (88 FR 21652), the China National Center of Standards Evaluation and P.R. China suggest that products be categorized by risk level depending on how frequently a child comes into contact with the products,

and that CPSC should develop a list of products to which the regulation applies.

Response 36: Although this comment was filed in response to the PRA notice, the comment is about the substance of the rule. The commenters’ suggestion to broadly qualify implementation of Reese’s Law is contrary to the requirements of the statute, which requires CPSC to promulgate a rule or identify a voluntary standard, with performance and labeling requirements, for all consumer products that contain or are designed to use button cell or coin batteries. The rule or voluntary standard must eliminate or adequately reduce the risk of ingestion to children six years old or younger during foreseeable use and misuse conditions. Accordingly, the Commission will not adopt the commenters’ suggestion to exclude from the Commission’s implementation of Reese’s Law a potentially large number of consumer products that are covered by the law and present at least some degree of ingestion hazard.

Y. Toy products.

Comment 37: In response to the April 11, 2023, **Federal Register** notice requesting comment on the PRA burden associated with non-children’s products subject to the proposed rule (88 FR 21652), Switzerland asks why products containing button cell or coin batteries that are subject to Reese’s Law must fulfill more stringent requirements than those imposed for toys that are compliant with the toy standard of ASTM F963, as incorporated by reference in 16 CFR part 1250.

Response 37: Although this comment was filed in response to the PRA notice, the comment is about the substance of the rule and not about the paperwork burden. Section 4 of Reese’s Law, Notes to 15 U.S.C. 2056e, specifically exempts “any toy product that is in compliance with the battery accessibility and labeling requirements” of 16 CFR part 1250. Accordingly, toy products are not within the scope of the rule and are already covered by the existing toy standard. However, we agree with the commenter that the requirements for children’s and non-children’s products that contain button cell or coin batteries that are subject to this final rule are more stringent than those imposed for toys. On March 20, 2023, CPSC staff sent a letter to the ASTM F15.22 toy subcommittee requesting that the subcommittee consider changes to ASTM F963 which would adequately

address incidents and hazards involving toys.¹³

Comments Addressing the PRA

Z. The accuracy of CPSC’s estimate of the burden of the proposed collection of information.

Comment 38: ITI, CTA, JEITA, AWA, and RILA believe that the CPSC underestimated the burden of the collection of information proposed in the NPR. ITI believes that the labor rates used may under-represent the burden cost. ITI and RILA request that CPSC provide additional detail on how the PRA burden estimates were derived. While CTA indicates that it is standard practice within the technology sector to include warnings on product labels, the labeling is different enough to warrant additional hourly PRA burden associated with labeling. Relatedly, ITI suggests that product labeling should not be considered “usual and customary” and is within the definition of “PRA burden.”

ITI indicates that manufacturers may have more than two product families and therefore the estimate of 15,363 firms with 2 products each understates the number of unique non-children’s products containing coin/button cells on the U.S. market.

Response 38: Based upon the comments received, CPSC is adjusting its burden estimates upward, as shown in Table 6 in this preamble. Additionally, CPSC adopts a higher wage rate to represent total compensation costs for private industry workers in goods producing industries. We provide the substance of this revised PRA burden estimate in section X of this preamble.

AA. 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.

Comment 39: JEITA notes that the final rule would impose requirements different from those of international standards, and that this will burden manufacturers as labeling and testing for products intended for use in the United States would need to be completed separately from labeling and testing for other markets.

Response 39: Burdens and potential efficiencies associated with testing to international standards, in addition to CPSC standards, are outside the scope of

¹³ Staff’s letter to the ASTM F15.22 subcommittee can be found here: <https://www.cpsc.gov/s3fs-public/Letter-to-ASTM-F15-22-Reese-Law-NPR-230320.pdf?VersionId=6ZGPs5nSLhBGIFd0z1WHF1wo.oOgarH>.

PRA burden estimates for the proposed rule.

BB. The estimated burden hours associated with labels and hang tags, including any alternative estimates.

Comment 40: ITI, CTA, JEITA, and AWA provide estimates of hourly burden for various industry sectors. See Tab A, Issue 36, in Staff’s Final Rule Briefing Package. CPSC did not receive any detailed estimates on the total number of respondents to which this collection would apply, but data provided by various commenters on the number of firms to which the collection would apply imply that CPSC has likely overestimated the number of respondents. Commenters provided alternative estimates for the frequency of response based upon the number of product families to which the rule might apply. However, these estimates were not provided at the establishment level and are therefore difficult to compare to CPSC estimates, which are based on U.S. Census Bureau establishment data.

Response 40: Although burdens will vary for different industry sectors and by product as pointed out by commenters, the estimates provided by commenters generally support the Commission’s average burden calculations. CPSC assumes, moreover, that industry sectors responding to the public notice likely will experience

comparatively large impacts from implementation of Reese’s Law.

CC. The estimated respondent cost other than burden hour cost.

Comment 41: JEITA believe that the cost of test samples should be included in the estimated respondent cost.

Response 41: According to guidance provided by the Office of Management and Budget (OMB) and General Services Administration (GSA), the burdens calculated under the PRA typically do not include estimating the cost of test samples. See <https://pra.digital.gov/about/>.

Comments Addressing Out-of-Scope Issues

Tab A of Staff’s Final Rule Briefing Package discusses comments received on topics that are out of scope for this rulemaking.

IV. Commission Determination Regarding UL4200A–2023 and Description of the Final Rule’s Requirements

After consideration of the public comments summarized in section III of this preamble and Staff’s Final Rule Briefing Package, and for the reasons given in this **Federal Register** notice, the Commission determines that UL 4200A–2023 meets the performance and labeling requirements in section 2(a) of

Reese’s Law for consumer products that contain button cell or coin batteries. 15 U.S.C. 2056e(d)(1). The Commission does not make this determination with respect to the labeling of battery packaging, because UL 4200A–2023 does not address the labeling of battery packaging. Pursuant to section 2(e) of Reese’s Law, UL 4200A–2023 is a consumer product safety rule on the date the Commission makes this determination, September 8, 2023. However, because the Commission is codifying the requirements in the Code of Federal Regulations, for purposes of the direct final rule, the rule is effective 30 days after publication in the **Federal Register**. Furthermore, in recognition of the potential hardship resulting from immediate effectiveness of UL 4200A–23 as a mandatory standard in accordance with Reese’s Law, the Commission is granting a 180-day transitional period of enforcement discretion.

Table 3 summarizes the performance requirements in UL 4200A–2023 applicable to consumer products with battery compartments for replaceable button cell or coin batteries, and Table 4 summarizes the standard’s performance requirements applicable to consumer products with battery compartments for non-replaceable button cell or coin batteries.

TABLE 3—SUMMARY OF PERFORMANCE REQUIREMENTS IN UL 4200A–2023 FOR CONSUMER PRODUCTS WITH BATTERY COMPARTMENTS FOR REPLACEABLE BUTTON CELL OR COIN BATTERIES

Button cell or coin batteries must not become accessible or liberated when tested to these requirements:

Performance Requirements for Battery Compartment Securement (UL Section 5.2–5.6)

Battery Compartment Securement Options (UL Section 5.5–5.6).	<p><i>Option 1:</i> Coin, screwdriver, or other tool.</p> <ul style="list-style-type: none"> • Captive screws. <ul style="list-style-type: none"> ○ Exceptions for products containing batteries not intended to be replaced by the consumer. Such products shall have instructions and warnings that clearly state the battery is not to be replaced by the consumer. ○ <i>Exception 1:</i> Products that can only be accessed through the removal of multiple enclosures or panels using a tool. ○ <i>Exception 2:</i> Products that are only to be opened by a professional service center (where children are not present). • Two threads engaged or minimum torque + spin angle. <p><i>Option 2:</i> At least two independent & simultaneous hand movements.</p> <ul style="list-style-type: none"> • Shall not be combinable to a single movement with a finger or digit. <p>Open or remove any part of the compartment not meeting <i>Option 1</i> or <i>Option 2</i>. Apply Tension Test for Seams from ASTM F963 on pliable materials, using a force of 70.0 N (15.7 lbf). Determine whether Test Probe 11 from IEC 61032 can touch the battery.</p>
Accessibility Test (UL Section 5.3–5.4).	

Preconditioning Requirements (UL Section 6.2)

Preconditioning in Oven (UL Section 6.2.1).	Thermoplastics—7 hours at 158 °F or greater, based on operational temperature.
Simulated Battery Replacement (UL Section 6.2.2).	Open/Close and remove/install battery 10 times.

Use and Abuse Tests (UL Section 6.3)

Drop Test (UL Section 6.3.2)	Handheld products are 10 drops while portable products are 3 drops. Each drop is from 1 m (39.4 in) on hardwood, in positions likely to produce maximum force.
Impact Test (UL Section 6.3.3)	3 impacts on battery compartment with steel sphere, 2 J (1.5 ft-lbf) of energy.
Crush Test (UL Section 6.3.4)	330 N ± 5 N (74.2 lbf ± 1.1 lbf) for 10 s, using 100 by 250 mm (3.9 by 9.8 in) flat surface.

TABLE 3—SUMMARY OF PERFORMANCE REQUIREMENTS IN UL 4200A–2023 FOR CONSUMER PRODUCTS WITH BATTERY COMPARTMENTS FOR REPLACEABLE BUTTON CELL OR COIN BATTERIES—Continued

Compression Test (UL Section 6.3.4A).	Test from 16 CFR Part 1250, using a force of at least 136 N (30.6 lbf).
Torque Test (UL Section 6.3.4B)	Test from 16 CFR part 1250, using a torque of at least 0.50 Nm (4.4 in.-lbf).
Tension Test (UL Section 6.3.4C) ..	Test from 16 CFR part 1250, using a force of at least 72.0 N (16.2 lbf).
Probe for Accessibility (UL Section 6.3.5).	Apply 50 N to 60 N (11.2 lbf to 13.4 lbf) with Test Probe 11 from IEC 61032 to confirm compliance.

TABLE 4—SUMMARY OF PERFORMANCE REQUIREMENTS IN UL 4200A–2023 FOR CONSUMER PRODUCTS WITH BATTERY COMPARTMENTS FOR NON-REPLACEABLE BUTTON CELL OR COIN BATTERIES

Products that incorporate button cell or coin batteries that are not intended for user removal or replacement shall effectively prevent removal of the battery by the user or children.

Option 1—Not Accessible (UL Section 5.7(a)).	<ul style="list-style-type: none"> Made inaccessible by an enclosure that meets the same applicable preconditioning and use and abuse test requirements as battery compartments for replaceable batteries. Secured with soldering, fasteners such as rivets, or equivalent means. Confirmed with secureness test: test hook applies a force of 20 N ± 2 N (4.5 lbf ± 0.4 lbf) directed outwards for 10 s, at all possible points. Battery cannot liberate from the product.
Option 2—May be Accessible (UL Section 5.7(b)).	

The warning label requirements for consumer products and consumer product packaging in UL 4200A–2023 are substantively similar to the warning label requirements in the NPR (88 FR 8706–09), with the following differences:

- Colored markings must comply with the ISO 3864 series of standards;
 - Color is required only when the markings are printed on a label using more than one color;
 - Manufacturers may choose to use either the “Keep Out of Reach of Children” icon or the “Warning: Contains Coin Battery” icon on the consumer product packaging label;
 - Permanence of markings is tested consistent with the requirements in UL 62368–1, section F.3.9;
 - Inclusion of an additional warning statement in instructions and manuals to “Always completely secure the battery compartment. If the battery compartment does not close securely, stop using the product, remove the batteries, and keep it away from children.”
 - Removal of requirements for battery package warnings because they are being finalized in a separate final rule, and removal of certain performance and technical data requirements proposed under section 27(e) of the CPSA, which are not being finalized at this time.

In the following discussion, we provide a section-by-section summary of the final rule.

A. Section 1263.1 Scope, Purpose, Effective Date, and Exemption

Final rule § 1263.1(a) explains the scope and purpose of the safety standard required by Reese’s Law, as proposed in the NPR, with two modifications: the removal of the

provision for units, which is addressed instead in UL 4200A–2023, and removal of the provision for battery package labeling, which is addressed in a separate final rule. 15 U.S.C 2056e, Public Law 117–171. Based on section 2 of Reese’s Law, the scope of the final rule includes consumer products containing button cell or coin batteries, including the packaging of such consumer products and accompanying literature.

Section 1.3 of UL 4200A–2023 provides the scope of the voluntary standard, stating that the requirements apply to consumer products containing button batteries or coin cell batteries.¹⁴ This scope is consistent with Reese’s Law, which defines a “consumer product containing button cell or coin batteries” as “a consumer product containing or designed to use one or more button cell or coin batteries, regardless of whether such batteries are intended to be replaced by the consumer or are included with the product or sold separately.”¹⁵ This definition includes products that are not

¹⁴ Section 1.3 of UL 4200A–2023 also states that the standard does not include “products that by virtue of their dedicated purpose and instructions are not intended to be used in locations where they may be accessed by children, such as products for dedicated professional use or commercial use in locations where children are not normally or typically present.” The Commission interprets this exclusion from the scope of the standard consistent with the Commission’s jurisdictional authority in section 3 of the CPSA. For example, products used solely in professional settings are within the jurisdiction of the Occupational Safety and Health Administration. However, consumer products generally available for use or purchase by consumers are within the Commission’s jurisdiction. 15 U.S.C. 2052(a)(5).

¹⁵ Notes to 15 U.S.C. 2056e. The term “consumer product” has the same meaning as that in section 3(a) of the Consumer Product Safety Act (CPSA). 15 U.S.C. 2052(a).

sold with a battery but are designed to use a button cell or coin battery.

Section 1263.1(b) of the final rule establishes the effective date of the direct final rule. Because the Commission determines that UL 4200A–2023 meets the requirements in section 2(a) of Reese’s Law, section 2(e) of Reese’s Law provides that the voluntary standard is treated as a consumer product safety rule as of the date of the Commission’s determination. However, for the direct final rule, the effective date is 30 days after publication, as explained in section VII of this preamble. Consistent with section 6 of Reese’s Law (Notes to 15 U.S.C. 2056e), the rule requires that all consumer products and packaging containing button cell or coin batteries that are subject to the final rule, and that are manufactured or imported 30 days after publication of the final rule in the **Federal Register**, must comply with the requirements of this part. The Commission is granting a 180-day transitional period of enforcement discretion, to begin September 21, 2023.

Final rule § 1263.1(c) describes the exemption in Reese’s Law for toy products that meet ASTM F963, as incorporated into 16 CFR part 1250. UL 4200A–2023 excludes the same products from its scope.

Final rule § 1263.1(d) retains the exception for button cell and coin batteries that do not pose an ingestion hazard as proposed, meaning zinc-air batteries. This exception is also stated in UL 4200A–2023.

B. Section 1263.2 Definitions

Final rule § 1263.2 provides applicable definitions as proposed in the NPR, explaining that the definitions in section 3 of the CPSA and section 5

of Reese’s Law also apply to this rule. The final rule codifies several definitions from Reese’s Law relevant to requirements for consumer products containing button cell or coin batteries, such as “button cell or coin battery” and “consumer product containing button cell or coin battery.” Definitions related to battery package labeling are being finalized in a separate final rule.

C. Section 1263.3 Requirements for Consumer Products Containing Button Cell or Coin Batteries

Final rule § 1263.3 incorporates by reference the requirements in UL 4200A–2023, approved on August 30, 2023, as the mandatory standard for performance and labeling of consumer products containing button cell or coin batteries. Sections 5 and 6 of UL 4200A–2023 contain performance requirements, and labeling requirements are in sections 7 and 8 of UL 4200A–2023. Tabs D and E of Staff’s Final Rule Briefing Package, and Tables 3 and 4 in this preamble, describe the performance and labeling requirements in UL 4200A–2023 that are incorporated by reference.

V. Testing, Certification, and Notice of Requirements

Section 14(a) of the CPSA includes requirements for certifying that consumer products comply with applicable mandatory standards. 15 U.S.C. 2063(a). Section 14(a)(1) addresses required certifications for non-children’s products, and sections 14(a)(2) and (a)(3) address certification requirements specific to children’s products.

Non-Children’s Products. Section 14(a)(1) of the CPSA requires every manufacturer (which includes importers per 15 U.S.C. 2052(a)(11)) of a non-children’s product that is subject to a consumer product safety rule under the CPSA or a similar rule, ban, standard, or regulation under any other law enforced by the Commission to certify that the product complies with all applicable CSPSC-enforced requirements. 15 U.S.C. 2063(a)(1). Section 14(g) of the CPSA contains content and availability requirements for certificates. 15 U.S.C. 2063(g).

Children’s Products. A “children’s product” is a consumer product that is “designed or intended primarily for children 12 years of age or younger.” 15 U.S.C. 2052(a)(2). Section 4 of Reese’s Law specifically exempts from the performance and labeling requirements in section 2 of the law, any toy product that is in compliance with the battery accessibility and labeling requirements in 16 CFR part 1250, the mandatory toy

standard. However, all non-toy children’s products that contain button cell or coin batteries are subject to the final rule and must be tested by a CPSC-accepted third party laboratory and certified as compliant.

The following factors are relevant when determining whether a product is a children’s product:

- manufacturer statements about the intended use of the product, including a label on the product if such statement is reasonable;
- whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger;
- whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger; and
- the Age Determination Guidelines issued by CPSC staff in January 2020, and any successor to such guidelines.

Id. “For use” by children 12 years and younger generally means that children will interact physically with the product based on reasonably foreseeable use. 16 CFR 1200.2(a)(2). Children’s products, for example, may be decorated or embellished with a childish theme, be sized for children, or be marketed to appeal primarily to children. *Id.* § 1200.2(d)(1).

Section 14(a)(2) of the CPSA requires the manufacturer or private labeler of a children’s product that is subject to a children’s product safety rule to certify, based on a third party conformity assessment body’s testing, that the product complies with the applicable children’s product safety rule. 15 U.S.C. 2063(a)(2). The Commission’s requirements for children’s product testing and certification are codified in 16 CFR part 1107. Section 14(a) of the CPSA also requires the Commission to publish a notice of requirements (NOR) for a third party conformity assessment body (*i.e.*, testing laboratory) to obtain accreditation to assess conformity with a children’s product safety rule. 15 U.S.C. 2063(a)(3)(A). Because some consumer products that contain button cell or coin batteries are children’s products, the direct final rule incorporating by reference UL 4200A–2023 is a children’s product safety rule, as applied to those products.

The Commission published a final rule, codified at 16 CFR part 1112, entitled *Requirements Pertaining to Third Party Conformity Assessment Bodies*, that established requirements and criteria concerning testing laboratories. 78 FR 15836 (Mar. 12, 2013). Part 1112 includes procedures for CPSC to accept a testing laboratory’s accreditation and lists the children’s

product safety rules for which CPSC has published NORs. When CPSC issues a new NOR, it must amend part 1112 to include that NOR. CPSC did not receive any comments regarding the proposed NOR. Accordingly, this DFR amends part 1112, as proposed, to add the “Safety Standard for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries” to the list of children’s product safety rules for which CPSC has issued an NOR.

Testing laboratories that apply for CPSC acceptance to test whether children’s products containing button cell or coin batteries comply with the new rule will have to meet the requirements in part 1112. When a laboratory meets the requirements of a CPSC-accepted third party conformity assessment body, the laboratory can apply to CPSC to include 16 CFR part 1263, *Safety Standard for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries*, in the laboratory’s scope of accreditation of CPSC safety rules listed on the CPSC website at: www.cpsc.gov/labsearch.

VI. Incorporation by Reference

Section 1263.3 of the direct final rule incorporates by reference UL 4200A–2023. In accordance with regulations of the Office of the Federal Register (OFR), 1 CFR 51.5(b), section IV of this preamble, Commission Determination Regarding UL4200A–2023 and Description of the Final Rule’s Requirements, summarizes the provisions of UL 4200A–2023 that the Commission incorporates by reference into 16 CFR part 1263. The standard is reasonably available to interested parties in several ways. You may purchase a copy from Underwriters Laboratories, Inc (UL), 333 Pfingsten Road, Northbrook, IL 60062, or through UL’s website: www.UL.com. Before incorporation by reference, a read-only copy of UL 4200A–2023 is available for viewing on UL’s website at: <https://www.shopulstandards.com/>. After CPSC incorporates the UL standard, a free, read-only copy is also available at: <https://www.ulstandards.com/IBR/logon.aspx>. Finally, interested parties can schedule an appointment to inspect a copy of the standard at CPSC’s Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone: 301–504–7479; email: cpsc-os@cpsc.gov.

VII. Direct Final Rule Process and Effective Dates

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA; 5

U.S.C. 551–559) generally requires agencies to provide notice of a rule and an opportunity for interested parties to comment on it, section 553 of the APA provides an exception when the agency “for good cause finds” that notice and comment are “impracticable, unnecessary, or contrary to the public interest.” *Id.* 553(b)(B).

Reese’s Law states that if the Commission determines that an already-effective voluntary standard meets the requirements in section 2(a) of Reese’s Law before promulgating a final rule implementing those same requirements, then the voluntary standard shall be treated as a consumer product safety rule promulgated under section 9 of the CPSA (15 U.S.C. 2058) effective on the date of the Commission’s determination, which must be published in the **Federal Register**. 15 U.S.C. 2056e(d)–(e).

The purpose of this direct final rule is to codify in the Code of Federal Regulations the requirements in UL 4200A–2023 as the mandatory standard as for consumer products containing button cell or coin batteries, by incorporating by reference UL 4200A–2023. Although the Commission provided notice and collected comment on similar requirements in the NPR, Reese’s Law does not require a rulemaking if the Commission makes a favorable determination on a voluntary standard; therefore, once the Commission makes the determination under section 2(d) with regard to UL 4200A–2023, the voluntary standard is treated as a consumer product safety rule. Accordingly, additional public comments would not lead to substantive changes to the direct final rule. Under these circumstances, notice and comment are unnecessary.

In Recommendation 95–4, the Administrative Conference of the United States (ACUS) endorses direct final rulemaking as an appropriate procedure to expedite rules that are noncontroversial and that are not expected to generate significant adverse comments. *See* 60 FR 43108 (Aug. 18, 1995). ACUS recommends that agencies use the direct final rule process when they act under the “unnecessary” prong of the good cause exemption in 5 U.S.C. 553(b)(B). Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule, because CPSC does not expect any significant adverse comments.

Unless CPSC receives a significant adverse comment within 14 days of this notification, the direct final rule will become effective 30 days after publication, on October 23, 2023 (subject to a 180-day transitional period of enforcement discretion). In

accordance with ACUS’s recommendation, the Commission considers a significant adverse comment to be “one where the commenter explains why the rule would be inappropriate,” including an assertion that undermines “the rule’s underlying premise or approach” or a showing that the rule “would be ineffective or unacceptable without change.” 60 FR 43108, 43111. As noted, this rule codifies in the CFR a consumer product safety rule created by statute now that the Commission has made a determination under section 2(d) of Reese’s Law. 15 U.S.C. 2056e(d).

If the Commission receives a significant adverse comment, the Commission will withdraw this direct final rule. Depending on the comment and other circumstances, the Commission may then incorporate the adverse comment into a subsequent direct final rule.

Section 14(a)(3)(A) of the CPSA, however, requires that certification to an NOR is not effective until 90 days after publication of an NOR. 15 U.S.C. 2063(a)(3)(A). Accordingly, to provide the mandatory period for third party laboratories to become ISO accredited and CPSC-accepted to perform testing to part 1263, third party testing and certification of children’s products subject to this rule is not required until on or after December 20, 2023.

VIII. Environmental Considerations

The Commission’s regulations address whether the agency is required to prepare an environmental assessment or an environmental impact statement. Under these regulations, certain categories of CPSC actions normally have “little or no potential for affecting the human environment” and therefore do not require an environmental assessment or an environmental impact statement. 16 CFR 1021.5(c)(1). Safety standards providing performance and labeling requirements for consumer products containing button cell or coin batteries fall within this categorical exclusion.

IX. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612) generally requires agencies to review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603, 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* Although the Commission prepared an Initial Regulatory Flexibility Act analysis for the NPR to

implement Reese’s Law and a Final Regulatory Flexibility Act analysis (*see* Tab F of Staff’s Final Rule Briefing Package) that provides information for the public, the Commission’s determination under section 2(d) of Reese’s Law, 15 U.S.C. 2056e(d), that UL 4200A–2023 meets the performance and labeling requirements of section 2(a) of Reese’s Law, 15 U.S.C. 2056e(a), does not require notice and comment rulemaking. Because the Commission has determined that notice and the opportunity to comment are unnecessary for this DFR to codify UL 4200A–2023 as the mandatory standard for consumer products containing button cell or coin batteries, the RFA does not apply with respect to the subject matter of this rule.

X. Paperwork Reduction Act

This DFR contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501–3521). 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 this DFR, the Commission is amending the collection of information for children’s products to add the burden associated with performance and labeling requirements of the final rule, and is establishing an OMB control number for testing, certification, and paperwork retention requirements for general use, non-children’s products subject to this final rule. The Commission proposed to amend the children’s product collection in the NPR (88 FR 8717), and issued a separate **Federal Register** notice to collect comment on the estimated burden for testing and certification of non-children’s products. 88 FR 21652 (April 11, 2023). In accordance with the PRA’s requirements, the Commission provides the following information:

Title: (1) Amendment to Third Party Testing of Children’s Products, approved previously under OMB

Control No. 3041–0159 and (2) creation of new collection 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.¹⁶

Type of Review: Amendment of existing collection for Third Party Testing of Children’s Products, and creation of a 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. Both children’s and non-children’s products subject to this rule require: (1) testing of products containing or designed to use button cell or coin batteries, including creating a certificate of conformity; however, unlike non-children’s products, children’s products require third party testing by a laboratory whose accreditation has been accepted by CPSC to conduct such testing; (2) labeling requirements for 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 (3) recordkeeping requirements.

Summary, Need, and Use of Information: Based on the requirements in Reese’s Law, 15 U.S.C. 2056e(a) and (b), the proposed consumer product safety standard prescribes performance requirements for child-resistant battery compartments on consumer products, including children’s and non-children’s products, that contain button cell or coin batteries, and warning requirements for button cell and coin-battery packaging, consumer product packaging, consumer products, and instructions and manuals. These performance and labeling requirements are intended to reduce or eliminate injuries and deaths associated with children six years old and younger ingesting button cell or coin batteries.

Children’s Products: Section 4 of Reese’s Law specifically exempts from the performance and labeling requirements in section 2 of the law, any toy product¹⁷ that is in compliance

with the battery accessibility and labeling requirements in 16 CFR part 1250, Safety Standard Mandating ASTM F963 for Toys. However, some consumer products that are not toys subject to the toy standard are considered children’s products. A “children’s product” is a consumer product that is “designed or intended primarily for children 12 years of age or younger.” 15 U.S.C. 2052(a)(2). The Commission’s regulation at 16 CFR part 1200 further interprets the term. Section 14 of the CPSA requires that children’s products be tested by a third party conformity assessment body, and that the manufacturer of the product, including an importer, must issue a children’s product certificate (CPC). Based on such third party testing, a manufacturer or importer must attest to compliance with the applicable consumer product safety rule by issuing the CPC. The requirement to test and certify children’s products falls within the definition of “collection of information,” as defined in 44 U.S.C. 3502(3).

The requirements for the CPCs are stated in section 14 of the CPSA, and in the Commission’s regulation at 16 CFR parts 1107 and 1110. Among other requirements, each certificate must identify: the manufacturer or private labeler issuing the certificate; any third party conformity assessment body on whose testing 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.

The Commission has an OMB control number, 3041–0159, for children’s product testing and certification. This final rule would amend this collection of information to add testing and certification to the performance requirements for child-resistant battery compartments on children’s products (that are not toys) that contain button cell or coin batteries, as well as warnings on the packaging of these children’s products, the battery compartment of these children’s products, and any accompanying instructions and manuals, as set forth in the rule. The Commission did not receive any comment on the NPR’s estimated PRA burden for children’s products subject to this rule. The requirements in UL 4200A–2023 are materially similar to the NPR

requirements and do not change the Commission’s PRA burden analysis. Accordingly, CPSC has submitted the information collection requirements of this final rule for children’s products containing button cell or coin batteries to OMB for review in accordance with PRA requirements. 44 U.S.C. 3507(d).

Non-Children’s Products: This collection of information is solely for non-children’s consumer products, meaning (1) performance and labeling requirements for 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 containing button cell or coin batteries. 15 U.S.C. 2052(a)(2); 16 CFR part 1200. 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 (GCC).

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.

CPSC received nine comments in response to the estimated PRA burden for non-children’s products. Based on the comments, CPSC is increasing the estimated PRA burden as described in this section of the preamble, and will submit these revised estimates to OMB for review.

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

¹⁶ The Commission is finalizing requirements for the labeling of button cell or coin battery packaging in a separate final rule published elsewhere in this issue of the *Federal Register*, but for convenience, consistency with the IRFA, and clarity to stakeholders, we include the PRA requirements for all non-children’s products subject to performance or labeling requirements for button cell or coin batteries in this single PRA analysis.

¹⁷ For purposes of Reese’s Law, a “toy product” is “any object designed, manufactured, or marketed as a plaything for children under 14 years of age.” Notes to 15 U.S.C. 2056e.

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

Estimate of Respondent Burden for Non-Toy Children’s Products: The

hourly reporting burden imposed on firms that manufacture or import non-toy children’s products that contain button cell or coin batteries include the time and cost to maintain records related to third party testing, the time to

issue a CPC, and the time to include required warning labels on children’s product battery compartments, children’s product packaging, and to update instructions or manuals with required warnings.

TABLE 5—CHILDREN’S PRODUCTS ESTIMATED ANNUAL REPORTING BURDEN

Burden type	Total annual responses	Length of response	Annual burden (hours)
Third-party testing, recordkeeping and record maintenance	6,046	5.0 hours	30,230
Certification and labeling	1,209	1.0 hours	1,209
Total Burden .....	.....	.....	31,439

Three types of third party testing of children’s products are required: certification testing, material change testing, and periodic testing. Manufacturers must conduct sufficient testing to ensure that they have a high degree of assurance that their children’s products comply with all applicable children’s product safety rules before such products are introduced into commerce. 16 CFR 1107.20(a). If a manufacturer conducts periodic testing, they are required to keep records that describe how the samples of periodic testing are selected. 16 CFR 1107.21 and 1107.26.

CPSC estimates that 0.4 percent of all children’s products sold annually, or 6,046 children’s products, are children’s products that contain button cell or coin batteries and would be subject to third-party testing under this rule; for each of which 5.0 hours of recordkeeping and record maintenance will be required. Thus, the total hourly burden of the recordkeeping associated with certification is 30,230 hours (5.0 × 6,046). Additionally, battery compartments, product packaging, and instructions and manuals must be updated to include the required warnings statements. We estimate that the time required to make these modifications is about 1 hour per product. Based on an evaluation of a sample of supplier product lines, there are a total of 1,209 affected products; therefore, the estimated burden associated with warnings and labeling is 1,209 hours.

We estimate the hourly compensation of workers in industries that will have PRA-relevant burden imposed by this collection is \$36.80 (U.S. Bureau of Labor Statistics, “Employer Costs for Employee Compensation,” Sept. 2022, total compensation for all sales and office workers in goods-producing private industries: https://www.bls.gov/news.release/archives/ecec_

12152022.pdf). Therefore, the estimated annual cost to industry associated with the collection burden for non-toy children’s products is \$1,156,955 (\$36.80 per hour × 31,439 hours = \$1,156,955.2). No operating, maintenance, or capital costs are associated with the collection.

This estimate is the largest burden reasonably possible, assuming that every manufacturer had to modify three product labels (battery compartment, packaging, and instructions/manual). However, many non-toy children’s products that contain button cell or coin batteries already contain some type of warning on the product or product packaging. Accordingly, product modification for warnings and any associated burden could be much lower than the estimate.

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 a burden estimate, where an agency demonstrates that the disclosure activities required to comply are “usual and customary.” To the extent that warning statements on one or more battery compartments, product packaging, and instructions/manuals are usual and customary for non-toy children’s products that contain button cell or coin batteries, CPSC can estimate that no burden hours are associated with the labeling requirements in the proposed rule. We requested comment on this potential estimate of no burden for warning labels and received no comment with regard to children’s products. The largest possible burden estimate for warning labels for children’s products stated in the NPR was 1,209 hours at a cost of \$44,491 annually. However, because we received no contrary comment on the estimate of no burden for children’s products, CPSC

relies on the “usual and customary” exception and finalizes an estimate of no burden.

Estimate of Respondent Burden for Non-Children’s Products: The PRA **Federal Register** notice (88 FR 21652) estimating 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, included the time and cost to create and maintain records related to testing of consumer products (including issuing a GCC), as well as product labeling, including required warning labels on, as applicable, consumer product battery compartments, product packaging, and accompanying written materials (*i.e.*, instructions, manuals, inserts, or hangtags).

Though data provided by commenters are helpful, commenters have compared one-time burden estimates to annual respondent burden calculated by CPSC. CPSC assumes suppliers will continue to introduce products on a rolling basis, and that up-front costs will diminish over time.

Based on the comments, however, the Commission has revised the estimated burden. We have removed estimates for point-of-sale notices, including for websites offering the sale of button cell or coin batteries, because this requirement is not being adopted at this time. However, based upon the comments received (Comment 38 in section III of this preamble), CPSC is adjusting the burden estimates upward, as shown in Table 6. Additionally, CPSC adopts a higher wage rate to represent total compensation costs for private industry workers in goods producing industries.¹⁸

¹⁸ The March 2023 hourly total compensation costs for private industry workers in goods producing industries is \$43.62, according to the

TABLE 6—ESTIMATED ANNUAL RESPONDENT BURDEN
 [Revisions in **bold, italics**]

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
		3	1.25	57,611.25	2,513,002.72
Testing	15,363	2	3	92,178	3,997,759.86
		3	3.5	161,311.5	7,036,407.63
Recordkeeping	15,363	2	1	30,726	1,332,586.62
		3	1.25	57,611.25	2,513,002.72
Total Burden				153,630	6,662,933.10
				276,534	12,062,413.10

CPSC staff used establishment data from the U.S. Census Bureau by North American Industry Classification System (NAICS) code to estimate the number of entities with at least one product subject to the rule. Then, weights were assigned to each NAICS sector to estimate both the duration of the required response as well as the

estimated average number of responses. See Table 7. Additionally, CPSC staff obtained estimates from testing laboratories on the costs of certification testing. For non-children’s products, CPSC assumes that firms will test in-house or send the product to a lab for testing, but not both. Children’s products (that are not toys) subject to

the rule must be third party tested by a CPSC-accepted laboratory. According to information collected, the cost of third-party testing varies but is consistent with an estimate of \$261.72 per response (\$12,62,413.10 ÷ 3 responses ÷ 15,363 respondents = \$261.72).

TABLE 7—ESTIMATES BY NAICS SECTOR

NAICS code		Industry weight	Estimated PRA hours	Estimated number of responses
334118	Computer Terminal and Other Computer Peripheral Equipment Manufacturing.	0.035099	8	4
334290	Other Communications Equipment Manufacturing	0.020788	8	4
334310	Audio and Video Equipment Manufacturing	0.029919	8	4
335210	Small Electrical Appliance Manufacturing	0.003445	8	4
335912	Primary Battery manufacturing	0.005116	8	4
335999	All Other Miscellaneous Electrical Equipment and Component Manufacturing	0.023391	8	4
339920	Sporting and Athletic Goods Manufacturing	0.061625	2	1
339940	Office Supplies (except Paper) Manufacturing	0.005479	2	1
339999	All Other Miscellaneous Manufacturing	0.037159	2	1
423420	Office Equipment Merchant Wholesalers	0.029336	2	1
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers.	0.38266	8	4
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers.	0.131072	4	2
423690	Other Electronic Parts and Equipment Merchant Wholesalers	0.117874	8	4
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers	0.060731	2	1
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	0.056308	2	1

Labor Cost of Respondent Burden for Non-Toy Children’s Products. 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 in goods-producing industries was \$43.62 (March 2023, https://www.bls.gov/news.release/archives/ecec_06162023.pdf). Based on this analysis, CPSC estimates that labor cost of respondent burden would impose a cost to industry of approximately \$12,062,413 annually

(276,534 hours as stated in Table 6 × \$43.62 per hour = \$12,062,413.08).

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 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

U.S. Bureau of Labor Statistics, Employer Costs for

Employee Compensation (https://www.bls.gov/news.release/archives/ecec_06162023.pdf).

of \$4,448 (\$74.13 per hour × 60 hours = \$ 4,447.8).

CPSC has submitted the information collection requirements of this final rule for both children’s and non-children’s products to OMB for review in accordance with PRA requirements. 44 U.S.C. 3507(d).

XI. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that when a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a standard or regulation that prescribes requirements for the performance, composition, contents, design, finish, construction, packaging, or labeling of such product dealing with the same risk of injury unless the state requirement is identical to the Federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances.

Section 2(a) of Reese’s Law requires the Commission to issue a “consumer product safety standard for button cell or coin batteries and consumer products containing button cell or coin batteries.” However, if the Commission makes a determination under section 2(d) of Reese’s Law, determining that an existing voluntary standard meets the requirements in section 2(a) of Reese’s Law, section 2(e)(1) of Reese’s Law states that such voluntary standard shall be treated as a consumer product safety standard promulgated under section 9 of the CPSA (15 U.S.C. 2058). Therefore, the preemption provision of section 26(a) of the CPSA applies to all consumer products that fall within the scope of this DFR.

XII. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that, before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The submission must indicate whether the rule is a “major rule.” The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a “major rule.” Pursuant to the CRA, OIRA designated this rule as not a “major rule,” as defined in 5 U.S.C. 804(2). To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

List of Subjects

16 CFR Part 1112

Administrative practice and procedure, Audit, Consumer protection, Reporting and recordkeeping requirements, Third-party conformity assessment body.

16 CFR Part 1263

Administrative practice and procedure, Batteries, Consumer protection, Imports, Incorporation by reference, Infants and children, Labeling, Law enforcement.

For the reasons discussed in the preamble, the Commission amends chapter II, subchapter B, of title 16 of the Code of Federal Regulations as follows:

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

■ 1. The authority citation for part 1112 continues to read as follows:

Authority: Pub. L. 110–314, section 3, 122 Stat. 3016, 3017 (2008); 15 U.S.C. 2063.

■ 2. Amend § 1112.15 by adding paragraph (b)(55) to read as follows:

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule or test method?

* * * * *
 (b) * * *

(55) 16 CFR part 1263, Safety Standard for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries.

* * * * *

■ 3. Add part 1263 to read as follows:

PART 1263—SAFETY STANDARD FOR BUTTON CELL OR COIN BATTERIES AND CONSUMER PRODUCTS CONTAINING SUCH BATTERIES

Sec.

1263.1 Scope, purpose, effective date, and exemption.

1263.2 Definitions.

1263.3 Requirements for consumer products containing button cell or coin batteries.

Authority: 15 U.S.C. 2052, 2056e.

§ 1263. Scope, purpose, effective date, and exemption.

(a) *Scope and purpose.* As required by Reese’s Law (15 U.S.C 2056e, Pub. L. 117–171), this part establishes performance and labeling requirements for consumer products containing button cell or coin batteries to prevent child access to batteries during reasonably foreseeable use and misuse of the consumer product. The part is

intended to eliminate or adequately reduce the risk of injury and death to children 6 years old and younger from ingesting these batteries. This part also establishes warning label requirements for packaging of consumer products containing button cell or coin batteries, these consumer products, and instructions and manuals accompanying these consumer products.

(b) *Effective date.* Except as provided in paragraph (c) of this section, the effective date of § 1263.3 is October 23, 2023.

(c) *Exemption for toy products.* Any object designed, manufactured, or marketed as a plaything for children under 14 years of age that is in compliance with the battery accessibility and labeling requirements of 16 CFR part 1250 is exempt from the requirements of this part.

(d) *Batteries that do not present an ingestion hazard.* Button cell or coin batteries that the Commission has determined do not present an ingestion hazard are not subject to this part. These are: zinc-air button cell or coin batteries.

§ 1263.2 Definitions.

In addition to the definitions given in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) and section 5 of Reese’s Law (Notes to 15 U.S.C. 2056e), the following definitions apply for purposes of this part:

Button cell or coin battery means:

(1) A single cell battery with a diameter greater than the height of the battery; or

(2) Any other battery, regardless of the technology used to produce an electrical charge, that is determined by the Commission to pose an ingestion hazard.

Consumer product containing button cell or coin batteries means a consumer product containing or designed to use one or more button cell or coin batteries, regardless of whether such batteries are intended to be replaced by the consumer or are included with the product or sold separately.

Ingestion hazard means a hazard caused by a person swallowing or inserting a button cell or coin battery into their body whereby:

(1) The button cell or coin battery can become lodged in the digestive tract or airways; and

(2) Can potentially cause death or serious injury through choking, generation of hazardous chemicals, leaking of hazardous chemicals, electrical burns, pressure necrosis, or other means.

§ 1263.3 Requirements for consumer products containing button cell or coin batteries.

Each consumer product containing button cell or coin batteries shall comply with ANSI/UL 4200A, *Standard for Safety for Products Incorporating Button Batteries or Coin Cell Batteries*, approved on August 30, 2023. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the U.S. Consumer Product Safety Commission and at the National Archives and Records Administration (NARA). Contact the U.S. Consumer Product Safety Commission at: the Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504-7479, email: cpssc-os@cpssc.gov. For information on the availability of this material at NARA, visit <https://www.archives.gov/federal-register/cfr/ibr-locations> or email fr.inspection@nara.gov. A free, read-only copy of the standard is available for viewing on UL's website at <https://www.ulstandards.com/IBR/logon.aspx>. You may also obtain a copy from Underwriters Laboratories, Inc (UL), 333 Pfingsten Road, Northbrook, IL 60062, or through UL's website: www.UL.com.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2023-20333 Filed 9-20-23; 8:45 am]

BILLING CODE 6355-01-P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1263

[CPSC Docket No. 2023-0004]

Safety Standard for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: In February 2023, as required by Reese's Law, the U.S. Consumer Product Safety Commission (CPSC or Commission) issued a notice of proposed rulemaking (NPR) to establish performance and labeling requirements for consumer products containing button cell or coin batteries, and requirements for labeling of button cell or coin battery packages, to eliminate or adequately reduce the risk of injury from ingestion of button cell or coin batteries by children six years old and

younger. Elsewhere in this issue of the **Federal Register**, the Commission is publishing a direct final rule to incorporate by reference a voluntary standard as the mandatory standard for consumer products containing button cell or coin batteries. The Commission issues this final rule to complete Reese's Law requirements for warning labels on the packaging of button cell or coin batteries. Button cell or coin battery packaging subject to this final rule must be certified as compliant with these warning label requirements.

DATES: This rule is effective September 21, 2024. Button cell or coin battery packaging manufactured or imported after September 21, 2024, must comply with this final rule.

FOR FURTHER INFORMATION CONTACT:

William Cusey, Small Business Ombudsman, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone 301-504-7945; email: sbo@cpssc.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority¹

On February 9, 2023, pursuant to Reese's Law (Pub. L. 117-171, 15 U.S.C. 2056e), the Commission published an NPR to establish a Safety Standard and Notification Requirements for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries. 88 FR 8692. Consistent with section 2(a) of Reese's Law, the NPR proposed performance and labeling requirements for consumer products containing button cell or coin batteries² and labeling requirements for button cell and coin battery packaging. 15 U.S.C. 2056(a).

CPSC received 38 comments during a 30-day comment period ending in March 2023; four of the comments were duplicates. CPSC received two late-filed comments; one is out-of-scope for this rulemaking. We also received nine comments in response to an April 11,

¹ To implement requirements in Reese's Law for labeling of button cell or coin battery packaging, on September 8, 2023, the Commission voted (4-0) to publish this final rule. The Chair, and Commissioners Trumpka and Feldman, issued statements in connection with their vote, available at: https://www.cpsc.gov/s3fs-public/RCA-Reese-s-Law-Implementation-UL-4200A-2023-DFR-for-Button-Cell-or-Coin-Batteries-and-Draft-FR-to-Amend-Part-1263.pdf?VersionId=V56MNzyWa_iXqZQIKCyOIRtj9lcoFit.

² The Notes of Reese's Law, 15 U.S.C. 2056e, define the phrase "consumer product containing button cell or coin batteries" as "a consumer product containing or designed to use one or more button cell or coin batteries, regardless of whether such batteries are intended to be replaced by the consumer or are included with the product or sold separately."

2023 Paperwork Reduction Act (PRA) notice. 88 FR 21652. Most of the public comments concerned performance and labeling requirements for consumer products, which are addressed in the direct final rule, published elsewhere in this issue of the **Federal Register**, establishing 16 CFR part 1263. That direct final rule incorporates by reference ANSI/UL 4200A, *Standard for Safety for Products Incorporating Button Batteries or Coin Cell Batteries*, approved on August 30, 2023 (UL 4200A-2023), as the mandatory standard for consumer products containing button cell or coin batteries.

UL 4200A-2023 does not contain warning label requirements for button cell or coin battery packaging. Accordingly, in this final rule, pursuant to section 2(a)(2)(A) and 2(b) of Reese's Law, we review and respond to the public comments related to warning labels for packaging of button cell or coin batteries and finalize a rule for such warning labels. 15 U.S.C. 2056e(a)(2)(A) and (b). As explained in section I.D of this preamble, based on the comments, the final rule contains several modifications to requirements for battery package labeling from the NPR.³

A. Reese's Law

President Biden signed Reese's Law on August 16, 2022. 15 U.S.C. 2056e. The purpose of Reese's Law is to protect children six years old and younger against hazards associated with the ingestion of button cell or coin batteries during reasonably foreseeable use or misuse conditions. 15 U.S.C. 2056e(a)(1). Section 5 of Reese's Law broadly defines a "button cell or coin battery" as "(A) a single cell battery with a diameter greater than the height of the battery; or (B) any other battery, regardless of the technology used to

³ The information in this final rule is based on information and analysis provided in 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: <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=PyTbnom1OemA3BWl9Z11ONzTlyqbcthw>, and on 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 NPR Briefing Package), available at: <https://www.cpsc.gov/s3fs-public/NoticeofProposedRulemakingSafetyStandardandNotificationRequirementsforButtonCellorCoinBatteriesandConsumerProductsContainingSuchBatteries.pdf?VersionId=kDinNeydtkkt3T8RRtzN4u1GTXPRjpeL>.