

ALERT

Requirements for Consumer Products Containing Coin and Button Cells Expected to Phase in Soon

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Deadlines for compliance with central elements of Reese's Law are fast approaching. Many consumer products that use coin or button cell batteries will have to comply with the UL 4200A-2023 standard (and be tested to confirm compliance) by March 19, 2024.

In August 2022, Congress overwhelmingly passed, and President Biden signed, Reese's Law. The law is intended to prevent accidental ingestions of coin and button cell batteries by children, which can have potentially fatal consequences. Now codified at 15 U.S.C. § 2056e, the law requires changes to coin and button cell battery packaging and has resulted in a new mandatory standard for consumer products containing coin and button cells. Under the law, coin and button cells are defined as batteries of any chemistry with diameter greater than their height. Compliance with some elements of the law is already required. The requirements are set to phase in as follows:

- Child-resistant packaging (CRP) requirements for coin and button cell battery packages are already in effect as a result of Reese's Law Section 3, which mandated compliance with previously existing CRP rules in 16 C.F.R. Part 1700. Notably, if a manufacturer includes such batteries with a consumer product, but not installed in that product, the included batteries need to comply with the CRP requirements for battery packaging.
- The U.S. Consumer Product Safety Commission (CPSC) granted a limited extension of the compliance date for the packaging

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requirements discussed above for zinc-air button cells only, on the grounds that they do not pose a comparable ingestion hazard due to their chemistry and a disruption in supply would have greatly affected consumers who rely on them for use in hearing aids. This enforcement discretion is scheduled to end, however, on March 8, 2024.

- Likely the most far-reaching new requirement is that all consumer products containing coin or button cell batteries must be certified to comply with a formerly voluntary standard, UL 4200A-2023, to be lawfully manufactured or imported after March 19, 2024 (unless they are toys certified to meet ASTM F963). See 16 C.F.R. Part 1263. A CPSC direct final rule issued in September 2023 finalized this requirement, but the CPSC indicated that it will exercise enforcement discretion until March 19, 2024. This requirement has broad ramifications because UL 4200A contains construction requirements, performance testing (i.e., abuse testing) requirements, and marking requirements for products, packaging, and manuals. Many products will likely have to be redesigned, and all covered products will have to be tested. This is creating massive demand for testing capacity and manufacturers may encounter wait times for testing.
- Finally, back to coin and button cell battery packaging requirements: additional package marking requirements, beyond the requirement for CRP, will go into effect on September 21, 2024.

As noted above, the timeline to certify compliance with UL 4200A-2023 for products manufactured or imported after March 19, 2024, is aggressive given the vast quantity of products subject to the rule and potential bottlenecks for third-party testing. Consistent with other CPSC rules, children's products must be tested by a CPSC-accepted third-party lab. Other consumer products may be tested by any lab, or in-house by manufacturers, though many manufacturers rely on lab testing.

CPSC staff, in response to comments from industry and an independent review of the demands of the rule, recommended that CPSC allow 18 months from the issuance of the final rule for products containing batteries to come into compliance. The CPSC ultimately decided to allow only 180 days, however, which began to run when the direct final rule was published in September and will expire on March 19, 2024, as noted above.

The American Watch Association has challenged the final rule in federal court, but the schedule in that litigation suggests the court will not act before the March 19, 2024, date on which enforcement discretion is scheduled to end. Other trade associations have reportedly asked the CPSC for more time to comply with the rule, and those requests remain before the agency.

While it is possible that the CPSC will grant a further extension of enforcement discretion for consumer products containing button or coin cell batteries, manufacturers and importers have very little time to spare in view of the current March 19, 2024, deadline.