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Date: November 14, 2024

The Honorable Alexander Hoehn-Saric
Chair
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

RE: Notice of Proposed Rulemaking - Safety Standard for Toys: Requirements for Toys Containing Button Cell or Coin Cell Batteries (Docket Number CPSC-2024-0023)

This letter is being submitted in response to the Notice of Proposed Rulemaking relating to toys using or incorporating button or coin cell batteries (NPR). These comments are provided on behalf of The Toy Association and its 900+ members, representing manufacturers, importers, designers, retailers, inventors, and toy safety testing labs, all working to ensure safe and fun play for families. Toy safety is the number one priority for the industry, as evidenced by the fact that the industry and The Toy Association have been global leaders in advancing toy safety for decades.

The Toy Association recognizes the benefit of the process of reviewing existing standards and updating requirements when clear and convincing evidence on the record requires it. We also recognize that stakeholder input is an integral part of the rulemaking process and appreciate the opportunity to provide these comments for consideration.

ASTM F963, as incorporated in 16 CFR 1250 pursuant to CPSIA, is well-recognized internationally as one of the world's premier toy safety standards and its comprehensive requirements have been emulated globally for toys, as well as for several non-toy categories. Its credibility comes, in part, from the consensus process that ensures that multiple stakeholder viewpoints are considered. The standard is also respected because it is driven by solid, validated data and the ASTM F15.22 Subcommittee which manages it is responsive to data-supported identified hazards. Most recently, on January 18, 2024, the Commission updated part 1250 to incorporate by reference the 2023 revision, ASTM F963–23.[1] In doing so it followed the congressionally mandated process that provides for ASTM revisions to such Standard to be incorporated as revisions to 16 CFR 1250, unless objected to by the Commission within 90 days of enrollment by ASTM. No such objection occurred and pursuant to the congressionally set forth process the updated Standard was incorporated as a mandatory regulation effective April 20, 2024.[2] ASTM F963-23 included extensive revisions to subsection 4.25 addressing battery

[1] FR 89, No. 12, p 3345
[2] Under section 106(g) of the CPSIA, ASTM must notify the Commission when it revises ASTM F963. 15 U.S.C. 2056b(g). The revised standard shall be considered a consumer product safety standard issued by CPSC under section 9 of the CPSA (15 U.S.C. 2058), effective 180 days after the date on which ASTM notifies the Commission of the revision, unless, within 90 days after receiving that notice, the Commission notifies ASTM that it has determined that the proposed revision does not improve the safety of toys covered by the standard.

compartment safety which were characterized as an improvement to safety" and not objected to by the Commission.[3]

Reese's Law's Express Exemption for Toys is Applicable

Reese's Law[4] specifically exempts any toy product that is in compliance with the battery accessibility and labeling requirements in 16 CFR part 1250, Safety Standard Mandating ASTM F963 for Toys, from the performance and labeling requirements in section 2 of the law. 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.".[5]
ASTM F963 has long included requirements to address the potential ingestion of small batteries. This was specifically and expressly recognized by Congress with the provision of an unqualified exemption for toys in compliance with such regulation.

A glaring omission from the NPR is any recognition that such express exemption by Congress may supersede this attempt to employ this NPR as a means to bypass such exemption, relying on older provisions under CPSIA (15 USC 2056b(a)).

The Toy Association previously submitted comments[6] in response to the February 9, 2023, Notice of Proposed Rulemaking[7] for the application of Reese's Law (the 2023 NPR) related to non-toy consumer products, identifying a number of concerns related to the validity of the proposed test methodologies, the supporting information cited and the conclusions drawn by CPSC in that document.

The majority of the comments submitted by The Toy Association for the 2023 NPR remain relevant specifically for toys, since they identify underlying concerns related to the development process relying on partial, incomplete or inaccurate information as the basis for the NPR.

Despite the fact that Reese's Law (as implemented per 16 CFR 1263, incorporating by reference UL 4200A-23) specifically exempted toys that complied with ASTM F963, during the Commission briefing on the proposed rulemaking for Reese's Law held January 18, 2023, CPSC staff cited alleged (unsupported) "shortcomings" of the adequacy of protections related to button and coin cell batteries provided by ASTM F963. These allegations seemed to arise from a cursory comparison of ASTM F963-17 to other standards related to batteries, without considering or assessing the technical protections ASTM F963 already provided. The NPR briefing package repeated the same allegations, again without providing a technical basis or supporting evidence for the positions taken, and CPSC staff cited only an inadequate comparison of the battery accessibility & labeling requirements within ASTM F963 and other standards, in isolation and out of context, and categorized any differences in approach or protocol from the CPSC staff's preference as "shortcomings".

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[3] FR 89, No. 12, p 3345
[4] Pub. L. 117–171, §5, Aug. 16, 2022, 136 Stat. 2096, provided that: ''In this Act [see Short Title of 2022 Amendment note set out under section 2051 of Reese's Law which contains the following definitions:
''(3) CONSUMER PRODUCT.—The term 'consumer product' has the meaning given such term in section 3(a) of the Consumer Product Safety Act (15 U.S.C. 2052(a)).
''(4) CONSUMER PRODUCT CONTAINING BUTTON CELL OR COIN BATTERIES.—The term '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.
''(5) TOY PRODUCT.—The term 'toy product' means any object designed, manufactured, or marketed as a plaything for children under 14 years of age.''
[5] Ibid at Section 4, with *Toy Product* defined at Section 5(5).
[6] https://www.regulations.gov/comment/CPSC-2023-0004-0054
[7] https://www.regulations.gov/document/CPSC-2023-0004-0001

The claim in the NPR that it is "…consistent with [..] international standards for electronic toys"[8] is misleading, since although select individual requirements may be aligned with other standards, UL 4200A itself is not consistent with *any* international standard at the regulatory level. The 'consistency' may only relate to isolated sections or aspects of each of the standards that CPSC staff reviewed and selectively applied, as opposed to a complete comparison of regulatory provisions in relation to the whole standard(s) in effect. 16 CFR 1250 incorporates many other CPSC regulations addressing dynamic testing involving use and abuse, small parts and warnings, which were considered effective by Congress when it plainly and expressly exempted toys in compliance with the then existing requirements for toy safety for Reese's Law.

The Commission's adoption of ASTM F963-23 as an amendment to 16 CFR 1250 effective April 20, 2024 Should Govern

This is not a matter where an extensive mandatory regulation does not already exist. 16 CFR 1250 has been reviewed and amended by the Commission on numerous occasions. We have noted that the Commission has itself recently updated 16 CFR 1250 with battery compartment provisions (approved within the ASTM multi-stakeholder process) that the Commission, by unanimous vote, determined improve the safety of toy battery compartments in addition to other aspects addressing toy safety. The record before the Commission cannot support a determination that such Standard under section 9 of the CPSA (15 U.S.C. 2058) is not effective, as no complaint data now put forward on the record and before the Commission can be demonstrated as involving toys in compliance with 16 CFR 1250 as just amended. We note this is applicable to both the data included in this NPR and as subsequently provided, which necessitated an extension of the comment period to November 14, 2024.

The record provided does not demonstrate that toys following the current 16 CFR 1250 present an unreasonable risk of injury justifying adoption of the proposed NPR. Similarly, the record before the Commission cannot support a determination that the requirements proposed in the NPR were the result of consultation with representatives of consumer groups, product manufacturers, independent child product engineers and experts that determined this recently updated and adopted Standard is ineffective or inadequate in protecting children from toy safety hazards and that the proposed requirements are more stringent as ordinarily defined.[9] Simply put, such conjunctive processes did not occur. A *belief* by CPSC Staff that those parts of regulations adopted under Reese's Law (which itself exempts toy products in compliance with 16 CFR 1250) are necessarily more stringent requiring adoption of the NPR is insufficient to support the NPR as a regulatory alternative to the Commission's own action under CPSIA Section 106(g) amending 16 CFR 1250, effective April 20, 2024. A record is required with all requirements under 106(d) and Section 706 of the Administrative Procedure Act having been met.[10]

Technical Requirements Under 16 CFR 1250 are Robust

Our comments include both procedural and technical concerns related to the NPR and are outlined in this document following the structure, headers and approach taken in the NPR itself. The following are major technical areas of concern:

[8] FR 89, No. 156, p 65791
[9] See footnote 1: FR CPSC Docket- CPSC 2017-0010-0013 affirming support for such rule.
[10] Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983)

Small parts protections

A primary hazard condition for toys, especially for small children, is the presence, generation of and access to small parts. ASTM F963 requirements incorporate the globally accepted and effective means of identifying small parts (the small parts test requirement) coupled with testing requirements designed to prevent a small parts hazard condition in toys for children under 3 years of age, as well as for certain other toy categories - including toys that contain or use a battery that is a technical small part.

Button and coin cell batteries, aside from any further hazard potential, are small parts, and are subject to applicable sections of the suite of mechanical and physical tests proscribed in ASTM F963 to addresses the small parts hazard. CPSC knows and recognizes that the federally mandated small parts requirements, along with the associated use and abuse testing, are effective at preventing the presence or generation of small part components in children's toys (as well as for other hazard conditions, such as sharp points and sharp edges), and on more than one occasion the agency has reviewed and re-affirmed the effectiveness of the small parts standard[11], so it does not stand up to scrutiny for CPSC staff to make the blanket assertion that the physical test requirements of ASTM F963 are deficient in protecting against the accessibility of small part button and coin cell batteries.[12] This concern also relates to the comments regarding drop test and preconditioning testing provided later in this document and in prior comments**. It is important to stress that many of the test methods related to the alleged shortcomings are incorporated into ASTM F963 directly from CPSC regulations under the FHSA, at 16 CFR 1500.50 – 53, creating a presumption of adequacy.**

Incident data

The NPR suggests that there are toy-related incidents involving batteries from toys that need to be addressed through changes to the regulations but there are numerous problems with the data referenced, indicating that it has not been properly verified or analyzed. Certainly, as we have noted, no data appears to involve product that complies with the current (most recent) requirements of 16 CFR 1250, et. seq. Further, the dataset of merely associative incidents is inconclusive at best.

Additional problems with the historical data:

The usage of the term 'toy' in the data cited by CPSC in the NPR and briefing package, both in the referenced incident data and the extrapolated estimates, is not accurately applied, whether for the incident data that is often second- or third-hand information and unverified, or by CPSC staff, based on a review of the supporting information that demonstrates the inclusion of various non-toy products as "toys". The lack of analysis of the data raises the concern that these incidents may not necessarily relate to *actual toys* subject to the requirements of the toy regulations, rendering the data unreliable for the determination of the ASTM F963 standard's effectiveness without additional investigation and verification[13]. While the 2023 NPR for non-toy products did include a recognition that there is an element of misclassification that should be

[11] "The small parts ban at 16 C.F.R. part 1501 prevents deaths and injuries to children under three from choking on, inhaling, or swallowing small objects subject to the size requirements in 16 C.F.R. § 1501.4." at https://www.cpsc.gov/Business--Manufacturing/Business-Education/FAQ?p=3003&tid[3018]=3018

[12] FR 88 No. 27, Table 7, p 8701

[13] Historically, examples of products that have been erroneously categorized as "toys" include magnets intended for adults as executive desk products, sporting goods, BB guns, paint guns and airsoft guns, promotional products, arts & crafts products and materials, hoverboards, sensory learning aids, children's backpacks, musical greeting cards, party goods & novelties, and other general use products commonly found in the home, etc. As an example, saferproducts.gov report no. 20210503-631A6-2147364376 (link here) incorrectly identifies a non-toy product as a toy.

borne in mind in relation to ‘toys’ within the data cohort [14], the same recognition is missing entirely from the NPR.

The error is compounded by the inaccurate associations generated by the NEISS data system used as the basis for estimations. The NEISS data, while useful, is associative only; the categorizations given for a product type are entered by ER staff if a product is associated with the related incident, without determination of cause or confirmation of association. As such, it is incorrect to ascribe a causative relationship with the NEISS data as it leads to inflated estimated figures, and this error results in an overestimation throughout the NPR and briefing package.

Importantly, CPSC annual reports of ‘product-related’ incidents make that important distinction and include a caution that merely having a (product) associated with an incident does not necessarily mean that the (product) caused the incident. No such context is provided in the NPR for toys and the estimated incident data is presented as if fact; instead, by omission, the suggestion throughout the NPR and briefing package is that the mention of ‘toy’ in a reported incident, automatically assumes the incident to be counted as “toy caused,” without any verification.

When analyzing incident data related to products classified as battery-operated “toys”, the following steps, at a minimum, need to be assessed in order to determine a reliable degree of accuracy:
(a) is the product actually a toy, subject to ASTM F963,
(b) if it is a toy, is it a genuine product (as opposed to a counterfeit or knockoff product which is unlikely to meet any requirement and so would be illegal) *and* conforms to ASTM F963, resulting in the availability of a test report for review,
(c) if it is a toy and a genuine product, is the access to the battery a result of a failure of the battery compartment mechanism, as opposed to another cause (e.g., battery removal or mis-replacement of the battery lid, or from a battery accessed in the child’s environment independent of the product),
(d) if so, was the access to the battery a result of a failure of the battery compartment for the toy even with a ‘pass’ test report to ASTM F963 across all items designed & produced (as opposed to being the result of a production variance or other limited incidence factor).

Following the sequential analysis of data per above, only a determination of "yes" to each of these conditions *in order* infers that a change to ASTM F963 would be warranted and necessary: *if* a product is confirmed to be (a) a toy subject to ASTM F963 *and* (b) complies with ASTM F963, verified by a test report & certificate *and* (c) access to the battery is not prevented by the function of the design *and* (d) the failure is representative of all the items of that type. If a result of ‘no’ is determined at any point in the sequence, *it is a compliance issue instead, and any change to the requirements will not be effective.*

As referenced in relation to the recall data presented in the NPR later in this document, there is also the potential (indeed, likelihood) that a number of the incidents cited relate to issues arising from production variance, for example, a mis-assembly of the screw into its mount may result in stripping of the thread, or if an incorrect screw is used on certain products. It is important to bear in mind that samples with these issues present *would not meet* both previous and current iterations of ASTM F963 when tested since, for example, the lid would be knocked out of position during the impact test. Manufacturers carry out production and process checks to prevent these (as well as possible issues from other variance in the process) from occurring

[14] FR 88, No. 27, Footnote 11, p 8698

during the manufacturing run, in addition to the periodic testing that is mandatory for toys. The voluntary recall process allows for these issues to be addressed when identified after the product is in the marketplace. *A failure due to production variance does not in and of itself lead to a determination that the testing or standards themselves are deficient*, but this is exactly what is occurring now that CPSC is taking the position that any reported incidents, including associative or due to other external factors, are deemed to be causative by the product (toy in this case).

It is evident from the briefing package and staff briefings that the above analyses and assessments have not been carried out, resulting in the use of inaccurate and conjectural information. This is not only incorrect, unscientific and unreliable, but ignoring these critical factors also results in datasets that cannot support the regulatory burden of establishing that consumer safety, in relation to button cell batteries in toys, that are exempt from Reese's Law, will improve over current compliance with existing requirements.

Even if exact assessment is not possible in all instances, it is important to take the above factors into consideration as opposed to attributing causation in all cases. Just having something referred to as a "toy" does not mean it is one, and even if something is correctly classified as a toy, this does not automatically lead to the conclusion that the mandatory test requirements for toys are deficient as currently enacted. The briefing package does not establish that current standards do not address an established risk nor does it establish that the proposed "solution" will actually address a hypothetical problem.

As has been reiterated in a recent case related to CPSC actions, "It is important to distinguish between the number of injuries in a given period and the frequency of injury from use of a product."[15]; the data presented in the NPR relates *only* to the number of associative incidents and even then, the numbers, as shown, do not necessarily relate *to toys*. The data provided by CPSC relates only to (purported) hazard, isolated from a review of actual or estimated risk.[16] The NPR cites CPSRMS data from January 1st, 2016, to December 31st, 2022, with one fatality and 46 non-fatal incidents, as well as NEISS data reporting 185 emergency department (ER) treated incidents for the same 6-year period[17] for toys with button or coin cell batteries[18]. Admittedly no data involves products complying with 16 CFR 1250 as recently amended. Even with such datasets, given that battery exposure can involve circumstances beyond use of the products themselves, (e.g., children getting access to loose batteries after an adult or older child has replaced them or even before the batteries are placed in the toy), and the number of toys with button cell or coin cell batteries that are placed on the market over such period with hundreds of millions of uses, the data actually supports a position that that the toy standard then in effect was protective (as Congress concluded originally in 2022 in exempting toys that complied with ASTM F963 under Reese's Law).

The historical and estimated information is also unreliable as presented. In the 2023 NPR, National Capital Poison Control (NCPC) fatality information is provided for the years 1977-2022,

[15] https://www.cpsc.gov/s3fs-public/pdfs/recall/lawsuits/abc/148-CPSC_Docket_No_22-1_In_the_Matter_of_Leachco_Inc_ALJ_Decision.pdf?VersionId=JEkmoJldEmIa7L4KwYWwn11jqGJJ8Oi1, p 42, Note 28

[16] As an example, the IDI #171024HCC1059 addresses the fatality from that period; per the review of the redacted IDI, the summary states that "Officials could not report the type/model of the toy or batteries.", and "Police could not report how the toddler had found the batteries or other incident details." No information was available from the redacted document as to how the child got access to the battery or batteries. This IDI is presented as an example of when "…children may remove and ingest the batteries...", but the information in the IDI does not support the conclusion that the batteries came *from the toy* and the exposure could be due to any of a number of factors and scenarios.

[17] FR Vol 89, No. 156, p 65794

[18] Note that these statistics are presented under CPSC' staff's application of the definition for toy which is shown in this document to include non-toy products.

with no specific dates or years provided for the listed incidents. “Toys” are cited in 4 of the 69 deaths attributed to button or coin cells, however ASTM F963 became a mandatory consumer product safety rule under the Consumer Product Safety Improvement Act (CPSIA) in 2008, so it is important to determine whether the reported incidents occurred before or after the effective date of the mandatory standard, in order to properly assess the effectiveness of the standard or whether a change to the standard would have an impact. Similarly, NCPC data on nonfatal incident information is provided for the years 1982-2022; “toys” are cited in 13 of the 267 cases attributed to button or coin cells.[19] but again, without specific dates or years associated with the incidents.

The subsequent CPSRMS data in the 2023 NPR (for 2011-2021) lists 25 additional deaths, with only one associated with a toy[20]. Even without taking into account the (very real) possibility of additional factors such as mis-categorization, illegal or counterfeit product, or the battery being accessible before or after replacement independent of the product design, the data (4 in 45 years & 1 in 10 years) does not indicate a conclusion for a deficiency in the requirements of ASTM F963. Additionally, the CPSRMS nonfatal incident data cited in the 2023 NPR (for the years 2016 - 2021)[21] lists 74 incidents that involved a product, rather than the packaging of a battery, with ‘toys/games’ listed with a combined total of 43 instances (20 ingestion, 23 access). As previously stated in this document, this data is not reliable without including an assessment to consider the other possible contributing factors. Without that analysis, any such “solution” is a fallacy. Without analysis and verification of the data, any ‘solution’ is missing a critical structural foundation and cannot be deemed ‘effective’.

Easy Access

This section cites CPSRMS #170623CFE0001 as an exemplar of the issue of concern in this section, and that it “…describes a 9-year-old boy who opened a battery compartment by pulling a battery compartment access tab with his teeth.”[22]. On review of the referenced In-Depth Investigation (IDI) itself, the product in question is identified to be a fidget spinner. As defined by CPSC[23], fidget spinners are classified as general use products and not children’s products, unless very specific considerations are met in order to classify the specific example as a children’s product (and determination of ’toy’ classification would need to be carried out only once the item had been determined to be a children’s product). There is no information present to suggest that this product meets those considerations, let alone whether or not that analysis was carried out. The other three referenced incidents are not cited.

Recalls

The NPR states that between January 1, 2011, through March 19, 2024, there were six recalls of toys containing button or coin cell batteries, however Table 1 only shows five entries[24]. The Toy Association entered the same time period into the CPSC recall database[25], using the search term ‘button cell’ and the category ‘toys’ and only found three entries that related to button cells,

[19] FR 88, No. 27, p 8696
[20] *Id.*
[21] FR 88, No. 27, p 8698
[22] FR 89, No. 156, p 65796
[23] https://www.cpsc.gov/Business--Manufacturing/Business-Education/Business-Guidance/Fidget-Spinners and https://www.cpsc.gov/about-cpsc/chairman/ann-marie-buerkle/statements/statement-from-acting-chairman-ann-marie-buerkle-1
[24] FR 89, No. 156, p 65797
[25] https://www.cpsc.gov/Recalls?tabset=on&search_combined_fields=button%20cell&field_rc_date_value=2011-01-01&field_rc_date_value_1=2024-03-01&field_rc_hazards_target_id=All&field_rc_recall_by_product_target_id=208&field_rc_manufactured_in_value=&page=1

and one of those did not relate to battery accessibility concerns[26]. The other two are present in Table 1.[27]

Of the five entries in Table 1, only two appear to actually fit the definition of a toy (note that this assessment also corresponded to the results of the search of the CPSC database per the preceding paragraph). Of the remaining three, one is a Halloween window cling (holiday decoration)[28], one is a projector flashlight keychain (general use product & part of a hospital care package)[29] and the last is a slap watch (general use product)[30]. Using each of the keywords 'Halloween', 'slap', 'watch' and 'flashlight' in the CPSC recall database with the same timeline filters (1/1/2011 – 3/1/2024 and 'toy' category), these keywords either resulted in a 'no results found' or recalls that did not relate to button or coin cell batteries. Once the 'toy' category filter was removed from the search filters, all of the recalls were accessed when using the respective keyword(s). None involved products that met 16 CFR 1250 as recently amended. As such, it is hard to see how this list of recalls supports the NPR. This is glaring when the Commission's ***own recall database*** does not categorize the cited recalled products in the NPR as toys.[31]

Of the two remaining recalls listed in Table 1 that are toys, it is important to note that both present a battery compartment that requires the use of a tool to access. Based on verbal information received, it is understood that at least one of the voluntary recalls identified a manufacturing variance for a product that resulted in a proportion of the production run to have stripped screws and that this was initiated as a voluntary recall by the manufacturer, once the issue was identified. When correctly manufactured, the products met the requirements of the then-applicable version of ASTM F963. This is not evidence of inadequacy of the current regulation, as described earlier in these comments, and a change to the regulation will not necessarily address such isolated production issues.

Captive fasteners

In the preliminary paragraph of the section relating to captive fasteners in the NPR, while reference is made to ASTM F963 recently adding a fastener retention requirement in the 2023 version, the NPR states that "CPSC staff *understands that* when conducting use and abuse testing of a battery-operated toy in accordance with sections 8.5–8.10 of ASTM F963–23, test laboratories visually inspect any fastener used to secure the battery compartment both before and after testing to verify that the fastener remains attached to the toy or battery compartment cover."[32] (emphasis added). This is not the case.[33]

The Toy Association has provided the supporting information for the ASTM standard,[34] however CPSC staff took a position contrary to what was presented.[35] The additional test in ASTM F963-

[26] https://www.cpsc.gov/Recalls/2017/Moose-Toys-Recalls-Toy-Frogs
[27] https://www.cpsc.gov/Recalls/2017/hobby-lobby-recalls-easter-and-july-4th-light-up-spinner-toys and https://www.cpsc.gov/Recalls/2020/Toysmith-Recalls-LightUp-Magic-Wands-Due-to-Choking-and-Ingestion-Hazards
[28] https://www.cpsc.gov/Recalls/2017/Target-Recalls-Halloween-LED-Gel-Clings
[29] https://www.cpsc.gov/Recalls/2022/Halo-Recalls-Promotional-Childrens-Projector-Flashlights-Due-to-Button-Battery-Ingestion-and-Choking-Hazards and https://halo.com/flashlightrecall/
[30] https://www.cpsc.gov/Recalls/2021/K-M-International-Recalls-Slap-Watches-Due-to-Coin-Cell-Battery-Ingestion-and-Choking-Hazards
[31] Illustrative of the validity of the information being used as a supporting basis for the proposed regulatory change.
[32] FR 89, No. 156, p 65800
[33] CPSC staff have made their own interpretation contrary both to the wording and intent of the requirement & specified testing per section 4.25.4.3 in ASTM F963-23, and the ASTM F15.22 technical working group that developed the original proposed the requirement.
[34] ASTM F963 Section 4.25.4.3
[35] "While ASTM's position is more stringent, and has some valid points, and that may have been the intent, it was not made clear to us nor to industry, hence the confusion. As such, I don't think it's fair to adopt ASTM's interpretation." Email from B Mordecai March 15, 2024

23 is separate and discrete from the other use and abuse testing applied to the toy in order to ensure that the batteries do not become exposed[36].

It is also important to note that the CPSC staff position related to the ASTM testing (that the retention of the fastener is assessed visually after the product is tested to the use and abuse testing with the battery compartment fastened and secured in the closed position on the toy) is evidentially incorrect, *as an assessment made under those conditions would in no way relate to, or be able to, assess the relationship between the fastener and the component holding it*, since the fastener would be secured (through and independent of its mounting) into the connection on the remainder of the toy, and the fastener is held in place independent of its' retaining mounting. ASTM F963 section 4.25.4.3 addresses the relationship between the fastener and the component that it is mounted on, and the only way to assess that relationship is to assess the fastener and its mount in the opened position. As such, the balloted and approved fastener retention requirement in ASTM F963 was originally drawn from the similar requirement in IEC 62115[37], with the ASTM requirement applying a different force.

The ASTM requirement for captive screws as currently present in the standard is **more stringent** than what is present in UL 4200A (and IEC 62115) as proposed in the NPR.

Stress relief preconditioning test

The NPR proposes a seven-hour oven test at a temperature of 158 ˚F (70 ˚C)[38] which is one of the requirements that CPSC staff picked from another consumer product standard, in isolation from comparable or adjacent requirements within ASTM F963 and elsewhere, which was added to UL 4200A as a result. CPSC staff have indicated, within the ongoing discussions in ASTM F15.22 battery workgroup activity, that the thermoplastics listed in the NPR[39] are only provided as examples of the category of materials, as opposed to being thermoplastics that exhibit the properties of concern raised in the NPR. Also in those discussions, ASTM F15.22 committee members pointed out that the examples provided in the NPR are not materials that would be likely to be used for button or coin cell battery compartments, especially so for toys as the principal materials (in toys) would be ABS or styrenic polymers, which typically have properties that present deformation at temperatures well above the temperature of the proposed test.[40]

In a recent ASTM F15.22 committee call, CPSC staff informed the task group that the designs of concern were battery compartment covers that relied on a tab closure design that would be under stress when in the closed position. This type, by itself, is not a closure method that is permitted for battery compartments of button or coin cell batteries according to ASTM F963-23[41] since that standard only permits compartments that require the use of a tool.[42] Even if a tab is present, a toy must also have the tool design that is the basis for a secure compartment closure, independent of the tab. It is also important to consider that, based on CPSC staff's information from the ASTM F15.22 meeting, the stress relief test in UL4200A would therefore be redundant under at least one of the mandated closure types since that standard requires that the battery compartment closure for products that includes button or coin cell batteries shall either require the use of a tool to access the batteries (i.e. not relying on a tab closure), or the use of two simultaneous and separate actions, which is not permitted for toys per ASTM F963 and CPSC staff have subsequently verbally agreed is not an optimal solution. As such, the stress relief test

[36] ASTM F963 Sections 4.25.4.1 and 4.25.4.2
[37] IEC 62115:2017 Section 13.4.6
[38] FR 89, No. 156, p 65801
[39] *Id.*
[40] ABS melt temperature 190-270 ˚C
[41] ASTM F963-23, Section 4.25
[42] *Id.*

is not necessary, since other requirements separately preclude the potential vulnerabilities that this test is intended to address.

Drop test and tip-over test

The NPR makes an assertion that the impact test as defined in ASTM F963 is inadequate for toys containing button and coin cell batteries[43] while simultaneously ignoring the overwhelming evidence that it is intended to, and does, provide an effective level of protection against numerous hazardous safety conditions that could be potentially presented, including sharp points, sharp edges, small parts, exposed mechanisms and more. The NPR provides an uncited number of 'reported nonfatal incidents'[44] which can only be understood to be based on the same apparent assumption that association directly leads to causation that has been identified elsewhere in this document. UL 4200A addresses requirements for general use products, which includes use and potential misuse by adults. It is important to consider that the test parameters in ASTM F963, as was recognized by Congress when the determination was made to incorporate ASTM F963 by reference as a mandatory standard, applies to the use of the products by children and as-such, it would be reasonable and correct that the test parameters differ from those covering products that are used by adults. CPSC incorrectly assumes that such differences reduce rather than enhance safety.

The tip-over test correctly applies an alternative test for products that are too large or bulky for children to either play with them on a tabletop or to pick them up to a height that relates to the drop test. As these products are not played with or used by children in a manner that would be reflected by applying a drop test per UL 4200A, such products should continue to be assessed in relation to the tip-over test in lieu of the drop test.

Impact test

Similar to the preamble for the drop test and tip-over test, the NPR provides the same uncited number of 'reported nonfatal incidents' as a justification to include the impact test based on UL 4200A, in isolation from comparable or adjacent requirements.[45] Again, the source requirement was derived from a consumer product requirement considering *adult* manipulation and operation of the affected products, and as such, imposes excessive requirements that do not reflect a child's use and operation of the product. The NPR attempts to associate the impact test to circumstances "…when children throw, punch, kick or smash toys together or against another surface (such as furniture)"[46] while ignoring that the test is derived from adult-applied forces as well as the fact that *intentional or deliberate misuse* does not reflect normal use of the product which is clearly stated in ASTM F963[47] as the basis for the applied requirements & determined twice by Congress as effective and appropriate, both for CPSIA (in making the ASTM standard mandatory by reference) as well as for Reese's Law (by exempting toys that are subject to the mandatory toy standard).

The NPR also makes the assertion that the proposed crush test, which is intended to address a scenario where "…a person steps on a toy..."[48] and to apparently simulate "...the force exerted on a toy from a child or adult stepping or sitting on it.",[49] thus both ignoring the non-applicability of adult-derived interaction *as well as* an unsubstantiated and unsupported performance claim by CPSC staff that the test accurately simulates a child sitting on a toy.

[43] FR 89, No. 156, p 65802
[44] *Id.*
[45] *Id*.
[46] *Id.*
[47] ASTM F963-23, Section 1.1
[48] FR 89, No. 156, p 65804
[49] *Id.*

Torque tension testing

The NPR refers to a number of incidents whereby access to a battery or batteries was asserted to have been made as a result of "…children manipulating a toy with their hands or mouth to open the battery compartment.". As had already been illustrated in this document, such incidences do not reliably or substantively refer to actual toys.[50]

While the NPR does acknowledge the validity of the ASTM F963 torque tension test methodology, it then goes on to assert, without substantiation or any associated validation, that the applied torque and tension values listed in UL 4200A "…are better able to ensure the integrity of the battery compartment than the ASTM test.".[51] Indeed, while there are differing values for toys intended for children under 18 months of age and between the ages of 18 and 36 months, reflecting the differing mechanical abilities of children in those age groups, the test values for children over 36 months of age are almost identical to the slightly higher values listed in UL 4200A (for adults). There is no proof or basis provided for CPSC staff's assertion that the variance at those levels (4.4 in-lbf vs. 4.2 in-lbf and 16.2 lbf vs. 15.5 lbf respectively) is 'better' than ASTM F963 or provides *any* difference in test results or relative effectiveness while at the same time introducing duplicative, unnecessary and redundant test requirements. Conversely, ASTM F963 values are based on developmental and anthropometric data of children. CPSC staff's position becomes all the more questionable when the compression test is considered – while ASTM F963 has a nominal 30.5 lbf compression force, the 2024 NPR presumes without evidence that UL 4200A's 30.6 lbf is "…better able to ensure the integrity of the battery compartment than the ASTM test…".[52]

Packaging

Warning statements are proposed in the NPR, based on the requirements of UL 4200A (and 16 CFR 1263). In this example, CPSC staff proposes application of the federal small parts warning statement format, sizing and placement[53] while disregarding other coloration and formatting requirements, mandating instead the recommendations from the voluntary ANSI Z535 guidance document. This proposal ignores the other, effective warning statements that are applied at a different size and/or format (for example the warnings specified in section 5.3 of ASTM F963). There is no evidence that such a proposal is more effective than current statements being applied. While stating that the proposed requirements are 'consistent' with international standards,[54] CPSC is also ignoring or unaware of that fact that such international standards allow for warnings to be 'legible' in lieu of requiring other prescriptive sizing and formatting requirements, let alone requirements of the size and format presented in UL 4200A.

The warning statements mandated per 16 CFR 1263 are significantly larger in overall size and length than the Federal small parts warning statement. This results in manufacturers of small package products being placed in the impossible position of trying to conform to a requirement that cannot be placed on the package without enlarging the size of the package itself, increasing waste and leading to greater packaging and shipment costs. As illustrated in Appendix A of this document, the mandated sizing for the warning label on packages between 30 and 100 square inches is so large that, for a package with a 31 in^2 Principal Display Panel (PDP), the area for the proposed warning itself would be required to be over 10 in^2, dominating 30 % of the entire front face of the package. In many cases, the actual area of the PDP is usually less than the

[50] CPSRMS #170623CFE0001, Footnote #11
[51] FR 89, No. 156, p 65804
[52] *Id.*
[53] 16 CFR 1500.19
[54] FR 89, No. 156, p 65791

height x width calculation (due to die cuts and other considerations), and such packages are often blister cards or similar, so there is simply not enough space to apply the UL 4200A warning as mandated in these instances. The 'optional' case for smaller packages actually results in a larger footprint for the warning statement and does not address the situation in a manner that allows for the existing packaging size to be used, prompting unnecessary increases in package size. The problem and resulting wastage created by the overly prescriptive warning label requirement increase exponentially in cases of products designed and intended for use in multiple markets, which require the packaging and associated information to be in more than one language. The packaging example shown in #1 (existing layout) and #2 (with proposed warning) in Appendix B in this document illustrates the supplemental consideration relating to multi-language packaging (commonly applied for toys). Due to language parity requirements, this results in a package having to have English language statements repeated in the languages of the intended markets, at the very least doubling the area covered by the NPR's warning statements alone for a bilingual package and even more so for 3 or 4 language versions (and other languages often require more space than the English language statement when the translations result in more words being needed to convey the same statement).[55] These examples show that the proposed warning statement is significantly larger than what would be appropriate to provide clear and legible warnings to the consumer.

This approach is contrary to CPSC staff's voiced opinion on many occasions, of the importance of not adding competing or confusing messages that overcrowds a package and that would have the counter-effect of desensitizing consumers to important warnings.

In order to address only the impracticability of the proposed warning statement for smaller packaging sizes. The Toy Association is requesting that CPSC consider allowing for an alternative placement option for smaller packages (under 100 square inches) whereby the PDP has the battery warning symbol (the hazard triangle over an icon of a coin cell battery), and the statement itself is located on another panel of the package. While this will still result in significant packaging redesign and cost, it does at least allow for more instances that will not result in the package being placed the impossible position of being physically unable to meet the labeling requirement, without unnecessarily increasing packaging size and, thereby, waste.

<u>Feasibility of proposed requirements</u>

The NPR opines that "Many toys on the market already comply with the proposed requirements.",[56] but this is a misleading statement. Firstly, if toys meet already mandated requirements of ASTM F963 which are deemed effective, there is no justification for a change in the requirements. Secondly, the statement in the NPR does not consider the impact of the new and unnecessarily large warning labeling requirements – no toy currently on the market meets this excessive requirement. As such, the estimate that "…only 20 percent of the manufacturers and importers/wholesalers would incur any costs related to redesign required by the proposed rule."[57] does not accurately reflect the situation. Instead, a more accurate estimate is that 100% of the entities that manufacture toys which contain button and coin cell batteries would be impacted, since all of them will need to conduct testing and certification for the added-on tests, carry out expensive and onerous packaging re-sizing, and incur re-design and supply chain costs due to larger package sizes and single-market versions instead of multi-market packaging. Once the supply chain impact of the proposed 180-day enforcement window is taken into account, the cost increases that companies face in order to comply with the proposed NPR are multiplied by the financial impact of the forced obsolescence and removal from sale of

[55] This is inconsistent with existing requisite warning statements for toys and their packaging
[56] FR 89, No. 156, p 65807
[57] *Id.*

otherwise safe product that even the NPR recognizes will meet the physical requirements of the proposed rulemaking.[58] This estimate does not include the burden of the increased waste, which would be substantive. The feasibility assessment in the NPR does not take into account the fact that labeling requirements also apply on the product itself (where the products are not too small to fit the symbol). These changes would require either a print operation or a tooling modification in order to ensure that the marking is permanently present. Any change to the tool would incur costs that include both the changes themselves as well as the time for the tool to be removed from production.

Based on information from members, the following data points are more representative of the cost impacts for the proposed NPR:

- Tooling changes (redesign) – example ranges we have received are $ 700 - $ 5400 per tool depending on the complexity of the change, and associated time for the tool to be out of commission.
- Tooling changes (new tooling) – again, this can vary depending on product type, but if new tooling is required (for example when an existing tool cannot be modified), as an example, tooling for an action-figure sized item can cost over $ 42,000 per *each* individual product design, even were the scope of the revision be similar across different product types (such as by applying a standard battery compartment design change).

<u>Effective date</u>
Further to The Toy Association's comments relating to the 2023 NPR, which also had a proposed 180-day stay of enforcement period, we reiterate the concern for this NPR in that that this timeline is unnecessarily short given that the majority of toys are already re-designed to the just-adopted amendments to 16 CFR 1250. This timeline increases the cost of compliance without a corresponding increase in safety. As mentioned previously in this document, the need for such changes, let alone the need for such urgency in implementation, has not been demonstrated.

<u>Reese's Law requirements being considered by ASTM F15.22</u>
It is important to stress that ASTM F963 is not considered to be a static document and ASTM F15.22 is in the process of reviewing its existing requirements related to battery accessibility, specifically, to incorporate changes where agreed by consensus, which is in large part gained by the underpinning of accurate, validated and representative information. A significant factor in the time being taken up in the committee review stage *is due to the lack of such information;* as illustrated in this document, unvalidated information being used as the basis for this NPR does not meet the thresholds needed nor the scientific basis for changes in most instances.

Some of the information provided by CPSC is however underpinned by usable and actionable data. The provisions for a torque requirement on the fasteners used to secure the battery compartment, a pre-condition requirement to open and close the battery compartment before testing, an increase in the parameters and application of warning statements all are areas that ASTM F15.22 has already indicated an openness and intent to investigate & update as warranted, with CPSC staff's active and important participation. The ASTM F15.22 task group continues to work to determine which of CPSC's proposed revisions are relevant, appropriate or unnecessarily burdensome (as demonstrated by the assessment being carried out on the aging test identified earlier in this document).

[58] FR 89, No. 156, p 65807

It is noted that the NPR does not propose that toys be permitted to use the two simultaneous but separate actions to access the battery compartment, as raised in the 2023 NPR and its briefing package, where CPSC staff misleadingly asserted that ASTM F963 'did not address the requirement'[59] since it was not an option in the standard, despite the fact that ASTM F963 *intentionally* does not permit that option since it is not as reliable as a tool-related closure, especially for small products, and is more likely to present a failure condition, while also being more complicated to manufacture.
While the option to apply a two-action battery compartment closure method remains in 16 CFR 1263 (through incorporation by reference of UL 4200A) for non-toy products, The Toy Association appreciates that the NPR does not include reference to that closure method in the proposed revision to 16 CFR 1250, and that CPSC recognizes the validity of the information that The Toy Association[60] and ASTM F15.22 have provided.

CPSC Questions

A. Proposed Performance Requirements for Toys Containing Button Cell or Coin Cell Batteries

1. *Do the proposed performance requirements align with the requirements in part 1263? If not, what requirements should the Commission add or remove to align the two standards?*
   Response – As illustrated in this document, most of the proposed provisions do not need to align with 16 CFR 1263. Congress' prior direction, the position taken in Reese's Law and the lack of supporting information that the position taken in Reese's Law rulemaking and UL 4200A were based upon are all examples that support this conclusion. For other requirements from 16 CFR 1263, that do include applicable and substantiated supporting data, ASTM is currently working on revisions to ASTM F963 to revise areas that are relevant and improving safety. The fastener retention requirement in the 2024 NPR is less stringent than the corresponding requirement in the existing ASTM F963-23. Abuse testing for adults breaking products exceeds appropriate requirements (that are already applied for all hazard conditions tested in the toy standard).

2. *Are the proposed performance requirements adequate to address the risk of ingestion and insertion from children accessing button cell or coin batteries from toys? Please provide details of any additional requirements proposed.*
   Response – As noted in this document, data has not been provided to assess whether the proposed performance requirements would be "adequate to address" an undemonstrated risk. Instead, as described in our comments and as determined by Congress, the existing ASTM F963-23 standard already provides an appropriate level of effectiveness and protection.[61]

3. *Are there any toys weighing over 10 lbs. and up to 39.7 lbs., that would not be considered large and bulky (as defined in ASTM F963–23), and should a separate drop test for such toys be included?*
   Response - such toys are too large for children to use on a tabletop or be picked up to a height. Tip-over testing is appropriate and relevant for such products.

B. Proposed Warning Label Requirements for Toys Containing Button Cell or Coin Cell Batteries

[59] FR 88, No. 27, p 8701
[60] https://www.regulations.gov/comment/CPSC-2023-0004-0054
[61] FR Vol. 89, No. 12, p 3345

1. *Are the proposed warnings adequate to address the hazards associated with toys containing button cell or coin cell batteries?*
   Response - the proposed warnings are larger in both length and format/sizing/placement than what is needed for effect.
   A toy is a play product for children to enjoy, and engage with. Having the word "DEATH" in bold on the front of the package sends a contradictory message that toy may not be safe despite its' conformance with Federally mandatory requirements.

2. *Should CPSC consider additional warnings on toy packaging, on toys, or on instructional literature accompanying toys?*
   Response – As described in these comments, CPSC should not consider proposed warnings, in isolation from existing labeling requirements. Any additional labeling should also be considered based on risk – and the likelihood of improving effectiveness of requirements. With this approach, we would be open to considering additional warning/descriptions on instructions, however the packaging statement is already far beyond practicable and placement on the toy is already in many instances not possible.

3. *Should CPSC consider other warning formats?*
   Response – It is important to reiterate that being bigger is not a direct corollary to being better – for example, existing sizes and layouts per F963 Section 5.3 are sufficient and effective at warning consumers, and warning statements in other regions are recognized as being effective without the size and format requirements being imposed in the NPR.
   With regard to the warning label itself, the present warnings per ASTM F963 have not been demonstrated to be inadequate for the hazards addressed by the standard. The proposed warning is significantly larger and more pronounced than the Federal Small Part Warning statement and/or Federal Small Ball Warning statement, which addresses recognized potential hazards for an as-received small part, ball or marble present in the packaged product as opposed to a button or coin cell that is retained within the product.

C. Regulatory Flexibility Analysis

1. *Significant impact. Is CPSC's estimated cost of redesign to achieve compliance appropriate? If not, please provide additional information and support for your proposed correction.*
   Response - As detailed in the comments, CPSC's estimated costs do not consider many factors which will impose significant costs on manufacturers. These costs are multiplied by the implementation timeline which will incur scrap, shipment diversion and production stoppages due to tooling changes and other changes made necessary by the proposed rule.

   Also, do the estimated costs represent more than one percent of annual revenue for individual small U.S. manufacturers and importers?
   Response – this will depend on specific data relating to the size of the company and the number of affected products and associated revisions.

2. *Testing costs. Will third party testing costs for toys containing button cell or coin cell batteries increase as a result of the requirements in this NPR, and if so, by how much?*

   Response - The additional testing cost is understood to be US $ 200 – 300 per product type per year. Many companies will have, depending on product type and size of product range and/or company size, up to several hundred products that will result in an additional testing cost burden scaled to the number of products (e.g., 100 products would be US$ 20,000 – 30,000 per year). Additionally, re-work costs are significant. It is unknown how much testing costs or turnaround time will increase in the initial year from the publication of the Final Rule, since there will be logistical and bandwidth/laboratory availability bottlenecks while existing products are assessed for compliance.

3. *Effective date of 180 days after Federal Register publication. How much time is required to come into compliance with a final rule (including product compliance and third-party testing)? Please provide supporting data with your comment supporting a 180- day period or other effective date, particularly for small businesses.*

   Response – the proposed 180-day timeline will significantly impact the toy supply chain, and related costs by forcing scrap and materials wastage as well as lost sales while the revision process is undertaken since it cannot be carried out and implemented in the 180-day period. Additional cost factors include the necessity that packaging will either need to be single-market only or increased in size to accommodate multi-language warnings, increasing costs and wastage in the marketplace. Many button/coin cell battery products are small and their packaging cannot accommodate even the single language warning as-presented. Based on information related to non-toy products already covered by Reese's Law, the average shipping and customs clearing time was more than 180 days (120 days manufacturing, 60 days global transit, ~14 days customs clearance), without even considering the additional time for packaging (or product) design & development, or compliance testing.

4. *Alternatives to reduce the impact on small businesses. Are there any alternatives to the rule not discussed in this NPR that could reduce the impact on small businesses without reducing safety? Please provide supporting data with your comment, particularly addressing small businesses.*

   Response - This NPR has not attempted to measure its impact on safety, and while it is more stringent than existing requirements, that does not necessarily equate to increased safety.

D. Feasibility

1. *Are the proposed requirements in this NPR feasible, both technically and economically?*

   Response – As detailed in the comments, the NPR will impose significant economic burdens on all manufacturers.

2. *What would be the total cost to industry of implementing this rule? Please be specific about labor and/or materials costs to redesign products, and costs of third-party testing.*

   Response – It is not possible to determine total costs for the industry in the permitted timeframe.

3. *Will complying with this rule increase the costs of production or the retail price of toys containing button cell or coin cell batteries? Why? By how much?*
   Response - As described elsewhere, while a significant number of existing physical battery compartments will already meet the proposed physical testing, complying with this rule will increase production costs because companies will have to rework packaging and/or add packaging to accommodate for the design and labeling requirements. On-going compliance costs will be the additional test requirements under Reese's Law for UL4200A, which are supplemental to current physical/mechanical hazard testing for toys under ASTM F963 while not being necessary (as identified previously in this document). There are too many factors to be able to provide exact cost across the board, but we have received information that estimate the increase to be approximately 5 % -10 % of wholesale cost.

Conclusions

CPSC states that the intent of this NPR is to "…amend the requirements in [16 CFR] part 1250 specific to battery compartments for toys containing button cell or coin cell batteries to align the requirements more closely with the Commission's new rule for consumer products containing button cell or coin cell batteries, codified at [16 CFR] part 1263." [62]. The NPR acknowledges that Reese's Law (Public Law 117-171), as passed by Congress in 2022, explicitly exempted toys that fall under the scope of ASTM F963 (as incorporated by reference as a mandatory standard by 16 CFR 1250)[63], on the grounds that this category of product conformed to mandatory requirements that provided sufficient protection to adequately protect the public.

Despite this, CPSC is instead selecting to bypass Congress' 2022 express exemption for toys and assessment that the existing requirements were sufficient by applying an older congressional mandate[64] (Section 106 of CPSIA from 2008[65]), that in this specific case is superseded by Reese's Law, as the basis for amending 16 CFR 1250. This is carried out for the stated purpose of simple 'consistency' to address a perception of misalignment, absent the evidence to demonstrate that such products present a substantial hazard. This is inconsistent with the Commissions own recent adoption of ASTM F963-23, without objection, as an amendment to 16 CFR 1250 effective April 20, 2024[66].

The proposed rule overlays a set of redundant, duplicative and unnecessarily burdensome requirements onto 16 CFR 1250 in order to bypass the Congressionally mandated regulatory framework, for the purposes of being 'the same' as another standard for products that are not intended to be in scope of that other standard; nullifying an exemption to which toys are rightly subject and which are covered by an existing, effective regulation. Such an approach is proposed without reasonable objective evidence that products in compliance with the recently amended 16 CFR 1250 are unsafe. It has been evident for decades that other non-toy products were able to be placed on the market without requirements to protect against battery accessibility, despite a preponderance of evidence that children were able to access batteries from common household electronics, without action from the CPSC. It is unclear as to why now, when expressly directed by Congress to exempt toys that have effective requirements, CPSC is

[62] FR 89, No. 156, p 65792
[63] *Id.*
[64] FR 89, No. 156, p 65791that
[65] 15 U.S.C. 2056 (b)
[66] FR 89, No. 12, p 3345

moved to forcing a “sameness” while disregarding the science and data that does not support their position that ASTM F963 is now deemed to be ineffective.

As has been recently stated in relation to litigation related to a non-toy infant product, “The Commission was founded in part due to the inadequacy of product safety law. See 15 U.S.C. § 2051(a)(4),(5). But it exists to protect the *public* (that is the people, generally) from unreasonable risk of injury, not to eradicate *any* risk of injury to any member of the population. See 15 U.S.C. § 2051(b)(1).”[67] (emphasis in original).

The Toy Association’s stated primary goal is, and has always been, the safety of children. This also accurately reflects the position of the members of The Toy Association. The Toy Association is submitting these comments with the intent to provide constructive input to maintain and improve the safety of toys while ensuring that the basis for such change remains accurate, scientific and properly effective.

We thank you for your attention to these comments. If you would like to further discuss any of the issues raised, please do not hesitate to contact me.

Regards,

Jos Huxley
Senior Vice President of Technical Affairs
The Toy Association
jhuxley@toyassociation.org

About The Toy Association and the toy industry:

The Toy Association is the North American based trade association; our membership includes more than 900 businesses, from inventors and designers of toys to toy manufacturers and importers, retailers and safety testing labs, and all members are involved in bringing safe & fun toys and games to children. The toy sector is a global industry of more than US $90 billion worldwide annually, and our members account for more than half of this amount.

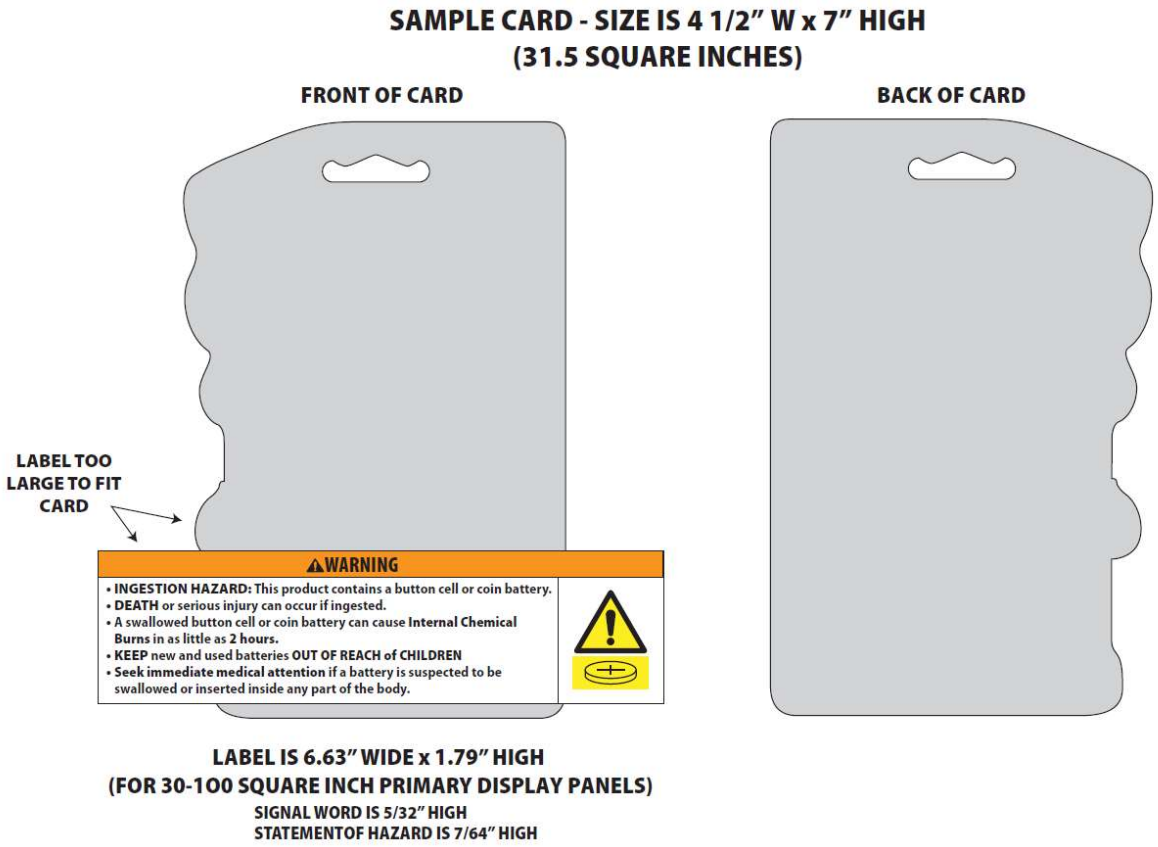
Toy safety is the top priority for The Toy Association and its members. Since the 1930s, we have served as leaders in global toy safety efforts; in the 1970s we helped to create the first comprehensive toy safety standard, which was later adopted under the auspices of ASTM International as ASTM F963. The ASTM F963 Toy Safety Standard has been recognized in the United States and internationally as an effective safety standard that has been adopted as a mandatory toy safety standard for all toys sold in the U.S. under CPSIA in 2008. It also serves as a model for other countries looking to protect the health and safety of their citizens with protective standards for children. The Toy Association continues to work with medical experts, government, consumers and industry to provide technical input to ensure that toy safety standards keep pace with innovation and potential emerging issues.

[67] https://www.cpsc.gov/s3fs-public/pdfs/recall/lawsuits/abc/148-CPSC_Docket_No_22-1_In_the_Matter_of_Leachco_Inc_ALJ_Decision.pdf?VersionId=JEkmoJldEmIa7L4KwYWwn11jqGJJ8Oi1 , p 62

The Toy Association is committed to working with legislators and regulators around the world to reduce barriers to trade and to achieve the international alignment and harmonization of risk-based standards that will provide a high level of confidence that toys from any source can be trusted as safe for use by children. Standards alignment assures open markets between nations to maximize product availability and choice.

Appendix A

Example of proposed warning statement on smaller packaging sizes



Note that the packaging example above only illustrates the relative sizing of the proposed warning statement and does not illustrate the following additional placements considerations:

- multilingual packaging requirements (including other mandatory labeling and language/size parity mandates)
- required placement of the product itself if the packaging is a blister card
- placement of the Federal Small Parts Warning statement
- cutouts/openings or other negative space requirements on the principal display panel
- other mandatory non-PDP labeling such as legal lines, product information

Appendix B

Example of proposed warning statement on smaller packaging sizes with multiple languages

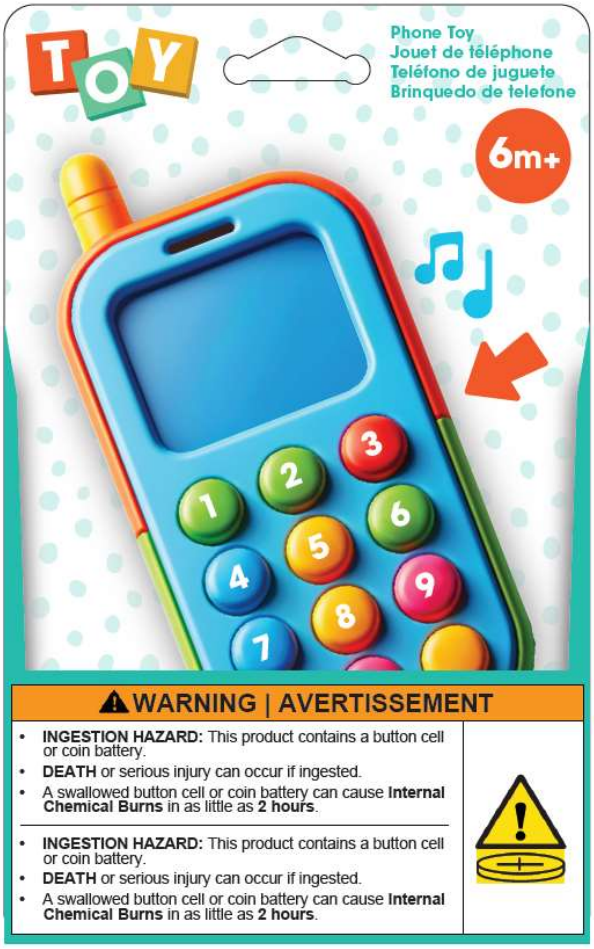
5” x 8” PDP (40 square Inches)

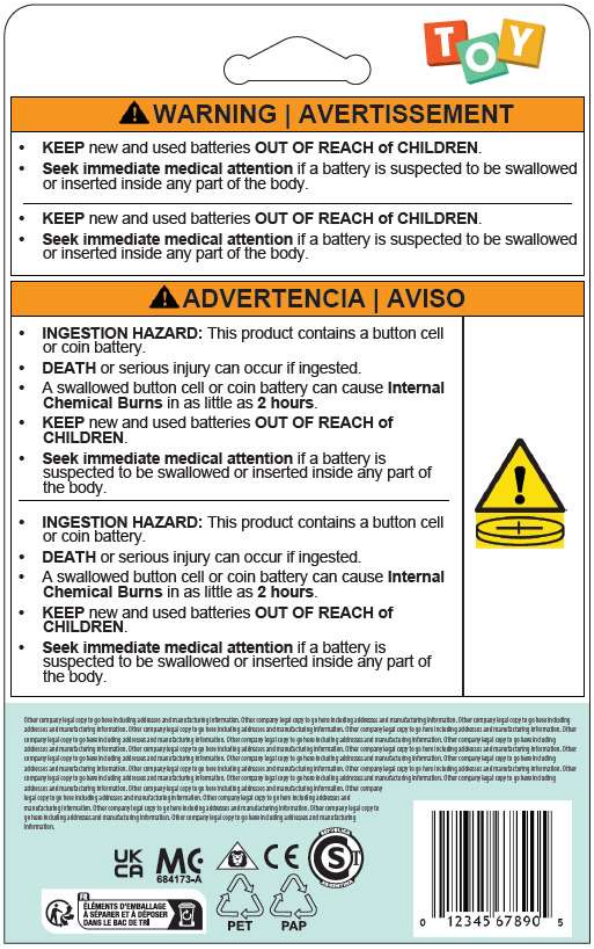
1. Current layout

NOTE: Example is for a product appropriate for children under 3.

A product for older children (between 3 years and 6 years) with small parts would also require placement for the Federal Small Parts Warning statement and small part statements for other regions.

2. With Proposed warning statement





NOTE: Example is for a product appropriate for children under 3, using the permitted ‘alternative’ statement, applied for English and French language versions, with Spanish and Portuguese on the back (not translated here).

Further to this example, a product for older children (between 3 years and 6 years) with small parts would also require space and placement for the Federal Small Parts Warning statement in multiple languages in addition to small part warning statements for other regions.