rule as written and recommended strengthening others. Many individual members of those organizations submitted comments supporting the rule as drafted. Approximately twenty manufacturers, trade associations, and firms that test toys commented on the proposed labeling requirements for toys and games, while other commenters addressed issues such as the applicability of the CSPA to writing and art materials and to balloons distributed by individual performers or sold individually. Other comments raised issues relating to labeling for unpackaged products sold or distributed in bulk or requested clarification of specific technical requirements established by the act or the proposed regulation. Comments on specific parts of the rule and the Commission's responses to the comments are discussed in the following paragraphs.

1. Relationship of the CSPA to Other Standards

Representatives of foreign toy manufacturers commented generally on the complications the legislation presents with regard to standardized labeling statements under the European toy safety directive and to the development and use of a graphic symbol to identify products that are hazardous to children under three. Inasmuch as Congress mandated in the CSPA the precise labeling requirements that products in the U.S. market must meet, the Commission has little ability to address these concerns. Thus, no changes have been made to the final rule concerning these issues.

2. Existing Policies With Respect to Labeling and Toys

A recurring question throughout the comments is the extent to which the Commission, in administering the CSPA, intends to apply its existing policies and interpretations with respect to labeling and toys generally. For example, commenters inquired whether they can combine the warning statements required for marbles and for games with small parts, if they produce a game that contains both items.

Under the general labeling provisions of 16 CFR 1500.127, the Commission permits information relating to a specific hazard associated with a hazardous substance to be combined with information relating to additional hazards if the resulting statement contains all the information needed to deal with each respective hazard. If the Commission followed its existing policies, the labeling for the game could be condensed to reflect the hazard associated with the small parts and the marble in one statement.

Similarly, under the Commission's small parts testing regulations, toys reasonably intended to be assembled by an adult and not intended to be taken apart by a child are tested only in the assembled state, if the shelf package and assembly instructions prominently indicate that the article is intended to be assembled only by an adult. The effect of this exception is to exempt from the small parts test the hardware used to assemble the toy. If the Commission follows this policy with respect to the labeling required by the CSPA, products containing such hardware would also be exempt from the labeling requirements.

The majority of the Commission's policies applicable to toys have evolved over the last ten to fifteen years, while many of the labeling policies are twenty to thirty years old. All of the policies provide standardized points of reference, both for regulated industries as well as the Commission staff, and take into account the requirements of the law, the objective of protecting the public, and the practical realities of the commercial world.

To avoid the confusion associated with establishing differing requirements for similar toys and labels, in administering the labeling provisions of the CSPA, the Commission will generally apply its existing policies with respect to children's articles and hazardous substances labeling. This general rule will apply unless such a policy (1) conflicts with the express provisions of the CSPA; (2) is overridden by a policy decision of the Commission as expressed in the final rule or in subsequent guidance to the staff of the Commission; (3) is impractical in its application; or (4) could result in a diminution of the protection envisioned by the law. The Commission believes it unlikely, however, that either of the latter two exceptions will occur.

3. Upper Age Limit

a. Toys and Games

The CSPA establishes labeling requirements for any toy or game that includes a small part and that is intended for use by children who are at least three years old but not older than six. The law permits the Commission to establish an alternative age to the upper limit of six years, but that alternative limit "may not be less than five years of age." 15 U.S.C. 1278(a)(1). In the proposed rule, the Commission declined to establish an alternative upper age limit. As explained below, the final rule adopts an upper age limit of less than six years.

Consumer advocates supported maintaining the upper age limit at six years, arguing that, in the absence of compelling evidence to the contrary, the upper age limit specified in the statute should control. Several industry commenters, however, objected to applying the labeling requirements to toys or games intended for use by children under seven years of age (i.e while they are six years old). These commenters argued that this upper age limit departed from the original 1991 staff recommendation that the Commission require labeling on toys or games intended for children aged from 36 months up to, but not including, 60 months. Most of these commenters suggested that the Commission select an alternative upper age limit of not more than five years, although some suggested that the Commission adopt the upper age limit in the original staff recommendation.

Other commenters argued that the upper age limit of six is inconsistent with the Commissions's Guidelines for Relating Children's Ages to Toy Characteristics which the Commission uses to evaluate toys or other articles intended for use by children. According to these commenters, the inconsistency arises because the guidelines differentiate products intended for children aged 37 through 72 months from those intended for children 73 through 96 months old. The commenters contended that, if manufacturers complied with the labeling requirements and also followed the guidelines, the practical effect of applying the labeling to products intended for children under the age of seven would be to require labeling for products intended for children between the ages of 73 and 96 months.

At the outset, neither the CSPA nor its legislative history contain an explanation of the reason for the statutory upper age limit of six years or for the floor of five years on the alternative age limit. The text of the legislation, however, expressly forecloses using the original staff recommendation to label toys and games intended for children up to, but not including, 60 months of age as the alternative upper age limit. Similarly, any alleged inconsistency between the Commission age grading guidelines and the labeling requirements of the CSPA arises because the statute itself establishes a presumptive upper age limit of six years for labeling that does not coincide with the age divisions in the guidelines. The Commission is, of