course, bound to follow the requirements of the law.

The original staff recommendation did not suggest labeling products for children five years of age or older because available data did not support the need to extend the labeling requirements to products intended for that age group. That recommendation therefore does not itself provide a basis for specifying a specific alternative upper age between five and seven years. However, the Commission believes that the rationale for the original proposalthat the products most likely to present a threat to children under three are toys and games intended for three and four year olds, and that the skills, levels of development and play interests of children five years of age and older differ significantly from those of such younger children—is valid. Thus, the Commission believes that establishing an upper age limit lower than six would not significantly compromise the safety of children under three.

An upper age limit of 5 years (e.g., under 60 months and one day) would most closely approximate the objectives of the original staff recommendation. However, since there is no clearly defined line between toys intended for four year olds and those intended for five years olds, drawing a distinction in the rule in effect based on the day after a child reaches his or her fifth year could create problems for manufacturers in complying with the law. In contrast, an upper age limit of less than 6 years (less than 73 months) would be consistent with the Commission's Guidelines for Relating Children's Ages to Toy Characteristics. Those established guidelines recognize a break between toys and games intended for children 37 months through 72 months old (less than 6 years old), and those intended for children 73 (6 years old) through 96 months.

The Commission has therefore lowered the upper age limit to apply to toys or games intended for use by children who are less than six years old. In addition to the reasons discussed above, the Commission believes that limiting the scope of the labeling requirement will more closely focus prospective purchasers on the potential hazards of those toys and games intended for older children that are most likely to be purchased for younger children. Moreover, many toys intended for children six years of age are also intended for children seven and eight years of age. While the great majority of these products are unlikely to be purchased for children under three, labeling all of these products could dilute the effectiveness of the labeling

on products intended for children from three up to six years of age that are most likely to be purchased for younger children.

b. "Younger Than Seven Years"

The preamble to the proposed rule points out that products intended for children of a specific age are generally recognized by consumers as being suitable for all children of that age. Thus, a toy labeled for use by children six years old is typically viewed as being appropriate for use by children who have just turned six, as well as for use by those approaching their seventh birthday. The proposed rule interpreted the term "intended for use by children who are * * * not older than six years" in the CSPA to mean that the labeling requirements apply to toys or games intended for children under seven years of age.

Several commenters disagreed with this approach. Some contended it was inconsistent with the Commission's age grading guidelines. Others, relying on the statutory upper age limit of six years, suggested that the interpretation in the proposed rule would lead manufacturers who currently label products for children age six and up in accordance with industry standard practice to revise the age recommendations to seven and up.

None of the commenters provided a basis for changing the interpretation. This approach is the same as that of the Commission's small parts regulation which applies to products intended for children under three years of age. Moreover, applying the labeling requirements to products intended for use by children who have not yet reached a specific age-in this case, six—is consistent with the analytical approach of the Commission's age grading guidelines. For example, a child does not attain the age of six years until the completion of the last day of his or her seventy-second month (i.e., is beginning the seventy-third month). Thus, the upper end of 72 months in the age grouping of 37 to 72 months specified in the guidelines, in effect, applies to articles intended for children who are in the midst of their fifth year but have not yet reached their sixth year, i.e. are under six years of age. The Commission, therefore, declines to modify the final rule in the manner requested by the commenters.

4. Prominence and Conspicuousness of Labeling

Under the CSPA, precautionary labeling statements must be displayed in the English language in conspicuous and legible type in contrast by

typography, layout, or color with other printed material on a product package, on any accompanying descriptive material, on any bin or container for retail display from which the product is sold, and on any vending machine from which it is dispensed. The act also requires that the labeling statements be displayed "in a manner consistent with part 1500 of title 16, Code of Federal Regulations." 15 U.S.C. 1278(c)(1)(B). Title 16, Part 1500.121, contains the Commission's policies and interpretations implementing section 2(p)(2) of the FHSA which requires that precautionary labeling for hazardous substances appear prominently and conspicuously. The proposed rule incorporated by reference those policies and interpretations, with modifications designed to accommodate specific provisions of the CSPA and the general differences between toy labels and hazardous substance labels.

No commenter objected to incorporating the provisions of 16 CFR 1500.121 by reference in the proposed rule. Consumer advocates favored publishing the proposed requirements in final without change. Several industry commenters, however, objected to specific provisions in the proposed rule modifying 16 CFR 1500.121. Those objections and the Commission's response are discussed below.

a. "Color-Blocking"

To assure that the labeling statements required by the CSPA appear prominently and conspicuously, the proposed rule solicited comments on the desirability of "color-blocking" those statements. Color-blocking would require the statements to appear on a background different from the color of the background of the area of the package on which it appears, from the color of any printed matter in proximity to the required statements, and, if the package were a see-through package, from the color of the article contained in the package. As the proposed rule explained, the packages of products subject to the CSPA generally contain many visual messages, some in printed product descriptions and depictions, others in see-through features that display actual products. All of these features have the potential to obscure labeling statements which, if they generally followed the provisions of 16 CFR 1500.121, would otherwise be regarded as conspicuous.

Several commenters objected to the "color-blocking" proposal, contending that it is more stringent than the current conspicuousness requirements contained in 16 CFR 1500.121. They also contended that requiring color-