than on the regulated product he or she has just purchased.

First, the law only applies to descriptive material that accompanies a product that requires labeling. A catalog that accompanies an unregulated product need not bear any labeling, even though the packages of other products described in the catalog might require labeling.

The status under the CSPA of a marketing material such as a catalog that depicts or advertises other items in addition to the regulated product that the catalog accompanies is a question of interpretation. Although a depiction of a regulated product in a catalog would appear to meet the plain meaning of the term "descriptive material," the Commission believes that requiring labeling in such a circumstance will do little to increase the protection provided by the point-of-purchase warning on the product's label. Accordingly, the Commission has excluded such catalogs and similar marketing materials from the definition of "descriptive material," unless they contain additional information, such as instructions for use of the regulated product it accompanies or a list of accessories intended to be used solely with that product.

## d. Descriptive Material Intended for Use by Children

Some commenters recommended that descriptive material intended for use by children not require precautionary labeling, if the warnings are included on a separate package insert intended for adults. The commenters, citing the Senate report, reasoned that the statutory warnings are intended for adult purchasers and that young children would be unable to understand and appreciate the hazards. Consumer advocates, however, favored requiring that such material be labeled, noting that the material is often read by adults even though it is intended for children and that many children are capable of reading and understanding the

The Commission believes that the inclusion of a properly labeled insert in addition to instructions for children is adequate to satisfy the objectives of the legislation without compromising safety. The final rule exempts from the labeling requirements descriptive material intended solely for use by children, provided that the package of the product also contains a properly labeled insert intended for adults that is prominently identified as a warning for parents.

## 6. Definition of Package

The proposed regulation defined the term "package" as the immediate package in which a product subject to labeling is sold or is intended to be stored, as well as to any outer container or wrapping. Commenters expressed concern that this definition could require labeling to appear on shrink wrap or cellophane applied over an immediate package, as well as on components of toys such as doll houses, toy medical bags, etc. that are themselves used to store other components. One commenter also suggested that the labeling requirements not apply to containers used to ship packaged products to retailers because consumers generally do not see or read information on such containers.

In response to the latter comment, the Commission notes that the CSPA only applies to retail packages intended to be distributed to consumers or to containers used to display bulk unpackaged and unlabeled items at retail. The Commission also notes that, for unpackaged, unlabeled products sold in bulk, unlabeled shrink wrap film intended to keep a toy clean or plastic "eggs" designed to permit toys to be dispensed from vending machines is not "packaging" which would require labeling under the CSPA.

With respect to the other comments, the reference to the outer container or wrapper of a product in the proposed rule tracks section 2(n) of the FHSA which requires that any labeling required under that act shall appear on the outside container or wrapper of a hazardous substance, unless the labeling is easily legible through the outside container or wrapper. This provision is equally applicable to the labeling required by the CSPA. With respect to functional components of toys that are used to store other components, the CSPA only requires that packaging intended for retail inspection must bear labeling. Thus, while cardboard boxes for games may require labeling if they have a surface that functions as a principal display panel, the Commission believes that Congress did not intend labeling to be applied directly to toys or components of toys that already bear labeling on their packaging or that are not part of the retail display. However, if such items are displayed at retail without any packaging, the items themselves would have to bear a hang tag containing the required labeling. The final regulation has been revised to clarify both of these issues.

## 7. Definition of "Toy or Game"

The proposed rule did not include a definition of "toy" or "game." However, commenters requested that the Commission clarify the scope of these terms, questioning whether arts and crafts materials, such as paint sets or bead stringing kits, are subject to the labeling requirements. Representatives of the Art and Creative Materials Institute cited a decision of the United States Court of Appeals for the Second Circuit to support the proposition that art materials are not necessarily included in the definition of a toy. This decision, however, addressed the issue of whether a flammable children's article was an educational material that was exempt from the banning requirements of the FHSA.

Past Commission actions have generally addressed the hazards associated with articles intended for use by children, including toys and games. The agency, therefore, has not previously undertaken to define either term. In the absence of a regulatory definition, however, the Commission generally looks to common dictionary definitions of terms for guidance. For example, a toy is "an object for children to play with; especially something made for the amusement of a child or for his use in play." A game is "an article for use in a physical or mental competition conducted according to rules in which the participants play in direct opposition to each other.\* \* \*'' (In the Commission's view, the latter definition also includes games in which children compete with an item itself rather than other children.) The Commission has elected not to include definitions of the terms "toy" and "game" in the final rule, but will continue to draw upon on common dictionary definitions of these terms for guidance in administering the CSPA.

With respect to the specific applicability of the term "toy" to arts and crafts sets intended for children three to five, these products are primarily intended for use in play and for the amusement of such children. The Commission therefore considers them to be "toys." Such items would require labeling under the CSPA, even though a child, in the course of play, might produce a "functional" item for display or use. However, items such as pens and pencils for general use which might incidentally be used in play would not be considered toys.

The Commission has also received inquiries concerning the status of "hybrid" items, such as children's toiletries which include toys or other items subject to the CSPA. If any part of