is made by subjecting the container to the appropriate test in 16 CFR 1500.52 or 53 simulating the use and abuse of a toy or article intended for use by children under three, in the case of banned small balls, or three or over for labeling purposes.

d. Marbles

Since marbles are primarily intended for use by children, the labeling requirements generally apply to all packages, games, or toys containing marbles. Marbles that are not intended for children include collectors' marbles and marbles for ornamental or industrial use. In addition, the Commission has excepted from the labeling requirements marbles that are permanently enclosed in a game or toy. As is the case with small balls, the determination of accessibility can be made by applying the tests of 16 CFR 1500.53.

e. Template for Testing Balls

The proposed regulation bans any ball intended for children under three years of age that, under the influence of its own weight, passes, in any orientation, through a circular hole with a diameter of 1.75 inches in a rigid template. One commenter questioned whether the template must have the same dimensions as the template used to test rattles. The pacifier regulation, 16 CFR 1511 provides a better point of reference for testing than the rattle regulation, since the procedure for testing pacifiers is similar to that used to test small balls. While the final rule does not incorporate all of the external dimensions of the pacifier test fixture, to assure that the template is rigid, the rule indicates that the depth of the template for testing small balls must be at least 1/4 inch (6mm.), consistent with that of the pacifier test fixture.

12. Balloons

The CSPA requires that the packaging of any latex balloon and any descriptive material which accompanies such a balloon bear specific labeling statements warning that uninflated balloons or pieces of balloons can choke or suffocate children under eight years of age. In the case of bulk sales of balloons, the bin, container for retail display, or vending machine from which the balloons are sold or dispensed must bear the required labeling statements.

a. Unpackaged Balloons Distributed Individually

One commenter expressed concern that the CSPA may require performers, such as professional magicians, who distribute individual unpackaged balloons to members of their audiences either to label the individual balloons or wear a tag or sign containing the required warnings. The law imposes neither requirement feared by the commenter.

Packages of balloons must bear precautionary labeling. However, the bulk sale requirements of the law are designed to require labeling on containers in which multiple products are held for retail sale. The Commission does not believe that Congress intended these provisions to extend to individuals who distribute unpackaged balloons that are not held in some form of container for retail display. Thus, unpackaged individual balloons distributed as part of a professional performance are not subject to the requirement. The same is true for balloons used in commercial birthday programs which are blown up prior to arrival of the children and are used to decorate the table and party area, even though individual balloons may be given to the children as they leave.

If, however, a performer receives packages of balloons that are unlabeled and distributes the packages to the public, the performer must take steps to assure that the packages are properly labeled. A performer can comply with these requirements by purchasing packages of balloons that are properly labeled or by placing a sticker label containing the required labeling on unlabeled balloon packages prior to distributing them to the public.

b. Books and Videos

The same commenter questioned the applicability of the labeling requirements to books and videos describing balloon sculpture. Descriptive material such as a book or videotape would only require precautionary labeling when that material is packaged with a package of balloons or when the material is intended to be distributed at the same time such a package is sold or delivered to a purchaser. The fact that a consumer who receives an instructional videotape or book may subsequently purchase balloons does not bring the tape or book within the ambit of the law. If an individual or company packages or distributes to the public a package of balloons together with a videotape, instruction sheet, or book that is classified as descriptive material, that individual or company has the obligation to assure that the descriptive material is properly labeled.

13. Exports

Some commenters questioned whether the CSPA requirements apply to products manufactured in the United

States exclusively for export. Products intended for export that are labeled in accordance with the specifications of the foreign purchaser and with the laws of the country to which they are to be exported do not require labeling under the CSPA, as long as the shipping container is clearly marked that the product is for export and the product is, in fact, exported. 15 U.S.C. 1264(b)(3). However, under existing Commission policy, the manufacturer or exporter of the product must comply with the export notification requirements of 15 U.S.C. 1273(d) and 16 C.F.R. 1019.

14. Products Manufactured Outside the United States

The CSPA includes an alternative to labeling descriptive materials for products manufactured outside the United States and shipped directly to consumers. Under the alternative, if the shipping container contains other accompanying material that is labeled conspicuously, the descriptive material need not be labeled. One commenter requested clarification that products packaged abroad and shipped to a U.S. affiliate for shipment to consumers be included in the scope of this exception. The commenter noted that the Senate Report contemplated this type of arrangement. The Commission accepts this suggestion and has revised the final regulation accordingly.

15. Effective Date

Several commenters requested that the Commission delay the effective date of the final rule to permit package labels to be redesigned and printed. Some suggested a delay of six months, while others requested a year. However, no commenter provided a detailed breakdown of the time frames involved.

Based on its experience with administering the prominence and conspicuousness requirements of 16 CFR 1500.121, the Commission agrees that a delayed effective date is appropriate. Accordingly, the final regulation becomes effective with respect to products manufactured in or imported into the United States six months after publication of the final rule. However, since the effective date of the law was January 1, 1995, the labeling statements required by the act must appear on the principal display panel of product packages in advance of publication of the final rule. In recognition of this fact, packages with labels lithographed or printed before the effective date of the rule may be used for a period of up to six months after the effective date if they display the specific statements prescribed in the statute on the principal display panel in a manner