of test participants of ages 50 to 70 be able to use them. Recent test results with older adults showed that 95% to 99% of the 60 to 75 year-olds sampled were able to use the newer types of reclosable packages tested. [195] Furthermore, the majority of participants rated the packages "easy to use." [195] Similar results were obtained for non-reclosable packaging. [194] These results would almost certainly hold or be even stronger for the 50–60 age group.

The Commission concludes that packaging that older adults can use, and which they perceive to be easy to use, has a higher likelihood of being used correctly by the general population than packaging they cannot use, or which they perceive to be difficult to use.

The Revised Protocols Will Not Compromise Child Safety

Several commenters argued that the proposed changes will lead to a reduction in child-resistance. Their argument is that packages that currently pass at, e.g., 95% CR effectiveness may be replaced with packages that pass at a lower effectiveness after the revised protocols are adopted. However, the Commission's tests of senior-friendly packages have shown that packages which are easier for senior adults to open need not be easier for children to open. Child-resistance effectiveness levels with the reclosable seniorfriendly packages tested by CPSC varied from 97% to 100%, which are as childresistant as the most effective of traditional CR packaging. [195]

One commenter submitted graphs depicting test data purportedly showing that modifications to CR packaging to make them more adult accessible result in less child-resistance. [275, 278] The commenter did not identify the packages tested, describe in detail the changes that were made to the packages, or provide the raw data for the tests. Indeed, for two of the five graphs purporting to reflect industry testing, no backup information was presented. The Commission cannot determine for any of the graphs whether the appropriate protocol was adequately followed or whether the effectiveness scores were calculated properly.13 The failure to provide these data makes it impossible to make a thorough or meaningful assessment of this commenter's submission.

Moreover, two of the five packages in these graphs purportedly scored at least

96% in both the child and adult tests. Thus, the limited information supplied by this commenter shows, at most, that some packages may need further modification or may need to be replaced with commercially available packages having both high adult-effectiveness and high child-resistance.

Another argument raised by these commenters was that each percentage point of reduction in true childresistance would result in a potential 32 million product failures. This figure apparently was obtained by dividing 100 into the estimated 3.2 billion CR packages produced each year. This argument overlooks the fact that even a package for which child-resistance has been slightly reduced to make it easier for adults to open will still be far more child-resistant than one where the cap has been left off or loose because it was difficult to open. A package that is not child-resistant or that is misused is less than 9% child-resistant, versus at least 80% child-resistant for packages that pass the protocol.14 Thus, each additional unit that is purchased in CR packaging and used properly because it is less difficult for adults to use can be over 10 times more child-resistant than non-CR packaging or misused CR packaging.

The Commission is unable to quantify the number of poisonings that will be prevented by the new rule, and such a calculation is not statutorily required. However, the record evidence including survey data, human factors analysis, and other information indicates that this rule will increase the proper use of CR packaging, reduce injuries, and save children's lives.

One commenter argued that persons who start using CR packaging because it is easier to open may let their guard down and not be as vigilant about keeping the products out of the reach of children. The commenter claimed that this will result in increased poisonings. However, it is speculative whether caregivers will likely get a false sense of security if they switch from non-CR packaging to CR packaging. And, the Commission is not aware of any evidence that this occurred when CR packages were first introduced.

Because no CR packaging is childproof, it will always be important to endeavor to keep hazardous products out of the reach of children. Although it may well still be important to educate people about the need to keep hazardous products away from children, the rationale for the PPPA is that education alone is inadequate to address the problem of accidental childhood poisonings:

Efforts at public education are based on the premise that poisonings are caused by parental negligence and that poisonings can be prevented by stimulation of greater parental care. The Committee, however, believes that parental negligence is not the primary cause of poisonings. There are too many potentially hazardous products in the modern home to hope that all of them can be kept out of the reach of children. Special packaging will accomplish what previous efforts have not b[y] attempting to create positive separation between young children and hazardous substances. Special packaging is intended simply to make the environment of young children safer.

S. Rep. No. 91–845 at 3.

Finally, the Commission has addressed through discretionary enforcement stays the possibility that a manufacturer may have difficulty maintaining the child-resistance of packaging while complying with the new protocol. Specifically, as discussed below, one of the grounds for such stays is that more time is needed to develop CRP that will meet the new protocol and not significantly reduce the childresistance of the package.

The Commission May Issue Safety Rules That Improve Convenience

One commenter also argued that the Commission could not issue the proposed rule because an ease-of-use regulation, even if it had a safety rationale, would not be a "safety standard" under the Consumer Product Safety Act ("CPSA"). As an example, the commenter claimed that the Commission could not use the CPSA to issue a convenience standard for lawn mowers.

The fact that the PPPA contains a specific ease-of-use requirement (that the packaging be not difficult for normal adults) is sufficient to refute this contention, regardless of what might be done under the CPSA. As regards the example of lawn mowers, however, the Commission's Safety Standard for Walk-Behind Power Lawn Mowers (issued under the CPSA), actually does contain a safety provision linked to convenience. See 16 CFR 1205.5(a)(iv). Thus, even under the CPSA, the Commission may issue standards fashioned to ensure safe behavior by consumers, even if that standard addresses the "convenience" of a safety feature.

Market Forces Have Failed To Eliminate Difficult-To-Use Packaging

Finally, a number of commenters argued that ease of use would be best

¹³ The Commission previously received another industry comment in which the SAUE scores were all calculated incorrectly, assuming the age group proportions were correct.

¹⁴Wilbur, C.J., "Closure Testing Equipment Studies, Status Reports, Non-Child Resistant, Snap Type Packaging and Continuous Threaded Type Packaging, CPSC," CPSC Directorate for Health Sciences (March 1990).