

the final regulation to incorporate a provision similar to 16 CFR 1500.127(b) which permits labeling information relating to multiple hazards to be condensed as long as the resulting statement contains all of the information necessary to deal with the specific hazard presented by each article. The Commission notes, however, that the message contained in the balloon label specified in the CSPA differs substantially from those in the labels for balls, marbles, and toys and games with small parts. Therefore, the label of a package that contains a balloon and another item subject to the CSPA may only have a combined signal word and statement of hazard. The remaining statements required by the act with respect to each of the products in the package must appear on the label of the package.

d. Label Justification, Layout and Spacing

The proposed rule required that labels required by the CSPA appear in the same format and layout as that prescribed in the legislation itself. Several commenters objected to this requirement, noting the Senate Report on the legislation would have permitted labels to vary from the precise format specified in the law. One commenter questioned whether the statutory format requirements included margin justification.

The requirement in the proposed rule was based on the precision with which the law identifies the text and format of the various labeling statements. The rule construed that precision as an express indication of how Congress intended those statements to appear on package labels. However, when taken in conjunction with the Congressional mandate that the Commission's regulations for the conspicuousness of labeling required by the CSPA be consistent with 16 CFR 1500.121, the Commission believes that a more valid reading of the legislation would treat the format and layout of the various labeling statements in the law as exemplary, rather than mandatory.

While the label format set forth in the law is more than adequate to meet the Commission's existing conspicuousness regulations, it does not take into account variations in packaging design and lithography that the Commission can expect to encounter for products subject to the CSPA. On balance, the existing policies implementing the labeling requirements of the FHSA have proven adequate to ensure that labels are prominent and conspicuous. Thus, the Commission has revised the proposed rule to delete the requirement that

manufacturers follow the precise format in the statute and instead will follow its existing labeling policies with respect to format and layout. The Commission however notes that one existing policy states that labeling statements shall appear blocked together within a square or rectangular area. This means that the labeling statements required by the act must appear on at least two lines. Since the resolution of the overall issue of format also resolves the question of margin justification, no response to that comment is necessary.

5. Descriptive Material

The CSPA requires the statutory warnings to appear on descriptive material accompanying a product that requires labeling under the act. The proposed regulation defined the term "descriptive material" as "any instruction (whether written or otherwise) for the use of the product, any depiction of the product, and any promotional material, advertisement, or other written literature that describes any function, use, warnings, user population, or other characteristic of the product, including its suitability for use with or relationship to other games, products, or toys." The proposed regulation also noted that descriptive material "accompanies" a product when it is packaged with the product or is intended to be distributed with the product at the time of sale or delivery to the purchaser. As is discussed below, the final rule retains much of the definition, but clarifies that catalogs and marketing materials that describe products other than a regulated product generally need not be labeled.

a. Meaning of "Accompanies"

Several commenters expressed concern that the definition of the term "descriptive material" in the proposed regulation might require multiple labels on product packages such as blister cards that, for example, contain instructions for use or recommended age labeling on the back of the cards. As the discussion of the term "accompanies" in the proposed rule indicates, the Commission believes that Congress intended labeling requirements for descriptive material to apply to material separate from the package of the article itself, such as an instruction sheet. The final regulation clarifies this point.

Another commenter questioned whether material such as mail order catalogs or newspaper advertisements depicting items subject to the CSPA are required to bear the required warning statements. The act only requires descriptive material which accompanies

a regulated product to be labeled. According to the proposed regulation, descriptive material "accompanies" a product when it is packaged with the product or when it is intended to be distributed with the product at the time of sale or delivery to the purchaser. A catalog or advertisement that does not meet either of these criteria would not require labeling.

b. Instructions for Use

Several commenters contended that the definition of the term "descriptive material" in the proposed rule was too expansive. Some requested that the definition be limited to material containing instructions for use.

Section 2(n)(2) of the FHSA expressly requires that labeling required by the act appear "* * * on all accompanying literature where there are instructions for use, written or otherwise." Inasmuch as the CSPA follows the general labeling scheme of the FHSA, the Commission believes that the use of the term "descriptive material" without the limitation contained in section 2(n) indicates a Congressional intention that CSPA labeling not be limited to material containing instructions for use. Accordingly, the Commission declines to adopt the revision requested by the commenter to limit the labeling requirements to written material containing instructions for use.

The Commission notes that the great majority of material that accompanies the products subject to the CSPA contains instructions for use, either with or without other descriptions. Moreover, each discrete piece of material accompanying a regulated product need only have one label. Thus, if a piece of accompanying literature contained, for example, instructions for use, a statement of the age of the children for whom an item is intended, and a depiction of the product, only one precautionary statement would be required. Therefore, the Commission believes that defining the term "descriptive material" broadly to include the variety of ways that accompanying material can describe or depict a regulated product should have little practical effect.

c. Catalogs and Marketing Materials

Many industry commenters contended that catalogs and marketing materials depicting other products, as well as the regulated products that such materials accompany, should be exempt from the labeling requirements. Under their rationale, the purpose of such catalogs is to focus the attention of the purchaser on the other products rather