

MAY 10 1999

Docket No. 98-R-12

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

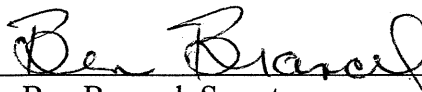
NOTICE OF SUBMISSION OF PROPOSED RULES TO
PRESIDING OFFICERS OF EACH HOUSE OF THE LEGISLATURE

NOTICE IS HEREBY GIVEN, pursuant to s. 227.19(2), Stats., that the State of Wisconsin Department of Agriculture, Trade and Consumer Protection is submitting a final draft of proposed Clearinghouse Rule Number 98-159 to the presiding officer of each house of the legislature for standing committee review. The proposed rule renames ch. ATPC 139, Wis. Adm. Code; renumbers and amends portions of ch. ATPC 139, Wis. Adm. Code, relating to consumer product safety; and creates portions of ch. ATPC 139, Wis. Adm. Code, relating to safety standards for children's bicycle helmets and banning drawstrings in children's clothing which pose serious safety hazards.

Dated this 27 day of April, 1999.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

By



Ben Brancel, Secretary



State of Wisconsin
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary



DATE: April 26, 1999

TO: The Honorable Fred Risser
President, Wisconsin State Senate
Room 220 South, State Capitol
Madison, WI 53703

The Honorable Scott Jensen
Speaker, Wisconsin State Assembly
Room 211 North, State Capitol
Madison, WI 53703

FROM: Ben Brancel, Secretary *Ben Brancel*
Department of Agriculture, Trade and Consumer Protection

SUBJECT: Proposed Amendments to Ch. ATPC 139, Wis. Adm. Code, relating to safety standards for children's bicycle helmets and drawstrings in children's clothing
Clearinghouse Rule No. 98-159

Pursuant to ss. 227.19(2) and (3), Stats., the Department of Agriculture, Trade and Consumer Protection hereby transmits the above rules for legislative committee review. We are enclosing three copies of the final draft rules, together with the following report. Pursuant to s. 227.19(2), Stats., the department will publish a notice of this referral in the Wisconsin Administrative Register.

1. SUMMARY AND EXPLANATION OF NEED FOR RULE

The department administers state laws related to unfair business practices, consumer product safety and hazardous household substances. The department has adopted rules under ch. ATPC 139, Wis. Adm. Code, "Hazardous Substances" which establish labeling requirements for certain hazardous products and prohibit the sale of products that pose unreasonable safety hazards to consumers. For example, the current rules prohibit the sale of certain toys that pose an unreasonable risk of injury to children.

This rule changes the title of ch. ATPC 139, Wis. Adm. Code, from "Hazardous Substances" to "Consumer Product Safety." The new title more fully and accurately describes the contents of the rules. This rule also adds a "note" which identifies the statutory authority under which ch. ATPC 139 is adopted and the statutory penalties which apply to rule violations.

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Bicycle Helmet Safety Standards

Bicycle deaths and injuries are a serious nationwide concern. According to the federal Consumer Product Safety Commission (CPSC), about 900 people are killed each year in bicycle-related accidents, 200 of whom are children. About 60 percent of these bicycle-related deaths involve head injuries. Across the country, about 500,000 people require emergency room treatment each year for bicycle-related injuries.

Research shows that properly designed bicycle helmets substantially reduce head injuries caused by bicycle accidents. Improperly designed helmets provide little or no benefit to consumers. The federal CPSC has adopted safety standards for all bicycle helmets sold in the United States after March 10, 1999. This rule prohibits the sale, in Wisconsin, of children's bicycle helmets manufactured or imported into the United States after March 10, 1999, that do not meet the federal safety standards. This rule provision will allow the department to enforce federal standards and will give Wisconsin consumers certain remedies they do not have under federal law.

Drawstrings on Children's Clothing

The department and the CPSC have documented strangulations and serious injuries caused by drawstrings in children's clothing. In Wisconsin, at least one fatality and five serious injuries have been attributed to drawstrings in the past 5 years. In 1996, CPSC adopted voluntary "Guidelines for Drawstrings on Children's Outerwear." However, the department has documented Wisconsin stores which are selling children's clothing which fails to meet the federal safety guidelines.

Based on the CPSC guidelines, this rule prohibits the sale of certain children's clothing with drawstrings that present serious safety hazards. This rule bans all the following, effective January 1, 2000:

- Children's clothing, sizes 0 to 16, with drawstrings in the neck area.
- Children's upper outerwear, sizes 0 to 16, with a drawstring at the waist or bottom of the garment, unless all the following apply:
 - * Not more than 3 inches of any drawstring is outside the drawstring channel when the garment is expanded to its fullest width.
 - * There is no toggle, knot or other attachment at the free end of any drawstring.
 - * Every drawstring is sewn to the garment at the midpoint of the drawstring channel so the drawstring cannot be pulled out of the channel.

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This rule will help protect Wisconsin children from strangulation or injuries caused by drawstrings on clothing. It will permit the department to take action against companies selling unsafe children's clothing and will give Wisconsin consumers certain remedies which they do not have under federal law.

The department developed this rule in consultation with children's interest groups, children's coalitions, school bus associations, medical groups, retailers and merchant trade associations. The department believes that there is majority consensus and support for this rule. The DATCP Board unanimously approved this final draft rule on April 8, 1999.

2. RULE MODIFICATIONS AFTER PUBLIC HEARING

On October 2, 1998, the DATCP Board authorized public hearings on this rule. Four hearings were held in Madison, Milwaukee, Eau Claire and Green Bay in January 1999.

The DATCP Board approved a final draft rule on April 8, 1999. The final draft rule includes the following modifications from the hearing draft:

- The final draft rule added definitions for the terms, "neck area" and "upper outerwear," based on current definitions used by the American Society for Testing and Materials (ASTM).
- The final draft rule reorganized and created a new title for sec. ATCP 139.05, related to hazardous toys and children's articles.
- The final draft rule created a new section, ATCP 139.055 to identify toys and children's articles that are specifically banned from sale in Wisconsin.
- The final draft rule modified the drawstring ban to address industry concerns. The final draft:
 - * Bans drawstrings in the neck area only.
 - * Applies CPSC safety standards to children's outerwear.
 - * Extends the drawstring rules to include children's clothing sizes 0-2T.
 - * Adopts the language used in the ASTM "Standard Safety Specification for Drawstrings on Children's Upper Outerwear" to identify the standards which must be met for drawstrings on children's outerwear.

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3. **HEARING TESTIMONY**

Public hearings were held in Madison, Milwaukee, Eau Claire and Green Bay from January 11-14, 1999. The department also accepted written comments until February 15, 1999. The department modified the final draft rule in response to hearing comments. **APPENDIX A** contains a summary of the hearing testimony, along with a list of persons attending, testifying or submitting written comments for the hearing record.

4. **RESPONSE TO RULES CLEARINGHOUSE COMMENTS**

The Legislative Council Rules Clearinghouse made only two comments on the hearing draft rule. First, the Clearinghouse suggested that the department use a different reference to the bicycle helmet safety standards in the Code of Federal Regulations. This change was made in the final draft rule. Second, the Clearinghouse suggested a change in how the rule referred to the effective date. The department revised the reference to the effective date for the rules regarding drawstrings on children's clothing.

5. **FISCAL ESTIMATE**

This rule will have no fiscal impact on the department or local units of government. A fiscal estimate is attached.

6. **REGULATORY FLEXIBILITY ANALYSIS**

The proposed bicycle helmet rule will have no effect on small businesses since all manufacturers and sellers of bicycle helmets are required to meet the federal bicycle helmet safety standards after March 10, 1999.

The proposed drawstring rule will have some impact on small business. Some businesses may still have some inventory of children's clothing with drawstrings around the neck area, or children's outerwear with drawstrings around the waist or hip area which do not meet the CPSC standards. This rule will require those retailers to remove the drawstrings before selling the clothing, or to return the clothing to the manufacturer. A copy of the final regulatory flexibility analysis is attached.

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING AND AMENDING RULES**

1
2 The state of Wisconsin department of agriculture, trade and consumer protection proposes the
3 following order to renumber ATCP 139.05(3)(intro.) and (a) to (e); to amend ATCP 139.01
4 (intro.); to repeal and recreate ch. ATCP 139(title) and ATCP 139.05(title); to create ch.
5 ATCP 139(note), 139.01(3) and (5), 139.055(title) and 139.055(6) to (8), relating to consumer
6 product safety.

**Analysis by the Department of
Agriculture, Trade and Consumer Protection**

Statutory authority: ss. 93.07(1), 100.20(2) and 100.42(2), Stats.

Statutes interpreted: ss. 93.07(1), 100.20(2) and 100.42, Stats.

The department of agriculture, trade and consumer protection currently administers laws related to unfair business practices, consumer product safety, and hazardous household substances. The department currently administers hazardous substance rules under ch. ATCP 139, Wis. Adm. Code.

This rule retitles the department's current rules to address unsafe consumer products as well as hazardous substances. This rule also bans the following consumer products which pose safety hazards to children:

- Children's bicycle helmets that fail to meet federal safety standards.
- Children's clothing with drawstrings that present a serious safety hazard.

1 **SECTION 3.** ATCP 139.01(intro.) is amended to read:

2 **ATCP 139.01 Definitions.** In addition to definitions under ~~s.~~ ss. 100.37 and 100.42,
3 Stats., the following shall apply in the interpretation and enforcement of this chapter:

4 **SECTION 4.** ATCP 139.01(3) is created to read:

5 ATCP 139.01(3) "Neck area" means the area one inch above and below the seam
6 between the body of a garment and the collar or hood.

7 **SECTION 5.** ATCP 139.01(5) is created to read:

8 ATCP 139.01(5) "Upper outerwear" means clothing, such as jackets and sweatshirts,
9 that is generally intended to be worn over other garments.

10 **SECTION 6.** ATCP 139.05 (title) is repealed and recreated to read:

11 **ATCP 139.05 Hazardous toys and children's articles; general.**

12 **SECTION 7.** ATCP 139.055(title) is created to read:

13 **ATCP 139.055 Banned toys and children's articles.**

14 **SECTION 8.** ATCP 139.05(3)(intro.) and (a) to (e) are renumbered ATCP
15 139.055(intro.) and (1) to (5).

16 **SECTION 9.** ATCP 139.055(6) to (8) are created to read:

17 ATCP 139.055(6) Children's bicycle helmets, manufactured or imported into the
18 United States after March 10, 1999, that do not meet the federal bicycle helmet safety standard
19 under 16 CFR 1203.

20 (7) Children's clothing, sizes 0 to 16, with drawstrings in the neck area.

21 (8) Children's upper outerwear, sizes 0 to 16, with a drawstring at the waist or bottom
22 of the garment, unless all the following apply:

1 (a) Not more than 3 inches of any drawstring is outside the drawstring channel when
2 the garment is expanded to its fullest width.

3 (b) There is no toggle, knot or other attachment at the free end of any drawstring.

4 (c) Every drawstring is sewn to the garment at the midpoint of the drawstring channel
5 so the drawstring cannot be pulled out of the channel.

6 **EFFECTIVE DATE.** (1) Except as provided in sub. (2), the rules contained in this
7 order shall take effect on the first day of the month following publication in the Wisconsin
8 administrative register, as provided in s. 227.22(2)(intro.), Stats.

9 (2) ATCP 139.055(7) and (8), as created by this rulemaking order, shall take effect on
10 January 1, 2000.

11
12 Dated this 27 day of April, 1999.

13
14 STATE OF WISCONSIN
15 DEPARTMENT OF AGRICULTURE,
16 TRADE AND CONSUMER PROTECTION

17
18
19 By Ben Brancel
20 Ben Brancel
21 Secretary
22

1998 Session

FISCAL ESTIMATE

DOA-2048 (R 10/94)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No. / Adm. Rule No.
ATCP 139

Amendment No. (If Applicable)

Subject

Consumer Product Safety

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

 Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Unit Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Source Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations
None

Assumptions Used in Arriving at Fiscal Estimate

The Department of Agriculture, Trade and Consumer Protection has administered and enforced ch. ATCP 139, Wis. Adm. Code since its inception in 1978. Under these rules, certain toys and other articles intended for use by children which present a mechanical hazard or unreasonable risk of personal injury or illness are banned. These proposed rules add two items to that category, children's bicycle helmets that do not meet the federal safety standard and children's clothing, sizes 0 to 16, which has drawstrings at the neck area and children's upper outerwear that has drawstrings at the waist and hip area, unless the drawstrings meet the safety standards established by the CPSC.

The Department currently investigates reports of injuries related to consumer products as well as monitors the marketplace for other consumer products. It is assumed these proposed rules will result in a decrease in the number of incidents of injury or death requiring Department intervention. It is anticipated that the workload associated with enforcement of these rules can be absorbed by existing program resources.

Initial workload providing publicity and education about the rules will be absorbed by existing staff responsible for administering the Department's consumer protection and consumer products safety laws

Based on these assumptions, the department believes there is no fiscal effect associated with amendment of this rule.

Long - Range Fiscal Implications

None anticipated.

Agency/prepared by: (Name & Phone No.)

DATCP
Rosemary Perrizo - 266-1239

Authorized Signature/Telephone No.

Barbara Knapp
Barbara Knapp (608) 224-4746

Date

3/18/99

FINAL REGULATORY FLEXIBILITY ANALYSIS

Proposed amendments to ch. ATCP 139, Wis. Adm. Code

Consumer Product Safety

ATCP 139.05, Wis. Adm. Code, currently prohibits from sale in Wisconsin certain types of toys and other articles intended for use by children which present a mechanical hazard and an unreasonable risk of personal injury or illness. The rule lists products such as toys with small components which may be ingested or sharp protrusions which may cause lacerations and finds that the public health and safety can only be protected by keeping them out of the channels of commerce. The proposed rule will add two items to this list of products, children's bicycle helmets which do not meet the federal safety standards and certain kinds of children's clothing, sizes 0 to 16, with drawstrings.

These amendments will have little or no effect on small businesses in regard to the sale of bicycle helmets and children's clothing without drawstrings.

Children's Bicycle Helmets

Under the Children's Bicycle Helmet Safety Act of 1994, the Federal Consumer Product Safety Commission (CPSC) issued a safety standard that requires all bicycle helmets to meet impact-attenuation and other safety requirements. The standard includes requirements specifically applicable to children's helmets and requirements to prevent children's helmets from coming off during an accident.

The federal rule is effective March 10, 1999, and applies to bicycle helmets manufactured after that date. Interim mandatory standards went into effect in 1995, and have applied to bicycle helmets manufactured from 1995 until March 10, 1999, inclusive. Firms have had the option of marketing and selling helmets meeting the new standard before its effective date.

The federal rule was announced in 1998 to give small businesses adequate time to adjust their inventories and prepare to purchase new products. Since the new standard allows for the continued sale of inventory manufactured prior to March 1999, which meets the 1995 safety standards, there will be no impact on small businesses as they deplete existing inventory. Adopting this federal standard into law in the Wisconsin Administrative Code will incorporate all applicable dates for sale of new and old inventory and harmonize state and federal law.

Drawstrings on Children's Clothing

In 1996, the federal Consumer Product Safety Commission (CPSC) issued guidelines to help prevent children from being strangled by or getting entangled in drawstrings. These guidelines recommend that manufacturers and retailers provide clothing with alternative closures, such as snaps, buttons, velcro and elastic, rather than drawstrings. CPSC also recommended that consumers purchase children's clothing with these alternative closures and remove all drawstrings from children's clothing already in their possession.

The proposed amendment will ban the sale of children's clothing, sized 0 to 16, manufactured after January 1, 2000, that has drawstrings on the neck area and children's outerwear with drawstrings, unless the garment meets the CPSC standards for drawstrings on children's outerwear. Because the majority of manufacturers and retailers have been following the CPSC guidelines voluntarily, these proposed rules should have no significant impact on small business in Wisconsin.

Since 1985, there have been 20 deaths and 43 injuries to children involving drawstrings nationally. In Wisconsin, there has been one reported fatality and five serious injuries due to drawstrings during the past five years. Because drawstrings on children's clothing are a hidden hazard that can lead to deaths and injuries, the interest of public safety far outweighs any potential cost to small businesses as a result of the proposed rule.

Based on the information above, the proposed rules are not expected to have a significant adverse impact on small businesses.

Dated this 18th day of March, 1999.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: *William L. Oemichen*
William L. Oemichen, Administrator
Trade and Consumer Protection Division

**SUMMARY OF PUBLIC HEARING TESTIMONY
AND WRITTEN COMMENTS
ON PROPOSED CHANGES TO ATCP 139, WIS. ADM. CODE**

The department held public hearings in Madison, Milwaukee, Eau Claire and Green Bay between January 11-14, 1999. The department also accepted written comments into the record until February 15, 1999.

The following persons appeared at the hearings or provided written comments for the hearing record:

- The Madison public hearing was held on January 11, 1999. Three persons registered to provide testimony. They were:

Jon Kaufman	Markesan School District	Supports Rules
Tom Cattnach	Markesan School District	Supports Rules
Patti Baird	Parent	Supports Rules

- The Milwaukee public hearing was held on January 12, 1999. One person registered to provide testimony. He was:

Robert W. Christian	Wisconsin School Bus Association	Supports Rules
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- The Eau Claire public hearing was held on January 13, 1999. One person registered to provide testimony and one person registered to provide comments. They were:

Phillip Fey	Student Transit - E.C. Inc.	Supports Rules
Patricia Lietz	Affiliation not identified	Supports Rules

- The Green Bay public hearing was held on January 14, 1999. One person registered to provide testimony. He was:

Byron J. Kruschke	Lamers Bus Lines, Inc.	Supports Rules
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APPENDIX A

In addition to the public hearings, the hearing record remained open until February 15, 1999, for written comments. The following persons, organizations and associations provided written testimony on the rule relating to drawstrings on children's clothing:

<u>Name</u>	<u>Affiliation</u>	<u>Date of filing</u>	<u>Comments</u>
Joanne Selkurt, M.D. President	Wisconsin Chapter American Academy of Pediatrics (WIAAP)	11/09/98	Supports rules
Rachel Peckham	Pharmacist	12/10/98	Supports rules
Patrick J. Conlin Vice President	Broadhead Area EMS, Inc.	12/14/98	Supports rules
William Perloff, M.D. Chairperson	Emergency Medical Services for Children (EMSC)	12/17/98	Supports rules
Diane Ross	Parent	12/17/98	Partial support
Judith Cleasby	Parent	12/21/98	Supports rules
Debbie Martin, R.N.	Helicopter flight nurse	12/23/98	Supports rules
Randy Hawley	Parent	12/28/98	Opposes rules
David Richmond Superintendent	Waterford Union High School District	12/28/98	Opposes rules
Jean Irwin Safety Director	Safe Way Bus Transit, Inc.	1/8/99	Supports rules
Jeannine Justmann Teacher	Markesan Middle/ Elementary School	1/11/99	Supports rules
Sandra Fenske Teacher	Markesan Elementary School	1/12/99	Supports rules
Jennifer Lochlien	Parent	1/21/99	Supports rules

APPENDIX A

<u>Name</u>	<u>Affiliation</u>	<u>Date of filing</u>	<u>Comments</u>
Warren Bluhm Columnist	Green Bay News-Chronicle	1/27/99	Opposes rules
Jane Howard Coordinator	Southeast Wisconsin SAFE KIDS	1/29/99	Supports rules
Cathy Gnewikow	Daycare provider	2/2/99	Supports rules
Charlene Sackett	Daycare provider	2/4/99	Partial support
Robert Christian Executive Director	Wisconsin School Bus Association	2/8/99	Supports rules
Jim Savage Coordinator	Wisconsin SAFE KIDS Coalition	2/9/99	Supports rules
Winnie Doxsie Vice President	Wisconsin PTA	2/12/99	Supports rules
Robert Verdisco President	International Mass Retail Association (IMRA)	2/12/99	Partial support
Jill Taylor, R.N. Director, Clinical Services	UW Children's Hospital	2/12/99	Supports rules
Nan Peterson, R.N. Coordinator	Madison Area SAFE KIDS Coalition	2/12/99	Supports rules
Beth Ann Littman Quality Assurance	Kids 'R 'Us	2/12/99	Partial support
Chris Tackett, Pres. Doug Johnson, V.P.	Wisconsin Merchants Federation	2/15/99	Opposes rules
Jessica Haats Chairperson	Western Dairyland Head Start	2/15/99	Supports rules

APPENDIX A

<u>Name</u>	<u>Affiliation</u>	<u>Date of filing</u>	<u>Comments</u>
Stephen Lamar, Director Government Relations	American Apparel Manufacturers Assn.	2/15/99	Opposes rules.
Pamela Patzke General Counsel	Lands' End	2/15/99	Partial support

Comments in Support

All of the comments received in regard to the bicycle helmet rule were in support of the rule. The department received no comments noting partial or total opposition.

In regard to the rule regarding drawstrings on children's clothing, the department received comments from consumers, children's interest groups, Wisconsin school associations, school bus associations, daycare centers and professional medical groups in support of the proposed rule to ban and prohibit from sale in Wisconsin all children's clothing, that contain drawstrings. These citizens, associations and groups applauded the state for taking a proactive step in the prevention of injury to Wisconsin's children and recommended changing the effective sizes from "2T to 16" to "0 to 16".

In addition, those in support noted that there are very practical alternatives to drawstrings, such as elastic, buttons, snaps and velcro which provide a safer closure and eliminate the risk of injuries inherent with drawstrings. These supporters also commended the state's efforts to eliminate this safety hazard that has caused unnecessary deaths and injuries to Wisconsin children.

Comments in Partial Support

Comments in partial support were received from two national retailers and a retail association. The two national retailers have already removed all drawstrings from the chest or above on all outerwear or tops, and from the bottom of any outerwear on children's clothing sized 0 to 16. They sell some outerwear with drawstrings located at the waist of the garment, as well as pants and shorts with drawstrings at the waist, to ensure proper fit. However, these retailers have addressed the safety issue by making any drawstrings internal on the garment. This means that the exposed cords of the drawstrings are on the inside of the garments and are consistent with CPSC guidelines, because the length of the exposed internal cords is not more than three inches when the garment is laying flat.

APPENDIX A

The retail association noted that the injury data showed no evidence that there has ever been a significant drawstring-related safety problem with any garment other than children's upper outerwear. Instead of implementing a total ban, the retail association recommends that the department focus its efforts on children's upper outerwear and model the rule after the CPSC Guidelines and the ASTM standards for drawstrings on children's upper outerwear.

Comments in Opposition

The major opposition to the proposed drawstring rule came from the Wisconsin Merchants Federation and an apparel manufacturers association. These associations reiterated that the injury data shows no evidence that there has ever been a significant drawstring-related safety problem with any garment other than children's upper outerwear. Therefore, they believed the original proposed rule to ban drawstrings on all children's clothing was overly broad.

Both organizations believe the CPSC voluntary guidelines are sufficient and are being followed by the majority of manufacturers of children's outerwear and that no mandatory rule is necessary. In addition, they assert that a partial or total ban of drawstrings on children's clothing will put Wisconsin in danger of becoming a commercial island and limit the ability of Wisconsin retailers to compete on an even playing field. Therefore, they suggest the department work with retailers and consumer groups in education efforts to insure compliance with CPSC's voluntary standards.