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(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2009-10

(session year)

### Joint

(Assembly, Senate or Joint)

### Committee for Review of Administrative Rules ...

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#### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

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(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
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- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)



State of Wisconsin  
Jim Doyle, Governor

Senator Jim Holperin  
JCRAR Co-Chair  
409 South, State Capitol

Department of Agriculture, Trade and Consumer Protection  
Rod Nilsestuen, Secretary

## PUBLIC NOTICE

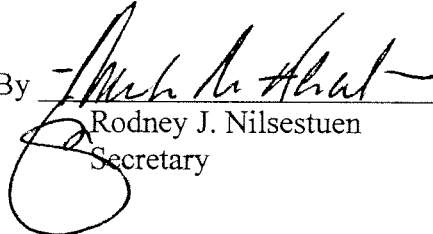
### FINAL DRAFT RULE TO LEGISLATURE

The Department of Agriculture, Trade and Consumer Protection announces that it is submitting the following rule for legislative committee review, pursuant to s. 227.19, Stats.:

CLEARINGHOUSE RULE #: **09-002**  
SUBJECT: **Consumer Product Safety**  
ADM. CODE REFERENCE: **ATCP 139**  
DATCP DOCKET #: **08-R-05**

Dated this 15<sup>th</sup> day of May, 2009.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE AND  
CONSUMER PROTECTION

By   
Rodney J. Nilsestuen  
Secretary

*Agriculture generates \$51.5 billion for Wisconsin*



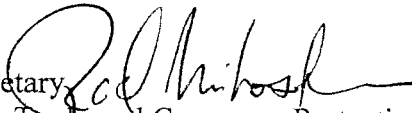
State of Wisconsin  
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection  
Rod Nilsestuen, Secretary

**DATE:** May 15, 2009

**TO:** The Honorable Fred Risser  
President, Wisconsin State Senate  
Room 220, South, State Capitol  
PO Box 7882  
Madison, WI 53707-7882

The Honorable Michael Sheridan  
Speaker, Wisconsin State Assembly  
Room 211 West  
State Capitol  
P.O. Box 8953  
Madison, WI 53708

**FROM:** Rodney J. Nilsestuen, Secretary,   
Department of Agriculture, Trade and Consumer Protection

**SUBJECT: Consumer Product Safety; Final Draft Rule**  
*(Clearinghouse Rule #09-002)*

The Department of Agriculture, Trade and Consumer Protection ("DATCP") is transmitting this rule for legislative committee review, as provided in s. 227.19(2) and (3), Stats. DATCP will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats.

This rule updates and clarifies current rules, prohibits the sale of certain hazardous consumer products including hazardous infant walkers, cribs, lawn darts, toys with magnets, yo-yo elastic tether toys, and toys containing excessive concentrations of lead. This rule is consistent with current federal rules and consensus industry safety standards.

### *Background*

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers state laws to protect consumers from hazardous consumer products, including hazardous household substances and toys. DATCP has adopted consumer product safety rules under ch. ATCP 139, Wis. Adm. Code. Current DATCP rules do all of the following:

- Require warning labels on certain products.
- Ban certain products that pose serious hazards which cannot be adequately cured by labeling. Many of these products are also banned by federal rules.
- Provide exemptions for certain small packages and minor hazards.

*Agriculture generates \$51.5 billion for Wisconsin*

DATCP last updated its consumer product safety rules 8 years ago. Since then, the federal consumer product safety commission and DATCP have identified serious product safety hazards that are not addressed by current DATCP rules. This rule does all of the following:

- Reorganizes and clarifies current rules.
- Bans certain products, because they pose serious safety hazards that cannot be adequately cured by labeling (see below). Most of these products are also banned by federal rules (this rule will allow DATCP to take action against federally-banned rules under state law).
- Clarifies that violations of consumer product safety rules also constitute unfair business practices under s. 100.20, Stats.

### *Rule Content*

Current DATCP rules ban a number of dangerous consumer products, including dangerous children's products (some of the products are also banned by federal rules). This rule reorganizes and clarifies a number of the current product bans, without substantially altering those bans. This rule also adds new bans related to the following hazardous consumer products:

- *Lawn darts that can cause puncture wounds.*
  - Current DATCP rules ban "lawn darts" that are intended for use by children. The current DATCP rules are based on federal rules (16 CFR 1500.18(a)(4)). Recently, the federal Consumer Product Safety Commission adopted additional rules (16 CFR 1306) to ban "lawn darts" labeled for adult use, because those "lawn darts" are often used by children and pose a serious puncture wound hazard to children *and* adults.
  - Consistent with current federal rules, this rule bans all "lawn darts," regardless of whether they are intended for use by children or adults.
- *Infant walkers that may propel infants down stairways.*
  - Current DATCP rules and federal rules (16 CFR 1500.18(a)(6)) ban hazardous infant walkers, but do not address stair-fall hazards. There is a voluntary industry standard (ASTM standard) for stair-fall protection, but some manufacturers and importers are not complying. The federal consumer product safety commission has documented that most "baby walker" incidents now involve children falling down stairs.
  - This rule bans infant walkers that are banned by 16 CFR 1500.18(a)(6) and that fail to meet the stair-fall protection standard in ASTM standard F 977-07 ("Standard Consumer Safety Specification for Infant Walkers"). This rule applies to infant walkers, also known as "baby walkers," "baby bouncers," and "walker jumpers," that are propelled by infants. It does *not* apply to baby strollers that are propelled by attending adults.

- *Toys with magnets that can be swallowed and can cause serious intestinal injury or death.*
  - Small and powerful rare-earth magnets are now widely used in toys, building sets and jewelry. As the number of products with magnets has increased, so has the number of serious injuries to children. In several reported incidents, magnets have fallen out of toys and been swallowed by children. Swallowed magnets can attract separately-swallowed metal objects through intestinal walls, and get trapped in place. The trapped magnets can twist or pinch the intestines, and can cause holes, blockages, infection and death if not treated properly and promptly. These injuries are difficult to diagnose. In the United States over the past 3 years, there have been 86 reported injuries, one reported death, and about 8 million magnetic toys recalled.
  - This rule bans products which contain magnets that may be swallowed by a child. The ban does *not* apply to toys that comply with federal regulations under 15 USC 2056b (the federal regulations adopt standards established by the "Standard Consumer Safety Specification for Toy Safety" published by ASTM International). Nor does it apply to toys in which the magnets are used only as internal parts of motors, relays, speakers or other electrical components, provided that the magnetic action is not part of the play pattern of the toy.
- *Cribs that can strangle or suffocate infants.*
  - Over the past 20 years, more than 1,100 children have died from crib-related injuries in the United States, and more than 11,600 children are hospitalized with crib-related injuries each year. Current federal regulations (16 CFR 1500.18(13) and (14)) ban cribs and related enclosures that fail to comply with applicable federal standards under 16 CFR 1508 and 1509 (the federal regulations apply to cribs manufactured after 1974 and 1983, respectively).
  - This rule bans baby cribs and related enclosures that are currently banned by federal law under 16 CFR 1500.18(13) or (14).
- *Yo-yo elastic tether toys that can strangle children.*
  - Yo-yo elastic tether toys, often called "yo-yo waterballs," have a weighted object attached to a stretchable elastic cord that can extend to over 2 feet. (These "yo-yo waterballs" are different from traditional yo-yos, which do not have stretchable elastic cords). Instructions tell children to "throw the ball into the air and try and catch it," encouraging a lasso-like movement. But the weighted object is heavy enough to generate significant momentum when swung like a lasso, which makes the toy difficult to control. In Wisconsin, there have been 7 reported incidents in which children became unconscious after the cord wrapped tightly around the child's neck and cut off circulation. In other cases, children have suffered broken blood vessels affecting eyes,

face and head areas. Illinois, New Jersey, the United Kingdom and Australia have already banned this toy from sale.

- This rule bans yo-yo elastic tether toys that do not comply with the standards for yo-yo elastic tether toys established by federal regulations under 15 USC 2056b (the federal regulations adopt standards established by the “Standard Consumer Safety Specification for Toy Safety” published by ASTM International).
- *Toys containing excessive concentrations of lead, which can cause serious long-term health effects.*
  - A recently-enacted federal law (15 USC 1278a) treats as banned hazardous substances any children’s products that contain lead in excess of the following amounts, beginning on the following dates:
    - \* 600 parts per million beginning 180 days after August 14, 2008.
    - \* 300 parts per million beginning one year after August 14, 2008.
    - \* 100 parts per million beginning 3 years after August 14, 2008.
  - This rule bans children’s products containing lead that are treated as banned hazardous substances under 15 USC 1278a. This ban does not apply to any of the following:
    - \* Electronic devices, including batteries, which meet alternative federal standards related to lead exposure.
    - \* A product component that is fully covered or encased (by something more than paint or electroplating), so that the component is inaccessible to a child despite normal and reasonably foreseeable use and abuse of the product.

### ***Public Hearings***

DATCP held one public hearing on this rule. DATCP held the hearing on February 12, 2009 in Madison and accepted written comments until February 27, 2009. Two people attended the hearing, with only one person speaking - in favor of the rule. No persons offered written hearing comments.

### ***Changes from Hearing Draft***

DATCP made minor editorial changes to the final draft rule in response to comments from the Legislative Council Rules Clearinghouse. DATCP also modified several non-substantive notes accompanying the rule, based on federal regulatory updates.

### *Response to Rules Clearinghouse Comments*

DATCP modified the final draft rule to address the comments from the Legislative Council Rules Clearinghouse.

#### *Fiscal Impact*

This rule will not have significant fiscal impact on DATCP or local units of government. A complete fiscal estimate is attached.

#### *Business Impact*

This rule will benefit most affected businesses by clarifying current rules and harmonizing state and federal law. This rule is based on existing federal regulations and, in the case of stair-fall protection in infant walkers, existing industry safety standards. Most affected businesses are already complying with the standards in this rule. Some manufacturers and retailers may need to modify product designs or curtail the sale of hazardous products that violate this rule. But, overall, this rule will have little adverse impact on affected business. Any adverse impact is outweighed by the need to prevent children and other consumers from possible serious injury or death. A complete business impact analysis is attached.

### *Federal and Surrounding State Regulations*

#### **Federal Regulations**

The following federal regulations apply to consumer products that are newly banned under this rule (federal regulations also apply to some products banned by current DATCP rules):

- *Lawn darts.* Lawn darts intended for use by children are currently banned under 16 CFR 1500.18(a)(4). Lawn darts intended for use by adults are currently banned under 16 CFR 1306. This rule bans lawn darts, consistent with the federal bans.
- *Infant walkers.* 16 CFR 1500.18(a)(6) bans infant walkers which have exposed parts capable of amputating, crushing, lacerating, fracturing, bruising, or causing hematomas or other injuries to fingers, toes, or other parts of a young child's anatomy. This rule bans infant walkers that are banned by the federal rules. The current federal ban does not address "stair-fall" hazards. This rule bans infant walkers that fail to comply with recognized industry standards related to "stair-fall" protection (ASTM standard F 977-07).
- *Toys with magnets.* Newly-enacted 15 USC 2056b adopts the standards established by the "Standard Consumer Safety Specification for Toy Safety" (published by ASTM International) which establishes standards for, among other things, toys with magnets that may be swallowed by a child. This rule bans toys with magnets that do not comply with the standards established by 15 USC 2056b.

- *Baby cribs.* 16 CFR 1508 and 16 CFR 1509 bans baby cribs that do not meet federal standards intended to reduce the risk of injury. This rule bans cribs that are banned by federal rules
- *Yo-yo elastic tether toys.* Newly-enacted 15 USC 2056b adopts the standards established by the "Standard Consumer Safety Specification for Toy Safety" (published by ASTM International) which establishes standards for, among other things, yo-yo elastic tether toys. This rule bans yo-yo elastic tether toys that do not comply with the standards established by 15 USC 2056b.
- *Lead in children's products.* 15 USC 1278a treats as a hazardous substance any children's products that contain more lead than 600 parts per million beginning 180 days after August 14, 2008, 300 parts per million beginning on the date that is 1 year after August 14, 2008, and 100 parts per million beginning on the date that is 3 years after August 14, 2008. This rule bans children's products containing excessive lead, consistent with the federal law.

### **Surrounding State Regulations**

Wisconsin has a fairly well-developed consumer product safety program, with broad authorizing legislation modeled after federal law. Wisconsin statutes authorize DATCP, as Wisconsin's equivalent of the federal consumer product safety commission, to issue orders and adopt rules regulating dangerous consumer products.

Surrounding states have less comprehensive consumer product safety programs, and fewer administrative options for regulating dangerous consumer products. Surrounding states tend to regulate consumer product safety on a more *ad hoc* basis, with special legislation aimed at specific products. However, several surrounding states have banned many of the same products that are newly banned under this rule.

#### *Lawn darts*

None of the surrounding states has banned lawn darts under state law.

#### *Infant walkers*

Illinois and Michigan ban infant walkers that are the subject of federal product recalls. The federal consumer protection safety commission has published an industry guidance stating that it will seek to recall infant walkers that fail to comply with relevant federal standards or ASTM standards.



The Honorable Fred Risser  
The Honorable Michael Sheridan  
May 15, 2009  
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*Magnets in toys*

Illinois and Michigan ban toys with magnets if the toys are the subject of a federal recall. The federal consumer product safety commission has recalled 17 toys since 2007 because the toys contained magnets that could detach and be swallowed or aspirated. Those toys are accordingly banned in Illinois and Michigan.

*Cribs*

Illinois, Minnesota and Michigan have adopted "safe crib" laws that ban unsafe cribs, including cribs banned by this rule.

*Elastic tether toys*

Illinois bans elastic tether toys, also known as "yo-yo waterballs" (New Jersey has a similar ban).

*Lead in children's products*

Illinois and Michigan ban children's products containing more than 600 ppm lead by weight. None of the other states surrounding Wisconsin regulates the lead content of children's products. However, the state of Connecticut bans children's products containing more than 300 ppm lead by weight (or 100 ppm after 2 years). The Connecticut law is consistent with the new federal law and this rule.

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

1 The Wisconsin department of agriculture, trade and consumer protection hereby proposes  
2 the following rule *to renumber and amend* ATCP 139.01; *to amend* ATCP 139.04; *to*  
3 *repeal and recreate* ATCP 139.055; and *to create* ATCP 139.12; *relating to* consumer  
4 product safety.

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

The department of agriculture, trade and consumer protection (DATCP) administers state laws to protect consumers from hazardous consumer products, including hazardous household substances and toys. DATCP has adopted consumer product safety rules under ch. ATCP 139, Wis. Adm. Code. This rule updates and reorganizes current rules, and bans the sale of certain products that pose an unreasonable hazard which cannot be adequately cured by product labeling.

***Statutes Interpreted***

Statutes Interpreted: ss. 100.37, 100.42 and 100.20, Stats.

***Statutory Authority***

Statutory Authority: ss. 93.07(1), 100.37(2), 100.42(2), and 100.20(2), Stats.

***Explanation of Statutory Authority***

DATCP has general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction. DATCP has authority under s.100.37, Stats., to regulate hazardous substances including toys and other articles intended for use by children. DATCP has authority under s. 100.42, Stats., to regulate unsafe consumer products. DATCP also has broad authority, under s. 100.20, Stats., to regulate unfair methods of competition and unfair trade practices in business.

### ***Related Statutes***

DATCP administers several consumer product safety statutes including s. 100.37, Stats. (hazardous household substances), 100.42, Stats. (consumer product safety), 100.41, Stats. (flammable fabrics) and 100.43, Stats. (poison prevention packaging).

### ***Background***

Current DATCP consumer product safety rules do all of the following:

- Require warning labels on certain products.
- Ban certain products that pose serious hazards which cannot be adequately cured by labeling (most of these products are also banned by federal rules).
- Provide exemptions for certain small packages and minor hazards.

DATCP last updated its consumer product safety rules 8 years ago. Since then, the federal consumer product safety commission and DATCP have identified serious product safety hazards that are not addressed by current DATCP rules. This rule does all of the following:

- Reorganizes and clarifies current rules.
- Bans certain products, because they pose serious safety hazards that cannot be adequately cured by labeling (see below). Some of these products are also banned by federal rules.
- Provides that violations of consumer product safety rules also constitute unfair business practices under s. 100.20, Stats.

### ***Rule Content***

Current DATCP rules ban a number of dangerous consumer products, including dangerous children's products (most of the products are also banned by federal rules). This rule reorganizes and clarifies a number of the current product bans, without substantially altering those bans. This rule also adds new bans related to the following consumer products:

- *Lawn darts that can cause puncture wounds.*
  - Current DATCP rules ban "lawn darts" that are intended for use by children. The current DATCP rules are based on federal rules (16 CFR 1500.18(a)(4)). Recently, the federal Consumer Product Safety Commission adopted additional rules (16 CFR 1306) to ban "lawn darts" labeled for adult use, because those "lawn darts" are often used by children and pose a serious puncture wound hazard to children *and* adults.

- Consistent with current federal rules, this rule bans all “lawn darts,” regardless of whether they are intended for use by children or adults.
- *Infant walkers that may propel infants down stairways.*
  - Current DATCP rules and federal rules (16 CFR 1500.18(a)(6)) ban hazardous infant walkers, but do not address stair-fall hazards. There is a voluntary industry standard (ASTM standard) for stair-fall protection, but some manufacturers and importers are not complying. The federal consumer product safety commission has documented that most “baby walker” incidents now involve children falling down stairs.
  - This rule bans infant walkers that are banned by 16 CFR 1500.18(a)(6) and that fail to meet the stair-fall protection standard in ASTM standard F 977-07 (“Standard Consumer Safety Specification for Infant Walkers”). This rule applies to infant walkers, also known as “baby walkers,” “baby bouncers,” and “walker jumpers,” that are propelled by infants. It does *not* apply to baby strollers that are propelled by attending adults.
- *Toys with magnets that can be swallowed and can cause serious intestinal injury or death.*
  - Small and powerful rare-earth magnets are now widely used in toys, building sets and jewelry. As the number of products with magnets has increased, so has the number of serious injuries to children. In several reported incidents, magnets have fallen out of toys and been swallowed by children. Swallowed magnets can attract separately-swallowed metal objects through intestinal walls, and get trapped in place. The trapped magnets can twist or pinch the intestines, and can cause holes, blockages, infection and death if not treated properly and promptly. These injuries are difficult to diagnose. In the United States over the past 3 years, there have been 86 reported injuries, one reported death, and about 8 million magnetic toys recalled.
  - This rule bans products containing magnets that may be swallowed by a child. The ban does *not* apply to toys that comply with federal regulations under 15 USC 2056b (the federal regulations incorporate standards contained in the “Standard Consumer Safety Specification for Toy Safety” published by ASTM International). Nor does it apply to toys in which the magnets are used only as internal parts of motors, relays, speakers or other electrical components, provided that the magnetic action is not part of the play pattern of the toy.

- *Cribs that can strangle or suffocate infants.*
  - Over the past 20 years, more than 1,100 children have died from crib-related injuries in the United States, and more than 11,600 children are hospitalized with crib-related injuries each year. Current federal regulations (16 CFR 1500.18(13) and (14)) ban cribs and related enclosures that fail to comply with applicable federal standards under 16 CFR 1508 and 1509 (the federal rules apply to cribs manufactured after 1974 and 1983, respectively).
  - This rule bans baby cribs and related enclosures that are currently banned by federal law under 16 CFR 1500.18(13) or (14).
- *Yo-yo elastic tether toys that can strangle children.*
  - Yo-yo elastic tether toys, often called “yo-yo waterballs,” have a weighted object attached to a stretchable elastic cord that can extend to over 2 feet (these “yo-yo waterballs” are different from traditional yo-yos, which do not have stretchable elastic cords). Instructions tell children to “throw the ball into the air and try and catch it,” encouraging a lasso-like movement. But the weighted object is heavy enough to generate significant momentum when swung like a lasso, which makes the toy difficult to control. In Wisconsin, there have been 7 reported incidents in which children became unconscious after the cord wrapped tightly around the child’s neck and cut off circulation. In other cases, children have suffered broken blood vessels affecting eyes, face and head areas. Illinois, New Jersey, the United Kingdom and Australia have already banned this toy from sale.
  - This rule bans yo-yo elastic tether toys that do not comply with federal regulations under 15 USC 2056b (the federal regulations incorporate standards contained in the “Standard Consumer Safety Specification for Toy Safety” published by ASTM International).
- *Toys containing excessive concentrations of lead, which can cause serious long-term health effects.*
  - Recently enacted federal law (15 USC 1278a) treats as a hazardous substance any children’s products that contain more lead than 600 parts per million beginning 180 days after August 14, 2008, 300 parts per million beginning on the date that is one year after August 14, 2008, and 100 parts per million beginning on the date that is 3 years after August 14, 2008.
  - This rule bans children’s products, containing lead, which are treated as banned hazardous substances under 15 USC 1278a. This ban does not apply to any of the following:
    - \* Electronic devices, including batteries, which meet alternative federal standards related to lead exposure.

- \* A product component that is fully covered or encased (by something more than paint or electroplating), so that the component is inaccessible to a child despite normal and reasonably foreseeable use and abuse of the product.

### ***Fiscal Impact***

This rule will not have significant fiscal impact on DATCP or local units of government. A complete fiscal estimate is attached.

### ***Business Impact***

This rule may have an adverse impact on some businesses that manufacture, sell or distribute articles banned by this rule. Some of those businesses may be “small businesses.” A complete business impact is attached.

### ***Federal and Surrounding State Regulations***

#### **Federal Regulations**

The following federal regulations apply to consumer products that are newly banned under this rule (federal regulations also apply to some products banned by current DATCP rules):

- *Lawn darts.* Lawn darts intended for use by children are currently banned under 16 CFR 1500.18(a)(4). Lawn darts intended for use by adults are currently banned under 16 CFR 1306. This rule bans lawn darts intended for children *or adults*, consistent with the federal bans.
- *Infant walkers.* 16 CFR 1500.18(a)(6) bans infant walkers that have exposed parts capable of amputating, crushing, lacerating, fracturing, bruising, or causing hematomas or other injuries to fingers, toes, or other parts of a young child’s anatomy. This rule bans infant walkers that are banned by the federal rules. The current federal ban does not address “stair-fall” hazards. This rule bans infant walkers that fail to comply with recognized industry standards related to “stair-fall” protection (ASTM standard F 977-07).
- *Toys with magnets.* A recently-enacted federal law (15 USC 2056b) adopts toy safety standards established by the “Standard Consumer Safety Specification for Toy Safety,” published by ASTM International. The ASTM publication includes standards for, among other things, toys with magnets that may be swallowed by a child. This rule bans toys with magnets that do not comply with the standards established by 15 USC 2056b.

- *Baby cribs.* 16 CFR 1508 and 16 CFR 1509 bans baby cribs that do not meet federal standards that are designed to reduce the risk of injury. This rule bans cribs that are banned by federal rules
- *Yo-yo elastic tether toys.* A recently-enacted federal law (15 USC 2056b) adopts toy safety standards established by the "Standard Consumer Safety Specification for Toy Safety," published by ASTM International. The ASTM publication includes standards for, among other things, yo-yo elastic tether toys. This rule bans yo-yo elastic tether toys that do not comply with the standards established by 15 USC 2056b.
- *Lead in children's products.* 15 USC 1278a treats as a hazardous substance any children's products that contain more lead than 600 parts per million beginning 180 days after August 14, 2008, 300 parts per million beginning on the date that is one year after August 14, 2008, and 100 parts per million beginning on the date that is 3 years after August 14, 2008. This rule bans children's products containing excessive lead, consistent with the federal law.

### **Surrounding State Regulations**

Wisconsin has a fairly well-developed consumer product safety program, with broad authorizing legislation modeled after federal law. Wisconsin statutes authorize DATCP, as Wisconsin's equivalent of the federal consumer product safety commission, to issue orders and adopt rules regulating dangerous consumer products.

Surrounding states have less comprehensive consumer product safety programs, and fewer administrative options for regulating dangerous consumer products. Surrounding states tend to regulate consumer product safety on a more *ad hoc* basis, with special legislation aimed at specific products. However, several surrounding states have banned many of the same products that are newly banned under this rule.

#### *Lawn darts*

None of the surrounding states has banned lawn darts under state law.

#### *Infant walkers*

Illinois and Michigan ban infant walkers that are the subject of federal product recalls. The federal consumer protection safety commission has published an industry guidance stating that it will seek to recall infant walkers that fail to comply with relevant federal standards or ASTM standards.

#### *Magnets in toys*

Illinois and Michigan ban toys with magnets if the toys are the subject of a federal recall. The federal consumer product safety commission has recalled 17 toys since 2007 because

the toys contained magnets that could detach and be swallowed or aspirated. Those toys are accordingly banned in Illinois and Michigan.

### *Cribs*

Illinois, Minnesota and Michigan have adopted “safe crib” laws that ban unsafe cribs, including cribs banned by this rule.

### *Elastic tether toys*

Illinois bans elastic tether toys, also known as “yo-yo waterballs” (New Jersey has a similar ban).

### *Lead in children’s products*

Illinois and Michigan ban children’s products containing more than 600 ppm lead by weight. None of the other states surrounding Wisconsin regulates the lead content of children’s products. However, the state of Connecticut bans children’s products containing more than 300 ppm lead by weight (or 100 ppm after 2 years). The Connecticut law is consistent with federal law and this rule.

## ***Data and Analytical Methodologies***

DATCP relies on incident data from consumer complaints and from the federal consumer product safety commission. DATCP uses test methods prescribed by federal rules, or by relevant industry standards (ASTM standards published by ASTM International).

### ***DATCP Contact***

Questions and comments related to this rule may be directed to:

Michelle Reinen, Program & Policy Analyst  
Department of Agriculture, trade and Consumer Protection  
P.O. Box 8911  
Madison, WI 53708-8911  
Telephone (608) 224-5160  
E-Mail: [hearingcomments@datcp.state.wi.us](mailto:hearingcomments@datcp.state.wi.us)

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2           **SECTION 1.** ATCP 139.01(1) is renumbered (1m).

3           **SECTION 2.** ATCP 139.01(1) is created to read:

4           (1) “Children’s product” means a consumer product, toy or other article designed  
5 or intended primarily for children 12 years of age or under.



1           **SECTION 3.** ATCP 139.01(2m) is created to read:

2           ATCP 139.01(2m) “Infant walker” means a mobile unit that enables a child to  
3 move on a horizontal surface when propelled by the child sitting or standing within that  
4 mobile unit. “Infant walker” includes products commonly known as “baby walkers,”  
5 “baby-bouncers” or “walker-jumpers.”

6           **SECTION 4.** ATCP 139.04(title) and (intro.) are repealed and recreated to read:

7           **ATCP 139.04 Banned products; general.** The following consumer products or  
8 hazardous substances present an unreasonable hazard to public health and safety that  
9 cannot be adequately cured by product labeling, and are banned from sale or distribution  
10 in this state pursuant to s. 100.37(2) or 100.42(2), Stats., or both ss. 100.37(2) and  
11 100.42(2), Stats.:

12           **SECTION 5.** ATCP 139.04(6) is amended to read:

13           ATCP 139.04(6) Paint or other similar surface-coating materials, intended for  
14 household use or packaged in a form suitable for household use ~~in and around the~~  
15 ~~household, including use on toys or articles intended for use by children, containing lead~~  
16 ~~compounds of which the lead content, calculated as the metal, is in excess of , which~~  
17 contain lead or lead compounds in which the weight of lead metal (Pb) exceeds 0.06% of  
18 ~~the total weight of the contained solids or~~ of the total nonvolatile content of the paint or  
19 the weight of the dried paint film. This subsection does not apply to artists’ paints and  
20 related materials.

21           **SECTION 6.** ATCP 139.04(12) is created to read:

22           ATCP 139.04(12) All lawn darts banned under 16 CFR 1306.

23           **SECTION 7.** Section ATCP 139.05(title) is repealed and recreated to read:

1           **ATCP 139.05(title) Children's products; general.**

2           **SECTION 8.** Section ATCP 139.05(4) is repealed.

3           **SECTION 9.** ATCP 139.055 is repealed and recreated to read:

4           **ATCP 139.055 Banned children's products.** The following children's  
5 products, which present a serious and unreasonable hazard to child health and safety that  
6 cannot be adequately cured by product labeling, are banned from sale or distribution in  
7 this state pursuant to s. 100.37(2) or 100.42(2), Stats., or both ss. 100.37(2) and  
8 100.42(2), Stats.:

9           (1) Toy rattles that are banned under 16 CFR 1500.18(a)(1).

10          **NOTE:** 16 CFR 1500.18(a)(1) bans toy rattles that contain internal or external  
11 rigid wires, sharp protrusions, or loose small objects that may cause  
12 laceration, puncture wound, aspiration, ingestion or other injury.

13          (2) Toys that are banned under 16 CFR 1500.18(a)(2).

14          **NOTE:** 16 CFR 1500.18(a)(2) bans toys that have noise-making components  
15 which may be dislodged by the operation of the toy or deliberately  
16 removed by a child, and which may cause laceration, puncture wound,  
17 aspiration, ingestion or other injury.

18          (3) Dolls, stuffed animals or similar toys that are banned under 16 CFR  
19 1500.18(a)(3).

20          **NOTE:** 16 CFR 1500.18(a)(3) bans dolls, stuffed animals or similar toys that  
21 have internal or external components which may cause laceration,  
22 puncture wound injury, or other injury.

23          (4) Lawn darts and similar sharp-pointed toys that are banned under 16 CFR  
24 1500.18(a)(4).

25          **NOTE:** 16 CFR 1500.18(a)(4) bans lawn darts and similar sharp-pointed toys  
26 that are usually intended for outdoor use, and which may cause puncture  
27 wound injury.  
28

1 (5) Infant walkers that are banned under 16 CFR 1500.18(6), or that fail to  
2 comply with the stair-fall protection standard in the "Standard Consumer Safety  
3 Specification for Infant Walkers," ASTM F977-07, published by ASTM International  
4 (2007).

5 **NOTE:** 16 CFR 1500.18(6) bans infant walkers which have exposed parts  
6 capable of amputating, crushing, lacerating, fracturing, bruising, or  
7 causing hematomas or other injuries to fingers, toes, or other parts of a  
8 young child's anatomy.

9 Copies of ASTM 977-07 are on file with the department and the  
10 legislative reference bureau. Copies may be obtained from ASTM  
11 International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken,  
12 PA 19428-2959, telephone 610-832-9585, website [www.astm.org](http://www.astm.org).

13 (6) Children's bicycle helmets, manufactured or imported into the United States  
14 after March 10, 1999, that do not meet the federal bicycle helmet safety standard under  
15 16 CFR 1203.

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

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

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

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

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

24 (9) Children's products that contain elemental mercury.

25 (10) Children's products which contain magnets that do not comply with the  
26 mandatory toy safety standards adopted under 15 USC 2056b.

1           **NOTE:** 15 USC 2056b adopts the standards established by the “Standard  
2           Consumer Safety Specification for Toy Safety,” published by ASTM  
3           International. The standards are intended to address ingestion hazards in  
4           addition to other safety hazards associated with magnets. The standards  
5           do not apply to toys in which the magnets are used only as internal  
6           components of motors, relays, speakers or other electrical components,  
7           provided that magnetism is not part of the play pattern of the toy.

8           (11) Baby cribs and related enclosures that are banned under 16 CFR

9           1500.18(13) or (14).

10           **NOTE:** 16 CFR 1500.18(13) and 16 CFR 1500.18(14) ban full-size and non-full  
11           size baby cribs that do not meet federal standards intended to reduce the  
12           risk of injury.

13  
14           (12) Yo-yo elastic tether toys that do not comply with the mandatory toy safety

15 standards adopted under 15 USC 2056b.

16           **NOTE:** 15 USC 2056b adopts the standards established by the “Standard  
17           Consumer Safety Specification for Toy Safety,” published by ASTM  
18           International. The standards are intended to address potential  
19           strangulation hazards..

20  
21           (13) Children’s products, containing lead, which are banned hazardous

22 substances under 15 USC 1278a.

23           **NOTE:** 15 USC 1278a treats as a banned hazardous substance any children’s  
24           product that contains more lead than 600 parts per million beginning 180  
25           days after August 14, 2008, 300 parts per million beginning on the date  
26           that is one year after August 14, 2008, and 100 parts per million beginning  
27           on the date that is 3 years after August 14, 2008.

28  
29           **SECTION 9.** ATCP 139.12 is created to read:

30           **ATCP 139.12 Unfair methods of competition and unfair trade practices.** A

31 violation of this chapter is an unfair method of competition and unfair trade practice in  
32 business under s. 100.20(1), Stats., and is hereby prohibited under s. 100.20(2)(a), Stats.

33           **SECTION 10. EFFECTIVE DATE AND INITIAL APPLICABILITY.** (1) Except as

34 provided in subs. (2) and (3), this rule takes effect on the first day of the month following

1 publication in the Wisconsin administrative register, as provided under s.

2 227.22(2)(intro.).

3 (2) This rule first applies to small businesses as defined in s. 227.114(1), Stats.,

4 on the first day of the third month commencing after the rule publication date, as required

5 by s. 227.22(2)(e), Stats.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

STATE OF WISCONSIN  
DEPARTMENT OF  
AGRICULTURE TRADE AND  
CONSUMER PROTECTION

By \_\_\_\_\_  
Rodney J. Nilsestuen, Secretary

Wisconsin Department of Agriculture, Trade and Consumer Protection

## Business Impact Analysis

*Rule Subject:* Consumer Product Safety  
*Adm. Code Reference:* ATCP 139  
*Rules Clearinghouse #:* 09-002  
*DATCP Docket #:* 08-R-05

### *Rule Summary*

This rule protects consumers from toys and other articles that may cause serious personal injury. The Department of Agriculture, Trade and Consumer Protection (DATCP) administers Wisconsin's consumer product safety program, and last updated its consumer product safety rules 8 years ago. Since then, the federal Consumer Product Safety Commission and DATCP have identified serious product safety hazards that are not addressed by current DATCP rules. This rule does all of the following:

- Reorganizes and clarifies current rules.
- Defines children's products as any consumer product, toy or other article designed or intended primarily for children under age twelve, unless a different age is stated.
- Bans certain products, because they pose serious safety hazards that cannot be adequately cured by labeling. With the exception of stair fall protection for baby walkers, these products are also banned by federal rules (this rule will allow DATCP to take action against federally-banned rules under state law). The products banned by the rule are:
  - Baby walkers that a child may propel through doorways leading to staircases creating a danger of falling down stairs.
  - Toys containing magnets that may be swallowed creating ingestion hazards.
  - Cribs which due to their construction create a potential of serious injury such as strangulation or suffocation.
  - Yo-yo elastic tether toys that create a danger of strangulation.
  - Toys containing excessive concentrations of lead.
  - Lawn darts intended for use by adults.

- Adopts standards established by federal rule and industry consensus that define acceptably safe products. Copies of the industry consensus standards are available to the public through the industry association that created the standards. The department has applied to the department of justice for approval of use of the standards in the rule.
- Clarifies the statutory authority that applies to the products regulated by the rule and determines whether the sale or distribution of the product is an unfair method of competition or trade practice.

### *Business Impact*

This rule prohibits the sale of certain toys and consumer products that do not meet federal regulations or, in the case of self-propelled baby walkers, do not meet consensus industry safety standards.

Most manufacturers and retailers are already complying with the standards in this rule. Most of the federal regulations have been in place for some time, and most manufacturers and retailers already have systems in place to verify that current and new products comply with the federal standards. In addition, many manufacturers and retailers actively participate in the process for developing the industry consensus standards and are already complying with those standards.

This rule will benefit the manufacturing industry by providing clear standards for the design and of safe products. It will also benefit manufacturers by harmonizing state and federal regulations. The regulations are consistent with prevailing industry standards.

Manufacturers and retailers that are not complying with current standards will need to modify their product design or curtail sales of non-complying products. However, this rule is not expected to have any significant adverse impact on manufacturers or retailers as a whole.

### *Accommodation for Small Business*

This rule prohibits the sale of certain unsafe toys and other unsafe consumer products. The rule is based on current federal regulations and industry safety standards. The rule harmonizes state and federal law, and provides clear guidance for individual businesses. Most businesses are already complying with the standards in this rule.

Some of the businesses affected by this rule are small businesses. This rule may require some small businesses to modify product designs or curtail the sale of non-complying products. But overall, this rule will have few adverse impacts on small business.

This rule is needed to protect consumers from unsafe toys and other articles that present an unreasonable risk of personal injury. A majority of the products contained in the rule are intended for use by children. Children are at a disadvantage as they are unable to evaluate risk.

This rule will have minimal adverse effects on small business, and those effects are outweighed by the need to prevent potential injury and death from unsafe toys and consumer products. Exemptions for small business would undermine the purpose of the rule to protect children and other consumers from potential serious injury or death.

*Conclusion*

Overall, this rule will benefit Wisconsin consumers by prohibiting the sale of unsafe products. This rule will require businesses selling certain toys and consumer products to comply with existing federal regulations and consensus industry safety standards related to those products. This rule will benefit most affected businesses. It may have some adverse effect on businesses currently selling unsafe products, but those effects are outweighed by the need to protect children and consumers. Overall, this rule will not have any significant adverse effect on small businesses or other businesses.

Dated this 17 day of March, 2009

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By 

Janet Jenkins, Administrator,  
Division of Trade and Consumer Protection



**FISCAL ESTIMATE**

DOA-2048 N(R10/98)

ORIGINAL  UPDATED

CORRECTED  SUPPLEMENTAL

LRB No. and Bill/Adm. Rule No.

Ch. ATCP 139

Amendment No. If Applicable

**Subject**

Consumer Products and Children's Products that are Unsafe

**Fiscal Effect**

**State:**  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum certain 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 Units Affected:

- Towns  Villages  Cities
- Counties  Others
- School Districts  WTCS Districts

**Fund Sources Affected**

- GPR  FED  PRO  PRS  SEG  SEG-S

**Affected Ch. 20 Appropriations**

**Assumptions Used in Arriving at Fiscal Estimate**

This rule will have no significant fiscal impact on DATCP or local units of government.

**Background**

Section ATCP 139.055, Wis. Adm. Code, protects consumers and their children from toys and other products intended for use by children that pose an unreasonable risk of personal injury from consumer products that are unsafe. Since s. ATCP 139.055 was enacted in 2000, children's products that create substantial risk of injury to children have continued to appear in the marketplace. This has made it necessary to open the rule to ban additional products from sale and distribution in the state. The new product and the hazards they create are as follows:

- Baby walkers that a child may propel through doorways leading to staircases creating a danger of falling down stairs.
- Toys containing magnets that may be swallowed creating ingestion hazards.
- Cribs which due to their construction create a potential of serious injury such as strangulation or suffocation.
- Yo-yo elastic tether toys that create a danger of strangulation.
- Toys containing excessive concentrations of lead.
- Lawn darts marketed for adult use that continue to create a substantial risk of injury to children.

**Impact of the Proposed Rule on State Government**

This rule will have no significant fiscal impact on DATCP or other state government because DATCP already conducts random inspections of compliance and investigation in relation to this rule. Adding additional products to those currently prohibited from sale will not create a significant increase in workload. Therefore the rule itself has no fiscal impact on DATCP.

**Impact of the Proposed Rule on Local Government**

This rule will have no fiscal impact on local government.


**Long-Range Fiscal Implications**

Agency/Prepared by: (Name & Phone No.)  
Dept of Agriculture, Trade & Consumer Protection

Authorized Signature/Telephone No.

Date

DATCP / Michelle Reinen (608) 224-5160

  
William Walker 608-224-4353

3/17/2009



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

#### CLEARINGHOUSE RULE **09-002**

AN ORDER to renumber and amend ATCP 139.01; to amend ATCP 139.04; to repeal and recreate ATCP 139.055; and to create ACTP 139.12, relating to consumer product safety.

Submitted by **DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION**

01-20-2009 RECEIVED BY LEGISLATIVE COUNCIL.

02-05-2009 REPORT SENT TO AGENCY.

RNS:RW

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached            YES             NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached            YES             NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached            YES             NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached            YES             NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached            YES             NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached            YES             NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached            YES             NO



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 09-002

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]**

#### **2. Form, Style and Placement in Administrative Code**

- a. The agency should consider amending and renumbering the listed subsections that are currently in s. ATCP 139.055, instead of repealing and recreating the subsections. The newly added products can be inserted with new created subsections.
- b. The term “hereby” in s. ATCP 139.12 is not necessary.
- c. In s. ATCP 139.055 (10), the term “which” should be replaced with “that.”

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

The agency may wish to clarify the initial applicability provision to specify that the rule first applies to the sale of products after the effective date of the rule.