



State of Wisconsin
Jim Doyle, Governor

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

DATE: July 10, 2009

TO: Bruce Hoesly, Legislative Reference Bureau
1 East Main Street, Suite 200

FROM: Rodney J. Nilsestuen, Secretary

SUBJECT: **Consumer Product Safety; Final Draft Rule for Publication (*Clearinghouse Rule No.09-002*)**

The Department of Agriculture, Trade and Consumer Protection (DATCP) hereby submits the following rule for publication:

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

We are enclosing a copy of the final draft rule, as adopted by DATCP. We are also providing the following information for publication with the rule, as required by s. 227.114(6), Stats.

Final Regulatory Flexibility Analysis (Summary)

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

Wisconsin Food and Agricultural Products - \$40 Billion for Wisconsin's Economy

2811 Agriculture Drive • PO Box 8911 • Madison, WI 53708-8911 • Wisconsin.gov

(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.

DATCP has not incorporated a small business enforcement policy in this rule, as 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

Bruce Hoesly
Legislative Reference Bureau
July 10, 2009
Page 4

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.

Comments from Legislative Committees (Summary)

On May 18, 2009, DATCP transmitted the above rule for legislative review. The rule was assigned to the Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection and to the Assembly Committee on Consumer Protection. The Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection did not hold a hearing and took no action. The Assembly Committee on Consumer Protection did not hold a hearing and took no action.