

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 manufactures 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 _____ day of _____, 2009

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
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Division of Trade and Consumer Protection