

## **Children's Safe Product Act – RCW 70.240.020 Lead, Cadmium, and Phthalates**

February 12<sup>th</sup>, 2016

The Children's Safe Product Act includes a "Prohibition on the manufacturing and sale of children's products containing lead, cadmium and phthalates" ([RCW 70.240.020](#)). Ecology continues to investigate for violations of the limits on lead, cadmium and phthalates in children's products in RCW 70.240.020.

Where the consumer product is one that is covered by the federal Consumer Product Safety Improvement Act (CPSIA) limit for a particular constituent, Ecology will generally refer the matter to the Consumer Product Safety Commission staff for enforcement.

Where the product is covered by the state limits (because it falls within the definition of "children's product" in [RCW 70.240.010](#)), but not by a limit under the CPSIA, Ecology will enforce the state limits.

The following is provided as guidance for determining whether the Department of Ecology will consider a particular children's product to be subject to continuing enforcement under Washington's limits on lead, cadmium and phthalates under RCW 70.240.020.

Shortly after Washington enacted its limits on lead, cadmium, and phthalates in children's products in 2008, Congress enacted the Consumer Product Safety Improvement Act (CPSIA), P.L. 110-314 (Aug. 14, 2008). The federal CPSIA imposes its own limits on lead,<sup>1</sup> certain phthalates,<sup>2</sup> and cadmium (among other substances) in certain categories of children's products.<sup>3</sup>

That federal law also prohibits the enforcement of any state safety regulation that prescribes content limits (1) on the same "consumer product" as the federal limit, and (2) for "the same risk of injury associated with such consumer product" unless the state regulation is identical to the federal standard.<sup>4</sup>

Washington's limits on lead, phthalates, and cadmium are generally more stringent than the CPSIA limits.<sup>5</sup> Therefore, for those consumer products to which a federal standard for lead, phthalates or cadmium applies, the Washington standard for that constituent is preempted and cannot be enforced.

However, Washington's limits on lead, phthalates and cadmium in children's products apply to a broader range of consumer products than are covered by the federal limits on those constituents. For those children's products that are covered by the Washington standards but not by federal standards, the Department of Ecology intends to enforce the applicable state standards.

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<sup>1</sup> 15 USC § 1278.

<sup>2</sup> 15 USC § 2057c.

<sup>3</sup> 15 U.S.C. § 2056b.

<sup>4</sup> 15 U.S.C. § 2075; 15 U.S.C. § 1261 note (b)(1)(A) (Effect Upon Federal and State Law, § (b)(1)(A), Pub. L. 94-284 § 17(a)).

<sup>5</sup> Compare RCW 70.240.020 with the federal standards referenced in footnotes 1, 2, and 3.

The Department of Ecology will use the following analysis to determine whether it will enforce the limits on lead, phthalates, or cadmium of Washington's Children's Safe Products Act with respect to a particular consumer product.

**First**, Ecology will determine whether the product meets the definition of "children's products" as defined in Washington's Children's Safe Products Act at RCW 70.240.010. The categories of consumer products set forth in the definition of "children's products" in RCW 70.240.010(3) are "toys," "cosmetics," "jewelry," products "to help a child with sucking or teething, [or] to facilitate sleep, relaxation, or the feeding of a child," and "clothing." Ecology will also consider whether the product falls within one of the exclusions in RCW 70.240.010(4).

**Second**, Ecology will determine whether the federal limits on lead, cadmium or phthalates applies to the product in question. The federal limits on lead, phthalates, and cadmium each applies to a different scope of products (as described in more detail below).

If the product in question is within the RCW 70.240.010 definition of "children's product," but is not a product to which the federal standard for the substance in question applies, then Ecology may enforce the state standard with respect to that product.

There are some important categories of "children's products," as defined by RCW 70.240.010, that remain subject to the Children's Safe Products Act limits on lead, cadmium and phthalates when offered, sold, or distributed for sale or use in the state of Washington.

**Lead:** The federal limit on lead applies to products designed or intended primarily for children 12 and under. The CPSC has adopted an interpretive rule providing guidance on the definition of "children's product" at 16 C.F.R. § 1200.1 and 1200.2. There is considerable overlap between the products covered by the federal lead limit and "children's products" under Washington law; however, the definitions are not identical. For example, car seats are not covered by the federal lead limit, but they are expressly covered by Washington law.

**Cadmium:** Federal law incorporates the ASTM F963-11, Standard Consumer Safety Specification for Toy Safety, which includes a limit of 75 ppm cadmium (using a specified digestion method) in the surface-coating or accessible substrate of toys intended for use by children under 14 years. Washington's 40 ppm, by weight, limitation on cadmium applies to a broader range of products than the federal law. For example, clothing (including footwear), jewelry, child care articles, and cosmetics (other than cosmetics that are not part of a toy) are not covered by the federal cadmium limits, but are covered by Washington law.

**Phthalates:** Federal law imposes a limit on three types of phthalates in children's toys and child care articles. These same three phthalates, plus three others, are also limited in mouthable children's toys and child care articles. Washington's limitation on phthalates applies to a broader range of products than the federal law. For example, clothing (including footwear) and cosmetics are not covered by the federal phthalates limits, but are covered by Washington law.