#### THE INTERNATIONAL CADMIUM ASSOCIATION

**REGULATORY UPDATE**

**November 28, 2012**[[1]](#footnote-1)

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**FEDERAL ISSUES**

**TSCA ISSUES**

**CBO Releases Report On Cost Of Implementing TSCA Reform**

On October 2, 2012, the CBO released its cost estimate for implementation of the Safe Chemicals Act of 2011 (S. 847), stating that implementing the bill would cost $128 million over the next five years, assuming appropriation of the necessary amounts, as EPA would incur additional administrative costs to meet the new requirements. CBO estimates that the legislation would increase EPA’s workload for regulating chemical safety by about 30 percent each year, based on historical information about how other large regulatory programs have been implemented by EPA and on other information EPA provided. The CBO report states that, according to EPA, it currently requires, on average, an appropriation of about $105 million annually to implement and enforce TSCA. That funding supports about 360 employees and includes about $5 million for grants to states to enforce TSCA. Subject to appropriation of the necessary amounts, CBO estimates that EPA would require about $30 million annually over the next five years to cover the costs of additional personnel, contractors, and other administrative activities associated with meeting the new requirements of the bill. Over the next two years, CBO expects that EPA would focus primarily on producing guidance documents and cost-benefit analyses and performing other administrative tasks related to the rulemaking process for new chemicals and substances already in use. The report states that EPA also would establish internal processes and information technology systems necessary to prioritize the analysis of tens of thousands of chemicals and to implement other related programs in subsequent years. According to EPA, the report notes, such activities are routinely carried out by contractors; as a result, the majority of the estimated $30 million annual funding needed over this period would cover contractor costs. By **2015**, as more implementation and enforcement of the new provisions of TSCA would begin, CBO estimates that EPA would shift funding to cover additional personnel. CBO’s report is available at <http://www.cbo.gov/publication/43651>.

**EPA Announces Immediate Final Rule On Cadmium Or Cadmium Compounds In Consumer Products**

EPA announced on November 20, 2012, that it is issuing a rule requiring manufacturers and importers of **cadmium** or **cadmium compounds** used in consumer products to provide unpublished health and safety data to EPA. EPA states that it is working with CPSC to reduce exposure to **cadmium** in consumer products, such as children’s metal jewelry. The final rule requires manufacturers, including importers, of **cadmium** or **cadmium compounds**, including as part of an article, that have been, or are reasonably likely to be, incorporated into consumer products to report certain unpublished health and safety studies. The final rule will be effective 30 days after publication in the *Federal Register*. For purposes of judicial review, the final rule shall be promulgated at 1 p.m. EST 14 days after publication in the *Federal Register*. A request to withdraw a chemical from the final rule must be received on or before 14 days after publication in the *Federal Register*. In a November 26, 2012, e-mail, EPA clarified that the final rule is an immediate final rule, rather than a direct final rule. More information is available in B&C’s November 26, 2012, memorandum, which is available at <http://www.lawbc.com/regulatory-developments/entry/epa-issues-direct-final-tsca-section-8d-rule-on-cadmium-and-cadmium-compoun/>. The unpublished rule is available at <http://www.epa.gov/oppt/chemtest/pubs/Prepublication_Copy_Cadmium-8d-FRM.pdf>.

**EPA Will Hold Webinar On CDR Reporting Tool**

EPA will hold a webinar on **November 29, 2012**, to provide a “debrief” for the electronic tool used for the CDR. EPA states that, during the webinar, it will “present high level statistics on the CDR reporting tool’s performance based on information provided by the EPA’s CDX helpdesk.” EPA will also discuss future electronic reporting technical enhancements and opportunities under TSCA and CDX. According to EPA, it will take questions and feedback related to the technical issues encountered during the reporting period to help in future electronic reporting tool development. EPA notes that “[s]pecific reporting requirements will not be fielded.” More information is available at <https://attendee.gotowebinar.com/register/3374205818940593152>.

**STATE ISSUES**

***California***

**California Lawmakers Express Concern With Economic Impact Of Safer Consumer Products Regulations**

State Senator Michael J. Rubio (D) and 15 other lawmakers sent a letter on October 1, 2012, to Governor Jerry Brown (D) expressing “significant concern about DTSC’s economic analysis and its lack of real answers regarding the economic impact” of the proposed Safer Consumer Products regulations. The lawmakers note that DTSC, without “fully understanding the economic impact,” drafted regulations “that are open-ended and unlimited in scope.” The proposed regulations “mandate[] industry to develop a costly and undefined analysis that is then submitted to a review process with no defined end point, standards or criteria for businesses nor certainty as to what will be deemed compliant.” To ensure predictability and transparency, the lawmakers ask Brown to direct DTSC to:

1. Conduct an economic analysis on the regulations that comports with the requirements set forth in S.B. 617; and

2. Withhold submitting the regulations to the Office of Administrative Law until that analysis is complete and can be properly analyzed and responded to by parties impacted by the regulations.

A spokesperson for the DTSC stated that an intensive economic review is impossible because “it’s unknown” which products will be identified as priority products. Once DTSC identifies the priority products, it “will conduct an economic impact analysis on that particular product and the industry associated with it.”

**CFCE Issues Report On Consumer Impact Of California’s Green Chemistry Initiative**

On October 8, 2012, CFCE issued a report entitled *The Consumer Impact of California’s Green Chemistry Initiative*, which states that DTSC “failed to meet its obligations to provide a meaningful economic analysis” of the draft Safer Consumer Products regulations. CFCE, a policy institute affiliated with the California Chamber of Commerce, states that the Safer Consumer Products regulations “have the potential to cost California businesses and consumers over $170 billion in the first 25 years of implementation in our Potential for Adversity Case. The total net costs to California businesses and consumers in the first 25 years of implementation could approach $150 billion. The [regulations] will directly affect 123,000 jobs in California at the peak of implementation in our Potential for Adversity Case.” DTSC Director Debbie Raphael described the report’s analysis as based on an “illogical and erroneous comparison” to REACH and stated the report is a “pinnacle of misinformation.” According to Raphael, an economic analysis of the regulations needs “meaningful inputs” that cannot be fully obtained until the priority products are selected, after the regulations are promulgated. CFCE’s report is available at <http://www.calchamber.com/GovernmentRelations/Documents/Consumer_Impact_of_California_Green_Chemistry_Initiative.pdf>.

**DTSC Will Circulate Revised Safer Consumer Product Regulations For Review**

A DTSC spokesperson stated on October 30, 2012, that DTSC will revise its proposed Safer Consumer Product Regulations based on comments it received, and it will circulate a revised proposal for at least a 30-day comment period. The spokesperson stated: “Our goal is to have the regulation in place in late spring **2013**.” DTSC is still reviewing the thousands of pages of comments submitted, and it will be several more weeks before DTSC releases any changes. Comments on the proposed Safer Consumer Product Regulations are available at <http://www.dtsc.ca.gov/SCPRegulations.cfm>.

***North Carolina***

**NCSAB Meeting Agenda Includes Cadmium Discussion**

There is no new publicly available information to report regarding NCSAB’s September 26, 2012, meeting, which included “**Cadmium** Discussion” on the agenda. The meeting minutes are not yet available online but will be posted at <http://daq.state.nc.us/cgi-bin/sab.cgi?year=2012>. The next NCSAB meeting is scheduled for **December 5, 2012**.

***South Carolina***

**Judge Orders New Mediation In Federal Lawsuit Concerning Dredging**

The South Carolina Supreme Court recently ruled that the Department of Health and Environmental Control violated state law in certifying a needed federal clean water permit for the project. The state court ruled the state Savannah River Maritime Commission, not the Department of Health and Environmental Control, has authority over river activities. The U.S. District Court for the District of South Carolina noted, in a November 2012 hearing, that this could raise difficult legal issues. The court asked all the parties in the federal suit “to participate fully and in good faith in court-ordered mediation.” The U.S. Army Corps of Engineers sent a letter to Senator Barbara Boxer (D-CA), Chair of the Senate Committee on Environment and Public Works, seeking an exemption from the state water quality certification. Environmental groups in South Carolina and Georgia sued the U.S. Army Corps of Engineers, claiming that a permit is needed because the deepening work will mean **cadmium** from river silt will be dumped on the South Carolina side of the river.

**MISCELLANEOUS ISSUES**

**AP Investigates Availability Of Cadmium Jewelry In Stores**

In an October 14, 2012, article, the AP claims that CPSC failed to pursue recalls after they found **cadmium**-tainted jewelry in stores, and failed to warn parents about the contaminated items already in their homes. The article states that the AP and representatives of two consumer groups were able to buy the items in Los Angeles, suburban San Francisco, central Ohio, and upstate New York. The AP notes that CPSC also allowed Wal-Mart Stores Inc. and Meijer to pull from shelves jewelry that failed safety testing without notifying parents who had previously purchased such items. The AP states that CPSC staffers “have consistently sided with firms that argued their high-**cadmium** items shouldn’t be recalled -- not because they were safe in the hands of kids, but because they were deemed not to meet the legal definition of a ‘children’s product.’” According to the AP, CPSC trusted retailers and jewelry importers to self-police their inventories for **cadmium**, but did not check whether they had done so for at least a year. The article is available at <http://bigstory.ap.org/article/ap-impact-feds-muff-kid-jewelry-cadmium-crackdown>.

**CPSC Issues Statement Concerning Unanimous Vote To Terminate Petition Concerning Cadmium**

In an October 3, 2012, statement, CPSC Commissioner Nancy A. Nord commented on CPSC’s unanimous vote to terminate the petition of the Sierra Club and others asking CPSC to establish content limits for **cadmium** in children’s jewelry and children’s toy jewelry. Nord noted that two ASTM standards now place restrictions on the use of **cadmium** in these products, and CPSC staff “found that these restrictions adequately protect against the risk of harm from **cadmium** exposure, negating the need for further regulation.” The statement is available at <http://www.cpsc.gov/pr/nord10032012.pdf>.

**EPA Releases List Of EDSP Universe Of Chemicals, Which Includes Cadmium**

On November 27, 2012, EPA released a document entitled *The EDSP Universe of Chemicals and General Validation Principles*, as well as the list of approximately 10,000 chemicals. According to EPA, the document is a supplement to the June 2012 *EDSP Comprehensive Management Plan*, which EPA intends to provide strategic guidance and outline critical activities that are planned for the EDSP for the remainder of FY 2012 through FY 2017. *The EDSP Universe of Chemicals and General Validation Principles* addresses chemicals that may be considered by the EDSP for screening and testing within the five year time horizon of the *EDSP Comprehensive Management Plan*. EPA states that, given the large number of chemicals that it regulates and that are potentially subject to EDSP screening, “it is important to strategically prioritize which chemicals should undergo screening so the chemicals with the greatest potential for interacting with the endocrine systems are evaluated in a timely manner to ensure public and wildlife protection.” To this end, according to EPA, the document describes general validation principles for the use of computational toxicology tools for efficient chemical prioritization. The document is available at <http://epa.gov/endo/pubs/edsp_chemical_universe_and_general_validations_white_paper_11_12.pdf>. The list of approximately 10,000 chemicals, which includes **cadmium**, is available at <http://epa.gov/endo/pubs/edsp_chemical_universe_list_11_12.pdf>. B&C’s July 2, 2012, memorandum regarding the *EDSP Comprehensive Management Plan* is available at <http://www.lawbc.com/regulatory-developments/entry/epa-releases-edsp-comprehensive-management-plan/>.

**IRIS Assessment**

***EPA Holds IRIS Public Stakeholder Meeting***

On November 13, 2012, EPA held a public stakeholder meeting on the IRIS Program. EPA invited stakeholders to participate in the meeting “to hear [their] views about IRIS and changes that are underway to improve the Program.” During the meeting, Dr. Kenneth Olden, NCEA Director, stated that any revisions to the IRIS Program will “take place while the train is still in motion,” and that EPA does not intend to “go back or hold up an assessment that is already in progress.” EPA states that the presentation materials will be posted “shortly” at <http://www.epa.gov/iris/publicmeeting.htm>.

***Cadmium (Qualitative Draft)***

There is no new publicly available information to report regarding the detailed tracking report for **cadmium** (qualitative and quantitative), which includes the following information:

| **Activity/Event** | **Start Date** | **End Date** |
| --- | --- | --- |
| **1. Draft Development** | TBD | TBD |
| **2. Agency Review** | TBD | TBD |
| **3. Interagency Review** | TBD | TBD |
| **4. External Peer Review** | TBD | TBD |
| **5. Final Assessment/Posting** | TBD | TBD |

**FTC Releases Revised Green Guides**

On October 1, 2012, FTC released the long-awaited revised *Guides for the Use of Environmental Marketing Claims* (Green Guides). FTC intends the Green Guides to help marketers ensure that the claims they make about the environmental attributes of their products are “truthful and non-deceptive.” FTC modified sections on general environmental benefit, compostable, degradable, ozone, recyclable, and recycled content. FTC added new sections concerning carbon offsets, certifications and seals of approval, free-of claims, non-toxic claims, made with renewable energy claims, and made with renewable materials claims. While the Green Guides are administrative interpretations of law, and are not independently enforceable, they describe the types of environmental claims FTC may find deceptive under Section 5 of the FTC Act. Under Section 5, FTC can take enforcement action against deceptive claims, which could lead to FTC orders prohibiting deceptive advertising and marketing and fines if those orders are later violated. The Green Guides are available at <http://www.ftc.gov/os/2012/10/greenguides.pdf>, and a summary is available at <http://www.ftc.gov/os/2012/10/greenguidessummary.pdf>. FTC posted a video at <http://business.ftc.gov/multimedia/videos/green-guides> that highlights changes to the Green Guides.

**U.S. PIRG Releases *Trouble In Toyland***

U.S. PIRG released on November 20, 2012, its 27th annual *Trouble in Toyland* report. In its press release, U.S. PIRG notes that the report provides the results of laboratory testing on toys for lead, **cadmium**, and phthalates, “all of which have been proven to have serious adverse health impacts on the development of young children.” In its report, U.S. PIRG includes the following recommendation for **cadmium**:

The CPSC should reinstate rulemaking proceedings to establish stronger mandatory guidelines for limits for **cadmium** in children’s jewelry, toy jewelry and adult jewelry and continue stringent surveillance at ports and retail stores.

*Trouble in Toyland* is available at <http://www.uspirg.org/reports/usp/trouble-toyland-2012>.

**INTERNATIONAL ISSUES**

**Cadmium Included In The World’s Worst Pollution Problems: Assessing Health Risks At Hazardous Waste Sites**

Green Cross Switzerland and the Blacksmith Institute released on October 24, 2012, a report entitled *The World’s Worst Pollution Problems: Assessing Health Risks at Hazardous Waste Sites*. **Cadmium** is listed as a pollutant found at battery recycling sites, lead smelters, mining and ore processing sites, industrial or municipal dumpsites, product manufacturing sites, chemical manufacturing sites, dye industry sites, petrochemical processing and production sites, electronic waste recycling sites, and heavy industry sites. The report is available at <http://www.greencross.ch/uploads/media/pollution_report_2012_top_ten_wwpp.pdf>.

**China Proposes Limits On Level Of Cadmium In packaging And Packing Materials**

MEP issued draft restrictions on the presence of toxic and hazardous substances in certain computers, computer monitors, and displays, as well as limits on heavy metal concentrations in their packaging. Under the draft, packaging and packing materials could not contain more than 100 milligrams per kilogram of lead, **cadmium**, mercury, and hexavalent chromium. Comments are due **January 25, 2013**. More information is available, in Chinese, at <http://www.mep.gov.cn/gkml/hbb/bgth/201209/t20120929_237083.htm>.

**China Holds Public Consultation On Priority Substance Substitutes**

MIIT held a public consultation on substitutes for priority substances identified earlier this year. The Catalogue of Encouraged Substitutes to Toxic and Hazardous Raw Materials (2012) proposes substitutes for heavy metals, organic pollutants, pesticides, and other toxic and hazardous substances. Three types of substitutes are proposed, based on technical stages: development (safe alternatives in urgent need of development); application (safe alternatives that have been developed and expect promising marketing promotion); and promotion (safe alternatives of mature promotion and in need of expanding range of application). Comments were due November 27, 2012. As reported in our July 28, 2012, Update, MIIT asked chemical companies that use certain priority hazardous substances, including heavy metals such as **cadmium**, to submit information on the substitution of those substances. More information is available, in Chinese, at <http://jns.miit.gov.cn/n11293472/n11295091/n11299329/14992671.html>.

**China Intends To Extend Pollutant Credit Trading Program To Include Cadmium**

A pilot program for trading pollution credits in central China’s Hunan province will be extended to include heavy metals such as lead, **cadmium**, chromium, and arsenic. The pilot program currently includes only chemical oxygen demand and sulfur dioxide. Under the trading exchange rules, companies must purchase permits to cover their estimated chemical oxygen demand and sulfur dioxide output between 2011 and the end of **2015**. If their emissions exceed the estimated amount, they must purchase more credits from companies that have not exceeded their quotas or face possible closure.

**EECCA NGO Begins Toy Chemical Safety Assessment**

An EECCA NGO has begun investigating the presence of lead, **cadmium**, antimony, arsenic, chromium, and mercury in toys. The project has already collected more than 500 products aimed at children for testing. Although the countries have legislated against toys containing the heavy metals, the NGO states that preliminary testing of the toys has shown unacceptable levels of lead, **cadmium** and antimony. Complete findings are expected in early **2013**. More information is available, in Russian, at <http://www.ecoaccord.org/news2012/1102.htm>.

**Japan Selects Groups Of Chemicals, Including Cadmium, For Endocrine Disruptor Research**

According to a spokesperson for MOE’s Environmental Safety Division, Japan has chosen 179 groups of chemicals to research for their potential endocrine-disrupting properties. Of those, 76 groups of chemicals will be subject to research on whether human and environmental exposures exist. These include aldrin, endrin, uranium, **cadmium**, trichlorobenzene, and formaldehyde. The spokesperson stated that Japan selected the chemical substances based on EXTEND2010 (Extended Tasks on Endocrine Disruption), a Japanese government program on endocrine disruptors. The program has been conducting literature reviews of endocrine disruptor research in other countries since 2000, initially under the EXTEND2005 program. More information is available, in Japanese, at <http://endocrine.jp/2act/index.html>.

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Unless otherwise noted, if you have questions about any item summarized above, please call or e-mail Lynn L. Bergeson at (202) 557-3801 or lbergeson@lawbc.com, or Carla N. Hutton at (202) 557-3809 or chutton@lawbc.com.

## ACRONYMS

**AP** -- Associated Press

**B&C** -- Bergeson & Campbell, P.C.

**CBO** -- Congressional Budget Office

**CDR** -- Chemical Data Reporting

**CFCE** -- California Foundation for Commerce and Education

**CPSC** -- United States Consumer Product Safety Commission

**DTSC** -- Department of Toxic Substances Control

**EDSP** -- Endocrine Disruptor Screening Program

**EECCA** -- Eastern Europe, Caucasus and Central Asia

**EPA** -- United States Environmental Protection Agency

**FTC** -- Federal Trade Commission

**ICdA** -- International Cadmium Association

**IRIS** -- Integrated Risk Information System

**MEP** -- Ministry of Environmental Protection

**MIIT** -- Ministry of Industry and Information Technology

**MOE** -- Ministry of the Environment

**NCEA**-- National Center for Environmental Assessment

**NCSAB** -- North Carolina Scientific Advisory Board on Toxic Air Pollutants

**NGO** -- Non-Governmental Organization

**REACH** -- Registration, Evaluation, Authorization and Restriction of Chemicals

**TBD** -- To Be Determined

**TSCA** -- Toxic Substances Control Act

**U.S. PIRG** -- United States Public Interest Research Group

1. This Update addresses significant federal, state, and international environmental and occupational safety and health regulatory issues and ongoing advocacy efforts pertinent to the ICdA member companies. A list of acronyms used in this Update is provided. [↑](#footnote-ref-1)