#### THE INTERNATIONAL CADMIUM ASSOCIATION

**REGULATORY UPDATE**

**July 28, 2018**[[1]](#footnote-1)

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# NEW DEVELOPMENTS

New information is available on the following issues in this Update:

Federal Issues

CAA Issues

EPA Intends To Renew ICR For NESHAP Area Sources, Including Primary Nonferrous Metals-Zinc, Cadmium, And Beryllium, page 3

CERCLA Issues

Industry, States Move To Intervene In NGO Challenge To EPA’s Decision Not To Issue Final Rule Regarding Financial Responsibility Requirements For Hardrock Mining Industry, page 4

Mining And Mineral Issues

House Democrats Introduce Mining Reform Bill, page 6

MSHA RFI Seeks Information Regarding Safety Improvement Technologies For Mobile Equipment, Belt Conveyors, page 7

Trade Issues

USTR Proposes To Amend List Of Chinese Products Subject To Tariffs, Would Include Certain Molybdenum Products, page 7

TSCA Issues

EPA Publishes Final Reporting Requirements For TSCA Mercury Inventory; NRDC Files Suit Challenging The Final Rule, page 8

EPA Announces Availability Of Guidance On Expanded Access To TSCA CBI, page 9

Miscellaneous Issues

CPSC Exempts Certain EWPs From Third Party Testing, page 10

NGO Introduces Chemical Hazard Data Commons, page 10

SAB Sends Letter To Pruitt On Proposed Rule On Strengthening Transparency In Regulatory Science, page 11

FDA Draft Guidance Includes Updated PDE For Cadmium Inhalation Route Of Exposure, page 12

State Issues

*Michigan*

MIOSHA Targets Blight Removal Projects To Protect Workers, page 12

*New Jersey*

Assembly Passes Legislation To Prohibit The Sale Of Adulterated Candy, page 13

*Oregon*

Comment Period Begins On New Draft Of Cleaner Air Oregon Rules, page 13

International Issues

Canada

Canada Commits To Reforming CEPA, page 14

Hong Kong

Excessive Cadmium Found In Prepackaged Frozen Spinach, Dried Mushroom Samples, page 15

Nepal

Draft Technical Regulation On Children’s Toys Would Retain Maximum Concentration For Cadmium, page 16

South Korea

MOE Releases Draft K-REACH Implementation Rules For Comment, page 16

U.S. Responds To WTO TBT Notification Of Revised K-REACH Enforcement Decree And Rules, page 17

Taiwan

Cabinet Approves National Policy Plan For Chemical Substances Management, page 17

**FEDERAL ISSUES**

**CAA ISSUES**

**EPA Intends To Renew ICR For NESHAP Area Sources, Including Primary Nonferrous Metals-Zinc, Cadmium, And Beryllium**

EPA published a May 30, 2018, [*Federal Register* notice](https://www.federalregister.gov/documents/2018/05/30/2018-11583/see-the-item-specific-docket-numbers-provided-in-the-text-proposed-information-collection-request) announcing that it intends to submit several ICRs to OMB for review and approval. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection. These are proposed extensions of 73 currently approved ICRs, including “NESHAP for Area Sources: Polyvinyl Chloride and Copolymers Production, Primary Copper Smelting, Secondary Copper Smelting, and Primary Nonferrous Metals-Zinc, **Cadmium**, and Beryllium.” The ICR expires **June 30, 2019**. According to the notice, respondents are polyvinyl chloride and copolymers production, primary copper smelting, secondary copper smelting, and zinc, **cadmium**, and beryllium production facilities. There is no change in burden from the previous ICR. Comments are due **July 30, 2018**. Under the PRA, a federal agency generally cannot conduct a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB and displays a currently valid OMB Control Number. OMB authorization for an ICR cannot be for more than three years without renewal. As this type of notice concerns continuing a current collection of information, rather than enacting a new requirement, typically it is not worthy of comment.

**CERCLA ISSUES**

**Industry, States Move To Intervene In NGO Challenge To EPA’s Decision Not To Issue Final Rule Regarding Financial Responsibility Requirements For Hardrock Mining Industry**

On June 8, 2018, the National Mining Association filed for leave to intervene as a respondent in the U.S. Court of Appeals for the District of Columbia Circuit case challenging EPA’s decision not to issue a final rule regarding financial responsibility requirements for the hardrock mining industry. *Idaho Conservation League v. Pruitt*, No. 18-1141. The National Mining Association states that it “has a clear interest in the outcome of this action -- a challenge that, if it were to succeed, would eliminate the benefits accruing to NMA members from EPA’s final action rejecting new, burdensome financial responsibility requirements.” On June 15, 2018, the New Mexico Energy, Minerals and Natural Resources Department, the New Mexico Environment Department, the Arizona Department of Environmental Quality, and the States of Alaska, Arkansas, Colorado, Louisiana, Michigan, Montana, Nevada, Utah, South Carolina, South Dakota, Wisconsin, and Wyoming moved to intervene as respondents, arguing that their interests will be impaired if the NGOs prevail in their appeal. According to the intervenor states, since CERCLA Section 108(b) was enacted, states have adopted statutes and developed their own regulatory programs governing hardrock mining facilities, including financial assurance requirements. The financial responsibility requirements can be substantial: Nevada currently holds nearly $2.8 billion in financial assurance for hardrock mines; New Mexico holds over $600 million. The state intervenors expressed two overriding concerns during EPA’s rulemaking process: (1) that any rule under CERCLA Section 108(b) for operating hardrock mines is now unnecessary because state mining regulatory programs already address the risks identified in CERCLA Section 108(b) and therefore eliminate the need for federal financial responsibility; and (2) that a proposed rule under CERCLA Section 108(b) would pose a significant preemption risk to the states’ mining regulatory programs. The petitioners’ June 18, 2018, non-binding statement of issues states:

* In the January 11, 2017, proposed rule and July 28, 2009, priority notice of action, EPA found that financial assurance regulations were needed for classes of facilities in the hardrock mining industry due to risks to human health and the environment posed by such facilities, among other factors. In the challenged action, EPA determined that financial assurance regulations are not appropriate for classes of facilities in the hardrock mining industry because such facilities do not present a risk of taxpayer funded response actions. Is EPA’s changed interpretation of risk to refer only to financial risks to the federal government, rather than risks to human health and the environment, contrary to the statute and unreasonable?
* Is EPA’s decision that financial assurance regulations are not appropriate for classes of facilities in the hardrock mining industry arbitrary, capricious, unsupported by the record, and otherwise contrary to law, where EPA made findings in the proposed rule and supporting materials showing regulation was necessary, and EPA ignored or dismissed without adequate explanation these findings in the final action?
* In the proposed rule and supporting draft regulatory impact analysis, EPA considered the costs and benefits of a proposed financial assurance rule for classes of facilities in the hardrock mining industry, including cost to industry, cost to the federal government of publicly-funded response actions, and benefits to human health and the environment from reduced pollution and prompt cleanup. In the final action, EPA considered only costs to industry and the federal government. Is EPA’s decision to consider financial costs to industry and the federal government, but not benefits to human health and the environment, arbitrary, capricious, and otherwise contrary to law?
* In the proposed rule, EPA requested comment on many specific regulatory provisions and findings. In the final action, EPA determined no rule is appropriate based on a changed interpretation of the statute, unexplained dismissal of the agency’s prior findings, and new rationales not included in the proposed rule. Does EPA’s final action violate the APA, which requires final rules be issued only after providing notice of proposed rulemaking and an opportunity for the public to comment, because EPA’s final action is not a logical outgrowth of the proposed rule?

On July 6, 2018, the court granted the motions for leave to intervene that were filed by Comstock Mining Inc., Comstock Mining, LLC, The Fertilizer Institute, Freeport-McMoRan Inc., Freeport Minerals Corporation, Freeport-McMoRan Safford Inc., Albemarle Corporation, Albemarle U.S., Inc., ASARCO LLC, the National Mining Association, Colorado, Louisiana, Nevada, Michigan, Utah, the New Mexico Environment Department, the New Mexico Energy, Minerals and Natural Resources Department, Arkansas, Alaska, South Dakota, Montana, Wyoming, Wisconsin, South Carolina, the Arizona Department of Environmental Quality, and the American Iron and Steel Institute. The court will establish the schedule for the filing of briefs in a future order. That order will automatically provide briefing only for intervenors on the side of respondents. The court notes that any intervenors intending to participate in support of petitioners must notify the court within 14 days, and include a statement of issues to be raised by the intervenor(s). The court reminds intervenors supporting the same party that they must file a joint brief or certify to the court why a separate brief is necessary. On July 26, 2018, the court ordered that intervenors show cause by **August 27, 2018**, why they should not be limited to one joint brief on the side of the party they support, and, where appropriate, one joint reply brief.

**MINING AND MINERAL ISSUES**

**House Democrats Introduce Mining Reform Bill**

On May 10, 2018, Representative Raúl Grijalva (D-AZ), Ranking Member of the House Committee on Natural Resources, and Representative Alan Lowenthal (D-CA), Ranking Member of the House Natural Resources Subcommittee on Energy and Mineral Resources, introduced the Hardrock Leasing and Reclamation Act of 2018 (H.R. 5753). According to the Democrats’ May 14, 2018, [press release](https://democrats-naturalresources.house.gov/media/newsletters/may14), the bill requires hardrock mining operations to meet some of the same requirements and standards that already apply to oil, gas, and coal development on public lands. The press release states that the bill would:

* Eliminate the “antiquated” use of mining claims, and create a leasing system for hardrock mines on public lands similar to oil, gas, coal, and numerous other minerals;
* Treat mining the same as other public land uses -- such as grazing, hunting, and energy development -- and allow mining to be managed through existing land-use planning processes;
* Provide clear authority for federal land managers to reject a mine proposal if it would cause unacceptable damage to public lands or resources;
* Establish a 12.5 percent royalty on new mining operations -- the same amount as oil and gas -- and an eight percent royalty on existing operations, with an exemption for small miners;
* Devote those royalties, as well as money raised from a per-ton fee on displaced material from mining, to the cleanup of abandoned hardrock mines across the country;
* Establish strong reclamation standards and bonding requirements to make sure the American people do not pay to clean up after mining companies that leave or go bankrupt; and
* Protect special places, such as wilderness study areas, roadless areas, and wild and scenic rivers, from mining.

According to the press release, the bill “will tremendously improve the century-old mining laws and reflects democratic priorities of protecting our public lands and providing American tax payers with a reasonable return for profits made from the natural resources that belong to us all.”

**MSHA RFI Seeks Information Regarding Safety Improvement Technologies For Mobile Equipment, Belt Conveyors**

According to [MSHA’s RFI](https://www.federalregister.gov/documents/2018/06/26/2018-13603/safety-improvement-technologies-for-mobile-equipment-at-surface-mines-and-for-belt-conveyors-at) published in the June 26, 2018, *Federal Register*, mining safety “could be substantially improved by preventing accidents that involve mobile equipment at surface coal mines and metal and nonmetal mines and belt conveyors at surface and underground mines.” MSHA states that it is taking a number of actions related to mobile equipment and belt conveyors to improve miners’ safety, including providing technical assistance, conducting awareness campaigns, and developing best practices and training materials. MSHA is also considering the role of engineering controls that would increase the use of seatbelts, enhance equipment operators’ ability to see all areas near the machine, warn equipment operators of potential collision hazards, prevent equipment operators from driving over a highwall or dump point, and help prevent entanglement hazards related to working near moving or re-energized belt conveyors. MSHA seeks information and data on engineering controls that could reduce the risk of accidents and improve miner safety. MSHA also seeks suggestions from stakeholders on best practices, training materials, policies and procedures, innovative technologies, and any other information to improve safety in and around mobile equipment, and working near and around belt conveyors. MSHA will hold stakeholder meetings to provide the mining community an opportunity to discuss and share information about the issues raised in the RFI. MSHA will publish a *Federal Register* notice announcing the stakeholder meetings at a later date. Comments are due **December 24, 2018**.

**TRADE ISSUES**

**USTR Proposes To Amend List Of Chinese Products Subject To Tariffs, Would Include Certain Cadmium Products**

On July 17, 2018, USTR published a [*Federal Register* notice](https://www.federalregister.gov/documents/2018/07/17/2018-15090/request-for-comments-concerning-proposed-modification-of-action-pursuant-to-section-301-chinas-acts) proposing to amend the list of products, published in a June 20, 2018, [*Federal Register* notice](https://www.federalregister.gov/documents/2018/06/20/2018-13248/notice-of-action-and-request-for-public-comment-concerning-proposed-determination-of-action-pursuant), that will be subject to increased tariffs. In the July 17, 2018, notice, USTR states that on July 6, 2018, China responded to the initial action by imposing increased duties on U.S. goods. USTR states that, in light of China’s decision to respond to the investigation by imposing duties on U.S. goods, it proposes to maintain the original $34 billion action and the proposed $16 billion action, and to take further action in the form of an additional ten percent *ad valorem* duty on products of China with an annual trade value of approximately $200 billion. The products subject to the proposed supplemental action are classified in the HTSUS subheadings set out in the Annex to the notice. The list includes the following **cadmium** products:

| **HTSUS Subheading** | **Product Description** |
| --- | --- |
| 2620.91.00 | Ash and residues (other than from the manufacture of iron or steel), containing antimony, beryllium, cadmium, chromium or their mixtures |
| 2825.90.75 | Cadmium oxide |
| 2830.90.20 | Cadmium sulfide |
| 8107.20.00 | Cadmium, unwrought; cadmium powders |
| 8107.30.00 | Cadmium waste and scrap |
| 8107.90.00 | Cadmium, articles thereof nesoi |
| 8507.30.40 | Nickel-cadmium storage batteries, of a kind used as the primary source of electrical power for electrically powered vehicles of 8703.90 |

USTR seeks public comment and will hold a public hearing regarding this proposed modification of the action in the investigation. The notice includes the following schedule for comments and responses:

* July 27, 2018: Due date for filing requests to appear and a summary of expected testimony at the public hearing, and for filing pre-hearing submissions;
* **August 17, 2018**: Due date for submission of written comments;
* **August 20-23, 2018**: The Section 301 Committee will convene a public hearing in Washington, D.C., beginning at **9:30 a.m. (EDT)**; and
* **August 30, 2018**: Due date for submission of post-hearing rebuttal comments.

**TSCA ISSUES**

**EPA Publishes Final Reporting Requirements For TSCA Mercury Inventory; NRDC Files Suit Challenging The Final Rule**

On June 27, 2018, EPA promulgated a [final rule](https://www.federalregister.gov/documents/2018/06/27/2018-13834/mercury-reporting-requirements-for-the-tsca-mercury-inventory) regarding reporting requirements for applicable persons to provide information to assist in the preparation of an “inventory of mercury supply, use, and trade in the United States,” where “mercury” is defined as “elemental mercury” and “a mercury compound.” The final rule applies to any person who manufactures (including imports) mercury or mercury-added products, or otherwise intentionally uses mercury in a manufacturing process (including processes traditionally not subject to TSCA, such as for the manufacture of pharmaceuticals and pesticides). The list of examples of mercury compounds includes **cadmium mercury sulfide** and **cadmium mercury telluride ((Cd,Hg)Te)**. EPA will use data from the 2018 reporting year for the **2020** mercury inventory. The 2018 reporting year is from January 1, 2018, to **December 31, 2018**, and the submission deadline for the 2018 reporting year is **July 1, 2019**.

The reporting requirements include activities that are established TSCA terms, including manufacture, import, distribution in commerce, storage, and export. EPA notes that the reporting requirements also apply to the otherwise intentional use of mercury in a manufacturing process. Persons who manufacture (including import) mercury or mercury-added products, or otherwise intentionally use mercury in a manufacturing process, are required to report amounts of mercury used in such activities during a designated reporting year. Reporters must also identify specific mercury compounds, mercury-added products, manufacturing processes, and how mercury is used in manufacturing processes, as applicable, from preselected lists. For certain activities, reporters must provide additional, contextual data.

The list of potentially affected entities includes all other metal ore mining (NAICS Code 212299); nonferrous metal (except aluminum) smelting and refining (NAICS Code 331410); and secondary smelting, refining, and alloying of nonferrous metal (except copper and aluminum) (NAICS Code 331492). More detail is provided in B&C®’s June 25, 2018, memorandum, “[EPA Publishes Final Reporting Requirements for TSCA Mercury Inventory](http://www.lawbc.com/regulatory-developments/entry/epa-publishes-final-reporting-requirements-for-tsca-mercury-inventory).”

On July 19, 2018, NRDC filed a lawsuit in the U.S. Court of Appeals for the Second Circuit challenging the final rule. *NRDC v. EPA*, No. 18-2121. NRDC is petitioning the court to review and set aside the final rule.

**EPA Announces Availability Of Guidance On Expanded Access To TSCA CBI**

On June 27, 2018, EPA published a [*Federal Register* notice](https://www.federalregister.gov/documents/2018/06/27/2018-13828/guidance-on-expanded-access-to-tsca-confidential-business-information-notice-of-availability) announcing the availability of guidance for each of three new expanded TSCA CBI access provisions. The Lautenberg Act expanded the categories of people to whom EPA may disclose TSCA CBI by specifically authorizing EPA to disclose TSCA CBI to state, tribal, and local governments; environmental, health, and medical professionals; and emergency responders. The guidance documents cover the content and form of the agreements and statements of need required under each provision, and include some basic logistical information on where and how to submit requests to EPA. The conditions for access vary under each of the new provisions, but generally include the following:

* The requester must show that he or she has a need for the information related to their employment, professional, or legal duties;
* The recipient of TSCA CBI is prohibited from disclosing or permitting further disclosure of the information to individuals not authorized to receive it (physicians/nurses may disclose the information to their patient or person authorized to make medical or health care decisions on behalf of the patient); and
* EPA generally must notify the entity that made the CBI claim at least 15 days prior to disclosing the CBI. There is an exception for disclosures in emergency situations, which require that EPA make the notification as soon as practicable.

In addition, under these new provisions, requesters are generally required to sign an agreement and may be required to submit a statement of need to EPA. Emergency requestors only need to sign an agreement and submit a statement of need if the person who made the claim so requests.

**MISCELLANEOUS ISSUES**

**CPSC Exempts Certain EWPs From Third Party Testing**

On June 22, 2018, CPSC issued a [final rule](https://www.federalregister.gov/documents/2018/06/22/2018-13392/childrens-products-childrens-toys-and-child-care-articles-determinations-regarding-lead-astm-f963) determining that certain untreated and unfinished EWPs, specifically, particleboard, hardwood plywood, and medium-density fiberboard, made from virgin wood or pre-consumer wood waste do not contain lead, the ASTM F963 elements, or specified phthalates that exceed the limits set forth under CPSC’s statutes for children’s products, children’s toys, and child care articles. Based on these determinations, the specified EWPs are not required to have third party testing for compliance with the requirements for lead, ASTM F963 elements, or phthalates for children’s products, children’s toys, and child care articles. ASTM F963 Section 4.3.5 requires that surface coating materials and accessible substrates of children’s toys that can be sucked, mouthed, or ingested must comply with the solubility limits of eight elements, including **cadmium**. The solubility limit for **cadmium** is 75 ppm. CPSC refers to the eight elements as the ASTM F963 elements.

**NGO Introduces Chemical Hazard Data Commons**

On July 10, 2018, HBN [announced](https://healthybuilding.net/blog/236-introducing-the-chemical-hazard-data-commons) the availability of the Chemical Hazard Data Commons, “a new tool for identifying chemicals of concern and finding less hazardous alternatives.” According to HBN, the Chemical Hazard Data Commons “combines the power of HBN’s Pharos Chemical and Material Library with new tools for visualizing hazard scoring, comparing hazards for chemical lists, staying on top of changes, finding safer alternatives, surveying other databases, and tapping the wisdom of the Data Commons community to collaborate on problem solving and solutions.” The Data Commons provides a detailed profile of each of over 85,000 substances, with single-page access to:

* Pharos hazard data across two dozen human and environmental health endpoints from 46 governmental and other scientific sources around the globe;
* GreenScreenTM list translator scores to identify chemicals of high concern and full assessments to identify preferable alternatives;
* Restricted substance listings from key government agencies and voluntary programs;
* Physical characteristic data, chemical formulas, and identifiers;
* Functional use data showing where the chemical is used; and
* Compound grouping to identify substances with similar hazards.

A search for “**cadmium**” returns a number of results.

**SAB Sends Letter To Pruitt On Proposed Rule On Strengthening Transparency In Regulatory Science**

On June 28, 2018, SAB [sent a letter](https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebProjectsCurrentBOARD/4ECB44CA28936083852582BB004ADE54/%24File/EPA-SAB-18-003%2BUnsigned.pdf) to EPA Administrator Scott Pruitt regarding its consideration of EPA’s proposed rule intended to strengthen the transparency of EPA regulatory science. SAB states that it should consider the proposed rule’s scientific and technical basis. While the long-term trend in most scientific fields is for authors to supply public access to data and analytic methods after scientific findings are published, SAB notes that for studies published many years ago, it may not be feasible to deliver public access to data and analytic methods. There are also sensitive situations where public access may infringe on legitimate confidentiality and privacy interests, and where exceptions from complete public access may be appropriate. In addition, according to SAB, there are considerations associated with the cost and effort that would be required in making large and complex existing datasets available within Institutional Review Board requirements, including the issue of who would be responsible for implementing the rule and any additional obligations. Thus, SAB states, “the development of guidelines and rules in this arena requires careful collaboration with the scientific community.” The letter lists other key science issues associated with the proposed rule to increase transparency that may benefit from SAB advice:

* Considerations related to the use of epidemiologic studies and methods that are based on confidential human subject data while also providing transparency in the underlying data;
* Consideration of the multiple existing methods to assess the validity of prior epidemiologic studies, that do not provide public access to data and analytic methods;
* Consideration of the selection of dose-response models and factors such as biological plausibility, mode of action, or mechanism of action to identify the most scientifically-appropriate model(s);
* The need to clearly define crucial sound science concepts such as “replication” and “validation”; and
* The identification and evaluation of mechanisms used by expert panels in vetting science that do not engage in reanalysis of original data with original methods, yet entail a rigorous review process that goes beyond typical journal peer review procedures.

SAB urges EPA to consider fully the thousands of public comments submitted and request, receive, and review scientific advice from SAB before revising the proposed rule.

**FDA Draft Guidance Includes Updated PDE For Cadmium Inhalation Route Of Exposure**

On July 13, 2018, FDA published a [*Federal Register* notice](https://www.federalregister.gov/documents/2018/07/13/2018-14971/q3dr1-elemental-impurities-international-council-for-harmonisation-draft-guidance-for-industry) announcing the availability of a draft guidance for industry entitled “Q3D(R1) Elemental Impurities.” The draft guidance revises the existing ICH guidance for industry “Q3D Elemental Impurities” and provides an updated PDE (Permitted Daily Exposure) for the **cadmium** inhalation route of exposure. According to the notice, the updated PDE of **three µg Cd/day** is based on a modifying factor approach like that used for calculating the PDEs for the **cadmium** oral and parenteral routes of exposure. The draft guidance is intended to correct a calculation error in the PDE for **cadmium** by the inhalation route of exposure. The notice states that following deliberations within the Q3D Expert Working Group, the revised calculation is based on a modifying factor approach that is consistent with the oral and parenteral PDE calculations. Comments are due **August 13, 2018**.

**STATE ISSUES**

***Michigan***

**MIOSHA Targets Blight Removal Projects To Protect Workers**

MIOSHA [announced](https://www.michigan.gov/lara/0%2C4601%2C7-154-11407_30453_30456-470026--%2C00.html) on May 31, 2018, that it relaunched its SEP that increases MIOSHA presence on blight removal projects to address hazards such as asbestos and lead that pose health threats to workers. The SEP will be in effect through **February 28, 2019**. MIOSHA states that blight reduction hazards include potential exposure to lead, asbestos, **cadmium**, silica, and other chemicals. During the 2016-17 SEP, MIOSHA conducted 30 inspections of residential blight removal jobsites. During each inspection, MIOSHA works with employers to assist them in identifying hazards that are associated with these demolition and renovation work operations.

***New Jersey***

**Assembly Passes Legislation To Prohibit The Sale Of Adulterated Candy**

On June 30, 2018, the Assembly passed A. 2179, which would prohibit the sale of adulterated candy in New Jersey. The bill defines “adulterated candy” to mean any candy, with or without a wrapper, containing, composed of, or made with lead, mercury, or **cadmium** intentionally introduced as a chemical element during manufacturing or distribution, as opposed to naturally occurring levels of any of those elements, and any candy whose wrapper contains, is composed of, or is made with, lead, mercury, or **cadmium**. Under the bill, the sum of the concentration levels of lead, mercury, or **cadmium** naturally occurring in any candy that is allowed to be sold or offered for sale shall not exceed 100 ppm by weight (0.01 percent). Any candy that is composed of, or is made with lead, mercury, or **cadmium** that is naturally occurring and exceeds 100 ppm by weight (0.01 percent) shall be considered adulterated candy. On June 27, 2018, identical legislation (S.B. 2799) was introduced in the Senate.

***Oregon***

**Comment Period Begins On New Draft Of Cleaner Air Oregon Rules**

On June 25, 2018, ODEQ and OHA began a public comment period on a [new draft of the Cleaner Air Oregon rules](https://www.oregon.gov/deq/aq/cao/Pages/Proposed-Rules.aspx). The new draft rules reflect the Oregon legislature’s adoption of S.B. 1541, which established the Cleaner Air Oregon framework in statute, and input from the 2017 public comment period. Consistent with the previous draft rules, the proposed rules will require industrial facilities to:

* **Report air toxics**: Cleaner Air Oregon requires companies to report use of 600 heavy metals, chemicals, and other pollutants to state regulators. **Cadmium and compounds** are included in the toxic air contaminant reporting list at [Table 2](https://www.oregon.gov/deq/Rulemaking%20Docs/cao-pn2-Tables.pdf);
* **Assess Risk**: The proposed rules would set risk limits for more than 250 industrial air toxics. Table 3 includes the following TRVs for **cadmium and compounds**:

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Chronic Cancer** | **Chronic Noncancer** | **Acute Noncancer** |
| **Notes** | **(μg/m3)** | **Notes** | **(μg/m3)** | **Notes** | **(μg/m3)** | **Notes** |
| o | 0.00056 | A | 0.010 | T | 0.030 | S |

o -- An inorganic chemical designated with “and compounds” indicates that the TRV applies to the sum of all forms of the chemical, expressed as the inorganic element.

A -- ODEQ Air Toxics Science Advisory Committee, 2018.

S -- ODEQ short-term guideline concentration.

T -- ATSDR.

Table 4 includes the following RBCs for **cadmium and compounds**:

|  |  |  |
| --- | --- | --- |
| **Residential Chronic** | **Non-Residential Chronic** | **Acute** |
| **Cancer RBC** | **Non-Cancer RBC** | **Child Cancer RBC** | **Child Non-Cancer RBC** | **Worker Cancer RBC** | **Worker Non-Cancer RBC** | **Non-Cancer RBC** |
| **(µg/m3)** | **(µg/m3)** | **(µg/m3)** | **(µg/m3)** | **(µg/m3)** | **(µg/m3)** | **(µg/m3)** |
| 0.00056 | 0.0050 | 0.014 | 0.037 | 0.0067 | 0.037 | 0.030 |

New and existing industrial facilities would be required to calculate the risks their emissions pose to people who live nearby and report their results to state regulators. Risk calculations would consider health problems (*e.g*., cancer, birth defects, nerve damage, nausea, breathing problems, rashes) from short- and long-term exposures.

* **Reduce risk**: The proposed rules would tie air quality permits and enforcement to the levels of potentially harmful air toxics a facility puts into the air and the impact they could have on the health of neighbors. Companies would be required to act if the levels of air toxics they emit exceed health safety limits. Current rules do not let regulators use health risks to neighbors to decide whether to grant permits to factories and other sources of air toxics.

A [public hearing](https://www.oregon.gov/deq/Regulations/rulemaking/Pages/Rcleanerair2017.aspx%22%20%5Cl%20%222018hearings) was held July 12, 2018, and another will be held **August 1, 2018**. Comments are due **August 6, 2018**.

**INTERNATIONAL ISSUES**

**CANADA**

**Canada Commits To Reforming CEPA**

On June 29, 2018, the Minister of Environment and Climate Change and the Minister of Health submitted its [*Follow-Up Report to the House of Commons Standing Committee on Environment and Sustainable Development on the Canadian Environmental Protection Act, 1999*](https://www.canada.ca/en/environment-climate-change/services/canadian-environmental-protection-act-registry/review/standing-committee-report-cepa-2018.html). In March 2016, the House of Commons designated the Standing Committee on Environment and Sustainable Development to undertake a comprehensive review of the provisions and operation of CEPA. The Committee’s report, [*Healthy Environment, Healthy Canadians, Healthy Economy: Strengthening the Canadian Environmental Protection Act, 1999*](http://www.ourcommons.ca/DocumentViewer/en/42-1/ENVI/report-8), addresses many elements of CEPA and provides guidance on how to improve the act and its implementation. The Follow-Up Report describes the many areas where the government is committed to taking further action in the near-term. In addition, the government will work towards legislative amendments “as soon as possible” in future parliamentary sessions. In its June 29, 2018, [press release](https://www.canada.ca/en/environment-climate-change/news/2018/06/government-of-canada-is-working-to-improve-canadas-law-on-pollution-prevention-and-toxic-chemicals-the-canadian-environmental-protection-act-1999.html), Environment and Climate Change Canada states that Canada is taking action to implement many of the Committee’s recommendations:

* It is working to enhance how it protects vulnerable populations, including by developing a policy framework for considering vulnerable populations -- such as children, pregnant women, and the elderly -- in the assessment and management of chemicals;
* It is taking action to protect Canadians from chemicals of high concern, such as endocrine disruptors, which can affect how hormones work and lead to long-term health issues; and
* It is updating standards and developing new instruments to improve air quality and reduce air pollution from industrial sources, including oil refineries.

In the section regarding chemicals management after **2020**, the Follow-Up Report states that as the current Chemicals Management Plan nears, it is “taking action to set new directions and objectives for chemicals management post-**2020**.” To help the government set new direction and objectives for chemicals management, it has initiated a broad-based engagement with partners and stakeholders that will continue through **2018** and **2019** to determine the future direction of chemicals management in Canada beyond **2020**. According to the Report, many of the chemicals management issues raised by the Committee will help inform this engagement, “which will examine such issues as endocrine disrupting chemicals, vulnerable populations, cumulative risk assessments, risk management, labelling, priority-setting, alternatives assessments and informed substitution, and substances of very high concern.” The outcome of this process will help shape program activities and, where needed, reforms to CEPA itself.

**HONG KONG**

**Excessive Cadmium Found In Prepackaged Frozen Spinach, Dried Mushroom Samples**

On June 1, 2018, CFS announced that a prepackaged frozen spinach sample was detected with **cadmium** in excess of the legal limit. CFS collected the spinach sample from a supermarket in To Kwa Wan for testing under its routine Food Surveillance Program. The sample contained **cadmium** at a level of 0.21 ppm, exceeding the legal limit of 0.1 ppm. CFS informed the vendor concerned and instructed it to stop sale and remove the affected batch from the shelves. CFS is tracing the source of the affected product.

CFS announced on June 29, 2018, that two prepackaged dried mushroom samples were detected with **cadmium** in excess of the legal limit. CFS collected the samples from a supermarket in Admiralty and an online shop respectively for testing under its routine Food Surveillance Program. After applying the conversion factors for dried foods as recommended by the Codex Alimentarius Commission, the results showed that the samples contained **cadmium** at levels of 0.18 ppm and 0.162 ppm respectively, exceeding the legal limit of 0.1 ppm. CFS informed the vendors concerned and instructed them to stop sale and remove the affected batches of the products from the shelves. CFS is tracing the source of the affected products.

**NEPAL**

**Draft Technical Regulation On Children’s Toys Would Retain Maximum Concentration For Cadmium**

As reported in our January 28, 2017, Update, Nepal adopted a standard setting mandatory maximum levels for 12 chemical substances, including **cadmium**, in children’s toys. The standards took effect July 16, 2017. Nepal has issued a [draft technical regulation](http://www.mope.gov.np/noticedetail.php?id=61) on children’s toys that would supersede the standard. While the draft technical regulation would change the limit for lead, and remove four previously covered substances, it would retain the maximum concentration levels for the other seven substances in the standard, including the 75 ppm maximum concentration for **cadmium**. The regulation would apply to toys designed or intended for use in play by children 16 years and younger that are imported, produced, stored, sold, and distributed in Nepal. These include but are not limited to construction sets; dolls and miniatures; vehicles; puzzles; collectibles; promotional merchandise; and electric and electronic toys. The draft technical regulation is expected to be adopted, superseding the current standard. The proposed date of entry into force is 181 days after publication in the *Nepal Gazette*.

**SOUTH KOREA**

**MOE Releases Draft K-REACH Implementation Rules For Comment**

As reported in our March 28, 2018, Update, in March 2018, MOE amended K-REACH. On May 30, 2018, MOE published draft rules that will implement the amendments. The draft rules provide details on pre-reporting substances, tonnage band registration dates, simplified registration, and CBI exemptions for manufacturers and importers. Companies must pre-report the substances that they manufacture or import by **June 30, 2019**. Companies that fail to do so will be banned from manufacturing or importing beginning **July 1, 2019**. The first registration deadline of **December 31, 2021**, is for substances manufactured or imported in total volumes of 1,000 tonnes or more annually and high concern substances, such as CMR substances, manufactured or imported in total volumes of one tonne or more annually. Substances can qualify for a simplified registration if they are low concern substances or intermediate substances that are completely used up in production. Comments were due July 9, 2018.

**U.S. Responds To WTO TBT Notification Of Revised K-REACH Enforcement Decree And Rules**

The U.S. WTO delegation circulated a [June 20, 2018, statement](http://www.lawbc.com/uploads/docs/US-comments-WTO.pdf) regarding South Korea’s June 11, 2018, TBT notification of the revised K-REACH enforcement decree and rules. The U.S. asks that the **January 1, 2019**, implementation date be delayed to allow companies adequate time to prepare. To address the confusion and uncertainty that have made compliance challenging, and particularly in light of various Korean announcements and amendments in recent weeks, the U.S. “strongly encourage[s]” the issuance of English translations and comprehensive guidance in English for all industry stakeholders. According to the U.S., while South Korea has stated that companies can apply to MOE for confidential treatment of some information, U.S. industry reports that MOE is denying most CBI claims. The U.S. is also concerned about MOE’s recent proposal for amendments to the Chemical Control Act and Presidential decrees to introduce a mandatory tracking and reporting system for chemicals from import to manufacturing and end-use. The proposed amendments “would impose a heavy new burden, particularly on non-Korean firms, as well impose inappropriate CBI disclosure requirements.” The U.S. delegation also notes MOE’s draft K-REACH implementation rules that, among other things, require companies by **June 30, 2019**, to “pre-report” the substances they manufacture or import, or face being banned from the market. The U.S. delegation “ask[s] you to notify this announcement, take industry comments into consideration, issue the guidance in English, and consider a longer implementation period.”

**TAIWAN**

**Cabinet Approves National Policy Plan For Chemical Substances Management**

The Cabinet approved the National Policy Plan for Chemical Substances Management, which provides guidelines intended to direct Taiwan’s laws on chemicals. The Plan has 23 policies divided into the following five fields:

* National governance;
* Risk reduction;
* Management capacity;
* Knowledge-building; and
* Cross-border management.

The National Policy Plan for Chemical Substances Management calls for:

* Creating a national chemicals management board;
* Promoting green chemicals and encouraging industry R&D aimed at reducing risk;
* Enhancing use-efficiency and waste management in line with “circular economics”;
* Creating systems for tracking flow and auditing;
* Establishing a national-level testing agency; and
* Achieving the “right to know” for communities.

According to a TCSB spokesperson, Taiwan EPA is meeting with ministries and agencies to “introduce specific plans in [the above] five fields.” A future white paper will provide more detail.

\* \* \* \* \*

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

**µg/day** -- Microgram Per Day

**µg/m3** -- Microgram Per Cubic Meter

**ATSDR** -- Agency for Toxic Substances and Disease Registry

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

**CAA** -- Clean Air Act

**CBI** -- Confidential Business Information

**CEPA** -- Canadian Environmental Protection Act, 1999

**CERCLA** -- Comprehensive Environmental Response, Compensation, and Liability Act

**CFS** -- Center for Food Safety

**CMR** -- Carcinogenic, Mutagenic, or Toxic for Reproduction

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

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

**EWP** -- Engineered Wood Product

**FDA** -- United States Food and Drug Administration

**HBN** -- Healthy Building Network

**HTSUS** -- Harmonized Tariff Schedule of the United States

**ICdA** -- International Cadmium Association

**ICH** -- International Council for Harmonization

**ICR** -- Information Collection Request

**K-REACH** -- Act for the Registration and Evaluation of Chemicals

**MIOSHA** -- Michigan Occupational Safety and Health Administration

**MOE** -- Ministry of the Environment

**MSHA** -- Mine Safety and Health Administration

**NAICS** -- North American Industry Classification System

**NESHAP** -- National Emission Standards for Hazardous Air Pollutants

**NGO** -- Non-Governmental Organization

**NRDC** -- Natural Resources Defense Council

**ODEQ** -- Oregon Department of Environmental Quality

**OHA** -- Oregon Health Authority

**OMB** -- Office of Management and Budget

**PDE** -- Permitted Daily Exposure

**ppm** -- Part Per Million

**PRA** -- Paperwork Reduction Act of 1995

**R&D** -- Research and Development

**RBC** -- Risk-Based Concentration

**RFI** -- Request for Information

**SAB** -- Science Advisory Board

**SEP** -- State Emphasis Program

**Taiwan EPA** -- Taiwan Environmental Protection Administration

**TBT** -- Technical Barriers to Trade

**TCSB** -- Toxic and Chemical Substances Bureau

**TRV** -- Toxicity Reference Value

**TSCA** -- Toxic Substances Control Act

**USTR** -- Office of the United States Trade Representative

**WTO** -- World Trade Organization

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)