#### THE INTERNATIONAL CADMIUM ASSOCIATION

**REGULATORY UPDATE**

**March 28, 2017**[[1]](#footnote-1)

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**FEDERAL ISSUES**

**CAA ISSUES**

**CRA Resolutions Would Repeal Final Rule Amending RMP For Chemical Facilities; EPA Delays Effective Date To Convene Proceeding For Reconsideration**

On February 1, 2017, Representative Markwayne Mullin (R-OK) and other GOP co-sponsors introduced a resolution (H.J. Res. 59) that would repeal EPA’s January 13, 2017, final rule amending the RMP regulations to reduce the likelihood of accidental releases at chemical facilities and improve emergency response activities when those releases occur. Senators Jim Inhofe (R-OK), John Cornyn (R-TX), John Barrasso (R-WY), Jerry Moran (R-KS), and Ron Johnson (R-WI) introduced a companion resolution on March 2, 2017. NGOs criticized the resolutions as setting a harmful precedent. While Senator Tom Carper (D-DE), Ranking Member of the Senate Environment and Public Works Committee, has remained silent, opponents of the rule have urged Carper and others to “reject self-interested calls from industries that use extremely hazardous chemicals to overturn the modest changes to the RMP rule.” The CRA prohibits agencies from later pursuing “substantially similar” rulemakings and could prevent EPA from taking action in the future to increase safety at high-risk chemical facilities.

On March 16, 2017, EPA promulgated a final rule that provides a 90-day administrative stay of the effective date of the RMP rule amendments, delaying the effective date of the final rule to **June 19, 2017**. EPA announced in a March 13, 2017, letter that it is convening a proceeding to reconsider the final rule. The RMP Coalition, comprised of several industry associations, submitted a petition for reconsideration on February 28, 2017. According to the March 13, 2017, letter, EPA Administrator Scott Pruitt determined that the criteria for reconsideration have been met for at least one of the objections. EPA will prepare an NPRM “in the near future” that will provide the RMP Coalition and the public an opportunity to comment on issues raised in the petition, as well as any other matter EPA believes will benefit from additional comment. More information regarding the January 13, 2017, final rule is available in our January 28, 2017, Update.

**CERCLA ISSUES**

**EPA Extends Comment Period For Proposed Rule Regarding Financial Responsibility Requirements For Hardrock Mining Industry**

On February 24, 2017, EPA [issued](https://www.epa.gov/newsreleases/epa-extends-comment-period-hard-rock-mining-proposed-rule) a 120-day extension of the comment period for its January 11, 2017, proposed rule that would require owners and operators of certain classes of hardrock mines and mineral processing facilities to show financial ability to address risks from hazardous substances. The proposed rule includes a table, for illustration purposes, of examples of commodities that EPA expects are subject to the proposed rule. The table includes **cadmium**. According to EPA, it received dozens of requests for an extension. Comments are due **July 11, 2017**. More information regarding the January 11, 2017, final rule is available in our January 28, 2017, Update.

**CWA/SDWA ISSUES**

**EPA Establishes Aquatic Life Criteria For Cadmium In Oregon**

As reported in our February 2, 2017, e-mail, on February 3, 2017, EPA promulgated a final rule establishing federal CWA aquatic life criterion for freshwaters under the State of Oregon’s jurisdiction, to protect aquatic life from the effects of exposure to harmful levels of **cadmium**. In 2013, EPA determined that the freshwater acute **cadmium** criterion and freshwater acute and chronic copper criteria that Oregon adopted in 2004 did not meet CWA requirements to protect aquatic life in the state. Since that time, EPA states, Oregon adopted revised criteria for copper, but has not adopted a revised acute criterion for **cadmium** and thus EPA is establishing a federal freshwater acute criterion for **cadmium** that takes into account the best available science, EPA policies, guidance, and legal requirements, to protect aquatic life uses in Oregon. EPA states:

**Cadmium** naturally occurs at low levels in surface waters, but anthropogenic activities can increase levels of **cadmium** in the environment. At higher concentrations, **cadmium** can be toxic to aquatic life. Sources of elevated **cadmium** in the environment include coal combustion, mining, electroplating, iron and steel production, and use of pigments, fertilizers and pesticides. Industrial facilities, stormwater management districts, or publicly owned treatment works (POTWs) that discharge pollutants to freshwaters of the United States under the state of Oregon’s jurisdiction could be indirectly affected by this rulemaking, because federal water quality standards (WQS) promulgated by EPA are applicable to CWA regulatory programs, such as National Pollutant Discharge Elimination System (NPDES) permitting. Citizens concerned with water quality in Oregon could also be interested in this rulemaking.

The final rule was effective March 6, 2017.

**TSCA ISSUES**

**EPA Publishes Initial Report To Congress On Capacity To Implement Certain TSCA Reform Provisions**

In January 2017, EPA published its [initial report](https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/initial-report-congress-epas-capacity-implement-certain) to Congress on EPA’s capacity to implement certain provisions of the Frank R. Lautenberg Chemical Safety for the 21st Century Act. The report provides the estimated resources necessary to conduct the anticipated minimum number of risk evaluations, as well as information on capacity specifically related to risk evaluations and associated promulgation of rules. EPA states that it is currently developing a rule to implement the fee collection provisions of the Lautenberg Act. The “substantially increased requirements and tight deadlines” under the Act require increased staffing levels and contractor resources dedicated to conducting and publishing risk evaluations and promulgating rules based on the risk evaluations. According to the report, EPA has developed much of the needed experience to address these requirements and has begun bringing on the additional staff and contractor support needed. EPA “is considering and expanding options to reduce the long lead times to bring on the highly skilled staff and specialized contractors needed for these scientifically demanding, technically complex tasks.”

**EPA Delays Effective Date Of Statutory Requirements For Substantiation Of CBI Claims Under TSCA**

On February 21, 2017, EPA published a *Federal Register* notice delaying the effective date of its January 19, 2017, *Federal Register* notice regarding its interpretation of new TSCA Section 14 concerning CBI claims for information submitted to EPA. EPA interprets the revised TSCA Section 14(c)(3) as requiring substantiation of non-exempt CBI claims at the time the information claimed as CBI is submitted to EPA. The February 21, 2017, notice delays the effective date from **March 20** to **March 21, 2017**.

**EPA Planning To Publish Proposed TSCA Fees Rule In Two To Three Months**

According to EPA Acting Assistant Administrator Wendy Cleland-Hamnett, EPA intends to release a proposed rule for collecting TSCA fees within the next two to three months. EPA had intended to release a proposed rule in December 2016 and promulgate a final rule in **August 2017**. Cleland-Hamnett spoke at the GlobalChem conference, and stated that EPA chose to take extra time to ensure it gets the pricing model correct. Under new TSCA, EPA is authorized to establish fees to defray 25 percent of the costs for testing, new substance notification, and risk evaluation and management (as set out in Sections 4, 5, and 6); these are capped at $25 million for the first three years. Fees may also support collecting, processing, reviewing, and providing access to and protecting from disclosure, as appropriate, under Section 14, information on chemical

**MINING AND MINERAL ISSUES**

**President Trump Signs Resolution To Disapprove SEC Rule Relating To Disclosure Of Payments By Resource Extraction Issuers**

On February 1, 2017, the House passed a resolution (H.J. Res. 41) by a vote of 235 to 187 to disapprove the SEC’s July 27, 2016, rule regarding the disclosure of payments by resource extraction issuers. The rule, mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act, requires resource extraction issuers to disclose payments made to governments for the commercial development of oil, natural gas, or minerals. The Senate passed the resolution by a vote of 52 to 47 on February 3, 2017, and on February 14, 2017, President Trump signed it.

**NIOSH Expands EVADE Software To Identify Multiple Hazardous Exposures**

NIOSH [announced](https://www.cdc.gov/niosh/mining/features/EVADEhasexpanded.html) on February 1, 2017, that it expanded the latest version of the EVADE software “to show mine workers exactly where they are being exposed to hazards on the job, and therefore where an intervention can be effective.” According to NIOSH, while it originally developed EVADE as software to support Helmet-CAM -- a system worn by a worker that records video and matches it with simultaneously collected data on hazardous dust exposure -- “the latest version of EVADE goes well beyond just dust.” In addition to a Helmet-CAM setup, the free downloadable program can be used with data coming from other sources, such as a video camera on a tripod, a stationary aerosol monitor, or a noise dosimeter. EVADE 2.0 “takes multiple data files and stitches them together to display when and where a worker might have been exposed to a high sound level or hazardous substance, such as dust, diesel, and gases.”

**NIOSH Announces “Safety Pays In Mining” Web Tool**

On March 7, 2017, NIOSH [announced](https://www.cdc.gov/niosh/updates/upd-03-07-17.html) the availability of a free web tool, Safety Pays in Mining. NIOSH states that the tool “offers mining companies information on not only the cost of injury claims, but a few suggestions on how that same money might be spent in other ways.” According to NIOSH, with Safety Pays in Mining, “mining companies can see in dollars what specific injuries, such as burns, fractures, dislocations and sprains, might cost them -- from $1,100 for a knee sprain to more than $15,000 for a broken ankle.” Users can enter their own figures, or use the default values based on past workers’ compensation claims, to show impact to profit margins and annual sales.

**Subcommittee Holds Oversight Hearing On Importance Of Domestically Sourced Raw Materials For Infrastructure Projects**

On March 21, 2017, the House Natural Resources Subcommittee on Energy and Mineral Resources held an oversight hearing on “[The Importance of Domestically Sourced Raw Materials for Infrastructure Projects](http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=401672).” The hearing focused on the role and importance of mining for the provision of raw materials used in any infrastructure project. The hearing memorandum includes the following Policy Overview:

* All infrastructure projects rely upon a mining operation;
* The U.S. contains many of the needed raw materials, however, access is stymied by an arduous and uncertain regulatory scheme;
* Expedited permitting regimes for infrastructure projects will have little to no effect if the mines that supply materials to those projects do not share the same accelerated process; and
* Sourcing raw materials domestically keeps costs down, creates both direct and indirect jobs, reduces the holistic impact of mining by minimizing transportation costs, and keeps the dollars invested in American infrastructure in the U.S.

Witnesses included:

* Mr. Michael Brennan, President and COO, Bramco, Inc. (on behalf of Associated Equipment Distributors);
* Ms. Cathleen Kelly, Senior Fellow, Energy and Environment, Center for American Progress;
* Mr. C. Howard Nye, Chair of the Board, President, and CEO, Martin Marietta (on behalf of National Sand Stone and Gravel Association); and
* Dr. Nigel Steward, Managing Director, Copper & Diamonds Operations, Rio Tinto.

**MSHA Proposes To Delay Effective Date Of Final Rule Concerning Examination Of Working Places In Metal And Non-Metal Mines**

On March 27, 2017, MSHA published a notice in the *Federal Register* proposing to delay the effective date of the January 23, 2017, final rule amending its standards for the examination of working places in metal and non-metal mines. According to the notice, MSHA is proposing to delay the effective date to assure that mine operators and miners affected by the examinations final rule have the training and compliance assistance they need prior to the rule’s effective date. MSHA proposed to delay the effective date of the final rule from **May 23, 2017**, to **July 24, 2017**. MSHA is soliciting comments on the limited issue of whether to extend the effective date and whether this extension offers an appropriate length of time for MSHA to provide stakeholders training and compliance assistance. Comments are due **April 26, 2017**. More information regarding the January 23, 2017, final rule is available in our January 28, 2017, Update.

**Gold King Mine Spill**

***Senator McCain Seeks Information On Criminal Investigation***

Senator John McCain (R-AZ) sent a letter on March 13, 2017, to the EPA OIG regarding its investigation into potential criminal misconduct or administrative misconduct relating to the 2015 Gold King Mine spill. McCain states that he is particularly interested in any OIG findings of potential criminal or administrative misconduct by EPA employees that have been referred to DOJ or EPA. According to the letter, DOJ has declined to take action on OIG’s findings and EPA has not yet responded. McCain asks to review those findings, along with DOJ’s response. McCain requests a copy of the final ROI and the formal communication between OIG and DOJ/EPA on potential findings of criminal or administrative misconduct.

**MISCELLANEOUS ISSUES**

**ATSDR Initiates Development Of Set 31 Toxicological Profiles**

On March 23, 2017, ATSDR published a notice in the *Federal Register* announcing that it is initiating development of its 31st set of Toxicological Profiles. ATSDR invites voluntary public nominations of substances for profile development, as well as public nominations of substances found on the [Substance Priority List](https://www.atsdr.cdc.gov/spl/). **Cadmium** is number 7 on the 2015 Substance Priority List, which includes 275 substances. The [Toxicological Profile for **cadmium**](https://www.atsdr.cdc.gov/ToxProfiles/tp.asp?id=48&tid=15) was updated in 2012. Nominations are due **April 24, 2017**.

**CDC Updates National Report On Human Exposure To Environmental Chemicals, Including Data On Cadmium**

In February 2017, CDC published [*Updated Tables, January 2017*](https://www.cdc.gov/exposurereport/), which provide nationally representative biomonitoring data that became available since the publication of the *Fourth National Report on Human Exposure to Environmental Chemicals, 2009*. The Updated Tables include data made available from NHANES survey periods 2005-2006, 2007-2008, 2009-2010, 2011-2012, 2013-2014, and pooled samples using corrected NHANES sampling weights. The Updated Tables are now represented in two separate volumes: Volume One contains data tables for most of the chemicals measured in the U.S. population, including **cadmium**; Volume Two contains data tables for organic pollutants and pesticides measured in pooled samples and adult cigarette smokers and nonsmokers. The Updated Tables also include links to biomonitoring summaries for some of the chemicals. The biomonitoring summary for [**cadmium**](https://www.cdc.gov/biomonitoring/Cadmium_BiomonitoringSummary.html) states:

Surveys of populations not known to have increased **cadmium** exposure have reported similar urine and blood levels (Becker et al., 2002; Becker et al., 2003; CDC, 2012; Friedman et al., 2006; Komaromy-Hiller et al., 2000; Wennberg et al., 2006; Wilhelm et al., 2006). Women had higher blood and urine **cadmium** levels compared to men of similar ages, with peak values observed in the fifth to sixth decades (CDC, 2012; Horiguchi et al., 2004b; Olsson et al., 2002; Wennberg et al., 2006). For NHANES 1999-2000, blood **cadmium** was also slightly higher in Mexican Americans and participants 20 years and older (CDC, 2012). Blood and urine **cadmium** levels are typically higher in cigarette smokers, intermediate in former smokers and lower in never-smokers (Becker et al., 2003; Becker et al., 2002; Mannino et al., 2004; Mortensen et al., 2011; Olsson et al., 2002). Blood **cadmium** levels are about twice as high in smokers compared to never-smokers (Becker et al., 2003; Becker et al., 2002; Olsson et al., 2002). Several studies of populations residing in areas with higher **cadmium** soil concentrations or with frank **cadmium** pollution have reported mean blood and urine **cadmium** levels considerably higher (as much as 10 times higher) than control groups or representative U.S. data (CDC, 2012; Ezaki et al., 2003; Jarup et al., 2000; Jin et al., 2004; Staessen et al., 1999; Staessen et al., 1996; Suwazono et al., 2000). Creatinine-corrected urine **cadmium** values in U.S. study subjects living near a former zinc smelter were similar to those from an unexposed community and to those in the U. S. population (CDC, 2012; Noonan et al., 2002).

People who are occupationally exposed may have blood and urine **cadmium** levels that are higher than those of the general population. The 95th percentiles for **cadmium** levels in the U.S. population were less than the OSHA standards for both blood **cadmium** (5 µg/L) and urine **cadmium** (3 µg/gram of creatinine) (CDC, 2012). Occupational standards are provided here for comparison only, not to imply a safety level for general population exposure.

Subtle increases in markers of renal tubular effects have been associated with urine **cadmium** levels as low as approximately 1 µg/gram of creatinine (Akesson et al., 2005; Ezaki et al., 2003; Jarup et al., 2000; Moriguchi et al., 2004; Noonan et al., 2002). However, two studies of women in Japan with lower exposures found no correlation between renal tubular effect markers and blood or urine **cadmium** levels (geometric means were 1.26 and 3.46 µg/gram of creatinine) (Ezaki et al., 2003; Horiguchi et al., 2004b). In postmenopausal women, decreased bone density was correlated with mean urinary **cadmium** levels of approximately 1 µg/gram of creatinine (Staessen et al., 1999). In adults aged 60 years and older, the risk of low bone mineral density increased by nearly three-fold when the blood **cadmium** exceeded 1.1 µg/L (Alfven et al., 2002). In the U.S. population, adult urinary and blood **cadmium** levels at the 95th and 90th percentiles, respectively, approached these values associated with subclinical changes in renal function and bone mineral density (CDC, 2012), and self-reported cigarette smoking in adults was associated with an increased risk for exceeding a cut-point of 1.0 µg **Cd**/g creatinine (Mortensen et al., 2011). Further research is needed to address the public health consequences of such exposure in the United States.

**CPCS Updates Safety Standard Mandating ASTM F963 For Toys**

As reported in our February 2, 2017, e-mails, on February 2, 2017, CPCS promulgated a direct final rule updating the mandatory toy safety standard to ASTM F963-16, “Standard Consumer Safety Specification for Toy Safety.” The direct final rule incorporates by reference ASTM F963-16 and updates the existing notice of requirements that provide the criteria and process for CPSC acceptance of accreditation of third party conformity assessment bodies for testing for ASTM F963. The rule is scheduled to take effect **April 30, 2017**, unless CPSC “receive[d] significant adverse comment” by March 6, 2017. If CPSC received timely significant adverse comment, it will withdraw the direct final rule before its effective date.

**PHMSA Issues Notice Regarding IMDG Code And ICAO Technical Instructions**

PHMSA issued a [notice](http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/PHMSA_Notice_IMDG_Code_and_ICAO_Technical_Instructions_Signed_2_27_17.pdf) on February 27, 2017, regarding the 2017-2018 versions of the IMDG Code and ICAO Technical Instructions. According to the notice, many offerors and carriers of hazardous materials in international transport are currently adhering to the requirements in the recently adopted 2017-2018 ICAO Technical Instructions and Amendment 38-16 of the IMDG Code. The HMR currently authorizes offerors and carriers to use only the 2015-2016 versions of the standards. PHMSA states that while it decides whether to adopt the 2017-2018 versions of the standards, it “will not take enforcement action against any offeror or carrier who is using the 2017-2018 versions of these standards when all or part of the transportation is by air with respect to the ICAO Technical Instructions, or all or part of the transportation is by vessel with respect to the IMDG Code. In addition, PHMSA will not take enforcement action against any offeror or carrier who offers or accepts for domestic or international transportation by any mode packages marked or labeled in accordance with the 2017-18 versions.”

**Codex Committee Continuing Work On Proposed Draft Maximum Level For Cadmium In Chocolate And Cocoa-Derived Products**

According to a February 22, 2017, *Federal Register* notice published by USDA’s FSIS, the Codex Committee on Contaminants in Foods will continue working on a proposed draft maximum level for **cadmium** in chocolate and cocoa-derived products at its **April 3-7, 2017**, meeting in Rio de Janeiro, Brazil. The USDA Office of Food Safety and FDA sponsored a public meeting on March 2, 2017, to provide information and receive public comments on agenda items and draft U.S. positions that will be discussed at the Codex Committee meeting.

**Executive Order Requires Two Regulations Be Identified For Elimination For Each New One Issued; Lawsuit Filed Challenging Order**

On January 30, 2017, President Trump signed an [Executive Order](https://www.whitehouse.gov/the-press-office/2017/01/30/presidential-executive-order-reducing-regulation-and-controlling) that would require agencies to identify at least two regulations for elimination for each one issued. For FY **2017**, the heads of all agencies are directed that the total incremental cost of all new regulations, including repealed regulations, to be promulgated be no greater than zero, unless otherwise required by law or consistent with advice provided in writing by OMB. Under the Executive Order, OMB will provide agencies with guidance on implementation. The guidance will address processes for standardizing the measurement and estimation of regulatory costs; standards for determining what qualifies as new and offsetting regulations; standards for determining the costs of existing regulations that are considered for elimination; processes for accounting for costs in different FYs; methods to oversee the issuance of rules with costs offset by savings at different times or different agencies; and emergencies and other circumstances that might justify individual waivers of the requirements. Unless otherwise required by law, no regulation will be issued by an agency if it was not included on the most recent version or update of the Unified Regulatory Agenda as required under Executive Order 12866, as amended, or any successor order, unless the issuance of such regulation was approved in advance in writing by the OMB Director. The Executive Order defines “regulation” or “rule” as “an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency.” It does not include:

(a) Regulations issued with respect to a military, national security, or foreign affairs function of the U.S.;

(b) Regulations related to agency organization, management, or personnel; or

(c) Any other category of regulations exempted by the OMB Director.

On February 2, 2017, OIRA issued interim guidance, in the form of Q&As, on implementing Section 2 of the Executive Order. According to the interim guidance, Acts of Congress that overturn final regulatory actions, such as disapprovals of rules under the CRA, operate in a similar manner as agency deregulatory actions for the purposes of the requirements of the Executive Order. On February 8, 2017, NRDC, the Communications Workers of America, and Public Citizen filed a joint complaint in the U.S. District Court for the District of Columbia seeking a ruling that would bar implementation of the Executive Order and the interim guidance. As an example, according to the joint complaint, the Executive Order would prevent EPA from setting new limits on GHGs, even after it finds such limits are necessary, unless it can balance out those limits with regulatory cuts elsewhere, in violation of the CAA.

**Executive Order Calls For Regulatory Reform Officers And Agency Task Forces To Implement Regulatory Reform Initiatives**

Under a February 24, 2017, [Executive Order](https://www.whitehouse.gov/the-press-office/2017/02/24/presidential-executive-order-enforcing-regulatory-reform-agenda), each agency must designate within 60 days an agency official as its Regulatory Reform Officer. The Regulatory Reform Officer will oversee the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. Each agency will also establish a Regulatory Reform Task Force that will make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law. At a minimum, each Regulatory Reform Task Force will attempt to identify regulations that:

(1) Eliminate jobs, or inhibit job creation;

(2) Are outdated, unnecessary, or ineffective;

(3) Impose costs that exceed benefits;

(4) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;

(5) Are inconsistent with the requirements of Section 515 of the Treasury and General Government Appropriations Act or the guidance issued pursuant to that provision, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or

(6) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

Within 90 days, each Regulatory Reform Task Force will provide a report to the agency head detailing the agency’s progress toward the following goals: (1) improving implementation of regulatory reform initiatives and policies; and (2) identifying regulations for repeal, replacement, or modification.

**Memorandum Calls For Data For Unified Agenda Of Federal Regulatory And Deregulatory Actions**

Dominic J. Mancini, OIRA Acting Administrator, signed a [memorandum](https://www.whitehouse.gov/the-press-office/2017/03/06/memorandum-spring-2017-data-call-unified-agenda-federal-regulatory-and) on March 6, 2017, containing guidelines and procedures for publishing the Spring 2017 Unified Agenda of Federal Regulatory and Deregulatory Actions. Agency submissions, which are due **March 31, 2017**, should meet the following requirements:

* The total incremental costs of any new significant regulatory actions issued between noon on January 20, 2017, and **September 30, 2017**, must, to the extent permitted by law, be fully offset as of **September 30, 2017**; and
* Agencies should, for each new significant regulatory action that imposes costs and that an agency plans to issue on or before **September 30, 2017**, identify two existing regulatory actions the agency plans to eliminate or propose for elimination on or before **September 30, 2017**.

To facilitate the FY **2018** regulatory budget planning process, the memorandum asks that submissions include a preliminary estimate of the total costs or savings associated with each of the planned FY **2018** significant regulatory actions and offsetting deregulatory actions.

**Executive Order Intends To Reorganize The Executive Branch**

On March 13, 2017, President Trump signed an Executive Order, “[Comprehensive Plan for Reorganizing the Executive Branch](https://www.whitehouse.gov/the-press-office/2017/03/13/presidential-executive-order-comprehensive-plan-reorganizing-executive).” The Executive Order directs OMB to propose a plan to reorganize governmental functions and eliminate unnecessary agencies. Within 180 days, the head of each agency must submit to OMB a proposed plan to reorganize the agency, if appropriate, to improve the efficiency, effectiveness, and accountability of that agency. OMB will publish a notice in the *Federal Register* inviting the public to suggest improvements in the organization and functioning of the executive branch and consider the suggestions when formulating the proposed plan. OMB will submit the proposed plan within 180 days after the closing date for the submission of suggestions. The proposed plan will include recommendations for any legislation or administrative measures necessary to achieve the proposed reorganization.

**STATE ISSUES**

***California***

**Senate Leaders Introduce “Preserve California” Legislative Package**

On February 23, 2017, the Senate leadership [announced](http://sd24.senate.ca.gov/news/2017-02-23-senate-unveils-california-environmental-defense-act-public-lands-and-whistleblower) the “Preserve California” legislative package, which is intended to insulate California “from dangerous rollbacks in federal environmental regulations and public health protections.” The package establishes “strong and legally enforceable baseline protections for the environment, public health, worker safety, and other areas of federal regulatory law that could be dramatically and recklessly weakened by the Trump Administration.” Measures would also protect federal lands within California from sale to private developers for the purpose of resource extraction; ensure federal employees are not penalized under California law for whistleblowing; and shield public information and data resources from federal censorship or destruction. The package includes:

* The California Environmental Defense Act (S.B. 49):
* Makes current federal clean air, climate, clean water, worker safety, and endangered species standards enforceable under state law, even if the federal government rolls back and weakens those standards;
* Directs state environmental, public health, and worker safety agencies to take all actions within their authorities to ensure standards in effect and being enforced today continue to remain in effect;
* Federal laws in these areas set “baselines,” but allow states to adopt more stringent standards; and
* Builds on S.B. 288 (Chapter 476 Statutes of 2003), the Protect CA Air Act, enacted in 2003 after the Bush Administration attempted to enact similar rollbacks of federal clean air standards.
* The Public Lands Protection Act (S.B. 50):
* Establishes a new state policy to discourage conveyances of federal lands to private developers for resource extraction and directs the state Lands Commission, which oversees much of the federal lands in the state, to establish a right of first refusal by the state of any federal lands proposed for sale or conveyance to other parties; and
* In doing so, ensures: (a) that the state reviews any transactions involving federal lands in California to ensure those lands are protected; and (b) where feasible, important lands are protected via state action.
* The Whistleblower and Public Data Protection Act (S.B. 51):
* Would ensure federal employees, who may have federal whistleblower protection, do not lose state licensure for revealing violations of law, unethical actions, or dangers to public health and safety. Would also direct state environmental and public health agencies to protect any information or data under state law, even if parties in Washington, D.C., order their censorship or destruction.

***Massachusetts***

**Bill Calls For Action Plan For Cadmium In Children’s Products**

The Act for a Competitive Economy Through Safer Alternatives to Toxic Chemicals, introduced on February 22, 2017, would require MDEP, in consultation with TURI, to prepare chemical action plans for three chemicals and specific uses, including **cadmium** as found in children’s products. The chemical action plans would:

1. Identify specific actions that manufacturers and users of these chemical substances shall be required to implement;
2. Require substitution of a safer alternative;
3. Establish schedules, timelines, and deadlines for achieving substitution of these chemical substances with safer alternatives, for specified uses;

(d) Where appropriate, require manufacturers or users of these chemical substances to prepare and submit to the department plans to effect the substitution(s); and

(e) Provide for technical assistance to manufacturers and users of these chemical substances.

***Missouri***

**House Resolution Calls For Study Of Operation Large Area Coverage**

H.R. 344, which was introduced on February 2, 2017, calls for the U.S. Army to hold town hall sessions in the St. Louis region to explain the testing that occurred as a result of Operation Large Area Coverage in the 1950s and 1960s in St. Louis. The resolution also calls for EPA and DHHS to conduct a study to track the health effects on populations exposed to Operation Large Area Coverage testing. The resolution states that, during the 1950s and 1960s, as part of a series of Cold War experiments, the U.S. Army dusted chosen American cities from coast to coast with a fine powder of a fluorescent, potentially toxic chemical. The powder scattering was part of Operation Large Area Coverage, a series of tests intended to assess the threat of biological attacks by simulating the airborne dispersion of germs. According to the resolution, the experiments exposed large portions of the U.S., and parts of Mexico and Canada, “to flurries of a synthesized chemical called **zinc cadmium sulfide**.”

On March 6, 2017, a public hearing was held on a nearly identical concurrent resolution, H.C.R. 14. The Special Committee on Urban Issues passed the bill on March 13, 2017. The bill was referred to the Rules-Legislative Oversight Committee. More information on H.C.R. 14 is available in our January 28, 2017, Update.

***New York***

**Bill Would Create List Of Chemicals Of High Concern And Designate Cadmium As A Priority Chemical**

On March 10, 2017, S.B. 5176 was introduced. The bill would amend the environmental conservation law, in relation to regulation of toxic chemicals in children’s products. Under the bill, chemicals included in Maine’s list of chemicals of high concern would be designated as chemicals of high concern. The bill would designate certain chemicals, including **cadmium**, as priority chemicals. Manufacturers of children’s products would be required to report any use of priority chemicals within one year.

***Washington***

**Bill Would Require Air Quality Study Of Air Traffic, Including Assessment Of Cadmium Concentration**

H.B. 1171, introduced on February 9, 2017, would require the Department of Commerce to complete a study regarding air quality implications of air traffic at the international airport in Washington with the highest number of total annual departures. The study, to be completed by the University of Washington School of Public Health by **September 1, 2019**, would assess the concentrations of ultrafine particulate matter, barium, aluminum, radioactive thorium, **cadmium**, chromium, and ethylene dibromide in areas surrounding and directly impacted by air traffic generated by the airport. The Department of Commerce must report its findings from the study to the appropriate committees of the legislature by **December 1, 2019**. The report must include a summary of findings on the prevalence of ultrafine particulate matter, barium, aluminum, radioactive thorium, **cadmium**, chromium, and ethylene dibromide pollution in areas surrounding and directly impacted by the airport, and a recommendation regarding whether sufficient ultrafine particulate matter, barium, aluminum, radioactive thorium, **cadmium**, chromium, and ethylene dibromide information is available to validate proceeding with a second phase of the study.

**WDOE Proposes Changes To Children’s Safe Products Reporting Rule**

On March 22, 2017, WDOE published a [NPRM](http://www.ecy.wa.gov/programs/hwtr/laws_rules/CSP_ReportingRule/1608docs.html). The proposed changes include:

* Adding 21 chemicals to the list of chemicals of high concern to children based on new scientific data;
* Removing three chemicals from the list of chemicals of high concern to children based on revised scientific data;
* Changing some grouped chemicals of high concern to children into individual listings;
* Setting a single annual reporting date consistent with reporting in other states;
* Making other minor amendments that include:
* Updating the reporting schedule to remove obsolete phase-in requirements.
* Using the term “*de minimis*” to refer to existing minimum chemical reporting levels.
* Clarifying that resubmission of identical annual data (copy and paste) is sufficient, instead of a letter to Ecology confirming no changes from the previous annual report.
* Updating chemical names to be consistent with terminology in our product testing database.

WDOE will hold a [public hearing](https://wadismeetings.webex.com/mw3100/mywebex/default.do?nomenu=true&siteurl=wadismeetings&service=6&rnd=0.22487691845987834&main_url=https%3A%2F%2Fwadismeetings.webex.com%2Fec3100%2Feventcenter%2Fevent%2FeventAction.do%3FtheAction%3Ddetail%26%26%26EMK%3D4832534b000000037992155fc55e61548848b59e2a706bbc84810910a02e18e8732636dcec763fff%26siteurl%3Dwadismeetings%26confViewID%3D2828027070%26encryptTicket%3DSDJTSwAAAAPpJwxnTFICgiZvTdxIBy837dAGAu6Q9l9waenPQUr7oQ2%26) on **April 25, 2017**. The public hearing will include a presentation, Q&A session, and formal public hearing. Comments on the proposed changes are due **May 12, 2017**.

**INTERNATIONAL ISSUES**

**CHINA**

**MEP Announces Lifelong Accountability System Intended To Control Soil Pollution**

MEP published a January 19, 2017, [press release](http://english.mep.gov.cn/News_service/media_news/201701/t20170119_394980.shtml) announcing that China will carry out a lifelong accountability system for polluters to stop worsening soil pollution. Beginning **July 2017**, polluters will be responsible for restoring contaminated land. According to MEP, before turning contaminated land into residences or other public facilities such as business venues and schools, land users should treat and restore the land first. As reported in our July 28, 2016, Update, the State Council [released](http://www.gov.cn/zhengce/content/2016-05/31/content_5078377.htm) on May 31, 2016, a ten-point soil pollution cleanup action plan. The plan is intended to halt serious soil pollution by **2020** and complete the clean-up of many areas by **2030**. According to a January 16, 2017, MEP [press release](http://english.mep.gov.cn/News_service/media_news/201701/t20170116_394760.shtml), China is already carrying out soil pollution surveys, promoting legislation on soil pollution prevention and control, enhancing land management, protecting uncontaminated soil and monitoring pollution sources, treating and restoring polluted soil, and increasing support for research in environmental protection.

**China Proposes To Require Certain Industries To Join Pollution Tracking System In 2017**

On January 23, 2017, MOE [released for comment](http://zqyj.chinalaw.gov.cn/index) a critical monitoring catalog that lists industries whose businesses would be required to join a new pollution registration system in the next 11 months. The system is intended to let officials track and tax a company for excess air and water pollution. The registration system will ultimately apply to any company listed on a national, provincial, or city-level critical monitoring catalog of businesses required to report pollution and, in some cases, pay pollution fees. Companies not listed in any of the categories but that emit sulfur dioxide, nitrogen oxide, smoke or dust, or volatile organic compounds above 30 tonnes annually each would also be required to register. Any company with annual emissions of wastewater with certain levels of chemical oxygen demand and ammonia nitrogen over 30 cubic meters annually would also have to register. Comments on the critical monitoring catalog were due February 20, 2017. Industries and companies that would be required to apply for licenses by the **end of 2017** include most ferrous and non-ferrous metals processors.

**Furniture Labeling Requirements Restrict Cadmium**

On February 1, 2017, a new standard on the technical requirements for environmental labeling of furniture products took effect. The standard, HJ 2547-2016, replaces HJ/T 303-2006. The standard includes requirements on product design and hazardous substances restrictions for furniture. Restricted substances include volatile organic compounds, formaldehyde, heavy metals such as lead, **cadmium**, mercury, and hexavalent chromium, phthalates, and several flame retardants.

**INDONESIA**

**Indonesia Revises Mining Regulation**

On January 11, 2017, Indonesia issued a fourth revision to a 2010 government regulation on the management of mineral and coal businesses. The regulation implements the Law on Mineral and Coal Mining. The revision renews a provision allowing local miners to export their products if they show a commitment to build their own smelters to process ore and send at least 30 percent of the mined ore to domestic smelting enterprises. The revision emphasizes that the ores that may be exported include washed bauxite, copper concentrates, and low-grade nickel ore. According to Energy and Mineral Resources Minister Ignasius Jonan, the government will “monitor [the progress] every six months. If they fail to fulfill the commitment to build the smelters, there will be no export licenses for nickel and bauxite miners.” Jonan stated that the revised regulation had been misunderstood as forcing local miners to each have at least 30 percent of their nickel or bauxite ore sent to local smelters to be permitted to export the rest. The requirement is calculated based on the capacity of Indonesian smelters, however. As an example, he stated that at present the amount of nickel that domestic smelters can handle in a year is 16 million tons; therefore nickel mines must sell about 4.8 million tons to those local smelters during the year, to meet the 30 percent requirement.

**THE PHILIPPINES**

**NGO Warns Of Cadmium In Cosmetics**

The EcoWaste Coalition has posted the following blog items:

* “[EcoWaste Coalition Warns vs. Beauty Products Laden with Toxic Mercury, Lead and **Cadmium** (Unregistered Cosmetics from Pakistan Contain Toxic Chemicals)](http://ecowastecoalition.blogspot.com/2017/01/ecowaste-coalition-warns-vs-beauty.html)”: The January 29, 2017, item states that EcoWaste Coalition “aired its latest toxic alert after finding eye liners and skin lightening creams imported from Pakistan (not from the usual suspect China) with alarmingly high concentrations of mercury, lead and **cadmium**”;
* “[Watch Out for Carcinogenic **Cadmium** in Lipstick](http://ecowastecoalition.blogspot.com/2017/02/watch-out-for-carcinogenic-cadmium-in.html)”: According to the February 13, 2017, item, EcoWaste Coalition revealed that Baolishi #25, which has no cosmetic product notification from the country’s health authorities, contains 2,478 ppm **cadmium** based on the screening it conducted using an X-Ray Fluorescence device; and
* “[EcoWaste Coalition Prods Consumers to Follow FDA’s Public Health Warnings vs. Unnotified Cosmetics](http://ecowastecoalition.blogspot.com/2017/02/ecowaste-coalition-prods-consumers-to.html)”: The February 17, 2017, item “appealed for consumer vigilance against beauty products lacking the required cosmetic product notifications from the Food and Drug Administration (FDA) after the agency issued successive advisories warning the public against a total of 109 unnotified cosmetic products.”

**SOUTH KOREA**

**MTIE Recalls Household Goods, Including Children’s Products Containing Cadmium**

On February 15, 2017, MTIE ordered the recall of 47 household products, including 21 children’s products. According to MTIE, the products failed to meet standards put forth by the Korean Agency for Technology and Standards. The 21 children’s products were found to contain harmful chemicals in excess. Jaju’s bathroom shoes for kids and Bearpaw’s boots were recalled for containing too much phthalate plasticizer, lead, and **cadmium**. The recalled products are banned from sale in the country, and companies will have to initiate recalls or exchanges.

**MOE Outlines Timeline For Changes To K-REACH**

During a February seminar, MOE outlined a provisional timeline for implementing changes to K-REACH. As reported in our January 28, 2017, Update, MOE began a public consultation in December 2016 that ended February 6, 2017. MOE intends to review the comments and submit changes to the Office of Legislation in **March 2017** and then to the National Assembly in **April 2017**. Once submitted to the National Assembly, the Environmental and Labor Committee and the Judiciary Committee will review the proposed amendments. Legislation amending K-REACH could be approved in **October 2017**. After the amendments are approved, secondary legislation will be drafted that will set out the registration deadlines and the lists of chemicals. The timeline outlined by MOE is below:

* **Late 2018**: One year pre-registration phase begins for 7,000 substances;
* **Late 2019**: Deadline for pre-registration and the extended deadlines for registrations;
* **2021**: Registration deadline for all substances used in volumes of over 1,000 tonnes per year (1,170 chemicals) and CMR substances used in volumes of one tonne or more per year;
* **2024**: Registration deadline for substances used in volumes of 100 to 1,000 tonnes per year (1,096 chemicals);
* **2027**: Registration deadline for substances used in volumes of ten to 100 tonnes per year (2,075 chemicals); and
* **2030**: Registration deadline for substances used in volumes of one to ten tonnes per year (2,642 chemicals).

**2016 Annual Reports Required Under K-REACH Due June 30**

Although the proposed revisions to K-REACH, as reported in our January 28, 2017, Update, would abolish the annual reporting requirement, the requirement remains in effect until K-REACH is amended. Under K-REACH, a person who manufactures, imports, or sells a chemical substance must report annually: (1) the volume and use information for all new chemical substances; and (2) existing chemical substances manufactured, imported, or sold at or above one ton in 2016. Reports are due **June 30, 2017**.

\* \* \* \* \*

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

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

**CAA** -- Clean Air Act

**CBI** -- Confidential Business Information

**CDC** -- Centers for Disease Control and prevention

**CEO** -- Chief Executive Officer

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

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

**COO** -- Chief Operating Officer

**CPCS** -- Consumer Product Safety Commission

**CRA** -- Congressional Review Act

**CWA** -- Clean Water Act

**DHHS** -- United States Department of Health and Human Services

**DOJ** -- United States Department of Justice

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

**EVADE** -- Enhanced Video Analysis of Dust Exposures

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

**FSIS** -- Food Safety and Inspection Service

**FY** -- Fiscal Year

**GHG** -- Greenhouse Gas

**GOP** -- Grand Old Party

**HMR** -- Hazardous Materials Regulations

**ICAO** -- International Civil Aviation Organization

**ICdA** -- International Cadmium Association

**IMDG** -- International Maritime Dangerous Goods

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

**MDEP** -- Massachusetts Department of Environmental Protection

**MEP** -- Ministry of Environmental Protection

**MOE** -- Ministry of Environment

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

**MTIE** -- Ministry of Trade, Industry, and Energy

**NGO** -- Non-Governmental Organization

**NHANES** -- National Health and Nutrition Examination Survey

**NIOSH** -- National Institute for Occupational Safety and Health

**NPRM** -- Notice of Proposed Rulemaking

**NRDC** -- Natural Resources Defense Council

**OIG** -- Office of the Inspector General

**OIRA** -- Office of Information and Regulatory Affairs

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

**PHMSA** -- Pipeline and Hazardous Materials Safety Administration

**ppm** -- Part Per Million

**Q&A** -- Question and Answer

**RMP** -- Risk Management Program

**ROI** -- Report on Investigation

**SDWA** -- Safe Drinking Water Act

**SEC** -- Securities and Exchange Commission

**TSCA** -- Toxic Substances Control Act

**TURI** -- Toxic Use Reduction Institute

**USDA** -- United States Department of Agriculture

**WDOE** -- Washington Department of Ecology

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)