#### THE INTERNATIONAL CADMIUM ASSOCIATION

**REGULATORY UPDATE**

**May 28, 2019**[[1]](#footnote-1)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# NEW DEVELOPMENTS

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

Federal Issues

Mining And Mineral Issues

Hardrock Mining Reform Legislation Would Modernize Mining Royalties, Address Taxpayer-Funded Mine Cleanups, page 4

House Subcommittee Holds Hearing On “Long Overdue Need To Reform The Mining Law Of 1872,” page 5

GAO Reviews Availability Of Selected Data Related To Mining On Federal Lands, page 5

Trade Issues

USTR Increases Tariffs To 25 Percent, page 6

TSCA Issues

EPA Proposes Procedures For Review Of CBI Claims For The Identity Of Chemicals On The TSCA Inventory, page 6

Proposed TSCA CDR Revisions Intended To Reduce Reporting Burden, page 7

NRDC Files Suit Challenging Final TSCA Mercury Inventory Rule, page 8

TSCA Inventory Inactive Designations Will Take Effect August 5, page 8

Miscellaneous Issues

Amazon Agrees Not To Sell Children’s School Supplies And Jewelry Containing Excessive Levels Of Lead And Cadmium, page 9

House Subcommittee Holds Hearing On Whether CPSC Is Protecting Americans From Dangerous Products, page 10

OSHA Intends To Publish Proposed Update To HCS In December 2019, page 11

State Issues

*California*

Attorney General Settles With Companies Charged With Selling Lead- And Cadmium-Tainted Jewelry, page 11

*Massachusetts*

TURI Seeks Grant Proposals For Projects That Will Reduce Toxic Chemicals Use, page 12

*Nevada*

Bill Would Designate Cadmium As Known Carcinogen Reasonably Associated With Lung Cancer, page 13

*New York*

Legislature Passes Child Safe Products Act, page 13

*Vermont*

Legislature Passes Bill To Create Interagency Committee On Chemical Management, page 14

*Washington*

Governor Signs Bill Requiring WDOE To Identify Consumer Products That Are A Significant Source Of Priority Chemicals, page 14

International Issues

Canada

Canada Publishes Information Received In Response To 2017 Inventory Update (Chemicals And Polymers), page 16

Health Canada Recalls Necklace Set Due To Lead And Cadmium In Excess Of Allowable Limit, page 17

Health Canada Recalls Necklace Set Due To Lead And Cadmium In Excess Of Allowable Limit, page 17

China

MEE Holds Public Consultation On Technical Guidelines For Risk Assessment, page 17

MEE Finds Some Coal Mining Operations Have Excessive Levels Of Cadmium, page 18

China Issues Conformity Assessment Rules For China RoHS2, page 18

Hong Kong

Amended Toy Standards Will Enter Into Force October 1, page 18

South Korea

State Council Approves Chemical Tracking System, page 19

MOEL Publishes Draft Regulations Implementing OSH Act Amendment, page 20

Thailand

OECD Inspectors Recommend Thailand Become Full Member Of MAD Scheme, page 20

UN

UNEP And PRI Agree With ICMM To Co-Convene Mine Tailings Storage Facilities Review, page 20

**FEDERAL ISSUES**

**MINING AND MINERAL ISSUES**

**Hardrock Mining Reform Legislation Would Modernize Mining Royalties, Address Taxpayer-Funded Mine Cleanups**

On May 9, 2019, Representative Raúl M. Grijalva (D-AZ), Chair of the House Natural Resources Committee, and Senator Tom Udall (D-NM) announced the introduction of their House and Senate mining reform bills intended to modernize the nation’s “badly antiquated” hardrock mining laws. According to a May 9, 2019, [press release](https://naturalresources.house.gov/media/press-releases/chair-grijalva-sen-udall-introduce-hardrock-mining-reform-legislation-to-modernize-mining-royalties-address-taxpayer-funded-mine-cleanups), Grijalva’s bill, the Hardrock Leasing and Reclamation Act of 2019 (H.R. 2579), would require hardrock mining operations to meet some of the same requirements and standards that already apply to oil, gas, and coal development on public lands. Among other measures, the House bill would:

* End the “outdated” claim-staking and patenting system that gives miners unfettered access to nearly all public land in the U.S.;
* 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, except for miners with less than $50,000 in mining income;
* Require meaningful tribal consultation;
* Eliminate the “exalted status” that mining currently enjoys on public lands, leveling the playing field with all other uses of public lands -- such as grazing, hunting, and energy development -- allowing it to be managed through existing land-use planning processes;
* Make certain special lands off-limits to hardrock mining;
* Require mining operators to report data on the amount and value of minerals being extracted from public lands;
* Establish strong reclamation standards and bonding requirements; and
* Create a fund to reclaim and restore abandoned mines and areas impacted by mining activities.

According to Udall’s May 9, 2019, [press release](https://www.tomudall.senate.gov/news/press-releases/udall-grijalva-introduce-hardrock-mining-reform-legislation-to-make-mining-companies-pay-their-fair-share), the Hardrock Mining and Reclamation Act of 2019 (S. 1386) would:

* Place hardrock mining on the same footing with other mining industries with a new royalty rate of five to eight percent based on the gross income of production on federal land;
* Finally provide for abandoned mine cleanup through the Hardrock Minerals Reclamation Fund, paid for by royalties and infused by an abandoned mine reclamation fee of one to three percent;
* End the public lands giveaway, by requiring an exploration permit and mining operations permit for non-casual mining operations on federal land, valid for 30 years and to continue as long as commercial production occurs;
* Encourage local autonomy over mining, and give states, political subdivisions, and Indian tribes the authority to petition the Secretary of the Interior to withdraw certain lands from mining; and
* Require a “look before you leap” approach, and direct DOI to conduct an expedited review of areas that may be inappropriate for mining and therefore eligible for withdrawal.

**House Subcommittee Holds Hearing On “Long Overdue Need To Reform The Mining Law Of 1872”**

The House Natural Resources Subcommittee on Energy and Mineral Resources held a hearing on May 9, 2019, on “[The Long Overdue Need to Reform the Mining Law of 1872](https://naturalresources.house.gov/hearings/the-long-overdue-need-to-reform-the-mining-law-of-1872).” Witnesses included:

* Edward D. Manuel, Chairman, Tohono O’odham Nation;
* Colin Davis, Member, Yellowstone Gateway Business Coalition;
* Gwen Lachelt, County Commissioner, La Plata County, Colorado; and
* Robert D. Comer, Partner and Co-Head of Mining, U.S., Norton Rose Fulbright.

**GAO Reviews Availability Of Selected Data Related To Mining On Federal Lands**

GAO [released](https://www.gao.gov/products/GAO-19-435R?utm_campaign=usgao_email&utm_content=daybook&utm_medium=email&utm_source=govdelivery) a report on May 16, 2019, on the availability of selected data related to hardrock mining on federal lands. The report examines the extent to which BLM, FWS, NPS, Reclamation, USGS, and the Forest Service collect selected hardrock mining data, and the agencies’ reasons for not collecting or maintaining certain data, where applicable. GAO obtained information from the six agencies on: (1) whether agencies collect data on each of the 16 hardrock mining data elements; (2) where and in what format they maintain these data, if collected; and (3) reasons for not collecting or maintaining these data, if they did not do so. Of the six agencies, BLM and the Forest Service reported collecting data on some of the 16 identified hardrock mining data elements. Specifically, BLM and Forest Service officials reported that they collect certain data elements consistent with their missions related to managing hardrock mining. The remaining four agencies reported that they do not collect these 16 data elements because they generally are not involved in hardrock mining activities on the lands they manage. GAO did not make any recommendations in its report.

**TRADE ISSUES**

**USTR Increases Tariffs To 25 Percent**

On May 9, 2019, USTR published a [*Federal Register* notice](https://www.federalregister.gov/documents/2019/05/09/2019-09681/notice-of-modification-of-section-301-action-chinas-acts-policies-and-practices-related-to) announcing that it has determined to increase the rate of additional duty from ten percent to 25 percent for the products of China covered by the [September 2018 action](https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/september/ustr-finalizes-tariffs-200) in its investigation. The increase took effect May 10, 2019. As reported in our September 28, 2018, Update, the final 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 |

**TSCA ISSUES**

**EPA Proposes Procedures For Review Of CBI Claims For The Identity Of Chemicals On The TSCA Inventory**

On April 10, 2019, EPA released a proposed rule regarding its plan to review certain CBI claims to protect the specific chemical identities of substances on the confidential portion of the TSCA Inventory. The CBI claims that would be reviewed under this plan are those that were asserted on NOA Form A’s filed in accordance with the requirements in the Active-Inactive rule. On April 23, 2019, EPA published the [proposed rule](https://www.federalregister.gov/documents/2019/04/23/2019-07920/procedures-for-review-of-cbi-claims-for-the-identity-of-chemicals-on-the-tsca-inventory) in the *Federal Register*. Comments are due **June 24, 2019**. More information is available in B&C®’s April 11, 2019, memorandum, “[EPA Announces Proposed Procedures for Review of CBI Claims for the Identity of Chemicals on the TSCA Inventory](http://www.lawbc.com/regulatory-developments/entry/epa-announces-proposed-procedures-for-review-of-cbi-claims-for-the-identity).” According to an item in EPA’s spring 2019 Regulatory Agenda, EPA intends to promulgate a final rule in **March 2020**.

On May 23, 2019, EPA published an update regarding the U.S. Court of Appeals for the District of Columbia Circuit’s April 26, 2019, decision to order EPA to address substantiation questions regarding reverse engineering applicable to persons claiming a specific chemical identity as CBI. EPA states that manufacturers and processors subject to the TSCA Inventory Notification (Active-Inactive) Requirements rule “are advised that no part of the rule has been vacated and that all requirements of the rule remain in effect.” EPA will announce any proposed or final changes to the rule in the *Federal Register*. As part of its response to the remand, EPA notes that it may seek to supplement its April 23, 2019, proposed rule establishing a plan to review CBI claims for chemical identity asserted in NOA Form A’s. EPA intends to provide public notice in the *Federal Register* and an opportunity for public comment on any future action supplementing that proposed rule. EPA suggests persons interested in the April 2019 proposed rule “submit any comments they may have on the original proposal” by the **June 24, 2019**, comment deadline, however.

**Proposed TSCA CDR Revisions Intended To Reduce Reporting Burden**

On April 12, 2019, EPA released a proposed rule that would amend the TSCA Section 8(a) CDR requirements and the TSCA Section 8(a) size standards for small manufacturers. The current CDR rule requires manufacturers (including importers) of certain chemical substances listed on the TSCA Chemical Substance Inventory to report data on chemical manufacturing, processing, and use every four years. EPA is proposing several changes to the CDR rule to make regulatory updates to align with new statutory requirements of TSCA, improve the CDR data collected as necessary to support the implementation of TSCA, and potentially reduce the burden for certain CDR reporters. The proposed amendments to the current CDR rule requirements include:

* Modifying the requirement to indicate whether a chemical is removed from the waste stream and recycled, remanufactured, reprocessed, or reused with the requirement to indicate whether a chemical is removed from the waste stream and recycled;
* Adding a requirement to identify the percent total production volume of a chemical substance that is a byproduct;
* Allowing reporting in specified metal categories for inorganic byproducts, including **cadmium** and **cadmium compounds** (includes any unique chemical substance that contains **cadmium** as part of that chemical’s structure); and
* Adding exemptions for specifically identified byproducts that are recycled in a site-limited, enclosed system and for byproducts that are manufactured as part of non-integral pollution control and boiler equipment.

EPA published the [proposed rule](https://www.federalregister.gov/documents/2019/04/25/2019-07716/toxic-substances-control-act-chemical-data-reporting-revisions-and-small-manufacturer-definition) in the *Federal Register* on April 25, 2019. Comments are due **June 24, 2019**. More information is available in B&C’s April 15, 2019, memorandum, “[EPA Proposes TSCA CDR Revisions and Update to Small Manufacturer Definition for TSCA Section 8(a)](https://www.lawbc.com/regulatory-developments/entry/epa-proposes-tsca-cdr-revisions-and-update-to-small-manufacturer-definition).” According to an item in EPA’s spring 2019 Regulatory Agenda, EPA intends to promulgate a final rule in **December 2019**.

**NRDC Files Suit Challenging Final TSCA Mercury Inventory Rule**

On April 18, 2019, EPA filed a brief in the U.S. Court of Appeals for the Second Circuit. *NRDC v. EPA*, No. 18-2121. According to EPA, petitioners’ request to vacate portions of the mercury inventory reporting rule is based on a “distorted and selective” reading of TSCA’s requirements. EPA argues that when read in full, the relevant provisions of TSCA expressly confer on it discretion to decide what information to collect under the mercury inventory reporting rule and when to collect it. At most, according to EPA, petitioners demonstrate that EPA might have had authority to issue a different mercury inventory reporting rule. Nothing in TSCA supports petitioners’ contention that the statute unambiguously requires the result they advocate, however. EPA states that under the appropriate standard of review, an agency’s regulation need not be “the only possible interpretation, nor even the interpretation deemed most reasonable by the courts.” EPA’s mercury inventory reporting rule “more than satisfies this deferential standard.” EPA maintains that its decision to eliminate the overlap between the mercury inventory reporting rule and the CDR rule “was logical, well explained, and neither arbitrary nor capricious.”

Vermont filed its reply brief on May 1, 2019, arguing that EPA’s exemptions from the mercury rule are contrary to TSCA and are arbitrary and capricious. According to Vermont, EPA ignores Congress’s intent and purposes in passing the Lautenberg Amendments, which requires reporting from “*any* person who manufactures mercury or mercury-added products or *otherwise intentionally uses* mercury in a manufacturing process.” Vermont argues that states have a strong interest to ensure that EPA complies with TSCA. Vermont’s goal of increasing consumer awareness of the presence of mercury in a variety of products is now undermined by EPA’s decision to omit the reporting of mercury that is intentionally added to products like watches, toys, and automobile components. On May 1, 2019, NRDC filed its reply brief. NRDC argues that EPA’s defense of the component exception ignores the plain meaning of TSCA and that the CDR exception is contrary to TSCA and unsupported by a reasoned explanation.

**TSCA Inventory Inactive Designations Will Take Effect August 5**

EPA announced on May 9, 2019, the availability of a signed action identifying chemical substances for inactive designation according to the TSCA Inventory Notification (Active-Inactive) Requirements rule. The signed action is a companion to the first version of the TSCA Chemical Substance Inventory released February 19, 2019, that designated all listings as active or identified as inactive. The signed action, dated May 6, 2019, initiates a 90-day period after which substances identified as inactive will be designated as inactive. The May 15, 2019, [*Federal Register* notice](https://www.federalregister.gov/documents/2019/05/15/2019-10070/tsca-inventory-notification-active-inactive-requirements-availability-of-a-signed-action-identifying) states that the inactive designations for chemical substances on the TSCA Chemical Substance Inventory are effective on **August 5, 2019**. Starting **August 5, 2019**, manufacturers and processors will be required to notify EPA before reintroducing into commerce a substance currently identified as inactive on the TSCA Inventory.

**MISCELLANEOUS ISSUES**

**Amazon Agrees Not To Sell Children’s School Supplies And Jewelry Containing Excessive Levels Of Lead And Cadmium**

The Washington State Office of the Attorney General announced on May 9, 2019, that Amazon will commit to nationwide corporate reforms after its investigation found “dozens of children’s school supplies sold on its online marketplace had illegal levels of toxic metals lead and **cadmium**.” According to the [press release](https://www.atg.wa.gov/news/news-releases/ag-ferguson-amazon-must-remove-toxic-school-supplies-kid-s-jewelry-marketplace), the Attorney General’s investigation revealed that individuals in Washington and across the U.S. made at least 15,188 purchases of products with illegal levels of lead and **cadmium** from Amazon.com. The press release states that when Amazon learned of the results of the investigation, it contacted the purchasers in early 2019 encouraging the disposal of the toxic items and provided more than $200,000 in refunds. To resolve the investigation without a lawsuit, Amazon entered into a nationwide legally binding agreement to block the sale of children’s school supplies and jewelry on Amazon.com without lab reports and other proof from the sellers that the products are not toxic. In addition, Amazon will pay the Attorney General’s Office $700,000, which will be used to fund future environmental protection efforts, including future investigations into toxic children’s products. Children’s school supplies and jewelry found to exceed the legal limits of these metals include:

* Pencil pouches;
* Backpacks;
* Lunchboxes;
* Book covers;
* Bracelets; and
* Necklaces.

The agreement requires Amazon to discontinue the sale of any children’s school supplies or jewelry containing lead and **cadmium** levels exceeding those allowed by state and federal laws. Amazon also will require all current sellers of these children’s products nationwide to provide certifications and lab testing from an accredited lab showing that their products are safe. The company identified approximately 18,000 sellers on its marketplace that offer around 900,000 individual children’s school supplies and jewelry products. These corporate reforms apply nationwide to all products of this type sold on Amazon.com, including those sourced from retail vendors (where Amazon is the seller of record) or sold by third-party marketplace sellers (where Amazon is not the seller of record).

**House Subcommittee Holds Hearing On Whether CPSC Is Protecting Americans From Dangerous Products**

The House Energy and Commerce Subcommittee on Consumer Protection and Commerce held a hearing on April 9, 2019, on “[Protecting Americans from Dangerous Products: Is the Consumer Product Safety Commission Fulfilling Its Mission?](https://energycommerce.house.gov/committee-activity/hearings/hearing-on-protecting-americans-from-dangerous-products-is-the-consumer)” The Subcommittee heard testimony from the following witnesses:

* Ann Marie Buerkle, Acting Chair, CPSC;
* Elliot F. Kaye, Commissioner, CPSC;
* Robert S. Adler, Commissioner, CPSC;
* Dana Baiocco, Commissioner, CPSC;
* Peter A. Feldman, Commissioner, CPSC;
* Rachel Weintraub, Legislative Director and General Counsel, Consumer Federation of America;
* Nancy Cowles, Executive Director, Kids in Danger;
* Remington A. Gregg, Counsel for Civil Justice and Consumer Rights, Public Citizen; and
* Mike Gentine, Counsel, Schiff Hardin LLP.

According to the [hearing memorandum](https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/CPSC%20Oversight%20Memo_040519Fn.pdf), over the last three years, CPSC recall actions have diminished. At the same time, a survey of children’s product recalls found that more incidents were reported prior to a recall being issued, suggesting a longer timeline for CPSC to investigate and act on recalls. CPSC enforcement has scaled back in other areas as well. CPSC has imposed fewer civil penalties in each of the last four years; the three penalties imposed in 2018 amounted to “the fewest assessments in decades.”

**OSHA Intends To Publish Proposed Update To HCS In December 2019**

According to an item in OSHA’s spring 2019 Regulatory Agenda, OSHA is conducting a rulemaking to harmonize the HCS to the latest edition of the GHS and to codify a number of enforcement policies that have been issued since the 2012 standard. OSHA intends to publish an NPRM in **December 2019**.

**STATE ISSUES**

***California***

**Attorney General Settles With Companies Charged With Selling Lead- And Cadmium-Tainted Jewelry**

On May 7, 2019, California Attorney General Xavier Becerra and CDTSC Acting Director Meredith J. Williams [announced](https://oag.ca.gov/news/press-releases/attorney-general-becerra-announces-settlement-companies-charged-selling-lead-and) settlements resolving allegations against five jewelry distributors for selling jewelry containing excessive levels of lead and, in one instance, **cadmium**. The settlements resolve allegations that the defendants violated California’s Metal Containing Jewelry Law and the Unfair Competition Law, and made untrue or misleading advertising claims. These settlements, filed as stipulated judgments, collectively award California $83,362 in monetary penalties and include orders to comply with all statutes and regulations applicable to the manufacture, distribution, or sale of jewelry in California. The companies also agree to sell only jewelry that has been screened or tested before offering it for sale. According to Becerra’s press release, in an effort to protect the public from toxic metals in jewelry, Becerra and Senator Holly Mitchell (D) “have joined together to update our current laws pertaining to jewelry.” S.B. 647, introduced by Mitchell on February 22, 2019, would improve California’s “outdated metal-containing jewelry laws to better reflect current and international science on the toxicity of lead and **cadmium** in jewelry” by:

* Adopting the federal standard for lead in children’s jewelry (<100 ppm);
* Establishing a **cadmium** standard for paint and surface coating of children’s jewelry pursuant to the ASTM International standard (<75 ppm);
* Amending the definition of children’s jewelry to conform with Canada’s definition (jewelry intended for children under 15 years of age); and
* Applying the EU lead jewelry standard (<500 ppm) to adult jewelry.

***Massachusetts***

**TURI Seeks Grant Proposals For Projects That Will Reduce Toxic Chemicals Use**

TURI [announced](https://www.turi.org/About/News/Press_Releases/TURI_Seeks_Grant_Proposals_from_Massachusetts_Organizations_Looking_to_Reduce_Toxic_Chemical_Use) on May 15, 2019, that it seeks grant proposals from Massachusetts businesses, community groups, and municipalities for projects that will reduce the use of toxic chemicals:

* Industry Grants of up to $30,000 are intended for manufacturing facilities to improve processes or install technology that results in reducing toxics;
* Small Business Grants of up to $10,000 are intended for businesses that provide services directly to consumers;
* Community Grants of up to $20,000 are available for regional or statewide projects and $10,000 for local projects; and
* Academic Research Grants of up to $25,000 are available to University of Massachusetts faculty and their graduate students to partner with Massachusetts companies on researching safer alternatives to toxic chemicals.

Applications are due **June 21, 2019**. TURI will notify awardees in **August 2019**. TURA reporting and planning requirements apply to the toxic substances listed in EPCRA Section 313 and CERCLA. The [complete list of TURA chemicals](https://www.mass.gov/doc/complete-list-of-tura-chemicals-april-2019/download) includes:

| **Substance Name** | **TRI Listed Substance** | **CERCLA Listed Substance** | ***De Minimis* Concentration Threshold** | **Qualifiers and Definitions** |
| --- | --- | --- | --- | --- |
| **Cadmium** | X | X |  | If threshold for both the pure and compounds form is exceeded include as part of the **cadmium compounds** category. |
| **Cadmium acetate** | C | C |  | Report as part of category **cadmium compounds**. Do not report as an individual chemical. |
| **Cadmium bromide** |  | C |  | Do not report as an individual chemical. |
| **Cadmium chloride** |  | C |  | Do not report as an individual chemical. |
| **Cadmium compounds** | X |  | 0.1% | Includes any unique chemical substance that contains **cadmium** as part of that chemical’s infrastructure. **Cadmium compounds** are OSHA carcinogens, the 0.1% *de minimis* threshold applies. |

**C** -- Reportable as part of a chemical category.

**X** -- Reportable chemical or category.

***Nevada***

**Bill Would Designate Cadmium As Known Carcinogen Reasonably Associated With Lung Cancer**

On February 18, 2019, S.B. 215 was introduced to revise the statutory provisions governing compensation for certain employees who develop cancer as an occupational disease. The bill was amended by the Senate Commerce and Labor Committee on April 11, 2019, to revise the provisions related to occupational diseases. Under the amended bill, several chemicals, including **cadmium**, would be listed as deemed to be known carcinogens that are reasonably associated with lung cancer.

***New York***

**Legislature Passes Child Safe Products Act**

On April 30, 2019, the New York Assembly and Senate passed the Child Safe Products Act (A. 6296 and S. 501). As reported in our January 28, 2019, Update, the companion bills would:

* Require NYSDEC to post lists of dangerous chemicals and chemicals of concern on its website. **Cadmium** and **cadmium compounds** would be listed as chemicals of concern, and the list of dangerous chemicals would include **cadmium**;
* Allow NYSDEC, in consultation with NYSDOH, to review the list of dangerous chemicals and chemicals of concern periodically to identify or remove dangerous chemicals or chemicals of concern based on credible scientific evidence;
* Permit designation of a “dangerous chemical”;
* Require manufacturers that sell a children’s product that contains an intentionally added priority chemical to report certain information;
* Require manufacturers of children’s products containing a priority chemical to notify persons that offer the children’s products for sale or distribution of the presence of such priority chemical, and provide such persons with information regarding the toxicity of such chemical;
* Prohibit the sale of children’s products containing a priority chemical; and
* Authorize NYSDEC to participate in an interstate chemical clearing house.

Industry groups are urging Governor Andrew Cuomo (D) to veto the bill, arguing that it is at odds with other states’ requirements and will not improve product safety.

***Vermont***

**Legislature Passes Bill To Create Interagency Committee On Chemical Management**

On May 17, 2019, the House passed an amended version of S.B. 55, which would establish an Interagency Committee on Chemical Management to evaluate chemical inventories in Vermont and identify potential risks from the inventories, and on May 22, 2019, the Senate concurred in the House’s proposed amendments. As reported in our January 28, 2019, Update, the bill would require a manufacturer of a children’s product containing a chemical of high concern to children to report the brand name, product model, and available universal product code of a product. The list of chemicals of high concern to children includes **cadmium** and **cadmium compounds**. Governor Phil Scott (R) has not commented on the bill. While Scott vetoed a similar bill in 2018, and the legislature failed to override the veto, Democrats currently hold a veto-proof majority. More information on the bill is available in our January 28, 2019, Update.

***Washington***

**Governor Signs Bill Requiring WDOE To Identify Consumer Products That Are A Significant Source Of Priority Chemicals**

On May 8, 2019, Governor Jay Inslee (D) signed the Pollution Prevention for Our Future Act (S.B. 5135). The bill:

* Prioritizes for action five classes of chemicals in consumer products, including phthalates, PFAS, PCBs, alkyphenol ethoxylate and bisphenol compounds, and organohalogen flame retardants;
* Gives WDOE the authority to ban or restrict chemicals after determining safer alternatives are available and to require disclosure of priority chemicals in key products; and
* Establishes timelines for action and legislative oversight.

Every five years, WDOE will report to the legislature its decision to designate at least five priority chemicals that meet at least one of the following:

(1) The chemical or a member of a class of chemicals are identified by WDOE as a:

(a) High priority chemical of high concern for children; or

(b) Persistent, bioaccumulative toxin;

(2) The chemical or members of a class of chemicals are regulated:

(a) In consumer products; or

(b) As a hazardous substance;

(3) WDOE determines the chemical or members of a class of chemicals are a concern for sensitive populations and sensitive species after considering the following factors:

(a) A chemical’s or members of a class of chemicals’ hazard traits or environmental or toxicological endpoints;

(b) A chemical’s or members of a class of chemicals’ aggregate effects;

(c) A chemical’s or members of a class of chemicals’ cumulative effects with other chemicals with the same or similar hazard traits or environmental or toxicological endpoints;

(d) A chemical’s or members of a class of chemicals’ environmental fate;

(e) The potential for a chemical or members of a class of chemicals to degrade, form reaction products, or metabolize into another chemical or a chemical that exhibits one or more hazard traits or environmental or toxicological endpoints, or both;

(f) The potential for the chemical or class of chemicals to contribute to or cause adverse health or environmental impacts;

(g) The chemical’s or class of chemicals’ potential impact on sensitive populations, sensitive species, or environmentally sensitive habitats;

(h) Potential exposures to the chemical or members of a class of chemicals based on:

(i) Reliable information regarding potential exposures to the chemical or members of a class of chemicals; and

(ii) Reliable information demonstrating occurrence, or potential occurrence, of multiple exposures to the chemical or members of a class of chemicals.

WDOE has listed **cadmium** and **cadmium compounds** as chemicals of high concern to children.

**INTERNATIONAL ISSUES**

**CANADA**

**Canada Publishes Information Received In Response To 2017 Inventory Update (Chemicals And Polymers)**

In April 2019, Canada [published a summary](https://open.canada.ca/data/en/dataset/ec43e97c-4487-442e-ab2b-2b9eaf77ee28) of the results of its 2017 Inventory Update (chemicals and polymers). The Inventory Update surveyed substances on the DSL, the Non-DSL, and the Revised In Commerce List. It considered substances identified by emerging science and domestic and international regulatory programs, as well as changes in Canadian commerce. According to Canada, the files provide an overview of the information gathered, including: type of submission; reported substances; substances that are manufactured or imported; industrial sectors involved; substance functions and commercial uses reported; and intended use (in commercial activity, in consumer activity, and by children). Canada states that it will use the information to update the commercial status of these substances, to inform priority setting, and to support risk assessment and risk management activities.

**Health Canada Recalls Necklace Set Due To Lead And Cadmium In Excess Of Allowable Limit**

Health Canada announced on May 7, 2019, a [consumer product recall](https://healthycanadians.gc.ca/recall-alert-rappel-avis/hc-sc/2019/69850r-eng.php) for a necklace set due to lead and **cadmium** in excess of the allowable limit. Under the Children's Jewelry Regulations of the Canada Consumer Product Safety Act, it is illegal to import, advertise, or sell jewelry items that appeal primarily to children under 15 years of age and contain more than 90 mg/kg total lead and 130 mg/kg of **cadmium**. Health Canada states: “A range of serious health effects have been associated with exposure to lead and **cadmium**, including anemia, vomiting, diarrhea and other effects on the heart and immune system. In extreme cases, there have been deaths.”

**Health Canada Announces Updated Product Safety Laboratory Test Methodologies, Including For Total Lead And Cadmium**

On May 7, 2019, Health Canada announced that it updated a number of Product Safety Laboratory Test Methodologies, including:

* Determination of Total Lead and **Cadmium** in Metallic Consumer Products by Inductively Coupled Plasma Optical Emission Spectroscopy (C02.4.1); and
* Reasonable Foreseeable Use -- Toys (M01.1).

Copies may be requested by sending an e-mail to [hc.cps-spc.sc@canada.ca](mailto:hc.cps-spc.sc@canada.ca).

**CHINA**

**MEE Holds Public Consultation On Technical Guidelines For Risk Assessment**

MEE began a [public consultation](http://www.mee.gov.cn/xxgk2018/xxgk/xxgk06/201904/t20190425_700961.html) on April 19, 2019, on draft technical guidelines for environmental health risk assessment. The standard includes details of how to conduct hazard identification; dose-response assessment; exposure assessment; and risk characterization. The guidelines are intended to standardize environmental health risk assessment work and implement China’s environmental protection law. According to the draft explanatory documents, environmental health risk assessments will be based on the latest scientific evidence available, and their results updated as scientific understanding evolves. Comments were due May 22, 2019.

**MEE Finds Some Coal Mining Operations Have Excessive Levels Of Cadmium**

In October 2018, MEE inspected 22 coal mining operations in counties near the city of Yiyang, Hunan province. On May 6, 2019, MEE announced that it ordered 16 of the operations to shut down due to contaminated water in tailings ponds and large amounts of leakage into local waterways and groundwater. MEE found that Yiyang Hong’an Mining Co. Ltd. was only licensed to produce 100,000 metric tons of coal annually but actually produced double that amount per year, without the facilities to control excess waste. Levels of **cadmium** in two of the Company’s tailing ponds were 73 times in excess of allowable levels. In ditches leading from the ponds, water tested there showed **cadmium** levels 1,319 times in excess of the allowable level. According to MEE, Taojiang Dongfang Mining Co. Ltd. had similar issues with high **cadmium** levels. Water downstream from its wastewater treatment facility showed **cadmium** levels between 3.82 and 9.44 times higher than allowable levels in China Grade III surface water sources.

**China Issues Conformity Assessment Rules For China RoHS2**

SAMR and MIIT [issued](http://gkml.samr.gov.cn/nsjg/rzjgs/201905/t20190517_293827.html) the Implementation Measures for Conformity Assessment System for the Restricted Use of Hazardous Chemicals in Electrical and Electronic Products on May 16, 2019. The Measures introduce a voluntary certification system to demonstrate compliance with the hazardous substance restriction limits in electrical and electronic products under China RoHS2. According to the announcement, China will upload all product compliance information to an online platform that has not yet been launched, but is expected to be announced soon. Under China RoHS2, the restricted substances are:

* **Cadmium** and **cadmium compounds**;
* Mercury and mercury compounds;
* Lead and lead compounds;
* Hexavalent chromium and hexavalent chromium compounds;
* PBBs; and
* PBDEs.

**HONG KONG**

**Amended Toy Standards Will Enter Into Force October 1**

Hong Kong published a [*Gazette* notice](https://www.info.gov.hk/gia/general/201903/29/P2019032800588.htm) on March 29, 2019, amending the toy safety standards to specify that the updated European Standard Safety of Toys -- Part 3: Migration of certain elements -- EN 71-3:2013+A3:2018 should be used in place of the current EN 71-3:2013+A1:2014. The standard applies to both toys and children’s paints and specifies requirements and test methods for the migration of 19 elements, including lead, **cadmium**, and mercury. The amendment will enter into force **October 1, 2019**.

**SOUTH KOREA**

**State Council Approves Chemical Tracking System**

The state council approved on April 2, 2019, an amendment to the CCA that would introduce a comprehensive chemical tracking system, despite industry concerns. Revisions to the CCA include:

* A tracking system for chemicals that are manufactured in, or imported into, the country, that will use a “universal chemical tracking number” to monitor chemical use, storage, and sales;
* A “notification of chemicals verification” for imports, consolidating the substance verification statement and toxic substances import declaration; and
* A provision for the appointment of an overseas manufacturer’s representative, where an importer cannot establish a substance’s content.

The universal chemical tracking number comprises a 15-20 digit code indicating:

* Whether the substance is toxic;
* The reporting year;
* Information on the substance form, and whether it is a mixture;
* A serial number;
* A verification number; and
* The country of manufacture.

Parliament will now consider the amendment.

**MOEL Publishes Draft Regulations Implementing OSH Act Amendment**

MOEL has begun a public consultation on [draft regulations](http://files.chemicalwatch.com/Osha%20implementation%20rules.pdf) to implement the January 15, 2019, amendment to the OSH Act. As reported in our January 28, 2019, Update, under the amendment, companies must submit SDSs to MOEL, as well as along the supply chain. Where a company has applied for, and received approval for, CBI protection, it must still supply an alternative name and contents that provide enough information to protect workers from the risk of exposure to hazardous substances. The key points of the draft regulations include:

* Mandatory safety and health plans for manufacturers with 500 or more full-time workers;
* A ban on sub-contracting for some types of work to prevent occupational disease caused by long-term exposure to chemical substances, including plating; and
* The right of government to order the suspension of operations where there may be or have been “major” accidents.

Comments are due **June 3, 2019**.

**THAILAND**

**OECD Inspectors Recommend Thailand Become Full Member Of MAD Scheme**

In March 2019, OECD inspectors presented a positive recommendation to the GLP working group that Thailand become a full member of the MAD scheme. The inspectors evaluated Thailand’s system for monitoring laboratory practices in September 2018 and concluded that Thailand’s GLP compliance monitoring program fully complied with OECD standards. The recommendation will be discussed at the **June 2019** joint meeting of OECD’s chemicals committees. If accepted, the recommendation will be forwarded to the OECD Council for final approval, likely in **2019**.

**UN**

**UNEP And PRI Agree With ICMM To Co-Convene Mine Tailings Storage Facilities Review**

On March 26, 2019, ICMM, UNEP, and PRI announced their agreement to co-convene an independent review that will establish an international standard on tailings storage facilities. According to UNEP’s [press release](https://www.unenvironment.org/news-and-stories/press-release/un-environment-programme-and-principles-responsible-investment-agree), while the standard would become an ICMM company member commitment, UNEP and PRI will encourage others to join in advocating for it to be accepted more broadly. UNEP’s press release states that the initiative “is in response to the recent tragedy at Brumadinho and will be informed by evidence and lessons from earlier mine tailings dam failures.” The aim is to complete this work by the **end of 2019**. As a next step, the co-convenors will jointly appoint an independent chair and a multi-stakeholder advisory panel.

\* \* \* \* \*

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](mailto:lbergeson@lawbc.com), or Carla N. Hutton at (202) 557-3809 or [chutton@lawbc.com](mailto:chutton@lawbc.com).

## ACRONYMS

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

**BLM** -- Bureau of Land Management

**CBI** -- Confidential Business Information

**CCA** -- Chemical Controls Act

**CDR** -- Chemical Data Reporting

**CDTSC** -- California Department of Toxic Substances Control

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

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

**DOI** -- United States Department of the Interior

**DSL** -- Domestic Substances List

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

**EPCRA** -- Emergency Planning and Community Right-to-Know Act

**EU** -- European Union

**FWS** -- Fish and Wildlife Service

**GAO** -- United States Government Accountability Office

**GHS** -- Globally Harmonized System of Classification and Labeling of Chemicals

**GLP** -- Good Laboratory Practices

**HCS** -- Hazard Communication Standard

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

**ICdA** -- International Cadmium Association

**ICMM** -- International Council on Mining and Metals

**MAD** -- Mutual Acceptance of Data

**MEE** -- Ministry of Ecology and Environment

**mg/kg** -- Milligram Per Kilogram

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

**MOEL** -- Ministry of Employment and Labor

**NOA** -- Notice of Activity

**NPRM** -- Notice of Proposed Rulemaking

**NPS** -- National Park Service

**NRDC** -- Natural Resources Defense Council

**NYSDEC** -- New York State Department of Environmental Conservation

**NYSDOH** -- New York State Department of Health

**OECD** -- Organization for Economic Cooperation and Development

**OSH** -- Occupational Safety and Health

**OSHA** -- Occupational Safety and Health Administration

**PBB** -- Polybrominated Biphenyl

**PBDE** -- Polybrominated Diphenyl Ether

**PCB** -- Polychlorinated Biphenyl

**PFAS** -- Per- and Poly-Fluorinated Alkyl Substances

**ppm** -- Part Per Million

**PRI** -- Principles for Responsible Investment

**Reclamation** -- Bureau of Reclamation

**RoHS2** -- Administrative Measures for the Restriction of the Use of Hazardous Substances in Electrical and Electronic Products

**SAMR** -- State Administration for Market Regulation

**SDS** -- Safety Data Sheet

**TRI** -- Toxics Release Inventory

**TSCA** -- Toxic Substances Control Act

**TURA** -- Toxics Use Reduction Act

**TURI** -- Toxics Use Reduction Institute

**UN** -- United Nations

**UNEP** -- United Nations Environment Program

**USGS** -- United States Geological Survey

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

**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)