#### THE INTERNATIONAL CADMIUM ASSOCIATION

**REGULATORY UPDATE**

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

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**FEDERAL ISSUES**

**MINING AND MINERAL ISSUES**

**MSHA Reinstates 2017 Final Rule Concerning Examination Of Working Places In Metal And Non-Metal Mines**

On September 30, 2019, MSHA published a [*Federal Register* notice](https://www.federalregister.gov/documents/2019/09/30/2019-20852/examinations-of-working-places-in-metal-and-nonmetal-mines) reinstating the regulatory provisions for examinations of working places in metal and non-metal mines published on January 23, 2017. MSHA notes that the U.S. Court of Appeals for the District of Columbia Circuit issued an order on June 11, 2019, and a mandate on August 23, 2019, requiring this action. As reported in our January 28, 2017, Update, MSHA promulgated a final rule on January 23, 2017, amending its standards for the examination of working places in metal and non-metal mines. The final rule requires that an examination of the working place be conducted before miners begin working in that place, that operators notify miners in the affected areas of any conditions found that may adversely affect their safety or health, that operators promptly initiate corrective action, and that a record be made of the examination. The September 30, 2019, rule is effective immediately. MSHA states that it will use the first 90 days to implement the rule fully. During this time, MSHA will hold informational stakeholder meetings and provide in-person compliance and technical assistance to ensure that miners and mine operators understand the rule's requirements. MSHA will announce the dates, times, locations, and other information in a separate *Federal Register* notice, and will post the details on [its website](https://www.msha.gov/). MSHA will also post on its website compliance assistance materials that include the MSHA’s inspector training materials.

**House Committee Approves Hardrock Mining Reform Legislation**

On October 23, 2019, the House Natural Resources Committee approved the Hardrock Leasing and Reclamation Act of 2019 (H.R. 2579) by a vote of 21 to 13. Under the bill, mining companies would pay royalties of 8 percent to 12.5 percent for hardrock mines on federal land. The bill was largely approved on party lines, but there was some crossover, with Representative Steven Horsford (D-NV) voting against the bill and Representative Garret Graves (R-LA) voting for it. Representatives Rob Bishop (R-UT), Committee Ranking Member, and Paul Gosar (R-AZ) criticized the bill, stating that it would harm the mining industry and push it overseas. Bishop described the legislation as “a messaging bill that is going nowhere” and described the concept behind the bill as “dumb.” Gosar called the royalty rates “grossly unrealistic.”

**TSCA ISSUES**

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

On November 8, 2019, EPA published in the *Federal Register* a [supplemental notice of proposed rulemaking](https://www.federalregister.gov/documents/2019/11/08/2019-23714/procedures-for-review-of-cbi-claims-for-the-identity-of-chemicals-on-the-tsca-inventory-revisions-to) regarding revisions to the CBI substantiation requirements under TSCA. EPA states that in response to a recent federal circuit court decision, it is proposing revisions to existing and proposed substantiation requirements for certain CBI claims. Specifically, EPA is proposing two additional questions that manufacturers and processors would be required to answer to substantiate certain CBI claims for specific chemical identities and is proposing procedures for manufacturers and processors to use in amending certain previously submitted substantiations to include responses to the additional questions. Comments on the supplemental notice are due **December 9, 2019**. According to an item in EPA’s fall 2019 Unified Agenda, EPA intends to issue a final rule in **February 2020**.

The proposed revisions supplement EPA’s proposed rule issued in the April 23, 2019, *Federal Register* and would amend the TSCA Inventory Notification (Active-Inactive) Requirements rule promulgated on August 11, 2017. More information on the proposed rule 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](https://www.lawbc.com/regulatory-developments/entry/epa-announces-proposed-procedures-for-review-of-cbi-claims-for-the-identity),” and more information on the final rule is available in our June 26, 2017, memorandum, “[EPA Issues Final TSCA Framework Rules](https://www.lawbc.com/regulatory-developments/entry/epa-issues-final-tsca-framework-rules).”

**EPA Intends To Promulgate Rule Amending CDR In December 2019**

According to an item in EPA’s fall 2019 Unified Agenda, EPA intends to promulgate a final rule amending the TSCA Section 8(a) CDR requirements in **December 2019**. As reported in our May 28, 2019, Update, 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 Unified Agenda item states that EPA now intends to complete these rulemakings as two separate actions. The proposed amendments to the 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. 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).”

**MISCELLANEOUS ISSUES**

**CPSC Proposes Rule Regarding Determinations Regarding ASTM F963 Elements And Phthalates For Unfinished Manufactured Fibers**

CPSC published a [proposed rule](https://www.federalregister.gov/documents/2019/10/09/2019-21517/childrens-toys-and-child-care-articles-determinations-regarding-astm-f963-elements-and-phthalates) on October 9, 2019, that would determine that certain unfinished manufactured fibers would not contain the ASTM F963 elements or specified phthalates that exceed the limits set forth under the CPSC’s statutes and regulations for children’s toys and child care articles. Based on the proposed determinations, the specified unfinished manufactured fibers would not be required to have third-party testing for compliance with the requirements of the ASTM F963 elements or phthalates for children’s toys and child care articles. Section 4.3.5 of ASTM F963 requires that surface coating materials and accessible substrates of children’s toys that can be sucked, mouthed, or ingested must comply with the solubility limits of the elements given in Table 1 of the toy standard, including **cadmium** (75 ppm). Comments are due **December 23, 2019**.

**NGO Finds Heavy Metals, Including Cadmium, In Baby Food; Schumer Urges FDA To Investigate**

Healthy Babies Bright Futures [announced](https://www.hbbf.org/sites/default/files/documents/2019-10/Press%20Release%20-%20Baby%20Food%20Study_0.pdf) on October 17, 2019, that 95 percent of the baby foods it tested “contain one or more toxic chemicals, including lead, arsenic, mercury and **cadmium**. One-quarter of foods tested contain all four toxic chemicals tested by the lab, all of which are heavy metals that can affect brain development.” The study tested 168 baby foods spanning 61 brands, and all but nine of the tested baby foods contained at least one of these four metals.

On October 20, 2019, Senator Charles E. Schumer (D-NY) issued a press release urging FDA to investigate the report. The press release states that “[t]hese toxic metals -- arsenic, lead, **cadmium**, and mercury -- are neurotoxins that can permanently alter the developing brain of a baby, erode their IQ, and affect behavior. While these metals are not unique to baby food, their presence in baby food is particularly concerning because of babies’ sensitivity to the toxic impacts.” The press release notes that FDA established a Toxic Elements Working Group in 2017 that was intended to modernize safety standards for the toxic metals Americans are exposed to, including in food, yet FDA has introduced no new standards in the time since. Schumer called on FDA to:

* Establish and adopt final health-protective standards for heavy metals to protect against neurodevelopmental impacts;
* Implement a proactive testing program for heavy metals in foods consumed by babies and toddlers; and
* Act immediately to establish a health-based limit for arsenic in infant foods.

**OSHA Proposes To Extend Approval Of Information Collection Requirements In Cadmium In General Industry Standard**

On November 1, 2019, OSHA published a [*Federal Register* notice](https://www.federalregister.gov/documents/2019/11/01/2019-23879/cadmium-in-general-industry-standard-extension-of-the-office-of-management-and-budgets-omb-approval) soliciting public comments concerning the proposal to extend OMB approval of the information collection requirements in the **Cadmium** in General Industry Standard. OSHA states that it has a “particular interest” in comments on the following issues:

* Whether the proposed information collection requirements are necessary for the proper performance of OSHA’s functions, including whether the information is useful;
* The accuracy of OSHA’s estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
* The quality, utility, and clarity of the information collected; and
* Ways to minimize the burden on employers who must comply.

Comments are due **December 31, 2019**. Under the PRA, a federal agency generally cannot conduct a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB and displays a currently valid OMB Control Number. OMB authorization for an ICR cannot be for more than three years without renewal. As this type of notice concerns continuing a current collection of information, rather than enacting a new requirement, typically it is not worthy of comment.

**OSHA Intends To Publish Proposed Update To HCS In January 2020**

According to an item in OSHA’s fall 2019 Unified 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 **January 2020**.

**USPIRG’s *Trouble In Toyland* Report Identifies Cadmium As A “Hidden Hazard”**

USPIRG [released](https://uspirg.org/news/usp/new-government-data-us-pirg-investigation-reveal-unsafe-toys-impact-kids) its 2019 [*Trouble in Toyland*](https://uspirg.org/feature/usp/trouble-in-toyland-2019) report on November 21, 2019. The report describes several “hidden hazards,” including **cadmium**, and states:

The Washington Attorney General found **cadmium** in children’s jewelry above the legal limit of 40 ppm. This toxic metal is sometimes used as a substitute for precious metals in inexpensive jewelry, including dress-up jewelry marketed to young children. **Cadmium** consumed by children builds up and can lead to certain cancers, osteoporosis, and other health complications as adults.

USPIRG recommends the following policy action:

Companies and retailers should stop using manufacturers that may substitute in cheaper metals for gold jewelry. The U.S. Consumer Product Safety Commission and state Attorneys General should continue testing kid’s jewelry for **cadmium** to identify more contaminated products.

**STATE ISSUES**

***California***

**Governor Signs Bill Reducing Cadmium Limit For Surface Coatings On Children’s Jewelry**

On September 27, 2019, Governor Gavin Newsom (D) signed S.B. 647, which amends existing provisions relating to the materials authorized to be used to make jewelry and children’s jewelry. The bill includes the following provisions:

* Adopts the federal standard for lead in all accessible components of children’s jewelry (<100 ppm total lead);
* Adopts the federal **cadmium** standard for paint and surface coating of children’s jewelry that is derived from an ASTM International standard (<75 ppm **soluble cadmium**);
* Amends the definition of children’s jewelry to conform with Canada’s definition (jewelry intended for children under 15 years of age); and
* Applies the EU lead jewelry standard (<500 ppm total lead) to certain materials in adult jewelry.

**Governor Vetoes Bill Amending Toxics In Packaging Prevention Act**

Governor Gavin Newsom (D) vetoed S.B. 232, which would have amended the Toxics in Packaging Prevention Act to increase the permissible heavy metal limit in recycled glass from 100 ppm to 200 ppm until **January 1, 2024**. The Act defines regulated metals as lead, **cadmium**, mercury, or hexavalent chromium. Newsom stated that he is a “strong supporter” of increasing recycling efforts, but that he does not “believe we should risk potential exposure to toxic substances during the process.”

**Biomonitoring California Announces New Results For Exposure Study**

Biomonitoring California announced new results on October 22, 2019, for CARE-LA. Chemicals measured in blood and urine samples from the 430 CARE-LA participants included:

* Metals, such as arsenic, **cadmium**, cobalt, lead, manganese, and mercury;
* PFASs such as PFOA and PFOS; and
* Phenols, such as BPA, BPS, BP-3, and triclosan (measured in a subset of 60 women).

Biomonitoring California states that some key findings based on data analyses conducted so far include:

* Most metals measured in CARE-LA were frequently detected (90-100 percent);
* All participants had at least one PFAS in their blood. On average, participants had seven PFASs (of 12 measured) in their blood; and
* The most frequently detected phenols were BP-3 (95 percent), BPS (77 percent), methyl paraben (95 percent), and triclosan (82 percent).

The initial results from CARE-LA were presented and discussed at the [November 6, 2019, Scientific Guidance Panel meeting](https://biomonitoring.ca.gov/events/biomonitoring-california-scientific-guidance-panel-meeting-november-2019).

***Washington***

**WDOE Publishes Addendum To Quality Assurance Project Plan For Phthalates And Metals In Children’s Products**

In October 2019, WDOE published [*School Supplies 2019: Addendum 4 to Quality Assurance Project Plan: Phthalates and Metals in Children’s Products*](https://fortress.wa.gov/ecy/publications/SummaryPages/1904018.html). According to the addendum, beginning in July 2019, WDOE will purchase school supplies for analysis of lead and **cadmium**. WDOE will focus the purchasing effort on pencil pouches, pencil cases, and book covers tested in the 2015, 2017, and 2018 studies. The study may also include investigations on other supplies marketed and sold as school supplies for use by a child 12 years old or younger. WDOE will purchase school supplies both online and in retail stores.

**INTERNATIONAL ISSUES**

**Global Tailings Review Begins Public Consultation On Draft International Standard For Safer Management Of Tailings**

On November 15, 2019, the Global Tailings Review began a [public consultation](https://globaltailingsreview.org/consultation/) to collect feedback on a draft Global Tailings Standard that aims to prevent catastrophic failures by creating a step change for the industry in the safety and security of tailings facilities. The draft Standard is organized around six topic areas:

* **Topic Area I: Knowledge base** requires operators to develop knowledge about the social, economic, and environmental context of a proposed or existing tailings facility and to conduct detailed site characterization;
* **Topic Area II: Affected communities** focuses on project-affected people. It requires human rights due diligence and meaningful engagement of project-affected people;
* **Topic Area III: Design, construction, operation, and monitoring of tailings facilities** aims to lift the performance bar for designing, constructing, operating, and monitoring tailings facilities;
* **Topic Area IV: Management and governance** focuses on ongoing management and governance of tailings facilities. It defines a number of key roles, essential systems, and critical processes;
* **Topic Area V: Emergency response and long-term recovery** covers emergency preparedness and response in the event of a disaster, the re-establishment of ecosystems, and the long-term recovery of affected communities; and
* **Topic Area VI: Public disclosure and access to information** requires public access to information about tailings facilities in order to fairly inform internal and external stakeholders about risks and impacts, management and mitigation plans, and performance monitoring.

The Global Tailings Review is an initiative co-convened by ICMM, UNEP, and the Principles for Responsible Investment. Comments on the draft Standard are due **December 31, 2019**.

**AUSTRALIA**

**Australia Publishes Decision RIS For Workplace Exposure Standards Framework Under Model WHS Laws**

SWA [published](https://www.safeworkaustralia.gov.au/doc/decision-regulation-impact-statement-workplace-exposure-standards-framework-under-model-work) on November 11, 2019, the Decision RIS about the framework for workplace exposure standards under the model WHS laws and how it should be kept up to date. SWA states that the majority of consultation RIS respondents and the break-even analysis of costs and benefits in the decision RIS supported option 2 as the preferred option. The preferred option consists of:

* Updating the workplace exposure standards for airborne contaminants;
* No change to the requirement to ensure exposure standards for substances and mixtures are not exceeded (Regulation 49); and
* Changing the name of workplace exposure standards to workplace exposure limits.

SWA states that a standard three-year transitional period was also preferred for implementing any changes to the workplace exposure standards for airborne contaminants. According to SWA, any changes to the workplace exposure standards will be supported by guidance materials and education to assist duty holders to meet their requirements.

The Decision RIS states that subject to a majority of WHS Ministers agreeing to option 2 as the preferred option, the workplace exposure standards for airborne contaminants referred to in the model WHS regulations will be amended to reflect the actions within the preferred option. SWA will work with the Commonwealth, state, and territory WHS regulators to implement a nationally harmonized transitional period and develop and deliver guidance for industry. Maintenance of the workplace exposure standards will be conducted as part of a review cycle in line with the five-year scheduled reviews of the model WHS regulations.

**CANADA**

**Canada Publishes Fifth Report On Human Biomonitoring Of Environmental Chemicals**

In November 2019, HC published the [*Fifth Report on Human Biomonitoring of Environmental Chemicals in Canada*](https://www.canada.ca/en/health-canada/services/environmental-workplace-health/reports-publications/environmental-contaminants/fifth-report-human-biomonitoring.html). The Fifth Report provides the results of Cycle 5 (2016-2017) of the Canadian Health Measures Survey. The Survey is intended to provide baseline data on indicators of environmental exposures, chronic diseases, infectious diseases, fitness, and nutritional status, as well as risk factors and protective characteristics related to these areas. The physical measurements include such factors as height and weight, blood pressure, physical fitness and lung function measures, as well as many measures based on blood and urine samples including environmental chemicals. The Fifth Report states:

**Cadmium** was analyzed in the whole blood of all Canadian Health Measures Survey (CHMS) participants aged 6-79 years in cycle 1 (2007-2009), and 3-79 years in cycle 2 (2009-2011), cycle 3 (2012-2013), cycle 4 (2014-2015), and cycle 5 (2016-2017). Data from these cycles are presented in blood as μg/L. **Cadmium** was analyzed in the urine of CHMS participants aged 6-79 years in cycle 1 (2007-2009), and 3-79 years in cycle 2 (2009-2011) and cycle 5 (2016-2017). Data from these cycles are presented in urine as both μg/L and μg/g creatinine. Finding a measurable amount of **cadmium** in blood or urine is an indicator of exposure to **cadmium**, and does not necessarily mean that an adverse health effect will occur. **Cadmium** was also analyzed in hair from CHMS participants 20-59 years old in cycle 5 (2016-2017); summary data from this analysis in hair can be found in Appendix D.

**CHINA**

**Draft National Standards Notified To WTO Would Specify Maximum Allowable Levels Of Cadmium**

On October 16, 2019, China notified a number of national standards to WTO. Standards that would specify limits for **cadmium** include:

* Limit of Harmful Substances in Architectural Wall Coatings: The standard specifies the terms and definitions, product classification, requirements, test methods, inspection rules, packaging, and labeling for substances that are harmful to the human body and the environment in all kinds of architectural wall coatings. The standard includes limitation requirements for soluble heavy metals, including **cadmium**;
* Limit of Harmful Substances in Vehicle Coatings: The standard specifies the terms and definitions, product classification, requirements, test methods, inspection rules, packaging, and labeling for substances that are harmful to the human body and the environment in various vehicle coatings. The standard includes limitation requirements for several heavy metals, including **cadmium**;
* Limit of Harmful Substances in Woodenware Coatings: The standard specifies the terms and definitions, product classification, requirements, test methods, inspection rules, packaging, and labeling for substances that are harmful to the human body and the environment in various woodenware coatings. The standard includes limitation requirements for soluble heavy metals, including **cadmium**;
* Limit of Harmful Substances in Industrial Protective Coatings: The standard specifies the terms and definitions, product classification, requirements, test methods, inspection rules, packaging, and labeling for substances that are harmful to the human body and the environment in various industrial protective coatings. The standard includes limitation requirements for several heavy metals, including **cadmium**; and
* Limit of Harmful Substances in Interior Floor Coatings: The standard specifies the terms and definitions, product classification, requirements, test methods, inspection rules, packaging, and labeling for substances that are harmful to the human body and the environment in interior floor coatings. This standard includes three types of interior floor coatings: water-based floor coatings; solvent-based floor coatings; and solvent-free floor coatings. In this standard, for each of the three floor coatings, soluble heavy metals, including **cadmium**, are limited.

China did not provide proposed dates of adoption or of entry into force for the standards.

**MIDDLE EAST**

**Middle Eastern Countries Would Align Toy Safety Regulation With EU Standard**

During the November 4, 2019, meeting of the GSO’s Technical Committee on Toy Safety, the Committee approved an amendment to its toy safety regulation that would align the allowable chemical migration limits with EU standard EN 71. The regulation sets limits on 19 substances, including **cadmium**, in three toy material categories (scraped off, liquid or sticky, or dry or pliable), as well as prohibiting most CMR substances and restricting certain phthalates in plastics. GSO’s Board of Directors is expected to approve the amendment by **mid-2020**.

**TAIWAN**

**Taiwan Proposes Removing Registration Requirement For Nine Toy Categories**

BSMI notified WTO on November 11, 2019, that it intends to remove nine categories of toys from the list of products that must be registered before they are sold in the country and instead require companies to test products and sign a declaration of conformity. BSMI stated that it aims to adopt a risk-based approach to regulating toy safety in an effort to reduce trade barriers and has assessed toys in the following categories to be of low risk:

* Books;
* Craft paper;
* Piggy banks;
* Sticker toys;
* Colored figure games and playing cards;
* Educational or observational toys, such as telescopes or cameras;
* Flat puzzle toys and dominoes;
* Board games; and
* Toy stamps and pens.

The proposed dates of adoption and of entry into force are yet to be determined.

\* \* \* \* \*

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.

**BP-3** -- Benzophenone-3

**BPA** -- Bisphenol A

**BPS** -- Bisphenol S

**BSMI** -- Bureau of Standards, Metrology and Inspection

**CARE-LA** -- California Regional Exposure Study in Los Angeles County

**CBI** -- Confidential Business Information

**CDR** -- Chemical Data Reporting

**CMR** -- Carcinogenic, Mutagenic, or Reprotoxic

**CPSC** -- U.S. Consumer Product Safety Commission

**EPA** -- U.S. Environmental Protection Agency

**EU** -- European Union

**FDA** -- Food and Drug Administration

**GCC** -- Gulf Cooperation Council

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

**GSO** -- GCC Standards Organization

**HC** -- Health Canada

**HCS** -- Hazard Communication Standard

**ICdA** -- International Cadmium Association

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

**ICR** -- Information Collection Request

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

**NGO** -- Non-Governmental Organization

**NPRM** -- Notice of Proposed Rulemaking

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

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

**PFAS** -- Perfluoroalkyl and Polyfluoroalkyl Substances

**PFOA**-- Perfluorooctanoic Acid

**PFOS** -- Perfluorooctane Sulfonic Acid

**ppm** -- Part per Million

**PRA** -- Paperwork Reduction Act

**RIS** -- Regulation Impact Statement

**SWA** -- Safe Work Australia

**TSCA** -- Toxic Substances Control Act

**UNEP** -- United Nations Environment Program

**USPIRG** -- U.S. Public Interest Research Group

**WDOE** -- Washington Department of Ecology

**WHS** -- Work Health and Safety

**WTO** -- World Trade Organization

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