#### THE INTERNATIONAL CADMIUM ASSOCIATION

**REGULATORY UPDATE**

**November 28, 2020**[[1]](#footnote-1)

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# NEW DEVELOPMENTS

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**FEDERAL ISSUES**

**MINING AND MINERAL ISSUES**

**President Signs EO On Addressing The Threat To The Domestic Supply Chain From Reliance On Critical Minerals From Foreign Adversaries**

On September 30, 2020, President Trump [signed an EO](https://www.whitehouse.gov/presidential-actions/executive-order-addressing-threat-domestic-supply-chain-reliance-critical-minerals-foreign-adversaries/) and declared a National Emergency to expand the domestic mining industry, support mining jobs, alleviate unnecessary permitting delays, and reduce U.S. dependence on China for critical minerals. According to a [White House fact sheet](https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-protecting-domestic-mining-industry-critical-minerals-supply-chains/) on the EO, the EO begins the process for DOI to develop a program to use its authorities under the Defense Production Act to fund mineral processing that protects U.S. national security. The fact sheet states that the action will cut down on unnecessary delays in permitting actions, providing opportunities for jobs and improving economic and national security. Through the EO, federal agencies will use their authorities to investigate and work to decrease U.S. reliance on mineral imports. Under the EO, by **January 1, 2021**, and every 180 days thereafter, the Secretary of the Interior shall inform the President of the state of the threat posed by U.S. reliance on critical minerals, in processed or unprocessed form, from foreign adversaries and recommend any additional actions necessary to address that threat. The term “critical minerals” means the minerals and materials identified by the Secretary of the Interior pursuant to EO 13817 Section 2(b), as amended by this EO. DOI’s [final list of critical minerals](https://www.federalregister.gov/documents/2018/05/18/2018-10667/final-list-of-critical-minerals-2018) does not include **cadmium**.

**House Subcommittee Holds Hearing On DOI’s Royalty Reductions**

On October 6, 2020, the House Natural Resources Subcommittee on Energy and Mineral Resources held a hearing on “[Interior’s Royalty Cuts: Thoughtful Policy or Industry Giveaway?](https://naturalresources.house.gov/hearings/interiors-royalty-cuts-thoughtful-policy-or-industry-giveaway)” The hearing focused “on the public costs and lack of public benefits of the royalty cuts the Trump administration has offered oil and gas drillers and mining corporations operating on public lands during the coronavirus pandemic.” At the request of Committee Chair Raúl M. Grijalva (D-AZ), GAO has reviewed royalty relief applications and approvals, interviewed BLM officials in western state offices, and interviewed DOI officials to understand better the Trump Administration’s royalty policies. GAO presented the findings of its review at the hearing. Witnesses included:

* Frank Rusco, Director, Natural Resources and Environment Team, GAO;
* Mark Squillace, Raphael J. Moses Professor of Law, University of Colorado Law School;
* Jayson O’Neill, Director, Western Values Project; and
* Kathleen Sgamma, President, Western Energy Alliance Denver.

**TSCA ISSUES**

**EPA Developing TSCA Section 8(a) Reporting And Recordkeeping Rule For Certain TSCA Work Plan Chemicals**

According to an item in EPA’s Spring 2020 Unified Agenda, EPA is developing a rulemaking under TSCA Section 8(a) to add certain chemicals that are on the [TSCA Work Plan](https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/tsca-work-plan-chemical-assessments-2014-update) to the Chemical-Specific Reporting and Recordkeeping rules in 40 C.F.R. Part 704, Subpart B. EPA is developing the rule to obtain information about potential hazards and exposure pathways related to certain chemicals on the TSCA Work Plan, particularly occupational, environmental, and consumer exposure information. EPA states that this information is needed to inform prioritization and risk evaluation of the chemical substances, as mandated under TSCA Section 6. EPA intends to issue an NPRM in **November 2020** and a final rule in **June 2021**. The TSCA Work Plan includes **cadmium** and **cadmium compounds**:

| **Hazard Criteria Met**  | **Hazard Score** | **Exposure Criteria Met** | **Exposure Score** | **Persistence and Bioaccumulation Criteria Met** | **Persistence and Bioaccumulation Score** | **Use** |
| --- | --- | --- | --- | --- | --- | --- |
| Known human carcinogensChronic cardiovascular, renal, and musculoskeletal effectsAcute and chronic toxicity from inhalation exposures | 3 | Widely used in consumer productsPresent in biomonitoring, drinking water, surface water, ambient air, soilHigh reported releases to the environment | 3 | High environmental persistenceModerate bioaccumulation potential | 3 | ConsumerIndustrial |

**STATE ISSUES**

***California***

**OEHHA Issues Interim Advisory Tissue Levels For Cadmium In Fish**

As reported in our October 6, 2020, e-mail, OEHHA announced [interim advisory tissue levels for **cadmium** in sport fish](https://oehha.ca.gov/fish/report/development-interim-advisory-tissue-levels-common-contaminants-california-sport-fish) on October 6, 2020. According to OEHHA, the interim advisory tissue levels provide guidance for developing safe eating advice for fish recreationally caught from California waters, based on **cadmium** levels in fish tissue.

**New Results Available For California Regional Exposure Study**

Biomonitoring California announced on November 9, 2020, that [new results](https://biomonitoring.ca.gov/results/projects/3088) for the California Regional Exposure Study in Riverside, San Bernardino, Imperial, Mono, and Inyo counties are now available in Biomonitoring California’s [online database](https://biomonitoring.ca.gov/results/explore). Chemicals measured in blood and urine samples from the study participants included several metals, including arsenic, **cadmium**, cobalt, lead, manganese, and mercury. According to Biomonitoring California, most metals measured were frequently detected (94-100%).

***Texas***

**Bill Would Require Disclosure Of Metals, Including Cadmium, In Lipstick And Lip Gloss**

On November 9, 2020, H.B. 90 was introduced in the House. The bill would require a manufacturer that sells a lipstick or lip gloss cosmetic to disclose on its website and the cosmetic label the presence of any “toxic metal,” including lead, chromium, **cadmium**, aluminum, and manganese, “regardless of whether the concentration of the metal in the cosmetic is less than one percent.”

**INTERNATIONAL ISSUES**

**AUSTRALIA**

**MAA Warns Of Potential “Significant Delays” For Consignments Of All Seafood To China**

On November 6, 2020, the Department of Agriculture, Water and the Environment issued [MAA 2020-18](https://www.agriculture.gov.au/export/controlled-goods/fish/fish-notices/2020/2020-18), “China: Fish: Update on potential significant delays for consignments of all seafood.” According to the MAA, the Department has received information via commercial channels indicating that there may be “significant delays” at Chinese ports of entry for the clearance of consignments of seafood from Australia. Exports of abalone, Atlantic salmon, and coral trout may also be affected. The MMA states that the Department “understands that consignments of Australian live rock lobsters may be tested for heavy metals such as **cadmium** at Chinese ports of entry.”

**CANADA**

**2020 Energy and Mines Ministers’ Conference Focuses On Economic Recovery; Ministers Approve Update To Canadian Minerals And Metals Plan Action Plan 2020**

During the 2020 Energy and Mines Ministers’ Conference, held September 25 and 28, 2020, Seamus O’Regan, Canada’s Minister of Natural Resources, and Ranj Pillai, Deputy Premier and Minister of Energy, Mines and Resources for Yukon, agreed that an inclusive approach that builds capacity and ensures diversity is a key ingredient to Canada’s successful economic recovery. The Ministers also signaled their desire to work together on topics of common interest, including hydrogen, small modular reactors, and critical minerals/batteries. The Ministers agreed to:

* Build upon provincial and territorial plans on hydrogen and the forthcoming Hydrogen Strategy for Canada to create a Hydrogen Working Group as a forum for multilateral discussions and advance cooperation;
* Advance collaboration on the development and deployment of SMRs in Canada; and
* Work together to build an all-Canadian Critical Minerals and Battery value chain across sectors and pursue engagement with partners in the U.S. and beyond.

The Ministers agreed to an [update to the Canadian Minerals and Metals Plan Action Plan 2020](https://www.minescanada.ca/sites/default/files/pictures/PDF/cmmp-actionplan2020_update_en_final.pdf), highlighting industry challenges resulting from COVID-19 and progress on the pan-Canadian initiatives introduced in March 2020. The update takes into consideration the short-, medium-, and long-term targets and initiatives taken by governments and industry to support economic recovery post-COVID. The action plan demonstrates early progress on the six pan-Canadian initiatives outlined in the Preliminary Version of Action Plan 2020 and identifies two new collaborative initiatives that will drive toward the vision of being the leading mining nation. The next action plans will be released in **2021** and **2022**, with subsequent ones following every three years thereafter.

**CHINA**

**Draft Standard Would Restrict Heavy Metals In Printing Inks**

As reported in our September 28, 2020, Update, on September 23, 2020, China notified WTO of a national standard that would limit certain heavy metals in printing inks. SAMR published the draft national standard on September 23, 2020. The standard would establish a maximum limit requirement of 100 mg/kg for lead, **cadmium**, mercury, and hexavalent chromium. The standard also would establish maximum limit requirements for soluble heavy metals (antimony, arsenic, barium, **cadmium**, chromium, lead, mercury, and selenium). The limit for **soluble cadmium** would be 75 mg/kg.

**SAMR Publishes Draft Standard For Heavy Metals In Watch Casings**

SAMR published a draft national standard on September 23, 2020, that would apply to watch casings that come into contact with skin. The draft standard includes terms and definitions, requirements, and inspection rules and would apply to watch cases, back covers, straps, and buckles made of metal, cermet, inorganic glass, synthetic sapphire glass, leather, plastic, and rubber. It would restrict heavy metals, including **cadmium**, and includes a limit of 75 mg/kg for **cadmium**.

**NHC Holds Public Comment Period On Draft Food Safety Standard For Inks Used In FCMs And Articles**

On October 15, 2020, NHC began a public consultation on a draft standard for inks used in FCMs and articles. The draft standard would divide inks into two categories: inks printed on FCMs and articles that are in direct contact with food; and inks in indirect contact but for which the ingredients may be transferred to food. For inks in indirect contact, the draft standard would ban colorants based on lead, mercury, **cadmium**, hexavalent chromium, arsenic, antimony, selenium, and their compounds. The draft standard would establish migration limits, including a limit of 5 mg/kg or less for **cadmium**. Comments are due **November 30, 2020**.

**INDIA**

**Supplementary Rules To Food Safety And Standards (Packaging) Regulations Could Address Migration Limits For Cadmium**

FSSAI will begin framing supplementary rules to the Food Safety and Standards (Packaging) Regulations 2018. The supplementary rules will be based on recommendations from an expert body created in 2019 to consider possible national regulations on the use of plastics as FCMs and the increase in the use of PET and multi-layer polymers in packaging food and drinks. The expert body offered additional recommendations, including directing BIS to establish standards outlining the migration limits for heavy metals like antimony, **cadmium**, and chromium. The existing standards include migration limits only for the heavy metals cobalt and manganese.

**TAIWAN**

**NGO Claims Dried Mushrooms Have Excessive Pesticide And Metal Residues**

The Consumers’ Foundation announced on November 2, 2020, that it detected excessive pesticide and metal residues in dried mushrooms sold at retailers in Taipei and New Taipei cities. Twenty-five dried mushroom samples were purchased in August 2020 in supermarkets, traditional markets, herbal medicine shops, and dried foods stores. The countries of origin for the 12 packs of almond mushrooms included nine from Taiwan, one from China, one from Brazil, and one from South Korea. According to the Consumers’ Foundation, nine of the 12 almond mushroom packs contained lead or **cadmium** at levels exceeding that allowed by the Ministry of Health and Welfare. The Consumers’ Foundation called for tighter import controls and inspection of mushroom products and the set-up of a Cabinet-level food safety response platform to address the issue of problematic foods.

**UN**

**UNEP Publishes Report On Sustainability Reporting In The Mining Sector**

UNEP published a report on September 28, 2020, entitled [*Sustainability Reporting in the Mining Sector: Current Status and Future Trends*](https://wedocs.unep.org/bitstream/handle/20.500.11822/33924/SRMS.pdf?sequence=1&isAllowed=y). The report examines the context and state of sustainability reporting in the large-scale mining sector, with a specific focus on what governments have done to enhance the transparency of the sector. According to UNEP’s September 28, 2020, [press release](https://www.unenvironment.org/resources/report/sustainability-mining-sector), among findings of the report are the growing demand for more detailed disclosures at the mine-site level and the need for increased government involvement and guidance (such as on national SDG priorities) that can inform the context of sustainability disclosures of mining companies and make them more meaningful for stakeholders. UNEP states that there has not been much direct action by governments when it comes to enhancing sustainability disclosures of mining companies with some exceptions, including South Africa and Canada. While placing primary emphasis on mining companies, the report also examines transparency of the wider mineral value chain and highlights the role of VSIs that have been developed to support responsible mineral sourcing.

\* \* \* \* \*

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

**BIS** -- Bureau of Indian Standards

**BLM** -- Bureau of Land Management

**C.F.R.** -- Code of Federal Regulations

**DOI** -- U.S. Department of the Interior

**EO** -- Executive Order

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

**FCM** -- Food Contact Material

**FSSAI** -- Food Safety and Standards Authority of India

**GAO** -- U.S. Government Accountability Office

**ICdA** -- International Cadmium Association

**MAA** -- Market Access Advice

**mg/kg** -- Milligram per Kilogram

**NGO** -- Non-Governmental Organization

**NHC** -- National Health Commission

**NPRM** -- Notice of Proposed Rulemaking

**OEHHA** -- Office of Environmental Health Hazard Assessment

**PET** -- Polyethylene Terephthalate

**SAMR** -- State Administration of Market Regulation

**SDG** -- Sustainable Development Goal

**SMR** -- Small Modular Reactor

**TSCA** -- Toxic Substances Control Act

**UN** -- United Nations

**UNEP** -- United Nations Environment Program

**VSI** -- Voluntary Sustainability Initiative

**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)