#### THE INTERNATIONAL CADMIUM ASSOCIATION

**REGULATORY UPDATE**

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

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**FEDERAL ISSUES**

**CERCLA ISSUES**

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

On August 17, 2018, the intervenors filed their response to the U.S. Court of Appeals for the District of Columbia Circuit’s order to show cause and justification for the proposed intervenor briefing format. *Idaho Conservation League v. Pruitt*, No. 18-1141. The intervenors stated that there are two distinct intervenor groups, one comprising 12 states and three state regulatory agencies (state intervenors), and the other comprising three separately represented sets of mining companies and three trade associations representing mining entities (industry intervenors). These two distinct intervenor groups “have materially different interests, and accordingly they will focus on distinct issues, have differing perspectives on the agency action at issue, and make different arguments in support of the agency.” On August 27, 2018, the court issued an order with the following briefing format and schedule:

* Joint Brief of Petitioners -- September 14, 2018;
* Joint Brief of Respondents -- **November 14, 2018**;
* Joint Brief of State Intervenors for Respondents -- **November 30, 2018**;
* Joint Brief of Industry Intervenors for Respondents -- **November 30, 2018**;
* Joint Reply Brief of Petitioners -- **December 21, 2018**;
* Deferred Joint Appendix -- **January 4, 2019**; and
* Final Briefs -- **January 8, 2019**.

The court states that the parties will be informed later of the date of oral argument.

The petitioners filed their opening brief on September 14, 2018, arguing that the Trump Administration’s abandonment of the 2017 proposed rule is arbitrary and unlawful for four reasons: (1) EPA unlawfully ignored risks to health and the environment; (2) even if EPA could lawfully limit its analysis to financial considerations, it ignored substantial evidence of financial risk, including evidence CERCLA explicitly directs EPA to consider; (3) EPA based its decision in part on a comparison of costs to industry with costs to the Superfund; and (4) EPA cannot abandon a proposed rule based on entirely new rationales and arbitrary assertions at odds with its prior factual findings without providing a new opportunity for comment.

**DOI Issues ANPRM Regarding Natural Resource Damages For Hazardous Substances**

On August 27, 2018, DOI’s ORDA published an [ANPRM](https://www.federalregister.gov/documents/2018/08/27/2018-18498/natural-resource-damages-for-hazardous-substances) regarding natural resource damages for hazardous substances. ORDA seeks comments and suggestions from state, tribal, and federal natural resource co-trustees, other affected parties, and the interested public on whether revisions to the regulations for conducting natural resource damage assessments and restoration for hazardous substance releases are needed, and if so, what specific revisions should be considered. The regulations provide procedures that state, tribal, and federal natural resource co-trustees may use to evaluate the need for and means of restoring, replacing, or acquiring the equivalent of public natural resources that are injured or destroyed because of releases of hazardous substances into the environment. CERCLA -- which authorizes natural resource damage claims by states, federally recognized Indian tribes, and the federal government -- specifies that the regulations are optional, but if the state, tribal, and federal governments (described as natural resource “co-trustees” by CERCLA) use them, they are entitled to a “rebuttable presumption” on their claim in any subsequent legal proceeding. The ANPRM seeks comment and suggestions in response to the CERCLA biennial review requirement and Executive Order 13777 (February 24, 2017), which directed DOI and other federal agencies to establish Regulatory Reform Task Forces to evaluate existing regulations and make recommendations regarding repeal, replacement, or modification, consistent with applicable law. Comments are due **October 26, 2018**.

**MINING AND MINERAL ISSUES**

**Forest Service Intends To Expedite Review Of Certain Proposed Mineral Operations**

The Forest Service published an ANPRM on September 13, 2018, requesting comments regarding the need to clarify its regulations that minimize adverse environmental impacts on National Forest System surface resources in connection with operations authorized by U.S. mining laws. These rules and procedures govern prospecting, exploration, development, mining, and processing operations conducted on National Forest System lands authorized by the Mining Law of 1872, as amended, subsequent reclamation of the land, and any necessary long-term post-closure resource management. According to the notice, the goals of the regulatory revision are to expedite Forest Service review of certain proposed mineral operations authorized by U.S. mining laws, and, where applicable, Forest Service approval of some of these proposals by clarifying the regulations, to increase consistency with BLM surface management regulations governing operations authorized by U.S. mining laws to assist those who conduct these operations on lands managed by each agency, and to increase the Forest Service’s nationwide consistency in regulating mineral operations authorized by U.S. mining laws by clarifying its regulations. Comments must be received by **October 15, 2018**.

**MSHA Intends To Improve Safety By Sharing Information Rather Than New Regulations**

On September 25, 2018, MSHA held a stakeholder meeting to provide the mining community an opportunity to discuss and share information about the issues raised in MSHA’s June 26, 2018, [RFI](https://www.federalregister.gov/documents/2018/06/26/2018-13603/safety-improvement-technologies-for-mobile-equipment-at-surface-mines-and-for-belt-conveyors-at) seeking information regarding safety improvement technologies for mobile equipment and belt conveyors. During the meeting, Kevin Stricklin, Acting Administrator for MSHA’s Metal and Nonmetal Mine Safety and Health Division, stated that the Trump Administration has no plans to issue new regulations to prevent miners from being run over by heavy equipment such as trucks and bulldozers or injured by conveyor belts. According to Stricklin, MSHA’s focus is on gathering information and ideas from the public, then sharing those with employers and workers. Stricklin stated that a next step might be “some type of conference where we all get together and try to come up with best practices.” MSHA’s goal “is to decrease the chance of a fatality.”

**TRADE ISSUES**

**USTR Releases Final List Of Imports That Will Be Subject To Additional Tariffs, Includes Certain Cadmium Products**

On September 18, 2018, USTR [released](https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/september/ustr-finalizes-tariffs-200) a list of approximately $200 billion worth of Chinese imports that will be subject to additional tariffs. The additional tariffs were effective starting September 24, 2018, and initially will be in the amount of ten percent. Starting **January 1, 2019**, the level of the additional tariffs will increase to 25 percent. The list contains 5,745 full or partial lines of the original 6,031 tariff lines that were on a proposed list of Chinese imports announced on July 10, 2018. Changes to the proposed list were made after USTR and the interagency Section 301 Committee sought and received comments over a six-week period and testimony during a six-day public hearing in August. 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 |

USTR published a [*Federal Register* notice](https://www.federalregister.gov/documents/2018/09/18/2018-20246/procedures-to-consider-requests-for-exclusion-of-particular-products-from-the-additional-action) on September 18, 2018, setting out the specific procedures and criteria related to requests for product exclusions, and opening up a docket for the receipt of exclusion requests. USTR must receive all requests to exclude a particular product by **December 18, 2018**. Responses to a request for exclusion of a particular product are due 14 days after the request is posted in [Docket ID USTR-2018-0032](https://www.regulations.gov/docket?D=USTR-2018-0032). Any replies to responses to an exclusion request are due the later of seven days after the close of the 14-day response period, or seven days after the posting of a response.

On September 21, 2018, USTR published a [*Federal Register* notice](https://www.federalregister.gov/documents/2018/09/21/2018-20610/notice-of-modification-of-section-301-action-chinas-acts-policies-and-practices-related-to) modifying its prior action in its investigation into certain acts, policies, and practices of the government of China related to technology transfer, intellectual property, and innovation by imposing additional duties on products of China set out in the notice, including the **cadmium** products listed above. The rate of additional duty is initially ten percent ad valorem. On **January 1, 2019**, the rate of additional duty will increase to 25 percent ad valorem.

**TSCA ISSUES**

**EPA Issues Final TSCA Fees Rule**

On September 27, 2018, EPA issued a final fees rule under TSCA. As amended by the Frank Lautenberg Chemical Safety for the 21st Century Act, TSCA provides EPA the authority to require payment from manufacturers and processors who:

* Are required to submit information by test rule, test order, or ECA (TSCA Section 4);
* Submit notification of or information related to intent to manufacture a new chemical or significant new use of a chemical (TSCA Section 5); or
* Manufacture or process a chemical substance that is subject to a risk evaluation, including a risk evaluation conducted at the request of a manufacturer (TSCA Section 6(b)).

The final rule largely tracks the proposed rule. In its [press release](https://www.epa.gov/newsreleases/epa-meets-important-tsca-milestone-finalizing-last-four-chemical-safety-framework-rules), EPA states that the fees collected from chemical manufacturers “will go toward developing risk evaluations for existing chemicals; collecting and reviewing toxicity and exposure data and other information; reviewing Confidential Business Information (CBI); and making determinations in a timely and transparent manner with respect to the safety of new chemicals before they enter the marketplace.” The final rule is effective the day after publication in the *Federal Register* and the fees will apply to all submissions received starting on **October 1, 2018**. Small businesses will be eligible to receive a substantial discount of approximately 80 percent on their fees. EPA will host a [series of webinars](https://www.epa.gov/tsca-fees/webinars-tsca-administration-fees-rule) focusing on making TSCA submissions and paying fees under the final rule. The webinars will be held on **October 10**, **October 24**, and **November 7, 2018**. EPA has posted a [pre-publication version of the final rule](https://www.epa.gov/sites/production/files/2018-09/documents/2018-09-27_prepubcopy_tsca-fees-finalrule.pdf), as well its [response to public comments](https://www.epa.gov/sites/production/files/2018-09/documents/final_clean_fees_rtc.pdf) on the proposed rule. More information on the final rule is available in our September 28, 2018, memorandum, “[EPA Issues Final TSCA Fees Rule](http://www.lawbc.com/regulatory-developments/entry/epa-issues-final-tsca-fees-rule).”

**MISCELLANEOUS ISSUES**

**Codex Alimentarius Commission Adopts MLs For Cadmium In Chocolate**

On August 8, 2018, the U.S. Codex Office published a [*Federal Register* notice](https://www.federalregister.gov/documents/2018/08/08/2018-16944/trade-and-foreign-agriculture-affairs-codex-alimentarius-commission-international-standard-setting) informing the public of the sanitary and phytosanitary standard-setting activities of the Codex Alimentarius Commission. According to the notice, several standards were adopted by the 41st session of the Commission in July 2018, including:

* MLs for **cadmium** in chocolate containing or declaring ≥ 50 percent to < 70 percent total cocoa solids on a dry matter basis; and chocolate containing or declaring ≥ 70 percent total cocoa solids on a dry matter basis.

The Commission also approved discontinuation of work on the following items, as recommended by the Codex Committee on Contaminants in Foods:

* Establishment of MLs for **cadmium** in dry mixtures of cocoa and sugars sold for final consumption.

The Committee will continue working on several items, including:

* MLs for **cadmium** in chocolate and cocoa-derived products (category of chocolate and chocolate products containing or declaring (1) < 30 percent and (2) ≥ 30 percent to < 50 percent total cocoa solids on a dry matter basis; and
* Discussion paper on development of a COP for the prevention and reduction of **cadmium** contamination in cocoa.

The Committee agreed to bringing discussion on several items, including a discussion paper on lead and **cadmium** in quinoa.

***Consumer Reports* Finds Heavy Metals, Including Cadmium, In Baby Food**

On August 16, 2018, *Consumer Reports* published an article entitled “[Heavy Metals in Baby Food: What You Need to Know](https://www.consumerreports.org/food-safety/heavy-metals-in-baby-food/).” According to *Consumer Reports*, its food safety team analyzed 50 nationally distributed packaged foods made for babies and toddlers, checking for **cadmium**, lead, mercury, and inorganic arsenic. The team found:

* Every product had measurable levels of at least one of these heavy metals: **cadmium**, inorganic arsenic, or lead;
* About two-thirds (68 percent) had “worrisome” levels of at least one heavy metal;
* Fifteen of the foods would pose potential health risks to a child regularly eating one serving or less per day;
* Snacks and products containing rice and/or sweet potatoes were particularly likely to have high levels of heavy metals; and
* Organic foods were as likely to contain heavy metals as conventional foods.

The recommendations for FDA include setting a goal of having no measurable amounts of **cadmium**, lead, or inorganic arsenic in baby and children’s food, and using the most sensitive testing methods to determine the presence of those metals. The recommendations for parents include:

* Go easy on the chocolate. Cocoa powder may contain **cadmium** and/or lead. Cocoa itself may have more than dark chocolate, and dark chocolate may have more than milk chocolate; and
* Take a pass on protein powders. These may contain arsenic, **cadmium**, and lead.

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

OSHA published a [*Federal Register* notice](https://www.federalregister.gov/documents/2018/08/15/2018-17557/the-cadmium-in-construction-standard-extension-of-the-office-of-management-and-budgets-omb-approval) on August 15, 2018, soliciting public comments concerning the proposal to extend OMB approval of the information collection requirements contained in the **Cadmium** in Construction Standard. According to the notice, OSHA 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.

OSHA is not seeking a burden-hour adjustment and will summarize any comments submitted in response to this notice and will include this summary in its request to OMB. Comments are due **October 15, 2018**.

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

On September 6, 2018, OSHA published a [*Federal Register* notice](https://www.federalregister.gov/documents/2018/09/06/2018-19288/the-cadmium-in-general-industry-standard-extension-of-the-office-of-management-and-budgets-omb) 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.

The information collection requirements specified in the **Cadmium** in General Industry Standard are intended to protect workers from the adverse health effects that may result from their exposure to **cadmium**. The major information collection requirements include: conducting worker exposure monitoring; notifying workers of their **cadmium** exposures; implementing a written compliance program; implementing medical surveillance of workers; providing examining physicians with specific information; ensuring that workers receive a copy of their medical surveillance results; maintaining workers’ exposure monitoring and medical surveillance records for specific periods; and providing access to these records to the workers who are the subject of the records, the worker’s representative, and other designated parties. According to the notice, OSHA is requesting a burden-hour adjustment decrease of 2,636 (from 75,998 to 73,362 hours). OSHA states that it estimates a decrease of exposed workers in the cross-industry sectors, as well as in the specific-industry sectors. On the other hand, OSHA notes that the number of plants is estimated to increase slightly in both sectors. As a result, the operation and maintenance costs have increased from $4,799,475 to $5,453,858, a total increase of $654,383, due to increased costs for exposure monitoring sampling and medical exams. Comments are due **November 5, 2018**.

**STATE ISSUES**

***District of Columbia***

**Safe Fields And Playgrounds Act Would Require Publication Of Approved Synthetic Materials That Include Cadmium**

On September 18, 2018, Safe Fields and Playgrounds Act of 2018 (B. 946) was introduced in the Council of the District of Columbia. The bill would require a study on the safety of all synthetic materials currently used in construction projects at District of Columbia public recreational spaces. Within 30 days after the transmission of the study to the Council, the Department of General Services would be required to publish on its website a list of approved synthetic materials that includes the concentration of any “known toxins, including lead, **cadmium**, chromium, mercury, tin, and zinc.”

***Oregon***

**WDOSH Publishes Summary Results From 2008-2016 Compliance Inspections**

On July5, 2018, WDOSH posted a report entitled [*Industrial Hygiene Exposure Assessment Measurements in Washington State: Summary Results from the Division of Occupational Safety and Health (DOSH) Compliance Inspections -- 2008-2016*](http://www.lni.wa.gov/Safety/Research/FACE/Files/WorkerExposureAssessmentInWashingtonState.pdf). The report contains worker exposure assessment information collected from workers in Washington State between 2008-2016 by industrial hygiene compliance safety and health officers employed by WDOSH. According to the report, in addition to supporting compliance efforts, “exposure samples provide insight into trends in concentration and severity of workers’ exposures to different substances, allow for comparisons among industries and occupations, and provides opportunities for worker exposure prevention.” Table 10 shows the number of samples collected for each substance where the maximum severity was greater than or equal to the substance PEL. The median severity is the halfway point in a sample distribution. For example, the report states, a median severity of 1.0 indicates that half of the samples collected were equal to or exceeded the PEL. Table 10 includes:

|  |  |  |  |
| --- | --- | --- | --- |
| **Substance** | **Samples** | **Maximum Severity** | **Median Severity** |
| **Cadmium dust (as Cd)**  | 13  | 2.0  | 0.1  |

The report recommends that WDOSH closely monitor the amount and type of worker exposure sampling being conducted and consider developing a multi-approach exposure sampling plan. The report also recommends that WDOSH address outdated PELs and substances without PELs. According to the report, the majority of the approximately 500 substance PELs have not been updated in Washington since their adoption in 1992. Since then, the report notes, “much new information has been generated about health effects of substances at exposure levels lower than current PELs.”

**INTERNATIONAL ISSUES**

**Global Witness Releases Tool Intended To Expose Corruption In Extractive Industries**

On August 9, 2018, Global Witness [announced](https://www.globalwitness.org/en/press-releases/global-witness-launches-finding-missing-millions-new-tool-exposing-corruption-extractive-industries/) the release of a handbook entitled [*Finding The Missing Millions*](https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/finding-missing-millions/), “a ground-breaking tool for rooting out corruption and tax avoidance in the oil, gas and mining industries.” According to Global Witness, the handbook “helps people use new sources of data to expose questionable extractive deals and hold power to account.” The handbook features ten different methods for using data from oil, gas, and mining projects to check whether companies are paying the right amount to governments. Each method features “real life” case studies to show how this can be done. Global Witness states that one example looks at payments earmarked for development projects to benefit mining-affected communities in South Goa, India. The payments were due to be transferred by the mining company Vedanta to a local district authority. According to Global Witness, a lack of transparency previously made it impossible for local people to know how much they were owed from Vedanta’s mine and to follow the money into government accounts. By using a method shown in the handbook, Global Witness revealed that Vedanta owed $2.1 million to local communities. Global Witness notes that the method for tracking community-level payments will be useful in other resource-producing countries, many of which have similar localized payment systems.

**AUSTRALIA**

**Australia Publishes First National Plan For Resources Sector For 20 Years**

On September 21, 2018, Australia issued a [press release](https://www.minister.industry.gov.au/ministers/canavan/media-releases/first-national-plan-australias-resources-sector-20-years) announcing the [first long-term plan](https://www.industry.gov.au/data-and-publications/resources-2030-taskforce-report) for Australia’s resources sector for 20 years, prepared by the Resources **2030** Taskforce. The Minister for Resources and Northern Australia appointed the Resources **2030** Taskforce to examine and make recommendations on how Australia’s resources sector can remain globally competitive and sustainable over the decades to come. The Taskforce’s recommendations include:

* Developing an approach to showcase Australia’s attractiveness as an investment destination;
* Regular benchmarking of domestic and international policies to identify areas for improvement;
* Developing strategies to enhance and grow competitive downstream industries, including value-adding for prospective battery and critical-minerals industries;
* Expanding the Exploring for the Future program to cover all of Australia and to invest in modern exploration techniques to deliver a “step change” in exploration success rates;
* Investigating tax incentives to encourage individuals to live and work in mining areas;
* Improving environmental performance by establishing consistent approaches to life-of-mine rehabilitation and establishing a national repository of environmental data;
* Establishing a holistic approach to basin planning and approval processes; and
* Promoting the opportunities of a career in the resources sector.

**CANADA**

**Canada Proposes To Take No Further Action On Sector-Specific UVCBs**

On August 25, 2018, Canada published a [notice](http://www.gazette.gc.ca/rp-pr/p1/2018/2018-08-25/html/notice-avis-eng.html#nb2) in the *Canada Gazette* announcing that it concluded that 57 substances in the sector-specific inorganic UVCBs group do not meet any of the criteria set out in CEPA Section 64. According to the notice, substances in the group were identified as priorities for assessment as they met categorization criteria under CEPA Section 73(1) or were considered a priority on the basis of other human health concerns. The 57 substances include:

|  |  |  |
| --- | --- | --- |
| **CAS Number** | **DSL Name** | **Common Name** |
| 69011-69-4 | **Cadmium, dross** | **Cadmium dross** |
| 69011-70-7 | **Cadmium, sponge** | **Cadmium sponge** |

The notice states that the main sectors of activity for the substances are the base metals processing, iron and steel manufacturing, aluminum smelting and automotive parts manufacturing, pulp and paper manufacturing, and cement manufacturing sectors. According to the notice, 38 substances were determined to be no longer manufactured or imported or intermediates, ten were determined to be intermediates or wastes, three were determined to be byproducts or wastes, and five were determined to be wastes. On the basis of the information available, the potential for exposure of the environment to these substances is considered to be either negligible or not expected. The notice states that considering all available lines of evidence presented in the screening assessment, there is a low risk of harm to organisms and the broader integrity of the environment from all 57 substances in the sector-specific inorganic UVCBs group. Canada concluded that these 57 substances do not meet the criteria under CEPA 64(a) or (b), as they are not entering the environment in a quantity or concentration or under conditions that have or may have an immediate or long-term harmful effect on the environment or its biological diversity or that constitute or may constitute a danger to the environment on which life depends.

**Assessment Collaboration Framework Between EPA, ECCC, And HC Published**

[The Assessment Collaboration Framework](https://www.canada.ca/en/environment-climate-change/services/evaluating-existing-substances/assessment-collaboration-framework-us-epa-eccc-hc.html) between EPA, ECCC, and HC was published on September 7, 2018. In 2011, the U.S. and Canada launched the RCC to facilitate closer cooperation between Canada and the U.S. on the development of more effective approaches to regulation that strengthen the economy, enhance competitiveness, and provide greater protection to public safety and welfare. The Framework notes that EPA, ECCC, and HC have common policy objectives under TSCA, as amended by the Lautenberg Act, and CEPA to reduce risks posed by chemicals to human health and the environment. The participating agencies recognize that the Framework focuses on areas of technical collaboration on science and regulatory issues and practices related to chemical assessments. Issues pertaining to policy development in this area are generally considered beyond the scope of the Framework. Work under the Framework may identify or inform policy issues, however. The overall goal of the Framework is to facilitate and enhance collaboration between the three agencies for the risk-based assessment of chemicals within their respective legislative and regulatory context. Stakeholder engagement and broad communication to the public are additional goals of the Framework. The Framework states that it will enable enhanced alignment on risk assessment of chemicals, including identification of risk assessment priorities, information gathering and sharing, risk assessment methodologies, work sharing, and joint assessments. The goals will be achieved through the implementation of a [Rolling Work Plan](https://www.canada.ca/en/environment-climate-change/services/evaluating-existing-substances/assessment-collaboration-framework-canada-united-states-rolling-workplan.html), published in an appendix to the Framework. According to the Framework, Rolling Work Plan elements will be reflected in the annual operational plans of each government.

**CHINA**

**Baby Carrier Standard Entered Into Force July 1**

National product standard [GB/T 35270-2017](http://www.codeofchina.com/search/default.html?page=1&keyword=35270) for baby carriers entered into force on July 1, 2018 The carriers are used for children over the age of four months who need a certain amount of support for their heads. The standard, set by AQSIQ and issued on December 29, 2017, outlines requirements for the textiles used in the carriers, including 100 mg/kg for **cadmium**.

**New Soil Pollution Prevention And Control Law Will Take Effect January 1**

On August 31, 2018, China approved a new Soil Pollution Prevention and Control Law that will take effect **January 1, 2019**. Under the new Law, land that had been used for industrial activity must be surveyed for soil contamination before the land can be converted to residential or public use. The Law includes provisions intended to prevent soil pollution from contaminating groundwater. Under the new Law, the responsible party must pay for cleaning up soil pollution. The new Law authorizes permanently closing facilities responsible for the most serious infractions such as failing to clean up properties properly or submitting fake cleanup data. Greenpeace East Asia expressed concern with the “polluter pays” principle, “since certain companies like chemical and oil refineries could declare bankruptcy in these cases, then there would not be a way to [pay for] the clean-up of the land.” In 2014, an MEP and MLR study found that 16 percent of China’s soil nationwide and 19.4 percent of farmland is polluted, with nickel, **cadmium**, and arsenic the primary heavy-metal contaminants.

**JAPAN**

**MHLW Publishes Labeling And SDS Guidance In English**

MHLW has published an [English translation](https://www.mhlw.go.jp/new-info/kobetu/roudou/gyousei/anzen/dl/180815-01.pdf) of its guidance on labeling and SDSs under ISHL. The translation provides detailed information on GHS implementation in Japan and is based on the GHS. The translation includes:

* An overview of the ISHL and related laws covering labeling and SDSs;
* Information required in labeling and SDSs under ISHL; and
* A list of substances subject to labeling and SDSs under ISHL.

The list of substances subject to the obligations of labeling and notification includes:

| **Substance Name** | **CAS Number** | **Cut-Off Value for Labeling** | **Cut-Off Value for SDS** |
| --- | --- | --- | --- |
| **Cadmium and its compounds** |  | 0.1% | 0.1% |

The guidance includes the “Exemption of Solids from the Obligation of Labelling (from June 1, 2106),” which notes that of the pure substances for which labeling is mandatory, the following types of metals, in forms other than powder, are exempt from the obligation of labeling: yttrium; indium; **cadmium**; silver; chromium; cobalt; tin; thallium; tungsten; tantalum; copper; lead; nickel; platinum; hafnium; ferrovanadium; manganese; molybdenum; and rhodium.

The guidance does not address the labeling and SDS requirements of PRTR and the Poisonous and Deleterious Substances Control Act. The English translation is only 15 pages, while the [original guidance](https://www.mhlw.go.jp/new-info/kobetu/roudou/gyousei/anzen/dl/130813-01-all.pdf), in Japanese, is 56 pages. If there are questions regarding the English version of the guidance, the Japanese version should be consulted.

**NEPAL**

**Study Finds Toxic Chemicals In Children’s Products; IPEN Calls For Nepal To Enforce Toy Standard**

IPEN published a [press release](https://ipen.org/news/press-release-high-levels-toxic-substances-children%E2%80%99s-toys-nepal-affirm-need-enforce-nepal) on July 22, 2018, announcing the availability of a [study](https://ipen.org/documents/toxic-chemicals-childrens-products-nepal) it conducted with CEPHED of toxic chemicals in children’s products in Nepal. According to the press release, the analysis found high levels of dangerous contaminants in 62 percent of 52 toys sampled, including heavy metals such as lead, **cadmium**, chromium, barium, zinc, and bromine, as well as several phthalates in all toys in a small discrete sample. All toy samples were purchased in Nepal, and they were manufactured in China, India, and Thailand. The press release states that “[t]hese toxic metals and chemical contaminants are known to damage the nervous system and reproductive system, cause lung and kidney diseases, affect the immune system and reduce intellectual capacity, and have been associated with permanent brain damage and cancer. Young children are likely to put toys in their mouths and thus ingest chemicals during a period of rapid neurological development, making children under 5 especially vulnerable to the impacts of toxic exposures.” The study’s findings include:

* High concentrations of lead, **cadmium**, chromium, zinc, barium, and bromine were identified in 32 out of 52 toy samples. Some samples of toys contained very high levels of toxic heavy metals such as lead (4,688 ppm), **cadmium** (363 ppm), chromium (3,348 ppm), and other substances such as zinc (78,820 ppm), barium (3,030 ppm), and bromine (462 ppm), which significantly exceed the national standard limits set by the government of Nepal in 2017;
* Thirty-seven out of 52 toys (71 percent) contained at least one toxic metal. Thirty-two out of 52 toys (62 percent) contained toxic chemicals above the Nepalese standard (noncompliance), and 20 out of 52 toys (38 percent) have toxic chemicals below the standards (compliance);
* Some toys were contaminated with one to three toxic metals in concentrations exceeding the national standards. Thirty-two out of 52 toys (62 percent) contained one toxic metal; seven out of 52 toys (13 percent) contained two toxic metals; and two out of 52 toys (four percent) contained three toxic metals;
* **Cadmium** was found in three toy samples out of 37 contaminated samples (eight percent). All three samples (100 percent) contained **cadmium** in concentrations higher than the national standard limit of 75 ppm. One out of three samples (33 percent) contained **cadmium** at levels five-fold higher than the national standard;
* One toy contained lead at levels 52-fold higher than the national standard, **cadmium** at levels five-fold higher than the national standard, chromium at levels 56-fold higher than the national standard, zinc at levels 21,000-fold higher than the national standard, bromine at levels 4.6-fold higher than the national standard, and DEHP at levels 3,710-fold higher than the national standard of less than 0.01 percent;
* Only 42.3 percent (22 out of 52) toy samples had labels with information on choking hazards and the appropriate child’s age for playing with the toy; and
* None of the toy samples had labels containing information on the chemical composition. According to the study, this undermines the recommendations of UN Environment’s Chemicals in Products Program, which has been adopted by more than 100 governments, including the government of Nepal in 2015.

As reported in our January 28, 2017, Update, Nepal adopted a standard setting mandatory maximum levels for 12 chemical substances, including **cadmium**, in children’s toys. The standards took effect July 16, 2017. According to the press release, since passage of the standard, “the private sector is urging the government to change how it determines heavy metal levels in products. Chemical experts say that the regulatory method that measures total concentration limit of chemicals is rapid, easy, and less costly for developing countries.” According to IPEN, “the ‘extractable elements’ approach, a change industry is advocating, is cumbersome and expensive, and relies on assumptions that do not prevent exposure, particularly in children.”

**PHILIPPINES**

**NGO Finds Counterfeit Lipsticks Contaminated With Heavy Metals, Including Cadmium**

EcoWaste Coalition published an August 5, 2018, [press release](http://www.ecowastecoalition.org/2018/08/05/6911/) warning consumers that it found counterfeit lipsticks with “dangerously high concentrations of heavy metal contaminants,” including **cadmium**. Of the 57 samples of lipsticks purchased, 55 were found to contain one or more toxic metals such as arsenic, **cadmium**, lead, and mercury above the maximum allowable limits set by the “ASEAN Guidelines on Limits of Contaminants for Cosmetics.” **Cadmium** up to 332 ppm was detected in two samples. EcoWaste Coalition notes that according to the Guidelines, “heavy metal contaminants could be derived from the quality and purity of raw materials, and the manufacturing process.”

**VIETNAM**

**Vietnam Announces National Chemical Database System**

On August 2, 2018, MOIT [announced](http://cuchoachat.gov.vn/default.aspx?page=news&do=detail&category_id=43&id=4381) the availability of the [National Chemical Database System](http://chemicaldata.gov.vn). The National Chemical Database System will:

* Support the management of administrative procedures on chemical management;
* Share management information between MOIT’s Department of Chemicals and the Departments of Industry and Trade in the field of chemicals;
* Synthesize and process statistical data for chemical risk assessment and other management needs;
* Share information on hazardous properties and the classification of chemicals for businesses and communities; and
* Prepare data to support the provision of information in response to chemical incidents.

**Updated Draft National Chemical Inventory Available For Comment**

On September 15, 2018, Vietnam issued a [notice](http://cuchoachat.gov.vn/default.aspx?page=news&do=detail&category_id=43&id=4386) announcing the availability of an [updated draft National Chemical Inventory](http://www.lawbc.com/uploads/docs/Vietnam-chemicals-inventory-2018-revision.pdf). The draft Inventory includes 31,745 substances, including **cadmium** and a number of **cadmium compounds**. Comments on the draft National Chemical Inventory are due **October 15, 2018**.

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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

**ANPRM** -- Advance Notice of Proposed Rulemaking

**AQSIQ** -- General Administration of Quality Supervision, Inspection, and Quarantine

**ASEAN** -- Association of South East Asian Nations

**BLM** -- Bureau of Land Management

**CAS** -- Chemical Abstracts Service

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

**CEPHED** -- Center for Public Health and Environmental Development

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

**COP** -- Code of Practice

**DEHP** -- Di-(2-Ethylhexyl) Phthalate

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

**DSL** -- Domestic Substances List

**ECA** -- Enforceable Consent Agreement

**ECCC** -- Environment and Climate Change Canada

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

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

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

**HC** -- Health Canada

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

**ICdA** -- International Cadmium Association

**IPEN** -- International POPs Elimination Network

**ISHL** -- Industrial Safety and Health Law

**Lautenberg Act** -- Frank R. Lautenberg Chemical Safety for the 21st Century Act

**MEP** -- Ministry of Environmental Protection

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

**MHLW** -- Ministry of Health, Labor and Welfare

**ML** -- Maximum Level

**MLR** -- Ministry of Land and Resources

**MOIT** -- Ministry of Industry and Trade

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

**NGO** -- Non-Governmental Organization

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

**ORDA** -- Office of Restoration and Damage Assessment

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

**PEL** -- Permissible Exposure Limit

**POP** -- Persistent Organic Pollutant

**ppm** -- Part Per Million

**PRTR** -- Pollutant Release and Transfer Register

**RCC** -- Regulatory Cooperation Council

**RFI** -- Request for Information

**SDS** -- Safety Data Sheet

**TSCA** -- Toxic Substances Control Act

**UN** -- United Nations

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

**UVCB** -- Unknown or Variable Composition, Complex Reaction Products, and Biological Material

**WDOSH** -- Washington Division of Occupational Safety and Health

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)