#### THE INTERNATIONAL CADMIUM ASSOCIATION

**REGULATORY UPDATE**

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

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

# NEW DEVELOPMENTS

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

Federal Issues

TSCA Issues

EPA Publishes Final Scope Documents For 20 High-Priority Substances, page 3

EPA’s OCSPP Reorganization Will Include New Risk Evaluation And Risk Management Divisions, page 3

Miscellaneous Issues

CPSC Reviewing Testing And Labeling Regulations Pertaining To Product Certification Of Children’s Products, Including Reliance On Component Part Testing, page 4

ELI Report Looks At Trump Administration’s Impact On Environmental Law And Policy And What Lies Ahead, page 4

EPA’s Temporary Enforcement Policy No Longer In Effect, page 5

State Issues

*Oregon*

ODEQ Proposes To Remove Duplicative Air Rules Regarding CAGM Facilities, page 5

International Issues

Australia

SWA Publishes Resources Intended To Support Transition To GHS 7, page 5

Canada

Canada Announces Support For Minerals And Metals Sector, page 6

Canada Announces Investment In Innovative Technology For Canadian Mining Industry, page 6

China

China Proposes Lower Limits On Metals In FCMs, Including Cadmium, page 7

China Notifies WTO Of Standard To Limit Heavy Metals, Including Cadmium, In Printing Ink, page 7

India

BIS Restricts Heavy Metals, Including Cadmium, In Food Packaging Printing Ink, page 7

Quality Control Order Makes National Toy Standards Mandatory, page 8

India Circulates Fifth Draft Of Draft Chemicals (Management And Safety) Rules, 20XX, page 8

New Zealand

New Zealand Publishes Resources Intended To Provide Farmers Advice On Managing Cadmium, page 8

Thailand

Final Inventory Of Existing Chemicals Includes Cadmium, page 9

Thailand Joins OECD MAD Agreement, page 9

UN

UNEP Announces Global Industry Standard On Tailings Management, page 10

**FEDERAL ISSUES**

**TSCA ISSUES**

**EPA Publishes Final Scope Documents For 20 High-Priority Substances**

On September 4, 2020, EPA [announced](https://www.federalregister.gov/documents/2020/09/04/2020-19671/final-scopes-of-the-risk-evaluations-to-be-conducted-for-twenty-chemical-substances-under-the-toxic) the availability of the final scope documents for the risk evaluations to be conducted under TSCA for the 20 high-priority substances. The scope document for each chemical substance includes the conditions of use, hazards, exposures, and the potentially exposed or susceptible subpopulations that EPA plans to consider in conducting the risk evaluation for the chemical substance. The 20 chemicals consist of seven chlorinated solvents, six phthalates, four flame retardants, formaldehyde, a fragrance additive, and a polymer precursor. As reported in our January 28, 2020, Update, the 20 high-priority substances for risk evaluation do not include **cadmium**.

More information is available in our September 4, 2020, memorandum, “[EPA Publishes Final Scope Documents and List of Manufacturers Subject to Fees for Risk Evaluations of High-Priority Chemicals](https://www.lawbc.com/regulatory-developments/entry/epa-publishes-final-scope-documents-and-list-of-manufacturers-subject-to-fe).”

**EPA’s OCSPP Reorganization Will Include New Risk Evaluation And Risk Management Divisions**

EPA’s OCSPP will be reorganizing at the **end of September 2020**. OCSPP currently consists of OPPT, OPP, and OSCP. According to reporting in *Bloomberg Environmental*, EPA is reorganizing within OPPT and OPP, as well as reorganizing at the OCSPP level. EPA has recently completed its first risk evaluations under TSCA and begun to concentrate on risk management activities. The reorganization reflects this by taking the current risk management divisions, the National Program Chemicals Division and the Chemical Control Division, and the Risk Assessment Division and reorganizing them to focus separately on existing chemicals and new chemicals. More information is available in our September 10, 2020, memorandum, “[EPA’s OCSPP Reorganization Will Include New Risk Evaluation and Risk Management Divisions](https://www.lawbc.com/regulatory-developments/entry/epas-ocspp-reorganization-will-include-new-risk-evaluation-and-risk-managem).”

**MISCELLANEOUS ISSUES**

**CPSC Reviewing Testing And Labeling Regulations Pertaining To Product Certification Of Children’s Products, Including Reliance On Component Part Testing**

CPSC published a [*Federal Register* notice](https://www.federalregister.gov/documents/2020/08/24/2020-16441/regulatory-flexibility-act-section-610-review-of-the-testing-and-labeling-regulations-pertaining-to) on August 24, 2020, announcing that it is conducting a review of the regulations for third-party testing and certification to demonstrate compliance with safety standards for children’s products. Under RFA Section 610, CPSC is required to review within ten years after their issuance regulations that have a significant economic impact on a substantial number of small entities. CPSC promulgated the testing and component part regulations in 2011. CPSC seeks comment to determine whether, consistent with the CPSC's statutory obligations, the regulations should be maintained without change or modified to minimize the significant impact of the rules on a substantial number of small entities. Comments are due **October 23, 2020**.

All toys intended for use by children 12 years of age and under must be third-party tested and certified in a Children’s Product Certificate as compliant to the federal toy safety standard enacted by Congress. The toy safety standard refers to ASTM F963, which includes limits for **cadmium**.

**ELI Report Looks At Trump Administration’s Impact On Environmental Law And Policy And What Lies Ahead**

ELI recently released [*Environment 2021: What Comes Next?*](https://www.eli.org/research-report/environment-2021-where-do-we-go-here), a report that looks at the Trump Administration’s impact on environmental law and policy and what lies ahead. ELI states that the report is “a response to growing demand for analysis of how deregulatory initiatives by the Trump Administration will affect environmental protection, governance, and the rule of law with a focus on what might happen in a second Trump administration or a new administration.” According to ELI, the report:

* Assesses the Trump Administration’s steps to remake federal environmental regulation and redefine the relationships among state and federal environmental decisions;
* Identifies key categories of action affecting environmental regulation and examines some possible future outcomes; and
* Helps environmental practitioners, policymakers, and the public at large think about what lies ahead, looking particularly at the nation’s ability to address new problems and confront as yet unsolved challenges, such as environmental justice.

**EPA’s Temporary Enforcement Policy No Longer In Effect**

EPA issued a [memorandum](https://www.epa.gov/enforcement/covid-19-implications-epas-enforcement-and-compliance-assurance-program-addendum) on June 29, 2020, announcing an “addendum on termination” to its March 26, 2020, COVID-19 [temporary enforcement policy](https://www.epa.gov/enforcement/covid-19-implications-epas-enforcement-and-compliance-assurance-program). The memorandum notes that as states and businesses begin to re-open, there will be a period of adjustment as regulated entities plan how to comply with environmental legal obligations and with public health guidance from CDC and other agencies regarding actions intended to stem the transmission and spread of COVID-19. The memorandum states that “it is now appropriate to expressly include a provision in the temporary policy that covers termination of the temporary policy, and to make such changes to the policy as are needed to reflect the impact of the changing circumstances on facility operations, worker shortages, and other constraints caused by the public health emergency.” The temporary enforcement policy terminated “in its entirety” on **August 31, 2020, at 11:59 p.m. (EDT)**.

**STATE ISSUES**

***Oregon***

**ODEQ Proposes To Remove Duplicative Air Rules Regarding CAGM Facilities**

ODEQ proposed on September 1, 2020, several revisions to its air rules, including proposed revisions to address duplicative rules regarding CAGM facilities. According to ODEQ, rules applicable to CAGM facilities, including limiting raw materials containing **cadmium**, were put into place within Division 244 to address these sources while the Cleaner Air Oregon rules (Division 245) were in development. The final rules adopted in Division 245 establish standards and requirements for CAGM facilities, and the rules within Division 244 are now redundant standards and requirements. According to ODEQ, the removal of the rules from Division 244 does not lessen the requirements for CAGM facilities or allow increases of emissions. ODEQ states that the change is administrative in nature. ODEQ will hold a hearing on **September 29, 2020**. Comments are due **September 30, 2020**.

**INTERNATIONAL ISSUES**

**AUSTRALIA**

**SWA Publishes Resources Intended To Support Transition To GHS 7**

On August 31, 2020, SWA [announced](https://www.safeworkaustralia.gov.au/media-centre/news/resources-support-transition-ghs-7) the availability of new guidance intended to help businesses transition to GHS 7. Australia will begin a two-year transition to the GHS 7 on **January 1, 2021**. To help businesses understand the changes required under GHS 7, SWA states that it has published a dedicated [GHS 7 web page](https://www.safeworkaustralia.gov.au/ghs-7-transition) and suite of information sheets. The information sheets provide details about classification and labeling requirements for workplace hazardous chemicals and the duties of manufacturers, importers, suppliers, and end users. SWA notes that it delayed the transition to GHS from July 1, 2020, to **January 1, 2021**, due to the impact of COVID-19 on Australian businesses. To ensure that businesses that had started to implement GHS 7 are not disadvantaged, work health and safety regulators are allowing importers and manufacturers to classify and label chemicals in accordance with GHS 7 from July 1, 2020, to **January 1, 2021**, ahead of the official transitional period. Suppliers and end users can also supply and use GHS 3 or GHS 7 labeled chemicals during this period.

**CANADA**

**Canada Announces Support For Minerals And Metals Sector**

On July 29, 2020, Natural Resources Canada issued a [press release](https://www.canada.ca/en/natural-resources-canada/news/2020/07/canada-delivers-broad-support-for-the-minerals-and-metals-sector.html) announcing its support for the minerals and metals sector during the COVID-19 pandemic, including “concrete actions” to support the minerals and metals sector, such as the [Canadian Emergency Wage Subsidy](https://www.canada.ca/en/revenue-agency/services/subsidy/emergency-wage-subsidy.html) and [critical bridge financing](https://www.canada.ca/en/department-finance/news/2020/05/government-announces-support-program-for-large-employers-is-open-for-applications.html) for larger companies, as well as [flow-through share flexibility](https://www.canada.ca/en/department-finance/news/2020/07/government-supports-jobs-and-safe-operations-of-junior-mining-exploration.html) for junior exploration companies. The Honorable Seamus O’Regan, Minister of Natural Resources, announced on July 29, 2020, that the government will invest $98 million over five years to renew two flagship geoscience programs led by the Geological Survey of Canada: the [Geo-Mapping for Energy and Minerals Program](https://www.nrcan.gc.ca/science-data/earth-sciences/earth-sciences-resources/earth-sciences-federal-programs/gem-geo-mapping-energy-minerals/about-geo-mapping-energy-minerals-gem-program/21817) and the [Targeted Geoscience Initiative](https://www.nrcan.gc.ca/targeted-geoscience-initiative-increasing-deep-exploration-effectiveness/10907). The Geo-Mapping for Energy and Minerals Program is intended to provide geoscientific knowledge of the “immense untapped resources” in Canada’s North and to inform mineral resource opportunities in the context of a changing climate. The Targeted Geoscience Initiative provides “next-generation geological knowledge and innovative techniques to target deeply buried mineral deposits.”

**Canada Announces Investment In Innovative Technology For Canadian Mining Industry**

Canada [announced](https://www.canada.ca/en/natural-resources-canada/news/2020/09/canada-invests-in-innovative-technology-for-the-canadian-mining-industry.html) on September 17, 2020, a $1.6 million (CAD) investment for the development of an active clay analyzer for the Canadian mining industry. Canada states that the project, led by the [Saskatchewan Research Council](https://www.src.sk.ca/) with Suncor Energy Inc. and the Northern Alberta Institute of Technology as partners, will develop a technology to provide near real-time measurements of the active clay content in oil sands and mine tailings. Project collaborators are also providing in-kind and financial contributions, bringing the overall project value to $2.29 million (CAD). The press release states that the clay analyzer “will assist in near real-time measurements of clay concentrations, which will allow the companies to develop strategies for effective process control and tailings management options that can reduce the use of chemicals, resulting in savings on operations costs and reducing tailing deposit footprints.”

**CHINA**

**China Proposes Lower Limits On Metals In FCMs, Including Cadmium**

As part of a [public consultation](http://www.nhc.gov.cn/sps/s3593/202008/c44ef007064e4aeeaaa5e24bdf9f3bb1.shtml) on 16 national food safety standards, NHC has proposed to revise the standard for metals used in FCMs and articles. The proposed revision would:

* Tighten the restrictions on metal materials used in FCMs, including limits for impurity elements in metal substrates and coating materials, including **cadmium**, and migration indexes of impurity and alloy elements, including for **cadmium**;
* Remove the four percent acetic acid food simulant test method; and
* Add a requirement for inks, adhesives, and coatings used in metal FCMs to comply with existing standards.

Comments are due **October 20, 2020**.

**China Notifies WTO Of Standard To Limit Heavy Metals, Including Cadmium, In Printing Ink**

On September 23, 2020, China notified WTO of a national standard that would limit certain heavy metals in printing ink. According to the notification, the standard would establish maximum limit requirements and sample preparation and determination methods for lead, **cadmium**, mercury, hexavalent chromium, and soluble heavy metals (soluble antimony, soluble arsenic, soluble barium, **soluble cadmium**, soluble chromium, soluble lead, soluble mercury, and soluble selenium) in printing inks. China did not provide a proposed date of adoption or a proposed date of entry into force.

**INDIA**

**BIS Restricts Heavy Metals, Including Cadmium, In Food Packaging Printing Ink**

Under a revised standard that came into effect on July 25, 2020, BIS has banned the use of certain plasticizers, phthalates, heavy metals, and solvents in food packaging printing ink. The standard restricts pigments and compounds based on antimony, **cadmium**, arsenic, chromium, lead, mercury, and selenium. According to a member communication issued by the All India Printing Ink Manufacturers’ Association, “[i]nk manufacturers are required to make every effort with their supply chain to ensure that impurities are kept to a minimum.”

**Quality Control Order Makes National Toy Standards Mandatory**

Under a quality control order issued by the Department of Promotion of Industry and Internal Trade, companies manufacturing or importing toys intended for children under 14 years must comply with seven existing national standards. Toys that do not conform were banned from sale beginning September 1, 2020. The standards include:

* Mechanical and physical properties -- IS 9873 (Part 1 -- 2019);
* Flammability -- IS 9873 (Part 2 -- 2017);
* Migration of certain elements -- IS 9873 (Part 3 -- 2017);
* Finger paints -- IS 9873 (Part 7 -- 2017);
* Slides, swings, and similar activity toys for outdoor and indoor domestic use -- IS 9873 (Part 4 -- 2017);
* Certain phthalate esters in toys and children’s products -- IS 9873 (Part 9 -- 2017); and
* Safety of electric toys -- IS 5644 -- 2006, reaffirmed in 2016).

**India Circulates Fifth Draft Of Draft Chemicals (Management And Safety) Rules, 20XX**

In September 2020, the government circulated a [fifth draft of the Chemicals (Management and Safety) Rules, 20XX](https://www.lawbc.com/uploads/docs/NEW_OCR_draft__07092020.pdf) to certain industry groups. The Schedule II list of priority substances to be registered includes **cadmium** and a number of **cadmium compounds**. Under the fifth draft, the 750 priority substances imported in volumes above one tonne annually would have to be registered within 18 months of the Rules coming into effect. Part II of Schedule X still includes **cadmium oxide** and **cadmium stearate**. More information on the third and fourth draft of the Chemicals (Management and Safety) Rules, 20XX is available in our March 28, 2020, Update.

**NEW ZEALAND**

**New Zealand Publishes Resources Intended To Provide Farmers Advice On Managing Cadmium**

In 2020, the Cadmium Management Group produced a series of fact sheets and guidance intended to provide growers and farmers advice on managing **cadmium** in New Zealand:

* [Fact sheet -- Managing **cadmium** in food crops in New Zealand](https://www.mpi.govt.nz/dmsdocument/41250-Managing-Cadmium-in-food-crops-in-New-Zealand-Fact-sheet);
* [Fact sheet -- Managing **cadmium** in leafy green crops in New Zealand](https://www.mpi.govt.nz/dmsdocument/41256-Managing-Cadmium-in-leafy-green-crops-in-New-Zealand-Fact-sheet);
* [Fact sheet -- Managing **cadmium** in onion crops in New Zealand](https://www.mpi.govt.nz/dmsdocument/41259-Managing-cadmium-in-onion-crops-in-New-Zealand-Fact-sheet);
* [Fact sheet -- Managing **cadmium** in potato crops in New Zealand](https://www.mpi.govt.nz/dmsdocument/41262-Managing-cadmium-in-potato-crops-in-New-Zealand-Fact-sheet);
* [Fact sheet -- Managing **cadmium** in wheat and cereal crops in New Zealand](https://www.mpi.govt.nz/dmsdocument/41265-Managing-cadmium-in-wheat-and-cereal-crops-in-New-Zealand-Fact-sheet);
* [Fact sheet -- Managing **cadmium** in grazing farm systems in New Zealand](https://www.mpi.govt.nz/dmsdocument/41253-Managing-cadmium-in-grazing-farm-systems-in-New-Zealand);
* [Guide -- Managing **cadmium** in food crops in New Zealand](https://www.mpi.govt.nz/dmsdocument/41244-Guide-Managing-cadmium-in-food-crops-in-New-Zealand); and
* [Guide -- Managing **cadmium** in grazing farm systems in New Zealand](https://www.mpi.govt.nz/dmsdocument/41247-Guide-Managing-cadmium-in-grazing-farm-systems-in-New-Zealand).

The Cadmium Management Group was formed from the Cadmium Working Group, which ran from 2006 to 2009. Members include representatives from the fertilizer industry, grower sector groups, industry organizations, research organizations, regional councils, and central government.

**THAILAND**

**Final Inventory Of Existing Chemicals Includes Cadmium**

DIW has launched an [inventory of existing chemicals](http://inventory.diw.go.th/hazardous61/index.php). The inventory, which includes over 11,000 chemicals that are manufactured, processed, or imported in Thailand, can be searched by chemical name, molecular formula, hazardous substance category, chemical group, GHS hazard classification, and CAS number. The inventory includes only chemicals under the authority of MOI. The inventory consists of chemicals listed in Annexes 5.1 to 5.5 of the List of Hazardous Substances, as well as chemicals that have been notified/declared to DIW/MOI and added to Annex 5.6 (List 5.6 Notification Framework). **Cadmium** is included on the inventory.

Chemicals not listed on the final inventory are considered new chemicals. DIW’s preliminary existing chemicals inventory included only data collected from 2012 to 2015. It had approximately 16,000 chemical substances.

**Thailand Joins OECD MAD Agreement**

OECD [announced](http://www.oecd.org/chemicalsafety/thailand-joins-oecd-agreement-on-mutual-acceptance-of-chemical-safety-data.htm) on September 7, 2020, that Thailand has joined the OECD MAD system, “ensuring that its non-clinical safety data related to the protection of human health and the environment will be accepted by all 44 countries adhering to MAD.” OECD states that participation in the MAD system requires that testing be carried out using OECD standards for test methods and data quality. Governments verify laboratory compliance using OECD procedures. At present, all 37 OECD countries, as well as Argentina, Brazil, India, Malaysia, Singapore, South Africa, and Thailand, adhere to the system.

**UN**

**UNEP Announces Global Industry Standard On Tailings Management**

UNEP [announced](https://www.unenvironment.org/news-and-stories/press-release/new-global-industry-standard-tailings-management-aims-improve-safety) on August 5, 2020, the launch of a [Global Industry Standard on Tailings Management (the Standard)](https://www.unenvironment.org/resources/report/global-industry-standard-tailings-management), establishing “the first global standard on tailings management that can be applied to existing and future tailings facilities, wherever they are and whoever operates them.**” T**he Standard covers the entire tailings facility lifecycle, from site selection, design, and construction, through management and monitoring, to closure and post-closure. UNEP states that the Standard “significantly raises the bar for the industry to achieve strong social, environmental and technical outcomes.” The Standard elevates accountability to the “highest organisational levels,” adds new requirements for independent oversight, and establishes clear expectations around global transparency and disclosure requirements.

The Standard was developed through the [Global Tailings Review](https://globaltailingsreview.org/), an independent process co-convened in March 2019 by UNEP, PRI, and ICMM. The co-conveners have each endorsed it and call for its broad and effective implementation across the industry:

* UNEP will support governments that wish to incorporate and build upon this Standard into their national or state legislation and policies;
* PRI, representing $103.4 trillion (USD) in assets under management, will be developing investor expectations to support all mining companies in implementing the Standard; and
* ICMM member companies will implement the Standard as a commitment of membership, which includes robust site-level validation and third-party assessments.

\* \* \* \* \*

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

**CAGM** -- Colored Art Glass Manufacturing

**CAS** -- Chemical Abstracts Service

**CPSC** -- Consumer Product Safety Commission

**DIW** -- Department of Industrial Works

**ELI** -- Environmental Law Institute

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

**FCM** -- Food Contact Material

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

**ICdA** -- International Cadmium Association

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

**MAD** -- Mutual Acceptance of Data

**MOI** -- Ministry of Industry

**NHC** -- National Health Commission

**OCSPP** -- Office of Chemical Safety and Pollution Prevention

**ODEQ** -- Department of Environmental Quality

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

**OPP** -- Office of Pesticide Programs

**OPPT** -- Office of Pollution Prevention and Toxics

**OSCP** -- Office of Science Coordination and Policy

**PRI** -- Principles for Responsible Investment

**RFA** -- Regulatory Flexibility Act

**SWA** -- Safe Work Australia

**TSCA** -- Toxic Substances Control Act

**UN** -- United Nations

**UNEP** -- United Nations Environment Program

**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)