#### THE INTERNATIONAL CADMIUM ASSOCIATION

**REGULATORY UPDATE**

**November 28, 2017**[[1]](#footnote-1)

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***Bergeson & Campbell, P.C. extends its best wishes to our clients and many friends and we wish you and your family a happy, healthy, and peaceful New Year. As we have for many years, the firm has made a contribution to the House of Ruth, a shelter for battered women and their children, in lieu of gifts to our clients, and on our clients’ behalf.***

# NEW DEVELOPMENTS

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**FEDERAL ISSUES**

**CERCLA ISSUES**

**EPA On Track To Issue Final Rule Regarding Financial Responsibility Requirements For Hardrock Mining Industry**

According to Barry Breen, Acting Assistant Administrator of EPA’s Office of Land and Emergency Management, EPA is on track to meet a **December 1, 2017**, court deadline to issue a final rule concerning financial responsibility requirements for the hardrock mining sector. Barnes Johnson, Director of EPA’s Office of Resource Conservation and Recovery, stated that the rule is “on schedule” and EPA Administrator Scott Pruitt is expected to sign the rule on or before **December 1, 2017**. Breen and Johnson made their comments at the annual meeting of the Association of State and Territorial Solid Waste Management Officials. According to Johnson, there are “lots of conversations going on . . . within EPA, and there’ll soon be interagency conversations going on related to the final rule.” Breen and Johnson did not provide any details regarding whether and how the final rule will address criticism from the Trump Administration, other agencies, GOP lawmakers, and industry associations. In a March 2017 budget document, EPA called for barring the use of Superfund remediation funds in FY **2018** to “finalize or enforce” the proposed rule “as the rule is currently written.” On November 2, 2017, EPA submitted a final rule to OMB for review. The January 11, 2017, proposed rule includes a table, for illustration purposes, of examples of commodities that EPA expects are subject to the proposed rule. The table includes **cadmium**. More information regarding the January 11, 2017, proposed rule is available in our January 28, 2017, Update.

**EPCRA ISSUES**

**EPA Withdraws Direct Final Rule Regarding 2017 NAICS Codes For TRI Reporting**

EPA published a November 14, 2017, *Federal Register* [notice](https://www.federalregister.gov/documents/2017/11/14/2017-24633/community-right-to-know-adopting-2017-north-american-industry-classification-system-naics-codes-for) withdrawing its August 17, 2017, direct final rule regarding updating the list of NAICS codes subject to reporting under the TRI to reflect the OMB 2017 NAICS code revision. As reported in our September 28, 2017, Update, on August 17, 2017, EPA published proposed and direct final rules. EPA stated that it would withdraw the direct final rule if it received adverse comment. According to the November 14, 2017, *Federal Register* notice, EPA received a relevant adverse comment on the proposed update, and will proceed with a final rule based on the proposed rule after considering all public comments. Comments on the proposed rule were due September 18, 2017. More information regarding the proposed rule is available in our September 28, 2017, Update.

**MINING AND MINERAL ISSUES**

**MSHA Proposes To Amend Final Rule On Examinations Of Working Places In Metal And Nonmetal Mines**

On September 12, 2017, MSHA published a proposed rule regarding the January 23, 2017, final rule requiring an examination of the working place 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 proposed rule would amend the final rule to allow the examination of the working place as miners begin work in that place, and to require that the examination record include descriptions of adverse conditions that are not corrected promptly and the dates of corrective action for these conditions. According to MSHA, the proposed rule would provide mine operators additional flexibility in managing their safety and health programs and reduce regulatory burdens without reducing the protections afforded miners. Comments were due November 12, 2017.

**House Committee Chair Requests Secretaries Perdue And Zinke To Examine “Politically Motivated Mineral Withdrawals”**

On September 28, 2017, Representative Rob Bishop (R-UT), Chair of the House Committee on Natural Resources, sent a [letter](https://naturalresources.house.gov/newsroom/documentsingle.aspx?DocumentID=402964) to Agriculture Secretary Perdue and Interior Secretary Zinke concerning the Obama Administration’s withdrawal of millions of acres for federal lands from mineral access “due to false premises of environmental protectionism and the intentional misuse of statutory authority.” According to Bishop, “in the waning hours of the prior administration, an order was published in the *Federal Register* withdrawing over 100,000 acres of Forest Service and Bureau of Land Management lands from mineral entry for 20 years.” Bishop asks Perdue and Zinke “to conduct a comprehensive and expedited review of all mineral withdrawals executed in the past eight years to determine those of merit and those whose purpose served only to block appropriate development under [the Federal Lands Policy Management Act].”

**EPA’s Smart Sectors Program Holds First Meeting, Includes Mining Sector**

EPA’s Smart Sectors, “a partnership program between the Agency and regulated sectors focused on achieving better environmental outcomes,” held its first meeting on October 3, 2017. EPA’s October 3, 2017, [press release](https://www.epa.gov/newsreleases/epa-launches-smart-sectors-program) states: “The Smart Sectors program is designed to effectively engage business partners throughout the regulatory process. . . . When industries and regulators better understand each other, the economy, public, and the environment all benefit.” According to the press release, a sector-based approach “can provide benefits, such as: increased long-term certainty and predictability, creative solutions based on sound data; and, more sensible policies to improve environmental protection.” Smart Sectors will collaborate with 13 specific sectors, including agriculture, autos, chemical manufacturing, mining, oil, and utilities. According to EPA’s [fact sheet](https://www.epa.gov/sites/production/files/2017-09/documents/ssp_factsheet-final-508.pdf), program leads for each sector will:

* Serve as ombudsmen within EPA across program offices;
* Conduct educational site tours and host roundtables with EPA leadership;
* Analyze data and information and advise on forward-thinking options for environmental improvement;
* Maintain meaningful, open dialogue with trade association partners and their environmental committees; and
* Develop reports that profile the impact of each sector on the economy and the environment.

**MSHA Stays Effective Date Of Final Rule Concerning Standards For Examination Of Working Places In Metal And Nonmetal Mines**

On October 5, 2017, MSHA stayed the effective date of its January 23, 2017, final rule that amended standards for examination of working places in metal and nonmetal mines to **June 2, 2018**. MSHA also reinstated the provisions of the working place examinations standards that were in effect as of October 1, 2017. MSHA states that the stay and reinstatement offers additional time for MSHA to provide stakeholders training and compliance assistance.

**TSCA ISSUES**

**EPA Provides Opportunity For Public Input On Approaches To Reduce Burden Association With Reporting Inorganic Byproducts**

On October 12, 2017, EPA published a *Federal Register* notice “providing an opportunity for the public to offer input about approaches that would reduce burden associated with the reporting of inorganic byproducts while maintaining the Agency’s ability to receive the information it needs to understand exposure.” As reported in our September 28, 2017, Update, during the September 13-14, 2017, meeting of the Negotiated Rulemaking Committee, Committee members agreed that they would be unable to reach a consensus recommendation on a strategy for EPA to reduce CDR requirements for inorganic byproducts. Comments are due **December 11, 2017**. If EPA determines that the CDR rule needs to be updated, it will propose changes by **May 2018**.

**EPA Proposes Reporting Requirements For TSCA Mercury Inventory**

EPA published on October 26, 2017, a [proposed rule](https://www.federalregister.gov/d/2017-23225) regarding reporting requirements for applicable persons to provide information to assist in the preparation of an “inventory of mercury supply, use, and trade in the United States,” where “mercury” is defined as “elemental mercury” and “a mercury compound.” EPA proposes that supply, use, and trade of mercury include reporting requirements for activities comparable to established TSCA terms: manufacture, import, distribution in commerce, storage, and export. The reporting requirements also would apply to otherwise intentional use of mercury in a manufacturing process. Persons who manufacture (including import) mercury or mercury-added products, or otherwise intentionally use mercury in a manufacturing process, would report amounts of mercury in pounds used in such activities during a designated reporting year. Reporters also would identify specific mercury compounds, mercury-added products, manufacturing processes, and how mercury is used in manufacturing processes, as applicable, from pre-selected lists. For certain activities, reporters would provide additional, contextual data (*e.g*., country(ies) of origin/destination for imports/exports and NAICS codes for mercury or mercury-added products distributed in commerce). EPA states that the proposed reporting requirements would not apply to persons engaged in the generation, handling, or management of mercury-containing waste, unless that person manufactures or recovers mercury in the management of that waste with the intent to use the recovered mercury or store it for use. In addition, persons engaged in trade (*e.g*., brokering, selling wholesale, shipping, warehousing, repackaging, or retail sale), but who do not first manufacture mercury or mercury-added products, or otherwise intentionally use mercury in a manufacturing process, would not be required to report. Finally, in an effort to avoid reporting that is unnecessary or duplicative, EPA proposes certain exemptions for persons who already report for mercury and mercury-added products to the CDR and the Interstate Mercury Education and Reduction Clearinghouse. The list of potentially affected entities includes all other metal ore mining (NAICS Code 212299); nonferrous metal (except aluminum) smelting and refining (NAICS Code 331410); and secondary smelting, refining, and alloying of nonferrous metal (except copper and aluminum) (NAICS Code 331492). Based on the inventory of information collected, TSCA Section 8(b)(10)(D) directs EPA to “identify any manufacturing processes or products that intentionally add mercury; and . . . recommend actions, including proposed revisions of Federal law or regulations, to achieve further reductions in mercury use.” Comments are due **December 26, 2017**. More information is available in B&C’s November 27, 2017, memorandum, “[December 26, 2017, Deadline Approaching for Comments on EPA’s Proposed Reporting Requirements for TSCA Mercury Inventory](http://www.lawbc.com/regulatory-developments/entry/december-26-2017-deadline-approaching-for-comments-on-epas-proposed-reporti).”

**EPA Will Hold Meetings To Discuss Amended TSCA Implementation Activities**

EPA will hold [two meetings to discuss TSCA implementation activities](https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/meetings-and-webinars-amended-toxic-substances-control). The first meeting, on **December 6, 2017**, is to update and engage with the public on EPA’s progress in implementing changes to the New Chemicals Review Program as a result of the 2016 amendments to TSCA, including discussion of EPA’s draft New Chemicals Decision-Making Framework. EPA will describe its review process for new chemical substances under new TSCA, and interested parties will have the opportunity to provide input and to ask questions. EPA plans to use the feedback it receives from the public meeting and written comments to improve policy and processes relating to the review of new chemicals under TSCA. The second meeting on **December 11, 2017**, will focus on possible approaches for identifying potential candidate chemical substances for EPA’s prioritization process under TSCA. As amended, TSCA required that EPA establish processes for prioritizing and evaluating risks from existing chemical substances. EPA will describe and take comment on a number of possible approaches that could guide EPA in the identification of potential candidate chemical substances for prioritization. Online requests to participate in either meeting must be received by **December 5, 2017**. EPA will allow on-site registration, but states that seating and speaking priority will be given to those who pre-register by the deadline. Written comments regarding the New Chemicals Review Program are due **January 20, 2018**. Written comments concerning approaches for identifying potential candidates for prioritization are due **January 25, 2018**.

**MISCELLANEOUS ISSUES**

**Clean Label Project Publishes White Paper On Contaminants In Infant Formula And Baby Food**

Clean Label Project published in October 2017 a white paper entitled “[The War on Contaminants: The Case for Infant Formula and Baby Food](http://www.cleanlabelproject.org/app/uploads/clp-white-paper_baby.pdf).” The paper presents the results of “the largest study of its kind on nutritional/ingredient superiority and industrial and environmental contaminants in America’s best selling infant formula and baby food.” Clean Label Project measured over 130 contaminants, including heavy metals, including **cadmium**, pesticides, melamine and its analogues, antibiotic-residues, BPA and its analogue BPS, antibiotics, and acrylamides. According to [Clean Label Project](http://www.cleanlabelproject.org/product-ratings/infant-formula-baby-food/), 58 percent of baby food products tested had detectable levels of **cadmium**, and soy-based infant formulas had on average seven times more **cadmium** than other formulas.

**CPSC Proposes To Exempt Certain EWPs From Third Party Testing**

On October 13, 2017, CPSC published a [proposed rule](https://www.federalregister.gov/documents/2017/10/13/2017-21980/childrens-products-childrens-toys-and-child-care-articles-determinations-regarding-lead-astm-f963) to determine that certain untreated and unfinished EWPs, specifically, particleboard, hardwood plywood, and medium-density fiberboard, made from virgin wood or pre-consumer waste wood would not contain lead, the ASTM F963 elements, or specified phthalates that exceed the limits set forth under CPSC’s statutes for children’s products, children’s toys, and child care articles. Based on the proposed determinations, the specified EWPs would not be required to have third party testing for compliance with the requirements for lead, ASTM F963 elements, or phthalates for children’s products, children’s toys, and child care articles. ASTM F963 Section 4.3.5 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 eight elements, including **cadmium**. The solubility limit for **cadmium** is 75 ppm. CPSC refers to the eight elements as the ASTM F963 elements. Comments are due **December 27, 2017**.

**CPSC Scheduled To Vote On Proposed Revision Of ATSM F963 Standard**

On November 21, 2017, the CPSC was scheduled to vote on a proposed revision of the ATSM F963 mandatory toy standard. Under CPSIA Section 106(g), ASTM F963-17 will be considered a consumer product safety standard issued by CPSC unless CPSC notifies ASTM that it has determined that the proposed revision does not improve safety. CPSC must decide by **November 30, 2017**, whether to allow ASTM F963-17 to go into effect. If CPSC allows ASTM F963-17 to become the new mandatory standard, it would become effective on **February 28, 2018**. In the CPSC [briefing package](https://www.cpsc.gov/s3fs-public/Proposed%20Revision%20of%20ASTM%20F963%20Mandatory%20Toy%20Standard%20-%20November%2015%202017.pdf?Rqy8BAU21cW2qoESRe_DSqkDknOpDtBq), staff recommends that CPSC allow ASTM F963-17 to become the CPSC mandatory standard, with the exception of exemption language in Section 8.20.1.5(5). Staff also recommends that the Commission publish a direct final rule amending the toy standard at 16 C.F.R. Part 1250 to update the reference to ASTM F963, and amend the notice of requirements in 16 C.F.R. Part 1112 to reflect the revisions in ASTM F963.

**EPA Issues Directive To End “Sue And Settle” Lawsuits**

On October 16, 2017, EPA Administrator Scott Pruitt issued a directive designed to end “sue and settle” practices within EPA, “providing an unprecedented level of public participation and transparency in EPA consent decrees and settlement agreements.” According to EPA’s October 16, 2017, [press release](https://www.epa.gov/newsreleases/administrator-pruitt-issues-directive-end-epa-sue-settle), EPA is sued by an outside party that asks the court to compel EPA to take certain steps, either through change in a statutory duty or enforcing timelines set by the law, and then EPA will acquiesce through a consent decree or settlement agreement, affecting EPA’s obligations under the statute. The press release states: “Oftentimes, these agreements are reached with little to no public input or transparency. That is regulation through litigation, and it is inconsistent with the authority that Congress has granted and the responsibility to operate in an open and fair manner.” The directive ensures EPA increase transparency, improve public engagement, and provide accountability to the American public when considering a settlement agreement or consent decree by:

1. Publishing any notices of intent to sue EPA within 15 days of receiving the notice;

2. Publishing any complaints or petitions for review in regard to an environmental law, regulation, or rule in which EPA is a defendant or respondent in federal court within 15 days of receipt;

3. Reaching out to and including any states and/or regulated entities affected by potential settlements or consent decrees;

4. Publishing a list of consent decrees and settlement agreements that govern EPA actions within 30 days, along with any attorney fees paid, and update it within 15 days of any new consent decree or settlement agreement;

5. Expressly forbidding the practice of entering into any consent decrees that exceed the authority of the courts;

6. Excluding attorney’s fees and litigation costs when settling with those suing EPA;

7. Providing sufficient time to issue or modify proposed and final rules, take, and consider public comment; and

8. Publishing any proposed or modified consent decrees and settlements for 30-day public comment, and providing a public hearing on a proposed consent decree or settlement when requested.

**EPA Directive Intends To Ensure Independence, Geographic Diversity, And Integrity In Scientific Committees**

EPA Administrator Scott Pruitt [issued](https://www.epa.gov/newsreleases/administrator-pruitt-issues-directive-ensure-independence-geographic-diversity) on October 31, 2017, a directive intended to ensure that any advisors serving on an EPA FAC “are independent and free from any real, apparent, or potential interference with their ability to objectively serve as a committee member.” According to EPA’s press release, based on EPA calculations, in the last three years, members of three of EPA’s 22 FACs -- SAB, CASAC, BOSC -- received upwards of $77 million in direct EPA grant funding while concurrently serving on these committees. Pruitt also announced his plan to appoint new leadership and new members to SAB, CASAC, and BOSC. The press release states that, “[i]n the spirit of cooperative federalism,” he intends to appoint members that will significantly increase geographic diversity and state, tribal, and local government participation on the committees. The directive focuses on the importance of the following areas pertaining to EPA FACs:

1. Strengthen Member Independence: Members shall be independent from EPA, which shall include a requirement that no member of an EPA FAC be currently in receipt of EPA grants, either as principal investigator or co-investigator, or in a position that otherwise would reap substantial direct benefit from an EPA grant. This principle shall not apply to state, tribal or local government agency recipients of EPA grants;

2. Increase State, Tribal, and Local Government Participation: In the spirit of cooperative federalism and recognition of the unique experience of state, tribal, and local government officials, committee balance should reflect prominent participation from state, tribal and local governments. Such participation should be appropriate for the committee’s purpose and function;

3. Enhance Geographic Diversity: Given the range of environmental and public health considerations across the country, membership should be balanced with individuals from different states and EPA regions. Emphasis should be given to individuals from historically unrepresented or underrepresented states and regions; and

4. Promote Fresh Perspectives: To encourage and promote the inclusion of new candidates with fresh perspectives and to avoid prolonged and continuous service, membership should be rotated regularly.

**STATE ISSUES**

***California***

**CDTSC Seeks Public Input On 2018-2020 Priority Product Work Plan**

On October 6, 2017, CDTSC announced that it is working on its **2018-2020** Priority Product Work Plan and [is seeking public input](https://calsafer.dtsc.ca.gov/Comments/PackageDetail.aspx?PID=11871). The Priority Product Work Plan identifies and describes the product categories that CDTSC will evaluate during the three-year period covered by the Work Plan. CDTSC invites interested parties to submit recommendations or comments regarding the new Work Plan. Recommendations may include, but are not limited to, product categories to consider for the new Work Plan and product categories from the [2015-2017 Priority Product Work Plan](http://dtsc.ca.gov/SCP/upload/PriorityProductWorkPlan_2015.pdf) that CDTSC should consider carrying over into the **2018-2020** Work Plan. In making any recommendation regarding the Work Plan, CDTSC requests certain specific supporting documentation where available, including, but not limited to:

* A description of the product category under consideration and examples of specific products that fall within the category;
* A description of any Candidate Chemical(s) contained in the product category if known (CDTSC may only designate those products that contain a candidate chemical as Priority Products); and
* Any information supporting the recommendation to consider a product category for the Work Plan (*e.g*., hazard information for chemicals contained in the product category, exposure information, sales volume for the product category in California, and availability of alternatives).

**Cadmium** and **cadmium compounds** are [Candidate Chemicals](https://calsafer.dtsc.ca.gov/chemical/search.aspx). The product categories in the 2015-2017 Priority Product Work Plan are:

* Beauty/Personal Care/Hygiene;
* Building Products: Painting Products, Adhesives, Sealants, and Flooring;
* Household/Office Furniture/Furnishings with Perfluorochemicals or Flame Retardants;
* Cleaning Products;
* Clothing;
* Fishing and Angling Equipment; and
* Office Machinery Consumable Products.

Comments were due November 6, 2017.

***Minnesota***

**Minnesota Identifies And Recalls Jewelry Containing Cadmium**

On November 22, 2017, MDH announced that three children’s jewelry products containing “toxic levels of **cadmium**” were recalled in November 2017 as the result of a joint investigation by MDC, MDH, and MPCA to enforce Minnesota’s Safe Toys Act. According to the press release, MDC, MDH, and MPCA established the Chemicals in Products Interagency Team to enforce the law and encourage industry compliance. The Interagency Team launched a pilot investigation to identify children’s jewelry sold in Minnesota that may pose a health hazard due to toxic chemicals. MPCA bought 89 children’s jewelry products, both in store and online. Laboratory testing identified three products with extremely high levels of **cadmium**. The press release states that the three children’s jewelry products were purchased from independent retailers on Amazon.com. MDC notified the retailers that the products posed a toxic hazard to children and violated Minnesota law. The companies voluntarily issued recalls and provided refunds to Minnesota consumers. Amazon removed the online product listings and cooperated with the investigation. The continuing investigation is focused on identifying the manufacturers and other retailers that may be selling the products. The press release notes that “[s]ome companies now use **cadmium** as a low-cost substitute for lead, which is highly restricted in children’s products. But **cadmium** exposure is associated with delayed brain development, kidney and bone damage, and cancer. Babies and young children are at particular risk because they often bite, chew or suck on toys and other objects.” The agencies prepared a fact sheet on the “[Toy Safety Act: Enforcement Action and Consumer Tips](http://links.govdelivery.com/track?type=click&enid=ZWFzPTEmbXNpZD0mYXVpZD0mbWFpbGluZ2lkPTIwMTcxMTIyLjgxMzQxMzAxJm1lc3NhZ2VpZD1NREItUFJELUJVTC0yMDE3MTEyMi44MTM0MTMwMSZkYXRhYmFzZWlkPTEwMDEmc2VyaWFsPTE2OTY3NzgxJmVtYWlsaWQ9Y2h1dHRvbkBsYXdiYy5jb20mdXNlcmlkPWNodXR0b25AbGF3YmMuY29tJnRhcmdldGlkPSZmbD0mZXh0cmE9TXVsdGl2YXJpYXRlSWQ9JiYm&&&100&&&http://mn.gov/commerce-stat/pdfs/toxic-toys.pdf),” and MDH has prepared a fact sheet about [lead and **cadmium** in children’s jewelry](http://links.govdelivery.com/track?type=click&enid=ZWFzPTEmbXNpZD0mYXVpZD0mbWFpbGluZ2lkPTIwMTcxMTIyLjgxMzQxMzAxJm1lc3NhZ2VpZD1NREItUFJELUJVTC0yMDE3MTEyMi44MTM0MTMwMSZkYXRhYmFzZWlkPTEwMDEmc2VyaWFsPTE2OTY3NzgxJmVtYWlsaWQ9Y2h1dHRvbkBsYXdiYy5jb20mdXNlcmlkPWNodXR0b25AbGF3YmMuY29tJnRhcmdldGlkPSZmbD0mZXh0cmE9TXVsdGl2YXJpYXRlSWQ9JiYm&&&101&&&http://www.health.state.mn.us/divs/eh/hazardous/topics/toxfreekids/childrensjewelry.pdf).

***New York***

**Albany And Suffolk Counties Begin Enforcing Toxic Free Toys Acts**

On November 1, 2017, the Toxic Free Toys Act entered into force in both Albany and Suffolk Counties. While the Act has the same name in each county, each Act has different requirements. Under the [Toxic Free Toys Act](http://www.albanycounty.com/Libraries/Department_of_Health/Toxic_Free_Toys_Act_Regulations.sflb.ashx) in Albany, the surface-coating materials on children’s products and children’s apparel not covered by specified federal legislation may not contain antimony, arsenic, **cadmium**, lead, and/or mercury of which the metal content of the soluble material is in excess of the levels specified. For accessible substrate materials, the migration of antimony, arsenic, **cadmium**, and/or mercury from toys and parts of toys cannot exceed the limits specified as calculated pursuant to ASTM F963. The maximum level for **cadmium** is 75 ppm. Under the Suffolk County [Toxic Free Toys Act](https://apps2.suffolkcountyny.gov/legislature/resos/resos2017/i1682-17.pdf), effective November 1, 2017, no retailer shall knowingly distribute, sell, or offer for sale a children’s product containing lead, mercury, antimony, arsenic, or **cadmium** in amounts exceeding the limits in federal law. The limit for **cadmium** is 75 ppm of accessible content. As previously reported, the Safe to Play Coalition challenged both Acts, arguing that each violated the supremacy clause and the New York Constitution.

***Oregon***

**Draft Cleaner Air Oregon Rules Available for Comment, Would Set TRV For Cadmium**

On October 20, 2017, ODEQ and OHA began a public comment period on the [proposed Cleaner Air Oregon rules](http://www.oregon.gov/deq/Rulemaking%20Docs/cao-pn-Div245.pdf). According to ODEQ, the proposed rules would close gaps in Oregon’s existing air quality rules by:

* Requiring companies to report air toxics: Companies would be required to report use of 600 heavy metals, chemicals, and other pollutants to state regulators. The list, in [Table 2](http://www.oregon.gov/deq/Rulemaking%20Docs/cao-pn-Div245tables.pdf), includes **cadmium**. The current rules do not require companies to report air toxics emissions to regulators;
* Requiring risk assessments: The proposed rules would set risk limits for 260 industrial air toxics. [Table 3](http://www.oregon.gov/deq/Rulemaking%20Docs/cao-pn-Div245tables.pdf) includes the following TRVs for **cadmium**:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Chemical** | **TRVs** | | | | | |
| **Cadmium** | **Chronic Cancer** | | **Chronic Noncancer** | | **Acute Noncancer** | |
| **(µg/m3)** | **Notes** | **(µg/m3)** | **Notes** | **(µg/m3)** | **Notes** |
| 0.00060 | A2 | 0.010 | T | 0.030 | S |

A2 -- ODEQ Air Toxics Science Advisory Committee, second review period, 2014-2017

S -- ODEQ short-term guideline concentration

T -- ATSDR

Table 4 includes the following adjustment factors for risk-based concentrations for **cadmium**:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Chronic Cancer** | | | | **Chronic Noncancer** | |
| **Early Life** | | **Multipathway** | | **Multipathway** | |
| **Resident ELAFr** | **Non-Resident ELAFnr** | **Resident MPAFrc** | **Non-Resident MPAFnrc** | **Resident MPAFrnc** | **Non-Resident MPAFnrnc** |
| -- | -- | 1.0 | 1.0 | 2.0 | 1.2 |

Table 5 includes the following RBCs for **cadmium**:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Residential Chronic** | | **Non-Residential Chronic** | | | | **Acute** |
| **Cancer RBC** | **Non-Cancer RBC** | **Child Cancer RBC** | **Child Non-Cancer RBC** | **Worker Cancer RBC** | **Worker Non-Cancer RBC** | **Non-Cancer RBC** |
| **(µg/m3)** | **(µg/m3)** | **(µg/m3)** | **(µg/m3)** | **(µg/m3)** | **(µg/m3)** | **(µg/m3)** |
| 0.00060 | 0.0050 | 0.015 | 0.035 | 0.0072 | 0.035 | 0.030 |

New and existing industrial facilities would be required to calculate the risks their emissions pose to people who live nearby and report their results to state regulators. Risk calculations would consider health problems (*e.g*., cancer, birth defects, nerve damage, nausea, breathing problems, rashes) from short- and long-term exposures. Under current rules, health risks to neighbors are not considered in setting use limits for air toxics; and

* Reducing risk: The new rules tie air quality permits and enforcement to the levels of potentially harmful air toxics a facility emits into the air and the impact they could have on the health of neighbors. Companies would be required to act if the levels of air toxics they emit exceed health safety limits. The current rules do not allow regulators to use health risks to neighbors to decide whether to grant permits to factories and other sources of air toxics.

ODEQ states that the proposed Cleaner Air Oregon rules were drafted to provide businesses with predictable and flexible air quality rules, allowing Oregon industries to remain competitive in a global economy. Oregon will hold six public hearings about the proposed rules. Comments are due **December 22, 2017**.

***Washington***

**WDOE Amends Children’s Safe Products Reporting Rule, Including List Of Chemicals Of High Concern To Children**

On September 29, 2017, WDOE amended the [Children’s Safe Products Reporting Rule](http://www.ecy.wa.gov/programs/hwtr/laws_rules/CSP_ReportingRule/1608docs.html). The amendments:

* Add 20 chemicals to the list of chemicals of high concern to children based on new scientific data;
* Remove three chemicals from the list of chemicals of high concern to children based on revised scientific data;
* Change a group of nonylphenols in the list of chemicals of high concern to children into three individual listings;
* Set an annual reporting date of January 31 to be more consistent with reporting in Oregon; and
* Made other minor amendments.

The updated Rule took effect October 31, 2017. Manufacturers must report on the presence of the 85 chemicals of high concern to children in their children’s products. The list of chemicals of high concern to children includes **cadmium** and **cadmium compounds**. WDOE will host webinars and provide technical assistance for manufacturers, retailers, and related associations.

**WDOE Will Test School Supply Products For Lead And Cadmium**

WDOE published in October 2017 an [addendum to the QAPP on phthalates and metals in children’s products](https://fortress.wa.gov/ecy/publications/SummaryPages/1703114.html). According to the addendum, at the request of the Washington State Attorney General’s Office, WDOE will investigate lead and **cadmium** levels in products that appear to be marketed to children 12 years of age or younger and are promoted as school supplies, “specifically pursuing pencil pouches/cases and book cover materials.” The addendum states that WDOE will collect at least 60 products of this type in fall 2017, screen the product components using X-Ray fluorescence, and send 60 samples for analysis of lead and **cadmium**. WDOE will submit a technical memorandum describing the results and data quality to the Washington State Attorney General’s Office at the end of the study in **early 2018**.

**INTERNATIONAL ISSUES**

**CANADA**

**Government Intends To Modernize And Improve CEPA**

On October 6, 2017, Minister of Environment and Climate Change Catherine McKenna sent a [letter](http://www.ourcommons.ca/content/Committee/421/ENVI/GovResponse/RP9148698/421_ENVI_Rpt08_GR/421_ENVI_Rpt08_GR-e.pdf) to the House Standing Committee on Environment and Sustainable Development, responding to the Committee’s report, [*Healthy Environment, Healthy Canadians, Healthy Economy: Strengthening the Canadian Environmental Protection Act, 1999*](http://www.ourcommons.ca/Content/Committee/421/ENVI/Reports/RP9037962/envirp08/envirp08-e.pdf). According to the letter, the government agrees that changes are necessary to modernize and improve CEPA. The letter states that the government will consider each of the report’s recommendations and respond by **June 2018** with a report on actions taken, and to be taken, in response to the Committee’s proposals. The government commits to examining potential amendments to CEPA and publishing a detailed report explaining its overall approach to improving implementation of CEPA to provide environmental and health protection as effectively as possible. The letter notes that the government is on track to meet the CMP’s goal of completing assessments for the 4,300 chemical substances in commerce that were identified as needing assessment by the categorization process that finished in 2006. According to the letter, in parallel with the review of CEPA, the government is consulting a broad range of stakeholders to determine what the focus of chemicals management should be in the **post-2020** period.

**Health Canada Proposes To Amend HPR To Allow Use Of Prescribed Concentration Ranges On SDSs**

On October 21, 2017, Health Canada published a notice in the *Canada Gazette* proposing to amend HPR to provide industry with the option to use prescribed concentration ranges rather than actual chemical ingredient concentrations or concentration ranges on SDSs for hazardous workplace products in Canada rather than requiring CBI applications under HMIRA. The prescribed concentration ranges would be spelled out directly in HPR. The concentrations and concentration ranges of ingredients in the product that present a health hazard could be disclosed on the SDS as either:

* The actual concentration or actual concentration range of the material or substance in the hazardous product; or
* One of the following prescribed concentration ranges within which the actual concentration or actual concentration range of the material or substance in the hazardous product falls:

(a) From 0.1 to 1 percent;

(b) From 0.5 to 1.5 percent;

(c) From 1 to 5 percent;

(d) From 3 to 7 percent;

(e) From 5 to 10 percent;

(f) From 7 to 13 percent;

(g) From 10 to 30 percent;

(h) From 15 to 40 percent;

(i) From 30 to 60 percent;

(j) From 45 to 70 percent;

(k) From 60 to 80 percent;

(l) From 65 to 85 percent; and

(m) From 80 to 100 percent.

In addition, if the actual concentration range falls between 0.1 and 30 percent and does not fit entirely into one of the prescribed concentration ranges of (a) to (g), a single range created by the combination of up to three applicable consecutive ranges between (a) and (g) could be disclosed instead, provided that the combined concentration range does not include any range that falls entirely outside the actual concentration range in which the ingredient is present in the hazardous product. The amendment would require any supplier who uses a prescribed concentration range to protect from disclosure the actual concentration or concentration range to provide immediately following that prescribed range a statement to the effect that the actual concentration or concentration range is being withheld as a trade secret. Publication of the notice began a 30-day comment period.

**Health Canada Publishes Notice Of Intent For Possible HMIRA And HPA Amendments**

Health Canada published a [notice](http://www.gazette.gc.ca/rp-pr/p1/2017/2017-10-21/html/notice-avis-eng.php#ne9) in the October 21, 2017, *Canada Gazette* seeking written comments on questions relating to possible HMIRA amendments and the exclusion for consumer products under HPA. The notices states that the following two issues related to the HPA and HMIRA have been raised during conversations with stakeholders:

(1) Whether the chemical names, CAS numbers, and any unique identifiers of carcinogens, mutagens, reproductive toxicants, and respiratory sensitizers should be able to be claimed as CBI under the HMIRA; and

(2) Whether the HPA exclusion for consumer products should be amended so that, for consumer products intended for use, handling, or storage in workplaces, hazard information through labels and SDSs would be required under the HPA.

Health Canada states that the notice of intent is an opportunity for the public to provide early comments and input into the proposal to amend HMIRA and HPA to address the issue of CBI for carcinogens, mutagens, reproductive toxicants, and respiratory sensitizers and the provision of hazard information for consumer products. According to Health Canada, some items to consider would be if changes regarding these two issues would have any effect, both positively or negatively, on trade, business requirements, training obligations, health and safety in the workplace, and the ability to meet obligations as an employer or supplier. Interested parties (including chemical manufacturers and distributors, employers, workers, provincial, territorial, and municipal governments, interested groups, and the general public) may, until **November 20, 2017**, provide comments.

**CHINA**

**China Notifies WTO Of RoHS2 Compliance Management Catalog**

In October 2017, MIIT notified WTO of its RoHS2 [compliance management catalog](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=239434&CurrentCatalogueIdIndex=0&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True) and [exemption list](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=239434&CurrentCatalogueIdIndex=0&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True). The catalog lists 12 product types that must comply with the hazardous substance restrictions in GB/T26572 2011:

* Refrigerators;
* Air conditioners;
* Washing machines;
* Electric water heaters;
* Printers;
* Photocopiers;
* Fax machines;
* Televisions;
* Monitors;
* Microcomputers;
* Mobile communication devices; and
* Telephones.

The exemption list contains details of 39 products or component parts that are exempt from the hazardous substance restrictions, and their limits if applicable. As reported in our January 28, 2016, Update, on January 21, 2016, MIIT announced RoHS2, which entered into force on July 1, 2016. RoHS2 restricts the following substances in electrical and electronic products:

* **Cadmium and compounds**, 0.01 percent;
* Mercury and compounds, 0.1 percent;
* Lead and compounds, 0.1 percent;
* Hexavalent chromium and compounds, 0.1 percent;
* PBBs, 0.1 percent; and
* PBDEs, 0.1 percent.

**Rice Contaminated With Cadmium Blamed On Polluted Soil**

On November 10, 2017, the Jiujiang government announced that, in response to an open letter about rice contaminated with **cadmium** in Jiujiang, it began an investigation and collected the contaminated rice. According to a public notice prepared by environmentalists and posted online, the contaminated rice was found in two houses in two different villages. The notice states that the soil the villagers used for planting has excessive amounts of **cadmium**, and some abandoned farmland is contaminated at even higher levels. The notice attributes the contaminated soil to sulfur, gold, and copper mines on Dingjia Mountain that were owned by the Jiujiang Mining and Smelting Co. The environmentalists claim waste water from the mines flowed through the village. In August 2017, the local government told the company that it had to cease operations and hired a third party to investigate the pollution.

**China Will Conduct Second National Census Of Pollution Sources**

China announced that it will begin the second national census of pollution sources on **December 31, 2017**. The census aims to investigate work units and individual enterprises that are sources of pollution. The scope of the investigation involves industrial, agricultural, and domestic pollution sources, centralized pollution control facilities, mobile sources, and other facilities that produce pollutants:

* Industrial pollution sources (including all industrial work units that produce wastewater, waste gas, and solid waste): Basic enterprises’ status; raw material consumption and production; facilities that produce pollution; the generation, control, emission, and use of pollutants; and the constructions and operations of pollution control facilities.
* In industrial wastewater: Chemical oxygen demand, ammonia nitrogen, total nitrogen, total phosphorus, petroleum, volatile phenol, cyanide, mercury, **cadmium**, lead, chromium, and arsenic;
* In industrial waste gas: Sulfur dioxide, nitrogen oxides, particulate matter, volatile organic compounds, ammonia, mercury, **cadmium**, lead, chromium, and arsenic; and
* General industrial solid waste and hazardous waste are included;
* For agricultural pollution sources: Disposal and resource use of the waste straw; the usage of chemical fertilizers, pesticides, and membrane; current status, pollution control and waste resource use of livestock and poultry breeding companies and farmers who have been registered in the investigation:
* In wastewater: Chemical oxygen demand (only required for livestock and poultry breeding and aquaculture), ammonia nitrogen, total nitrogen, and total phosphorus; and
* In waste gas: Ammonia (in planting and livestock and poultry breeding) and volatile organic compound;
* For centralized pollution control sites (including work units that dispose of household waste, hazardous waste, and wastewater): Basic information of work units, facilities’ capacity of pollution control, disposals of wastewater and solid waste, and generation, disposal, and emission of secondary pollutants:
* In wastewater: Chemical oxygen demand, ammonia nitrogen, total nitrogen, total phosphorus, five days biochemical oxygen demand, animal and vegetable oil, volatile phenol, cyanide, mercury, **cadmium**, lead, chromium, and arsenic;
* In waste gas: Sulfur dioxide, nitrogen oxides, particulate matter, mercury, **cadmium**, lead, chromium, and arsenic; and
* There will also be an examination of the generation, storage, and disposal of sewage sludge, waste incineration residues, and fly ash; and
* For mobile sources (including agricultural and construction machines): The holdings of the mobile source and emission-related information, volatile organic compound (exclude ships), nitrogen oxide and particulate emission, and sulfur dioxide emission (for some types of mobile sources only).

**TAIWAN**

**Taiwan FDA Intends To Lower Residue Limit For Cadmium In Cosmetics**

On October 2, 2017, Taiwan FDA [notified](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=239142&CurrentCatalogueIdIndex=0&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True) WTO of a draft regulation concerning the residue limit for **cadmium** contained in cosmetics. The draft regulation would lower the maximum level of **cadmium** from 20 ppm to five ppm. Taiwan FDA’s WTO notification does not include an implementation date.

**VIETNAM**

**Vietnam Publishes Decree Regarding New Chemical Law**

On October 9, 2017, the Vietnam Chemicals Agency [announced](http://luatvietnam.vn/default.aspx?tabid=651&id=43D8FAE6-45A5-4BD0-89BB-42BD1E1DC5BC&rurl=%2fVL%2f662%2fNghi-dinh-1132017NDCP-cua-Chinh-phu-ve-viec-quy-dinh-chi-tiet-va-huong-dan-thi-hanh-mot-so-dieu-cua-%2f43D8FAE6-45A5-4BD0-89BB-42BD1E1DC5BC%2fdefault.a) the availability of [Decree No. 113/2017/ND-CP](https://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Nghi-dinh-113-2017-ND-CP-huong-dan-Luat-hoa-chat-346246.aspx) Specifying and Providing Guidelines for Implementation of Certain Articles of the Law on Chemicals. The new Law on Chemicals will replace the 2007 Chemical Law as implemented via Decree 108/2008/ND-CP. The Decree addresses:

* General requirements to ensure safety in producing and trading chemicals;
* Requirements for chemicals subject to conditional manufacture or trade;
* Conditions for producing and trading industrial precursors;
* Requirements for restricted industrial chemicals;
* Requirements for banned and toxic chemicals;
* Requirements for chemicals requiring chemical incident prevention and response plans;
* Safe distance for dangerous chemical facilities;
* Classification of chemicals and SDSs;
* Requirements for chemicals subject to declaration; and
* Chemical safety training.

The Decree includes the following appendices:

* Appendix I: List of chemicals subject to conditional production or import, which includes:
* **Cadmium selenide**; and
* **Cadmium telluride**;
* Appendix II: List of chemicals restricted from production or trade, which includes:
* **Cadmium**;
* **Cadmium chloride**;
* **Cadmium fluoride**;
* **Cadmium oxide**;
* **Cadmium sulfide**; and
* **Cadmium fluoroborate**;
* Appendix III: List of prohibited chemicals;
* Appendix IV: List of hazardous chemicals requiring prevention plans and response measures:
* Appendix V: List of chemicals that must be declared, which includes:
* **Cadmium**;
* **Cadmium chloride**;
* **Cadmium fluoride**;
* **Cadmium oxide**;
* **Cadmium selenide**;
* **Cadmium sulfide**;
* **Cadmium fluoroborate**; and
* **Cadmium telluride**.

Decree No. 113/2017/ND-CP took effect November 25, 2017.

\* \* \* \* \*

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

**µg/m3** -- Microgram Per Cubic Meter

**ATSDR** -- Agency for Toxic Substances and Disease Registry

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

**BOSC** -- Board of Scientific Counselors

**BPA** -- Bisphenol A

**BPS** -- Bisphenol S

**CAS** -- Chemical Abstracts Service

**CASAC** -- Clean Air Scientific Advisory Committee

**CBI** -- Confidential Business Information

**CDR** -- Chemical Data Reporting

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

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

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

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

**CMP** -- Chemicals Management Plan

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

**CPSIA** -- Consumer Product Safety Improvement Act of 2008

**ELAFnr** -- Early-Life Adjustment Factor, Nonresidential (Unitless)

**ELAFr** -- Early-Life Adjustment Factor, Residential (Unitless)

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

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

**EWP** -- Engineered Wood Product

**FAC** -- Federal Advisory Committee

**FY** -- Fiscal Year

**GOP** -- Grand Old Party

**HMIRA** -- Hazardous Material Information Review Act

**HPA** -- Hazardous Products Act

**HPR** -- Hazardous Products Regulations

**ICdA** -- International Cadmium Association

**MDC** -- Minnesota Department of Commerce

**MDH** -- Minnesota Department of Health

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

**MPAFnrc** -- Multipathway Adjustment Factor, Nonresident Cancer (Unitless)

**MPAFrc** -- Multipathway Adjustment Factor, Resident Cancer (Unitless)

**MPAFnrnc** -- Multipathway Adjustment Factor, Nonresident Noncancer (Unitless)

**MPAFrnc** -- Multipathway Adjustment Factor, Resident Noncancer (Unitless)

**MPCA** -- Minnesota Pollution Control Agency

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

**NAICS** -- North American Industry Classification System

**ODEQ** -- Oregon Department of Environmental Quality

**OHA** -- Oregon Health Authority

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

**PBB** -- Polybrominated Biphenyl

**PBDE** -- Polybrominated Diphenyl Ether

**ppm** -- Part Per Million

**QAPP** -- Quality Assurance Project Plan

**RBC** -- Risk-Based Concentration

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

**SAB** -- Science Advisory Board

**SDS** -- Safety Data Sheet

**Taiwan FDA** -- Taiwan Food and Drug Administration

**TRI** -- Toxics Release Inventory

**TRV** -- Toxicity Reference Value

**TSCA** -- Toxic Substances Control Act

**WDOE** -- Washington Department of Ecology

**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)