

## ALERTS AND UPDATES

### Cadmium Products Now in Crosshairs of Federal and State Legislators

April 9, 2010

With lead banned in children's products by the Consumer Product Safety Improvement Act of 2008 (CPSIA), many American politicians, regulators and consumer groups are now calling for a ban on cadmium, another toxic metal that has been used in consumer products. Cadmium is a soft, bluish-white, natural metal with a very-low melting point. It has been used in batteries and jewelry, as well as in coatings on consumer products. Various studies have concluded that it is toxic and that certain exposure levels can lead to significant health problems. As a result, the use of cadmium has been on the decline in recent years. However, with the recent lead ban, it has been reported that some non-U.S. manufacturers in the last two years have turned to cadmium as a replacement for lead.

Cadmium is strictly regulated in the European Union. In the United States, the laws addressing cadmium are not as comprehensive. Only one federal statute deals with its use in consumer products, and this law—in place since 2008 as part of the CPSIA—only bans its use in coatings for children's toys. This toy-coatings ban is enforced by the Consumer Product Safety Commission (CPSC). No particular CPSC federal statute bans the use of cadmium in other consumer products, including children's products such as jewelry. The CPSC has a general enforcement statute in place, known as the Federal Hazardous Substances Act (FHSA), which theoretically permits it to ban products containing "hazardous substances." Because it can be challenging to initiate enforcement actions under the FHSA, it is rare for the CPSC to use the FHSA to ban specific products. A few states, including California (Proposition 65 warning required) and Washington, have laws in place that address cadmium in consumer products and a few other states have laws in place that address cadmium in product packaging, but the majority of states presently do not have cadmium laws. As a result, few legal barriers prevent products containing cadmium from being sold and imported into the United States. However, this may all soon change.

In early 2010, testing was conducted on various pieces of children's jewelry imported from China. The testing detected high levels of cadmium in some of the jewelry, and a subsequent Associated Press news article noted the dearth of U.S. restrictions on the use of cadmium. As a result, many consumer groups and politicians are calling for additional cadmium-banning legislation. Legislation proposing a ban on cadmium in children's jewelry was introduced earlier this year in the U.S. Senate and House of Representatives. Similar legislation for cadmium in children's jewelry and other children's products was introduced in various states this year, including California, Connecticut, Florida, Illinois, Minnesota, Mississippi, New Jersey and New York. The CPSC also initiated an investigation into cadmium, and its chairman, Inez Tenenbaum, has "highly" encouraged children's product manufacturers not to use cadmium and also warned parents not to allow young children to play with cheap metal jewelry. Moreover, this spring saw the first two CPSC cadmium-related recalls.

Thus, with the recent intense focus on cadmium and the claim that its use by non-U.S. manufacturers may be on the upswing, those involved with consumer products, including manufacturers, importers, wholesalers and dealers may want to evaluate their products in relation to cadmium. Although present laws are somewhat limited regarding cadmium, this may change in the future.

## **For Further Information**

If you have questions about this *Alert* or would like more information, please contact [Robert B. Hopkins](#), [Paul S. Rosenlund](#), [Andrew E. Mishkin](#), [Sharon L. Caffrey](#), [Karen Shichman Crawford](#), any other [member](#) of the [Products Liability and Toxic Torts Practice Group](#) or the attorney in the firm with whom you are regularly in contact.