

CLIENT ALERT

EPA Reverses Course and Promises to Withdraw TSCA Section 8(d) Cadmium Rule

Dec.14.2012

By email dated December 14, 2012, the Environmental Protection Agency (EPA) withdrew its controversial direct final rule requiring the reporting of existing and unpublished health and safety data for cadmium and cadmium compounds used in consumer products pursuant to section 8(d) of the Toxic Substances Control Act (TSCA). In its email, EPA admitted that "there is significant confusion and uncertainty within certain industrial sectors concerning the rule." EPA went on to indicate that it "will withdraw the immediate final rule and will sign a Federal Register notice announcing this decision no later than the January 2, 2013, effective date of the immediate final." EPA will be considering the questions and concerns raised in response to the immediate final rule and next steps with regard to this rule.

Several concerns that have been expressed about the rule involve its scope. The rule was aimed at manufacturers and importers of *articles* which, by itself is unusual under TSCA; it encompassed articles well beyond those that might present an exposure risk during normal and foreseeable use; it would have applied to applied to *any* consumer product for use in a home or school, not just children's products and metal jewelry; and it would have applied to a broad range of industries that are not typically covered under Section 8(d), including manufacturers, importers and retailers of consumer electronics, home furnishings, apparel and more. Moreover, the economic analysis EPA prepared in support of the rule failed to address the economic costs to importers of the articles (*i.e.*, consumer products) covered by the rule; it only examined costs to manufacturers and importers of basic chemicals. The withdrawal is a significant change in course and particularly important given the precedent setting nature of the rule's impact on consumer product regulation.

EPA stated in its announcement today that it "will also continue to work with the Consumer Product Safety Commission (CPSC) to reduce exposure to cadmium in consumer products generally, and especially those consumer products used by or around children, such as children's metal jewelry." The CPSC has been particularly diligent in avoiding the application of its chemical regulations to inaccessible parts of consumer products and focusing its attention based on the risk of exposure such as the risk of harm presented by ingestible components of children's toys and metal jewelry.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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