Save the Date!
The FJATA Annual Conference is April 15th-16th 2015 at Foxwoods!

GAO Conducted a Review of the CPSC’s Response to New and Emerging Risks.

The Government Accountability Office (GAO) asked FJATA to participate in a study July 16th to build upon GAO’s work about the authorities CPSC devotes to voluntary standards to identify and respond to consumer product safety hazards. Sheila Millar, FJATA Corporate Counsel, and Brent Cleaveland, FJATA Executive Director, participated in the call with 5 GAO staffers.

The GAO is mandated to conduct a study of the CPSC’s ability to respond quickly to emerging consumer product safety hazards. Specifically, the mandate requires the GAO to report to congressional appropriations committees on the results of the study including an assessment of whether (1) CPSC requires any additional authorities to respond to new and emerging consumer product safety hazards in a timely manner; and (2) any resources would be required to implement such additional authorities and achieve appropriate remedies for emerging safety hazards. The purpose was to obtain a variety of perspectives on CPSC’s authorities.

We advised the GAO staff that the CPSC has more than adequate authority under CPSA, FHSA, FFA and other statutes, as well as, its ability to review information submitted to the CPSC public database, which it can utilize to identify new and emerging risks affecting the public. The agency is set up to work with, not against, manufacturers and importers to ensure that safe products are sold. Any enhancements to this system should promote a more collaborative stance.

The one area where we suggested potential improvements could be considered is to make clear that official recognition by CPSC of a voluntary standard establishes a presumption of safety that would avoid unnecessary state regulation. CPSC has the ability to promote adherence to voluntary standards that it has found to be adequate and widely followed to state governments, but has not actively advocated in this area, citing limits on staff time and resources. Taking a more active stance, promoting support for an approved standard, like the children’s jewelry standard, especially one where the CPSC was so active in providing the scientific foundation, would go a long way to convincing state legislators to conform to a CPSC-accepted standard.

Environmentalists have latched onto a concept known as the “Precautionary Principle,” which posits that regulation may be based on assumed risk without clear scientific justification of hazard. The GAO asked for our opinion on formalizing this principle in CPSC decision-making. We stated that it would be disastrous for the CPSC to adopt this strategy as an agency and for the country. Regulatory decisions must be based on a sound scientific foundation to meet the needs
of protecting the public and establishing confidence by the regulated community that decisions are fair and appropriate. FJATA will continue to oppose reflexive bans that simply react to the media story of the day, while promoting scientifically justified, risk-based standards.

**Connecticut:** Now that HB 5305 has been signed by the Governor, work has begun by the task force that will eventually be recommending changes to the Connecticut 75ppm total cadmium in children’s jewelry statute, which would have been effective July 1 if the bill had not delayed the effective date for 2 years. The first meeting of this focus group, on July 23 established the scope and rules for future meetings. There was quite a lively discussion about the appointment of two industry leaders, Anthony DeGeorge and Brent Cleaveland, which was questioned by Rep. Diana Urban; the discussion caught media attention.

The second committee meeting July 31, 2014 at the Legislative Office Building in Hartford, Connecticut, was also open to the public and televised. This meeting had Skyped testimony from Alan Kaufman, Senior Vice President of the Toy Industry Association, who explained how the development of the children’s jewelry standard cadmium limit used the same methodology as the mandatory toy standard. He explained the ASTM process and stated that there was a diversified group that participated in the development of all facets of the standard.

The meeting continued with Skyped testimony from Professor Weidenhamer, Professor of Chemistry at Ashland University, who is on sabbatical in Spain. After presenting a recap of his cadmium research he accepted questions from the committee. It was revealed that his samples were obtained in 2008, years before the standard was started and the CPSC tests were completed. The average cadmium total content of his samples was 391,000ppm, or 39.1%. He also tested the entire item in one test, without separating component parts, like paint and rhinestones, which does not follow established protocol. All that being said, it came down to 1 issue: His concern is that it would be possible for a component to have 391,000ppm total cadmium content and be plated so well that it does not migrate more than the 200ug limit in the ASTM standard. Therefore the item would be compliant with the standard while allegedly containing dangerous amounts of cadmium.

The CPSC has already answered his concern (in a conference call), stating that their 24 hour test is abrasive enough to determine if exposure would be hazardous, and found his petition not persuasive. The next jewelry task force meeting is scheduled for August 7 and will be an opportunity for committee members to weigh in with their perspective.

See more at: [http://www.fjata.org/active-legislation-2/#sthash.JS8gh9JP.dpuf](http://www.fjata.org/active-legislation-2/#sthash.JS8gh9JP.dpuf)

**Maine Sets Deadline for Reporting Certain Chemicals in Children’s Products, Proposes Adding 4 Phthalates:**
Maine’s Department of Environmental Protection (DEP) adopted rules designating arsenic, cadmium, and mercury as priority chemicals with a reporting deadline of November 28, 2014 (see the arsenic designation [here](http://www.fjata.org/active-legislation-2/#sthash.JS8gh9JP.dpuf), the cadmium designation [here](http://www.fjata.org/active-legislation-2/#sthash.JS8gh9JP.dpuf), and mercury designation [here](http://www.fjata.org/active-legislation-2/#sthash.JS8gh9JP.dpuf)). These chemicals must be reported at levels above the practical quantification threshold if the substances have been intentionally added to a children’s product.

Unlike reporting in Washington State, an alternatives assessment is required if a priority chemical is intentionally added to a children’s product. If the chemicals are only present as a contaminant, reports are required if the level is above 100 ppm. A company may not need to report if it can demonstrate to DEP’s satisfaction that a system of manufacturing controls is in place to minimize the contamination. However, we anticipate that, as with Washington, the
state’s expectation of a manufacturing control program will require a level of detailed controls at
the manufacturing facility, steps likely not within the control of FJATA members.

This is only the latest step in the implementation of Maine’s Green Chemistry statute, known as
the Toxic Chemicals in Children’s Products Law. With Vermont recently joining the list of
states adopting such laws, a proliferation of splintered, expensive state regulations that add
administrative burdens to businesses without providing safety benefits to consumers continues.

Also, Maine’s DEP is proposing to designate four phthalates as priority chemicals: DEHP, DBP, BBP, and DEP. The
Maine DEP held a public hearing on the proposed
designations on July 29, and comments are due by September
29, 2014. Designation of a substance as a priority chemical
triggers reporting requirements and a mandatory assessment
of the availability, cost, and performance of safe alternatives,
as noted above. If the chemicals are only present as a
contaminant, reports are required if the chemical is present in amounts above 100 ppm, but an
alternatives assessment is not.

The CPSIA permanently banned three of Maine’s proposed phthalates in toys; however, the
recent CHAP report finds the fourth phthalate designated by Maine, DEP, is not a health risk to
children from consumer products. While children’s jewelry, apparel, and accessories were not
covered by the CPSIA phthalate ban, these phthalates that were have generally been removed
from the supply chain for children’s products already. With the issuance of CPSC’s phthalates
report, and action by Maine, the landscape for use of chemicals in products continues to be more
complex. The added costs and administrative burdens of the growing number of Green
Chemistry laws is one of the key reasons FJATA strongly supports reform of the federal Toxic
Substances Control Act.

New York: In his End of Session Report, FJATA New York lobbyist,
Tom Faist, describes how FJATA was once again successful in
promoting the Comprehensive Children’s Jewelry Safety Act in the
Senate, where the bill, S. 3947-A, passed 53-6 this past June. As has
been the case in recent years, Assy. Sweeney, who has introduced
several bills to regulate toxics in consumer products, used his position
as Chair of the Assembly Environmental Conservation Committee to keep the FJATA Model
Bill back and get his on the fast track. The good news: Sweeney is not running for reelection,
and the Assembly Sponsor of the FJATA Bill, A. 5970-A, Assy. Englebright, may become the
new Chair. 2015 may be the year when a second state will approve the ASTM F2923-11
Children's Jewelry Safety Standard and build momentum toward national harmonization. More
good news: no competing bills passed in the Senate.

FJATA’s Memorandum of Support for A.5970-A (companion to S.3947-A) is available here.

Federal News & Information:

T-TIP: Talks in the 6th round of the Transatlantic Trade and Investment Partnership talks
between the US and the European Union concluded on July 18. According to a Statement from
US Trade Representative Froman, progress was made in several areas, including regulatory
harmonization. In light of developments regarding Toxic Substances Control Act (TSCA)
reform, results could prove substantive (revising bill language, delaying any agreement).
The European Commission website reports that standards "mutual recognition" is not "feasible", because the two regulatory regimes are so different. However, there are four areas within which improved cooperation is seen as possible:

1. prioritizing assessment of existing chemicals;
2. chemical classification through Global Harmonized Code system;
3. share information on emerging issues;
4. align more closely in rules for “confidential business information” and establish protocols for horizontal data sharing.

The Office of the USTR reports similar objectives: reduce unnecessary Technical Barriers to Trade, such as through EU recognition of international standards used by US companies and opening a channel to mediate issues. Other objectives include regulatory transparency from both sides and regulatory harmonization where possible.

CHAP Phthalates Report: The Chronic Hazard Advisory Panel (CHAP) created pursuant to the CPSIA released its final report on phthalate toxicity on July 18. The CPSIA charged the panel with evaluating the permanent bans on three phthalates (BBP, DBP, and DEHP), interim bans on three further phthalates (DINP, DIDP, and DNOP), and other phthalates and phthalate alternatives as appropriate. The panel was to assess the health effects of phthalates on children. The report recommends:

- maintaining the existing permanent bans;
- making permanent the interim ban on DINP;
- lifting the interim bans on DNOP and DIDP;
- introducing a new permanent ban on DIBP, DPENP, DHEXP, and DCHP; and
- introducing a new interim ban on DIOP.

Immediately after the release of the report, the American Chemistry Council (ACC) issued a statement asking that the CPSC refrain from any notice until after providing for public comment. The CPSC is required to promulgate final rules on the interim-banned phthalates and related matters 180 days after receiving the report, which would be January 14, 2015. Any decision by CPSC both to lift the ban on DNOP and DIDP will not directly affect FJATA members, since the phthalates limits only apply to toys and childcare articles. FIATA recently testified at the CPSC’s workshop on reducing the burdens of third-party testing to support the use of sound scientific judgment to stop needless testing for phthalates where they are not necessary, including supporting a Shore hardness measure to identify rigid plastics not likely to contain any plasticizers or phthalates.

CPSC Nominations: The Senate confirmed Elliot Kaye as Chairman and Joseph Mohorovic as Commissioner on July 28th, 2014. They have now been sworn in. Robert Adler has been nominated for an additional term as a Commissioner but a vote on his 2nd term is not expected until after the August break. The CPSC will now have a full roster with 5 commissioners and a 3-person Democratic majority.

CPSC Schedules Workshop on Amendments to Certificate Rule: The CPSC has responded to an industry coalition request and will hold a workshop September 18 at its Bethesda headquarters on its Notice of Proposed Rulemaking (NPR) on the 1110, or certificates of compliance, rule. The coalition letter, on which FJATA was a signatory, requested
a forum within which industry could discuss implications to the supply chain from the Commission proposal to introduce new Risk Assessment Methodology (RAM) user fees and data submission requirements per its 1110 Rule NPR. FJATA had previously submitted comments to the CPSC detailing concerns with the changes outlined in the NPR, specifically citing concerns over electronic filing with U.S. Customs and Border Patrol (CBP) requirements for regulated products, and private labeler requirements to issue certificates even if they are not the best positioned party to issue such certifications.

However, the workshop will not be a forum to discuss user fees, a key concern the industry coalition had expressed. CPSC plans to respond to stakeholder concerns with proposed user fees, should they be approved through Congress, by means of Border Interagency Executive Council’s External Engagement Committee engagement.

**CPSC 2015 Priorities:** CPSC held a public hearing July 24 to request stakeholder input into its agenda and priorities for FY 2015 and/or 2016. Commenting were several consumer organizations, the Toy Industry Association (TIA), and the National Retail Federation (NRF). The consumer groups spoke in support of infant product registration initiatives the Commission has undertaken, expanding window covering regulations, and other ways to improve children’s product safety.

The TIA and NRF both spoke positively about the new cooperative efforts between the CPSC and Customs and Border Protection (CBP) in managing shipments. The NRF also said that the CPSC should minimize resource allocation to revising existing rules that are adequately serving their intended purpose, in particular noting that changes to rules on voluntary recalls, certificates of compliance, and information disclosure will do little to promote product safety.

FJATA and other trade associations have repeatedly related the need for the CPSC to find ways to reduce 3rd party testing burdens, an agenda item they will receive an additional $1 million to pursue should the current GSA bill be approved.

**Cause of Action CPSC Challenge:** Cause of Action, an independent government accountability organization, has submitted a letter to the CPSC Inspector General demanding an investigation into abuse and waste they claim was committed by the CPSC in the Buckyballs case. Cause of Action alleges the CPSC misrepresented its case, took punitive action against Craig Zucker for exercising his 1st Amendment rights, and neglected its obligations under the Freedom of Information Act (FOIA) and Information Quality Act (IQA).

The misrepresentation allegation considers that each of two amended complaints submitted to the Administrative Law Judge (ALJ) were said to have been approved by the Commission, although no record of Commission action was recorded for the period in question. Further, the letter contends that, as other have noted, application of the Responsible Corporate Office Doctrine (or Park Doctrine) in this case is incorrect, since there was no applicable rule or regulation that Zucker had contravened.

Interestingly, Cause of Action’s document argues that usual CSPC action when recalling a product from a dissolved corporate entity is to advise consumers to discard the product. Would you guess that providing purchasers an opportunity to collect $20 from Mr. Zucker was more or less costly than putting on a few network TV spots?
**Made in the USA: FTC Dings Company Peddling False Seals.** The Federal Trade Commission (FTC) has issued a proposed consent agreement with a company that it alleged was selling “Made in the USA” seals without actually verifying that claims were true. The team at Keller and Heckman highlights the decision [here](#), and also provides a reminder about how California courts have interpreted California law on Made in the USA claims.

**FJATA Association News:**

**Member Spotlight: Ballet Jewels**

"FJATA Member [Ballet Jewels](#) has been serving wholesale customers for over 60 years. That kind of longevity doesn't come easily in the fashion jewelry industry and it is Ballet's commitment to quality, trend, and timeless designs that have helped drive their success. As “Best in Class,” there are few things more important than quality control and compliance: the Ballet China office performs in-line testing, certification, and compliance, which are critical - especially when working with women's and children's products destined for the U.S. market. As a private label supplier, Ballet partners with the country’s largest retailers to create and position products aligned with each brand’s unique market niche. Visit the [Ballet Jewels website](#) to learn more."

**The FJATA CSR Committee:** The committee has taken a giant step forward, under the direction of Chairman David Newman, VP Operations, Carolee, and hosted its first webinar, July 29th, focused on educating the industry on this available option for reducing the cost of factory audits, a costly and often painful process for many members. Please feel free to distribute this to all interested stakeholders. The link to the recorded presentation is here: [https://www4.gotomeeting.com/register/942964775](https://www4.gotomeeting.com/register/942964775). You will be asked to enter your email and start the recording. The presentation describes the program and details the benefits.

We have long needed a solution to the costly, ineffective, and disorganized way the jewelry industry currently satisfies social compliance audit requirements. The conduct of the companies who make our products inevitably reflects on our brand identity and that of our customers. Currently, factories often undergo multiple disruptive and costly audits to establish adherence to virtually the same ethical standards in each case. Redundant audits result in greater costs without any added benefit. FJATA, recognizes the inefficiency of this and proposes this solution:

*To develop a comprehensive audit that will include requirements from a broad spectrum of retailers, brands, and stakeholders. The FJATA has partnered with the global compliance service provider, Sumerra, to develop, administer and manage the program.*

**It is not too late to have a seat at the table! Join the FJATA CSR Committee.** Be a part of shaping the audit process and ensure that your interests are included. To join contact: David Newman [dnewman@caroleeworld.com](mailto:dnewman@caroleeworld.com) or Brent [bcleaveland@fjata.org](mailto:bcleaveland@fjata.org).
Continuing Education, Webinars and Publications:

CMRC Training

The Conflict Minerals Resource Center (CMRC) is a resource for companies that wish to improve their ability to respond to the Dodd-Frank Section 1502 conflict minerals provisions. 7 major industry associations worked together with the premier conflict minerals law firm, Schulte Roth and Zabel LLP, and a leading cloud-based risk management company, Source Intelligence, to develop the tool. With the information gained from the 2013 reporting, the CMRC has issued a Press Release on the launch of a new training module to benefit users from that experience.

Our Mission- We continue to assume the leadership role in legislative issues and the establishment of internationally recognized, sensible standards for the jewelry and accessories industries on behalf of our members.

FJATA Committees:
The Annual Meeting Committee is chaired by Keith Barber, jkeithbarber@gmail.com
The CSR Committee is chaired by David Newman, dnewman@caroleeworld.com.
The Membership Benefits Committee is chaired by Keith Barber, keith@rainbowsalesinc.com.
The Legislative Committee is chaired by Anthony DeGeorge, adegeorge@faf.com.

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