

September 5, 2018

U.S. Consumer Product Safety Commission
Office of the Secretary
Room 8204
330 East-West Highway
Bethesda, MD 20814

RE: Recall Effectiveness: Announcement of Request for Information Regarding the Use of Direct Notice and Targeted Notices During Recalls, Docket Number CPSC 2017-0027-0002

Dear Madam Secretary:

The Retail Industry Leaders Association (RILA) appreciates the opportunity to provide feedback to the U.S. Consumer Product Safety Commission (CPSC) with regards to its published request for information (RFI) on recall effectiveness. By way of background, RILA's members include the largest and most innovative retailers. The retail industry employs over 42 million Americans and accounts for \$1.5 trillion in annual sales. RILA members strive to provide American consumers with a wide variety of safe and innovative products. We look forward to continuing to work with the CPSC on our shared product safety goals.

Executive Summary

Retailers have a unique perspective on the recall process. Retailers are often the key point of contact for the purchasing customer for questions surrounding a recall, and very often the facilitator of product recalls on behalf of the manufacturer. As the face of a recall to the consumer and with brand reputation at risk, retailers are invested in ensuring product recalls are handled efficiently and effectively, even though they may not be the manufacturers of the products being recalled.

RILA's comments are divided into six main topic areas: 1) RILA's vision for what recall effectiveness should mean; 2) potential solutions for making recalls more effective; 3) development of a flexible approach when communicating recalls base on level of risk and availability of customer contact information; 4) the limited effectiveness of the use of in-store posters to alert consumers of recalls; 5) costs associated with direct to consumer notification of recalls; and 6) the use of data from a formalized and expanded Retailer Reporting Program to help identify product hazards quicker. The major discussion points within these topic areas are summarized below.

First, the current focus on product return rates as the measure of effectiveness of a recall ignores supply chain corrective action that prevents unsafe product from entering the marketplace and independent action by consumers in response to product recall notifications, which may not entail returning products to manufacturers or retailers. Using factors such as

consumer outreach efforts, supply chain corrective action, post recall injury reports in addition to product return rates will enable the CPSC to estimate consumer response rates, which is a more accurate reflection of the effectiveness of a product recall.

Second, potential solutions to make recalls more effective include the CPSC's implementation of a tiered approach to product recalls, in order to highlight those with the highest risk of injury to consumers. The CPSC can also more clearly identify product by using UPC code in addition to model number in recall notice, list the safety hazard in the recall headline, and require manufacturers to give recalls 48 hours advance notices of pending product recalls. The CPSC should work with tech industry, manufacturers, retailers and consumer groups to encourage the use of technology to advance product safety and recall effectiveness. Additionally, the CPSC can create a dedicated function working with consumer groups and other stakeholders to increase consumer outreach and notification of recalls.

Third, the CPSC should move away from its current one-size-fits-all approach to communicating product recalls to consumers and instead focus on communication methods that are most effective and appropriate for specific individual recalls. The CPSC should streamline required product registration forms and processes to encourage consumers to register products. While direct notice to affected consumers may be the best way to alert consumers to a product recall, the CPSC should be aware of the legal hurdles, consumer privacy challenges, business confidential information concerns that retailers and manufacturers face when attempting to directly notify consumers about a product recall.

Fourth, in-store posters cannot be relied upon by CPSC to be an effective or efficient use of resources to reach the widest audience. Removing this requirement would be a burden reduction for retailers, with little safety impact on consumers.

Fifth, while not the recalling party, retailers incur significant costs implementing recalls and engaging in consumer outreach on behalf of the manufacturers. The CPSC should work with stakeholders to eliminate ineffective action steps and to find the most effective and cost-efficient means of notifying consumers and implementing recalls.

Finally, the value of the data gathered through the Retailer Reporting Program (RRP) cannot be overstated. CPSC should consider formalizing this program into an official government-industry partnership program so that product hazards could be identified quicker, resulting in more rapid recalls.

I. RILA Urges the CPSC to Adopt a New Definition of Recall Effectiveness: Response Rate versus Return Rate

Currently, recall effectiveness has been measured by the percentage of the number of items returned by consumers, compared to the number of products sold by the manufacturer. This narrow metric does not capture the full picture. For example, it does not capture the number of products identified and remediated or pulled from the supply chain prior to being sold to consumers. Additionally, many consumers respond to a recall by simply throwing away the item, especially if it is a lower cost item. Other times consumers may be aware of a product recall,

understand the risks, but are still willing to keep the product. These consumers may remove a problematic component, modify their use of the product to eliminate or lower the identified risk, or simply choose to accept the risk and continue to use the recalled product without any change to the product or its use. Still others may take no action because they did not have the same experience with the product (e.g., when a product is recalled because it has given some consumers a skin rash). All of these factors should be included when determining whether or not a recall is effective.

RILA believes that a better way to define recall effectiveness is by *response* rate, not *return* rate. Admittedly, determining customer response rate is not easy to quantify. However, there are several factors, including a combination of consumer outreach efforts and post recall injury data, which can give some insights into consumer response in connection with specific recalls. Outreach efforts can be quantified by the number of direct notices sent via email and using technology to determine the number of open clicks. Other metrics could include the number of phone calls made, number of letters sent and/or number of social media “likes” and retweets. As outlined below, none of these outreach methods is perfect, but having consumer outreach data provides the CPSC with a more accurate picture of how many consumers were made aware of the recall, regardless of the action they took, or did not take, in response.

Ultimately, a recall notice should clearly identify the product safety hazard and encourage consumers to take appropriate action to address the risk, but that response may not include returning the product to the store where it was purchased or returning it to the manufacturer. Rather than relying on return rates alone, using post-recall injury data combined with outreach metrics, product returns, and supply chain corrective actions or diversions will provide a much more accurate picture of the “effectiveness” of a recall.

II. Potential Solutions to Make Recalls More Effective

A. A Tiered Recall System Would Highlight Recalls of Products that Pose the Greatest Risk to Consumers

RILA and others have encouraged the CPSC to consider tiering recalls so that the most hazardous product safety notices get the much needed and greatest attention. Under the current system, all product corrective action announcements are treated equally, requiring the use of the word “recall” in the headline regardless of whether it involves the recall of a product with the potential to cause death or serious bodily injury or merely a notice to add a label to the product. As a result of the CPSC’s practice of calling everything a “recall,” consumers can be confused as to what is an actual safety hazard versus a minor issue needing attention but with little real safety threat associated. Or worse, using the same language for all recalls can cause consumers to tune out the CPSC recalls as just “noise” and take no action, even if the risks to consumers are serious. Neither of these is the desirable outcome of a product recall. Having a tiered approach would not only give consumers the important safety information they need, when they need it, but it could also significantly increase the rate of consumers acting on the most serious recalls.

Under a tiered system, the word “recall” would be reserved for the most severe hazard cases, and thus could require recalling companies to directly notify consumers when possible. Other

terms to identify recalls of products that pose less risk to consumers could include “safety alert” or “warning.” Such terms would clearly alert consumers that they should be aware of a notice, but immediate action to remove the product from their homes may not be necessary. The idea of having a tiered recall system is not new. In fact, the Food and Drug Administration (FDA) has been issuing “classes”¹ of recalls based on the level of hazard to consumers for many years. The tiering not only identifies the level of risk but also determines the level of public outreach by the recalling company. CPSC would be well served by reviewing FDA’s procedures and considering implementing a similar process for consumer product recalls.

Our intent is not to add additional burdens on the CPSC to enforce, nor is it to add requirements for retailers to train staff implementing the recall with new and different processes, but instead to provide clarity for the consumer, and flexibility for those executing recalls. In order to ensure the right process is in place, RILA recommends the CPSC collaborate with all stakeholders to make sure the intended purpose of a tiered recall system is achieved. Highlighting risk and clearly identifying that risk for consumers is paramount. Having stakeholder input is critical to a tiered recall system’s success. RILA members strongly urge the CPSC to consider implementing a tiered recall pilot program to test how implementation of such a process would work.

B. The CPSC Should Clearly Identify the Product and Safety Hazard to Enable Consumers to Understand Risks Posed by Recalled Products

The CPSC’s jurisdiction over consumer products is so broad that the hazards identified in recalls could be for any number of safety concerns. CPSC has issued product recalls for a wide range of issues, including wrong or misleading labeling, changes to warnings or use instructions, requests for consumers to inspect products for mold, replacement of a problematic component part, risk of laceration, burning, suffocation, entrapment, electrocution, or death, and everything in between. It is easy to see how consumers begin to tune out recall notices, because deciphering what is an immediate and serious safety hazard takes effort on their part to open and review every recall notice. Many consumers are unwilling to take that extra time, and at best, will only review the headline of a recall notice. Identifying why the product has been recalled in the recall headline, and the exact safety hazard, could clearly and quickly alert consumers as to the level of action they need to take in response to any recall.

For those consumers who have signed up to receive CPSC’s email recall alerts, another helpful measure would be to have a picture of the recalled item directly in the email alert. Having a picture of the items being recalled in the email alert would provide consumers a quick way to easily identify if the item in question is one they have in their homes, without having to click on a link in the email alert to view the product.

C. The CPSC Should Dedicate Staff to Work with Consumer Groups and Other Stakeholders to Spread Information About Product Recalls

RILA recommends that the CPSC develop a formal outreach process to work with consumer groups and other stakeholders to help spread product recall information to a wider audience.

¹ U.S. Food and Drug Administration, [2018 Investigations Operations Manual](#), Chapter 7: Recall Activities.

Consumer groups such as Consumer Reports, Good Housekeeping, Consumer's Union, Consumer Federation and Safe Kids have built large and active networks to share information about the safe and effective use of products. Other potential stakeholder partners include groups related to the recalled product, e.g., youth sports groups, outdoor sportsmen, day care facilities and new mom support groups. When CPSC is conducting a recall, tapping into these organizations to spread safety messaging and awareness of recalls, particularly for those recalls involving products posing the most hazardous risks, could be an excellent way to reach consumers who might not be plugged into CPSC recall notices but who have shown they are interested in receiving safety information.

The CPSC might consider creating a public liaison position similar to its Small Business Ombudsman. The primary purpose of this new role would be to seek out and identify stakeholders and groups that the agency can partner with to increase public awareness of recalls. This liaison function could develop and maintain an internal database of stakeholder contacts that can be easily accessed and used to make contact with relevant stakeholder groups when the CPSC announces a recall.

D. The CPSC Should Work with the Tech Industry, Manufacturers, Retailers and Consumer Groups to Encourage the Development and Use of Technology to Eliminate Safety Risks and Publicize Product Recalls

Technology has the potential to overcome many of the challenges inhibiting recall effectiveness. Over the past several years, there has been a dramatic increase in products that are connected to the internet (IoT products) being sold in the marketplace. During the CPSC's recent Hearing on Internet of Things and Emerging Technologies,² RILA along with many other commenters noted the potential safety benefits of this class of products.³ One key benefit is that some potential safety issues may be able to be addressed by a software update pushed out remotely by the manufacturer, minimizing the actions required of customers and easing burdens of recalls. When appropriate, this remote remediation could involve freezing the product's functions to prevent the use of the unsafe product until a software or other update is performed. A second benefit is that an IoT product with a digital screen could be used to publicize the recall of that product. For IoT products that have two-way connectivity capabilities, a recall notice could prohibit use of the product without reviewing the recall and include an acknowledgement or click through function to track consumer receipt and acknowledgement of the recall notice.

The proliferation of apps is another growing tech trend. There are currently a variety of apps on the market, and as the saying goes, "There's an app for that." One recently developed app, Whystle, allows consumers to receive curated consumer product and food recall information. For example, for new parents, Whystle will send alerts when a children's product has been recalled but not when scuba diving equipment is recalled. This personalized approach can help eliminate information overload and consumer recall fatigue. CPSC could also consider developing its own app for consumers to quickly find recalled products they may have purchased. Another method

² [Internet of Things and Emerging Technologies](#): Hearing Before the U.S. Consumer Product Safety Commission (CPSC) (2018).

³ Comments, Retail Industry Leaders Association, [The Internet of Things and Consumer Products Hazards](#), CPSC Docket No. CPSC-2018-0007.

to help consumers identify recalled products would be to strengthen the search function on www.cpsc.gov and www.saferproducts.gov so that consumers can quickly find specific recalled products without wading through items that are not relevant. Adding the ability to search by product model number would be an extremely helpful upgrade to these websites.

We are in the midst of a technology revolution where new and innovative technology is emerging on an almost daily basis. As noted above and in prior RILA testimony,⁴ many of these technologies, including IoT products and apps, offer tremendous potential product safety benefits. RILA members are optimistic that in the future, determining which customers purchased recalled products and directly contacting them will be a much easier task. The CPSC should dedicate staff and resources to understanding new and emerging technologies and their product safety related uses. Additionally, the CPSC should continue to explore using new technologies to increase public awareness of recalls and make recalls more efficient.

E. Additional Steps the CPSC Could Take in Executing Recalls

One issue that has been raised by RILA members is the lack of transparency about when recalls will be made public. Often our members are not made aware of a recall until they receive a CPSC press release email notification or even hear about a recall through the evening news.⁵ This concern has been raised in the past by RILA members, and it continues to be an issue today. It can take time to alert store managers and associates about a product recall and physically remove these products from store shelves. Having lead-time to assure that recalled products are removed from the store would greatly reduce the likelihood that a recalled product could be inadvertently sold after recalls have been announced by the CPSC. This extra lead time is also extremely helpful to mitigate a retailer's risk of unintentionally and illegally selling a recalled product. In order to provide consistency in the recall execution process, we urge the CPSC to make, as part of the recall negotiation process, a requirement to alert affected retailers with embargoed recall information at least 48 hours in advance of a recall being made public.

Another helpful measure to ensure retailers pull the correct recalled items, would be to include not only the model and serial numbers of products recalled, but also list the Universal Product Codes (UPC) on each recall notice. It is important to note that UPC codes are different from a Stock Keeping Unit (SKU) number. UPC's are indeed universal and having these codes would ensure that each retailer is pulling the appropriate products from shelves. The SKU number is one that is unique to each retailer, for inventory purposes, and would not translate into a usable system for all retailers. Listing the UPC code on each recall notice would be a quick and easy way to further the goal of implementing an effective recall.

⁴ *Id.*

⁵ RILA has not yet conducted a formal survey of all of its members on the magnitude of this problem, but one member reports that during the past 12 months, it has received advance notice of a product recall less than 50% of the time. In some situations, the retailer may never receive notice of the recall from the manufacturer especially in situations where the retailer has purchased from a distributor and not directly from the manufacturer. This retailer has had to set up a process to check CPSC's announced recalls daily to try to ensure that it complies with the prohibition against selling recalled products. Required advance notice would ensure timely and efficient implementation of product recalls.

III. The CPSC Should Develop a Flexible Approach to Communicating Recalls to Consumers Based upon Level of Risk, Availability of Consumer Contact Information, and Consumer Communication Methods Used by the Recalling Company

A. No One-Size-Fits-All Communication Method

The vast majority of product recalls are initiated and conducted by manufacturers, not retailers, although retailers certainly are a critical part of the recall process. Retailers wish to be strong and helpful partners with CPSC and manufacturers in conducting recalls. Under the current process, all recalls, regardless of severity of safety risk, are conducted in the same manner with the same level of consumer outreach. As noted above, RILA members support the CPSC implementing a tiered recall process, which would not only clearly identify the risk of harm to the consumer but would also include the level of consumer outreach communication efforts that are appropriate to the nature of the risk.

There are many ways to directly notify a consumer, including email, phone calls, mail, text messaging, and through various social media platforms. Each method has its pros and cons, and no method is perfect. According to RILA members, in those situations where the retailer has the customer contact information, email appears to be the preferred and most cost-effective form of customer notification. One of the benefits of using emails to publicize product recalls is that companies can use technology to determine receipt and open rate, which can be reported. However, a downside of using emails for recall communication is the volume of emails most consumers receive daily in their work and personal email accounts. With consumers and companies increasing security and strengthening spam filters, product recall emails may go into consumers' junk folders or be deleted outright without ever being opened to see the content. Similar problems persist with recall notices sent to consumers via mail. Consumers often throw mail from unexpected senders straight into the trash without ever reading it, believing it to be marketing or other junk mail. Finally, while social media is a great tool for spreading the word about a hazard quickly, not every customer has a presence on social media, and those that do may not be following the right organizations to receive recall notices on the various platforms.

Ultimately, there is no one-size-fits-all method when communicating with customers and consumers. Recalling parties and the CPSC should work collaboratively to determine the appropriate approach to take. RILA members urge the CPSC to adopt a tiered recall system that includes different levels of consumer outreach. Even if the agency decides not to move forward with a formal tiered recall process, the CPSC should still adopt a flexible approach requiring different levels of communication for recall scenarios involving various levels of risk.

B. Challenges of Obtaining Accurate Consumer Contact Information for Communication of Product Recalls

Many times, manufacturers, CPSC and others look to retailers to directly notify consumers of product recalls. This is based on an inaccurate assumption that retailers have infallible tools that can track all customers and directly correlate consumers with products purchased. Retailers cannot solve the recall effectiveness puzzle by themselves, especially when it comes to direct

notification of customers. And due to several factors, retailers might not have all the information necessary to formally make direct contact with consumers. While retailers do have a tremendous amount of data about their customers, it may be helpful for purposes of this discussion to review some ways that retailers gather customer contact and purchase data and some operational and legal challenges to using the data for product recalls.

Consumer purchasing preferences increasingly include online shopping and delivery. One product safety-related benefit of this trend is that for online purchases, retailers typically have delivery information and contact information (email or phone) for purposes of delivery notification. Additionally, consumers continue to move away from cash and check purchases (where tracking consumer purchases is challenging) to credit cards and digital payment methods (e.g., Apple Pay, Google Pay and new blockchain payment technology). As this trend continues, known purchasers of products using credit cards and other electronic means of payment will be easier to identify and notify of safety concerns. CPSC should be encouraged that the increase of credit card, digital payment methods, and online purchasing could be one piece of the puzzle when seeking to solve the challenge of direct notification to purchasing customers.

Retailers may also collect customer information when consumers sign up for loyalty programs or company credit cards, join membership-based stores, or log in to store wireless networks. The usefulness of this data depends on the ability to tie specific consumers with specific purchases and the accuracy of the consumer data. While membership-based retailers will be able to correlate consumer information with specific product purchases, making the connection between loyalty and credit card program members and purchases can be more challenging. To be able to connect a purchaser with a recalled product, the consumer must have used the loyalty program number or credit card when making the purchase. Currently, retailers are not able to correlate customers that sign on to store Wi-Fi networks and specific consumer purchases.

Additionally, customers may provide false, inaccurate, or incomplete contact information when signing up for loyalty programs, making it difficult to get into contact with the purchaser. Another consideration is human error in entering customer information into retailer's systems. This can make it a challenge to identify the accurate customer information. Finally, all consumer data and purchase information are subject to a company's record retention policy, which requires the destruction of data and records within specified time frames. Therefore, for recalls of products that have been on the market for several years, a retailer may no longer have customer purchase information.

C. The CPSC Should Streamline Product Registration Card Forms and Processes to Enhance Recall Effectiveness by Increasing the Number of Consumers Registering Products

One source of valuable customer contact information that is underutilized is product registration cards. The responsibility to supply product registration cards and maintain a customer contact database lies with the manufacturer of the product, except for the limited situations where a retailer is the importer of an infant or toddler durable good. Unfortunately, the sad fact is that registration rates, even of products for the most vulnerable populations is low.

Consumer feedback has indicated concerns about privacy and the inconvenience of filling out product registration cards and mailing them to the manufacturer as the primary reasons for the low registration rate. Over the past several years, there has been ongoing discussion of ways to improve product recall rates. Set forth below are some suggestions on how the CPSC and stakeholders can work together to improve product registration rates.

The CPSC should consider streamlining the required registration form to only require information that is absolutely necessary in the event of a product recall. The agency could also consider an option that allows the consumer to be notified in the manner in which they are most likely to respond. The CPSC should work with manufacturers and the tech industry to vigorously pursue the use of new technologies to ease the product registration burden for consumers. Several promising new technologies have been highlighted at recent ICPHSO events. The CPSC should encourage continued development of those innovative technologies.

During discussions of ways to increase use of product registration cards, one idea that is often raised is for retailers to require product registration information at the point of sale (POS). RILA members strongly oppose this idea for several reasons. First, the CPSC lacks legal authority to impose such a requirement. The Consumer Product Safety Improvement Act⁶ (CPSIA) imposed the requirement for including product registration cards and maintaining customer contact information on product manufacturers and importers of infant and toddler durable goods. The CPSIA does not impose this requirement on all consumer products. It also does not require consumers to register products, nor does it require retailers or any other third party to register customer information prior to purchase. Second, there are practical considerations that would make POS registration ineffective and overly burdensome. Often customers are buying infant and toddler durable products for a gift registry and are not the end users of the product. These customers may not know the consumer contact information necessary to complete the registration of those products and entering their own information would not be helpful in the event of a recall. Third, POS registration would require either that the purchaser open up the product to retrieve the registration card to fill out or that retailers' POS systems be able to link to manufacturers' websites to enable online registration. Neither of these options is practical or desirable from a customer service point of view. Requiring POS registration would cause frustration on the part of purchasers, retail associates, as well as other customers waiting in line to be checked out.

Rather than pursuing ideas that are not supported by legal authority and are impractical and ineffective in achieving the goal of increased product registrations, the agency should focus on ways to streamline registration forms and encourage the use of technology to make product registration easy.

D. Customer Privacy and Business Confidentiality Considerations

In addition to the operational challenges related to accurately identifying purchasers of recalled products outlined above, there are other hurdles that inhibit the use of consumer contact information in recall situations. One such hurdle is consumer privacy preferences. Retailers fully support the ability of their customers to control the amount of data that is collected and how that

⁶ Consumer Product Safety Improvement Act of 2008, Pub. L. No. 110-314, 122 Stat. 3016 (2008).

data is used. For example, when joining loyalty programs or other similar programs, customers can curate the exact type of information they wish to receive, including opting out of receiving any information from a retailer. Because of this, if a consumer opts out, retailers will respect the consumer and will not contact them except for those things the consumer has explicitly requested.

Retailers dedicate significant resources to gathering and developing customer information and data and consider customer lists to be highly valuable confidential business information. Because of this, retailers may be unwilling to give customer information to product manufacturers for purposes of direct consumer outreach. Indeed, doing so could violate a company's privacy policy and its commitment to customers that their information would only be used for specified purposes. Instead, retailers might opt to contact consumers on behalf of the recalling manufacturer. Doing so does entail costs to the retailer, which are passed onto the manufacturer conducting the recall. In those situations where retailers are able to share customer contact information with the recalling company, retailers will typically require recalling companies to sign agreements that restrict use of the data to the recall notification, prohibit use of customer contact information for marketing purposes, and require destruction of the customer data after recall notification.

Retailers strongly support the goal of removing unsafe products from the marketplace and look forward to working the CPSC and manufacturers to processes and procedures, to directly notifying informing affected customers of product recalls while addressing consumer privacy and business confidentiality concerns.

E. Legal Hurdles for Some Methods Used to Provide Direct Consumer Notice

As CPSC has rightly recognized, directly notifying purchasing customers of a consumer product recall is by far the most effective way to make sure that consumers are aware of a recall, and as a result, are much more likely to act in response. In addition to the operational and privacy challenges noted above, there are also legal hurdles for some methods of direct consumer notification. For example, the Telephone Consumer Protection Act⁷ (TCPA) imposes some restrictions on the use of direct phone calls and text messages. The TCPA restricts the making of telemarketing calls and the use of automatic telephone dialing systems and artificial or prerecorded voice messages. The agency in charge of enforcing the TCPA is the Federal Communications Commission (FCC). The TCPA regulations give consumers control over the volume of calls and texts received. Companies are required to have consumers' permission prior to calling or texting. A company can be subject to legal action if it contacts consumers without prior customer consent or when consent has been revoked.

The TCPA does have a very limited exception for emergency health and safety communications. However, the FCC has narrowly construed this exception. A large number of CPSC product recalls are Fast Track Recalls, which are initiated by the recalling party without a formal hazard determination made by the CPSC. Additionally, numerous recalls involve lower safety risks (e.g., recalls adding warnings, labels or instructions, recalls to switch out

⁷ Telephone Consumer Protection Act, 47 U.S.C. § 227.

noncompliant component parts, recalls to inspect for mold). Therefore, it is unclear whether the majority of CPSC recalls would fall under the TCPA health and safety exception.

An unfortunate and unintended consequence of the TCPA involves reassigned phone numbers. Currently, there is no one authoritative reassigned number database, and retailers and manufacturers may be unaware if a phone number has been reassigned from a consumer who has given consent to a consumer who has not given consent. Calling or texting consumers who have not given or have revoked consent could subject that company to potential legal action. Even when the retailer was not made aware of the reassignment, the risk of legal action remains. For that reason, retailers may be reluctant to make phone calls or send text messages to consumers, even if it is to share important product safety information.

RILA has recently advocated at the FCC to allow for an expansion of the TCPA's health and safety exemption,⁸ which would allow retailers and others to contact consumers to relay important safety information without fear of legal retribution. Another key component to RILA's advocacy includes asking the FCC to establish a comprehensive and authoritative reassigned number database⁹ that would enable callers to identify reassigned numbers and a reasonable safe harbor for callers who use it. This would enable and encourage callers to honor consumers' communications preferences and deliver desirable messages without risking unavoidable liability for calling numbers that they could not know had been reassigned.

To help eliminate one legal hurdle for direct consumer notification via call and text, the CPSC should consider engaging the FCC and supporting the expansion of the health and safety exemption to cover all CPSC recalls as well as the establishment of a reassigned number database and safe harbor.

IV. CPSC Should Eliminate the Mandatory Use of In-Store Posters

Despite no mandatory statutory requirement for in-store posters, they have become a *de facto* requirement for retailers, regardless of whether or not the retailer is the recalling party. This is due to the listing of in-store posters as a requirement in the CPSC Recall Handbook.¹⁰ Again, the majority of recalls are not initiated by retailers. As a result, the terms of the recall, including methods of consumer outreach and in-store posters, are negotiated by the CPSC and manufacturers without the input of retailers or any consideration regarding the practicality of the proposed consumer contact requirements. RILA has previously detailed in prior testimony and comments the costs and administrative burden the requirement for in-store posters imposes on retailers.¹¹ A summary of the key points is below.

Paper posters are an ineffective and inefficient method of communicating product recalls. Paper posters are subject to being torn down by customers or employees and the constant need to

⁸ Comments, Retail Industry Leaders Association, Interpretation of the Telephone Consumer Protection Act in Light of D.C. Circuit's ACA International Decision; Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 18-152; CG Docket No. 02-278 (2018).

⁹ Comments, Retail Industry Leaders Association, In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls (2018)

¹⁰ U.S. Consumer Product Safety Commission, [Recall Handbook](#), 2012.

¹¹ Comments, Retail Industry Leaders Association, [Regulatory Burden Reduction Efforts](#), September 30, 2017.

replace them is unrealistic. Given limited retail shelf space, posters may not be able to be placed in the location in the store where the product would have been on the store shelf. Even if posters could be posted in that location, the consumer may not be in that section of the store to purchase another similar item (e.g., consumers might only buy one play yard and would not again be in the section of the store selling play yards). Additionally, many retailers simply have no space to place posters. Others only have space in limited locations (e.g., at a customer service desk, on in-store bulletin boards, which may be at the back of the store.) Even those that have space to place posters near the front of the store, may have multiple checkout lanes and store entrances, and therefore, it is very likely that the posters will not be seen by all customers purchasing items and leaving the store.

Having a blanket requirement for in-store posters for every recall serves no practical benefit, and instead is a costly proposition for retailers to maintain, with little if any benefit to the consumer. We recognize that having in-store posters for product recalls could potentially be helpful in certain circumstances *if* the retailer has the space and capacity to post recall posters. Therefore, RILA urges the CPSC to eliminate the mandatory in-store poster requirement and make it optional for the recalling party. Manufacturers can work with their retail partners to determine whether use of in-store posters would be appropriate for a specific recall. Providing companies with the flexibility to adapt the mode of recall communications to their customer base and to best suit the circumstances and business model could go a long way to increase recall effectiveness.

V. Retail Costs for Direct Recall Notice to Consumers

Although typically retailers are not the recalling party, much has been said about retailers being the “face” of recalls to consumers for recall information and product returns. In this role of liaison to the consumer, retailers do dedicate significant resources and incur costs conducting recalls, and returns at the retail level. Most retailers charge the costs back to the manufacturer, as they are providing a service to the manufacturer. Sending direct mail notifications of recalls to consumers can be costly. Many retailers use third party companies to perform this outreach, and the processing and postage charges incurred are high. Because of this, retailers mainly send mail notifications only for privately labeled products. If it is done at the behest of a manufacturer, that cost is charged back to said manufacturer. As mentioned earlier in our comments, sending emails appears to be the most cost efficient and effective means of directly notifying consumers.

Given the significant costs that non-recalling parties, including retailers, incur connected with product recalls, RILA urges the CPSC to work with all stakeholders to find the most effective and efficient means of implementing recalls and providing recall notice to consumers.

VI. The CPSC Can Enhance Recall Effectiveness by Identifying Emerging Hazards Earlier and Reducing the Number of Recalled Products Through a Formalized and Expanded Retailer Reporting Program

RILA has long encouraged the CPSC to expand and formalize the current pilot retailer reporting program (RRP) into a full government-industry partnership program.¹² We will not repeat the numerous arguments in favor of such an expanded program, but merely highlight one key benefit is the type of data collected. Using technology to analyze the data gathered from an expanded government-industry partnership program will enable the CPSC to more quickly identify emerging hazards of products that may need to be recalled. Earlier identification of a safety issue will result in removing products from the marketplace quicker. It can limit the number of products recalled, as there will be fewer products in consumers' hands. With a smaller number of products being recalled, consumer identification and outreach can be simplified. RILA members continue to urge the CPSC to find a way to use this highly impactful data by formalizing and expanding the current RRP into a true government-industry partnership program and allowing all those who wish to participate and meet the programs eligibility criteria to join. The CPSC should also convene a group of interested parties as it looks to formalize such a program. A codified RRP, with input from stakeholders, would be a helpful tool for CPSC as it looks for ways to increase recall effectiveness.

Conclusion

We thank the CPSC for the opportunity to provide input on how to make the system of getting dangerous products out of the hands of consumers more effective. We look forward to working with the commissioners and staff on this critically important issue. Please do not hesitate to reach out to RILA for help on these efforts and any others the agency is considering. Feel free to contact me or Autumn Moore, RILA's director of regulatory affairs and compliance at autumn.moore@rila.org or 703.457.7919 if you have any questions.

Sincerely,

Kathleen McGuigan
Senior Vice President & Deputy General Counsel

Autumn Moore
Director, Regulatory Affairs & Compliance

¹² Hearing Testimony, Retail Industry Leaders Association, [CPSC Hearing on Agenda and Priorities for FY 2018-2019](#) (2018).