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Office of the Secretary  
U.S. Consumer Product Safety Commission  
4330 East West Highway, Room 820  
Bethesda, MD 20814

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**Comments of Public Citizen, Kids In Danger, Consumer Federation of America, Consumers Union, Consumer Reports, and U.S. PIRG to the Consumer Product Safety Commission Request for Information Regarding the Use of Direct Notice and Targeted Notices During Recalls (CPSC-2017-0027-0002)**

**Introduction**

We, the undersigned organizations, thank you for the opportunity to comment on the U.S. Consumer Product Safety Commission's (CPSC or Commission) request for information on recall effectiveness. This comment is an important follow up to the recall effectiveness workshop that the Commission hosted in July 2017 and the report that the Commission subsequently released in February 2018.<sup>1</sup> We hope that our comments will contribute to the CPSC's goal to "advance the concepts"<sup>2</sup> that were discussed at the workshop and in the report.

According to a 2018 Kids In Danger (KID) report on recall effectiveness, CPSC issued 280 recalls in the 2017 calendar year, which is the lowest number of recalls since 2008<sup>3</sup> – the year that Congress passed important safety reforms in the Consumer Product Safety Improvement Act (CPSIA). Also, in 2017, the number of manufacturers that issued more than

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<sup>1</sup> [https://www.cpsc.gov/s3fs-public/Recall\\_Effectiveness\\_Workshop\\_Report-2018.pdf?R1VyLltrl8M\\_id.2vkAklHoUZjaSCab](https://www.cpsc.gov/s3fs-public/Recall_Effectiveness_Workshop_Report-2018.pdf?R1VyLltrl8M_id.2vkAklHoUZjaSCab).

<sup>2</sup> <https://www.gpo.gov/fdsys/pkg/FR-2018-06-22/pdf/2018-13388.pdf>.

<sup>3</sup> [http://www.kidsindanger.org/wp-content/uploads/2018\\_Recall\\_Report.pdf](http://www.kidsindanger.org/wp-content/uploads/2018_Recall_Report.pdf).

one recall increased over 2016.<sup>4</sup> Information on the effectiveness of individual recalls, received through the Freedom of Information Act, was not thorough nor comprehensive, and gave no specific evidence that recalls are reaching consumers and encouraging them to act. We strongly urge the Commission to continue its work to help ensure that each recall is effective at warning consumers of the hazard and removing the product from use.

## **Background and Analysis**

We suspect, with few exceptions, that most consumers who own a recalled consumer product never find out about the recall. As CPSC staff outlined at the July 2017 recall effectiveness workshop, the average rates at which consumers participate in corrective actions are quite low: around 6% for all product types, with rates rising from about 4% for products with a retail price of less than \$20 to about 32% for products with a retail price of \$10,000 or more.<sup>5</sup> This is unacceptable, given that lives are at risk, and it stands in contrast to comparatively higher correction rates along other points in the supply chain.<sup>6</sup> Even some high-profile recent recalls, such as that of IKEA dressers, have yielded extremely low rates of action taken by consumers.<sup>7</sup> The CPSC must work hard with consumer advocates, manufacturers, and the public to assess how to increase the effectiveness of recalls and how to effectively warn the public about dangerous products.

In its request for information, the CPSC refers to the provisions in the CPSIA that require manufacturers to include registration cards in children's products and an online method of registering as an important mechanism for notifying the public about a recall. To be sure, our organizations are pleased that these provisions are in statute. However, this requirement is only imposed on manufacturers of durable infant and toddler products – what are often referred to as juvenile or nursery products. Moreover, it is unrealistic – in today's increasingly electronic age – to expect that most people will complete and mail back a physical registration card. According to the marketing firm Registria, the use of laptops and desktops are down while the use of mobile phones continues to increase. In 2005, 77% of those polled preferred paper registration. In 2016, this statistic completely flipped. Seventy five percent of those polled preferred digital registration.<sup>8</sup> Today, if consumers receive only a physical registration card and are not presented, electronically, with the opportunity to register their product, they may be left in the dark if a product in their home has been recalled. Thus, it is vital that the CPSC make full use of its authority – and recommend any statutory changes that may be needed – to harness technology and better ensure that products get registered. This would help ensure consumers are reached by companies and made aware of what actions to take to stay safe in case of a recall.

Another important issue that the CPSC must address is how best to notify a consumer once there is a recall. Companies may use social media including Twitter, Instagram, and

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<sup>4</sup> [http://www.kidsindanger.org/wp-content/uploads/2018\\_Recall\\_Report.pdf](http://www.kidsindanger.org/wp-content/uploads/2018_Recall_Report.pdf) at p. 8.

<sup>5</sup> [https://www.cpsc.gov/s3fs-public/Recall\\_Effectiveness\\_Workshop-Transcripts-2018.pdf?DANfPWVdXLz6jk.lAn9rzT3dX6ZQXQa0](https://www.cpsc.gov/s3fs-public/Recall_Effectiveness_Workshop-Transcripts-2018.pdf?DANfPWVdXLz6jk.lAn9rzT3dX6ZQXQa0) at pp. 39-41.

<sup>6</sup> *Id.* at p. 39.

<sup>7</sup> [https://consumerfed.org/press\\_release/hazardous-ikea-furniture-remains-in-homes-two-years-after-recall/](https://consumerfed.org/press_release/hazardous-ikea-furniture-remains-in-homes-two-years-after-recall/).

<sup>8</sup> *State of the Industry: Trends in Product Registration*, Registria, 2017.

Facebook to inform consumers of a recall. When most consumers buy a product, however, they do not assume that a recall is forthcoming. Therefore, the likelihood is slim that a consumer (especially a busy parent) will follow a manufacturer on any of these social media platforms on the off chance that a product that they bought will be recalled. The onus must be on the manufacturer to find the best way reach consumers, and not the other way around. We do not mean to say that manufacturers should not be using social media – they all should – but rather we mean that electronic outreach must be more robust, including by using a variety of direct notification tools and engaging influencers on social media. If manufacturers have methods to directly communicate with their consumers, such as through loyalty programs or other consumer lists, those methods should be used in every recall – even if they require companies to incur additional expenses.

More broadly, we urge the CPSC to keep in mind that core to safety is culture. Fundamentally, the CPSC should reinforce principles and incentives for companies to carry out recalls in an effective manner. Companies should be proactive in preparing for how they will carry out a recall should one be necessary for consumer safety. They also should devote sufficient resources and marketing expertise to recalls to maximize consumer response – in fact, they should dedicate at least the same effort into a recall as went into selling the product in the first place. The CPSC has long sought to foster a culture of safety among regulated entities, including by making these recommendations. We understand and appreciate that companies will need to be the primary experts when it comes to understanding their marketplace and how best to reach consumers and spur action. But through frequent trainings for companies on how to carry out a recall, clear and accessible written information, and direct conversations on the specifics of a company’s safety culture, the CPSC can help ensure that companies rise to the top and implement best practices for recalls.

The CPSC also has a very important role in holding companies accountable through fines, consent decrees and other agreements, and other types of measures to change corporate behavior following improper or illegal conduct. We support the CPSC’s use of its civil penalties authority to the fullest extent under the law, as warranted, and urge the agency not to hesitate to levy such fines. These fines can deter future wrongdoing and have a meaningful impact on the advance steps taken by companies to prevent hazardous products from reaching the market in the first place. We also support the agency’s use of agreements with companies – particularly knowing or serial violators of the Consumer Product Safety Act – to establish internal compliance programs, appropriate internal controls and procedures, and disposal processes. The agency should seek to enter into such agreements whenever justified by the facts and important toward improving a company’s safety culture.

## **Recommendations**

In advance of last year’s recall effectiveness workshop, the Consumer Federation of America (CFA), KID, and Public Citizen submitted a list of recommendations to the Commission that urged the agency to focus the limited time during the workshop on discussing concrete proposals that could improve recall effectiveness. Separately, Consumers Union also submitted recommendations for the workshop. Our groups all continue to believe that these issues remain important to consider, and we therefore reiterate them here. We urge the CPSC to:

- **Improve communication with the public:** The Commission should explore innovative and tech-savvy ways to convey information on recalls. For example, the Commission should consider agency action that allows consumers to opt-in to receive text messages if a product is recalled. This is essentially a 21<sup>st</sup> century version of the product registration form. It could also provide the agency with near-real-time metrics to understand the number of people who are receiving information on a recall and whether they take action. As consumer advocacy organizations, we care deeply about the privacy of consumers and ensuring that their information stays protected. Thus, we urge the CPSC to heavily collaborate with government, academic, and non-profit privacy experts and with manufacturers on the best ways to secure consumer information.

Wherever possible, consumers should be given the opportunity, at the point-of-sale, to seamlessly register the product under their name and contact information for the purposes of being notified in the case of a recall. In a public forum, the CPSC and stakeholders should further examine how to implement automatic or near-automatic product registration by retailers covering a substantial portion of consumer product sales.

The CPSC also could help develop feedback loops that improve the Commission's ability to measure the effectiveness of the information that is disseminated. Each recall can help inform the next – and the CPSC should rigorously track the effectiveness of different tools, approaches, and methods used by companies in carrying out recalls, and use this information to achieve greater clarity about what really works best. To inform this effort, the agency should ensure that companies provide adequate data that is granular enough to be helpful toward reaching conclusions. The CPSC could require an audit of the approaches taken by a company in carrying out particularly successful or unsuccessful recalls or require that all recalling companies across the board report back to the CPSC on several key metrics.

In addition, we note that public statements by the CPSC can have a lot of power. The agency could help ensure that companies dedicate appropriate effort, resources, and expertise to recalls by publicly issuing its goals or expectations for recall performance. By setting public benchmarks, such as across each major product category or as a part of specific corrective action plans, the CPSC could ensure that the public knows the extent to which a recall is underperforming, meeting, or exceeding expectations. The eventual goal for recalls should of course be 100% participation – to get all hazardous products out of homes, workplaces, and the market – but setting incremental expectations could help verify that companies make appropriate progress toward that goal.

- **Ensure more robust approaches to outreach:** For recalls to be effective, consumers must be aware of a recall and know how to participate in the recall. Companies can take many individual steps to reach consumers and encourage them to participate. New kinds of marketing techniques are becoming available at a rapid pace, and the CPSC should always encourage companies to make use of them – whether they involve reaching consumers through social media, microtargeting, or other means. In short, the Commission should explore how to expand and diversify reach to consumers beyond

press releases, social media, and paid media. The CPSC should also consider the most effective ways to communicate with populations who likely own specific recalled products.

- **Encourage incentives for consumer responsiveness to recalls:** Firms charged with implementing recalls should provide incentives to consumers to encourage consumer participation. The Commission should gather input on innovative incentives that could help create more consumer responsiveness. This can include extra features on a replacement product, cash back, or coupons for future purposes (with the first two likely being more effective). Covering any costs involved in participating in a recall is not an incentive but should be the minimum required.

In parallel, we urge the CPSC to build more robust and effective corrective action plans (CAPs) with recalling companies. This effort could include greater company preparedness for consumer response to recalls, effective outreach to supply chains, methods for better coordination between manufacturers and retailers, consumer participation incentives, accurate tracking of recall corrections, and the setting of targets for participation. Only with strong corrective action plans and high expectations will we begin to see meaningfully higher consumer recall participation rates that keep more Americans safe. Furthermore, we recommend that the CPSC and stakeholders should further examine, in a public forum, how to ensure that CAPs are strong, as well as which metrics should be used to measure the actual intervention (i.e., the actual effectiveness of corrective action plans). For instance, when there is an option for a consumer to receive a repair it will be important for companies and the CPSC to answer: (1) did the intervention remedy the risk; and (2) did the intervention not significantly degrade the performance of the product?

- **Develop means to get input from technology and marketing experts:** Increasing recall effectiveness is complex, and we urge the Commission to invite technology and marketing experts from academia, government, public interest and consumer organizations, and the private sector to provide input and collaborate on strengthening effectiveness.

Busy consumers should be motivated to act on recall information. Notification is rarely enough. CPSC should call on marketers and others to identify what is keeping consumers from participation when they know about a recall and develop more effective means of motivating them to act. Vanessa Perry of George Washington University spoke earlier this year at the International Consumer Product Health and Safety Organization Symposium and identified consumer biases that both hinder and motivate consumers to take action.<sup>9</sup> The CPSC should integrate that knowledge into recall plans.

Information technology and marketing, including both traditional and digital marketing, are increasingly sophisticated fields that have developed tools companies should be using for recalls. For example, the CPSC should immediately contact the United States Digital

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<sup>9</sup> Vanessa G. Perry, MBA, PHD, Professor of Marketing, Strategic Management and Public Policy, The George Washington University School of Business at the [February 2018 ICPHSO Annual Symposium](#).

Service, a project of the federal government that works to “deliver better government services to the American people through technology and design”<sup>10</sup> to discuss how to leverage technology to improve recall effectiveness.

In addition, the OECD Working Party on Consumer Product Safety has been studying the issue of recall effectiveness and will shortly release a report on its findings.

- **Work to receive better data:** Several consumer advocates, including CFA, KID, and CU, have already called for the collection and issuance of more detailed recall effectiveness data within the context of the recall of IKEA dressers. The advocates specifically called on “IKEA and the CPSC to provide updated data on the effectiveness of the recall, a complete accounting of action taken to date to alert consumers to the recall, and a renewed concrete effort by both to reach consumers who currently possess this deadly furniture and urge them to remove the recalled product from their home and get a refund.”<sup>11</sup> More broadly, the only way that the CPSC will be able to make informed policy decisions is by having good data on which to rely. We call on the Commission to urge manufacturers with low consumer participation rates in a recall, including IKEA, to provide the CPSC with fuller recall data to help the agency better understand the issues that manufacturers face in securing widespread participation.
- **Formalize, strengthen, and better define success:** To our knowledge, the Commission does not have a goal for what “success” looks like in improving recall effectiveness. This is an important metric that the Commission should discuss early in its deliberations around recall effectiveness, both in terms of individual recalls and more broadly as goals for CPSC compliance and communications staff to reach.

## Conclusion

In conclusion, the recommendations above are just some of the needed fixes to ensure greater recall effectiveness and an improved ability to remove dangerous products from our homes. We also continue to support broader measures, such as the agency’s November 2013 proposed interpretive rule, “Voluntary Remedial Actions and Guidelines for Voluntary Recall Notices,” which would help improve recall effectiveness and which we urge the CPSC to finalize.

We appreciate the dialogue CPSC is fostering on this issue. We all look forward to working directly with the CPSC to explore best practices for implementing improved product registration, direct notice capabilities, and targeted notices. We urge the CPSC to bolster companies’ implementation of recalls, use the most modern communication and outreach tools available, and draw on expert research on consumer behavior to help ensure recalled products are removed from use.

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<sup>10</sup> <https://www.usds.gov/>.

<sup>11</sup> [https://consumerfed.org/press\\_release/consumer-groups-mark-beginning-of-new-era-in-recall-effectiveness/](https://consumerfed.org/press_release/consumer-groups-mark-beginning-of-new-era-in-recall-effectiveness/).

Respectfully submitted,

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