

QUESTIONS FOR THE RECORD

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In Response to the

**COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON INNOVATION, DATA, AND COMMERCE**

UNITED STATES HOUSE OF REPRESENTATIVES

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Questions for the Record- Commissioner Dziak
Consumer Product Safety Commission

The Honorable Gus Bilirakis

1. What is CPSC currently doing to ensure the independence of third-party testing labs abroad, including countries like China that don't always respect the rule of law and whistleblower protections of foreign jurisdictions?

The Commission lacks the resources to conduct in-person reviews of the labs, both third-party and firewalled labs. There are currently 670 laboratories in over 50 countries worldwide and the Commission lacks the staff and budget to conduct such reviews. Given this, the Commission depends upon the reviews of in-country Accrediting Bodies and other in-country local governmental regulatory bodies. The Commission also works with other national consumer product safety authorities to help identify and address testing lab issues as they arise.

In particular, I am most concerned about firewalled labs. These labs are associated with the company producing the product being tested and located in countries that lack whistleblower protections and a true culture of transparency when issues with a particular product arise. Firewalled labs are supposed to have such protections in place, but in practice it is extremely difficult to ensure that such protections are honored.

a. Can CPSC guarantee the independence of these third-party labs?

While the Commission takes steps to work to attempt to safeguard lab independence, I do not believe the Commission can guarantee the independence of any lab, particularly third-party firewall labs. This concern is more acute for firewalled labs located in countries lacking a tradition of protecting whistleblowers, transparency, and non-retaliation for disclosing issues. Lab independence is, at least in part, a function of the ability of lab staff and stakeholders to have a confidential method to report issues to the Commission.

Commission staff provides reviews of lab applications and compares the documentation the lab has provided with a comparison review of the accrediting body's online listing of that lab's approval. But such a review is limited to the documentation and discrepancies in such documentation.

b. What type of due diligence is done when granting initial and renewal applications?

The Commission's application approval involves two staffers' reviews of the lab's application. Each reviewer assesses the scope requested in the application and compares the scope documentation the lab has provided with a comparison review of the accrediting body's online

listing of that lab's approval. Because staff is dependent on the application and the accrediting body's documentation to identify issues, this paper review does not have the same robustness of an in-person review of a particular lab.

The Commission maintains a listing of all approved labs and labs facing adverse actions such as suspension.¹ In cases where misconduct has been suspected or found, the Commission is able to suspend an approved lab. For example, in 2023, CPSC removed 19 labs provisionally due to alleged misconduct, and subsequently [two labs](#) remain withdrawn.

c. Historically, application renewals were delegated to career staff, not requiring a Commission vote, and reviewed as a matter of course. Do you support automatic renewals by career staff?

No. I believe it is the Commission's responsibility to review renewals of lab accreditation, particularly renewals of firewalled labs for the reasons described above. While the Commission relies on accreditation bodies for the standards and staff to review compliance of such standards, renewals like original approvals are a Commission action. Each review must be examined independently, and as general principle, I would support the Commission voting on such renewals.

I would also note that in March 2024, Senator Jon Ossoff requested a GAO study regarding third-party and firewalled labs.² Once GAO completes its findings and issues recommendations, I am committed to working with my colleagues and staff to implement such recommendations.

¹ See <https://www.cpsc.gov/cgi-bin/labsearch/>.

² See [Sen. Ossoff Launches Inquiry to Keep Georgia Children Safe from Lead Contamination - U.S. Senator for Georgia Jon Ossoff \(senate.gov\)](#).

The Honorable Russ Fulcher

1. Commissioner Dziak, you're new to the Commission. I'm not aware of where you come down on the issue of mandatory government rulemaking versus voluntary industry standards that are developed inclusively through the ANSI process, and that encourage broad participation by industry engineers, regulators, consumer organizations, and users. Where do you come down on that, and on the issues of rulemaking for ROVs and ATVs in particular?

In all Commission matters, I am committed to following the laws the Commission administers, including Consumer Product Safety Act (CPSA), Federal Hazardous Substances Act, Flammable Fabrics Act, Poison Prevention Packaging Act, Reese's Law, Virginia Graeme Baker Pool and Spa Safety Act, and the STURDY Act.

The CPSA prohibits issuance of a final rule if a voluntary standard exists that is likely to eliminate or adequately reduce the risk of injury associated with a consumer product, and if it is likely that there will be substantial compliance with the voluntary standard by products in the marketplace. The development of any mandatory rule must follow this statutory construct, which involves analysis and judgment to specific facts. I am committed to following CPSA regarding any rulemakings, including any future proposed rulemakings involving ROVs and ATVs. Regarding ROVs, the Commission published a rulemaking almost nine years ago. Following its publication, the ROV rulemaking became subject to an appropriations requirement that CPSC await a National Academy of Sciences report regarding these products before proceeding. I am committed to following the law as described in the appropriations bill pertaining to this rulemaking.

In addition, the Commission has a pending rulemaking regarding debris penetration, which predates my confirmation. It was put out for public comment in late 2022 with comments closing in January 2023. In compliance with the U.S. Court of Appeals for the District of Columbia Circuit in *WCMA v. CPSC*, I expect the Commission will promulgate a Notice of Availability to provide incident data related to the ROV/OHV debris penetration rulemaking. I am committed to following the law based on my review of the record in any proceeding, including this debris penetration rulemaking should it come before the Commission for a vote. With regard to ATVs, in January 2024, prior to my confirmation as a Commissioner, the Commission approved a final ATV standard incorporating the updated American National Standard for Four-Wheel All-Terrain Vehicles developed by the Specialty Vehicle Institute of America (ANSI/SVIA 1-2023) with modifications. That rule is effective on January 1, 2025.