COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments [if any].

DATES: Comments must be submitted on or before July 9, 2001.

FOR FURTHER INFORMATION OR A COPY CONTACT: Linda J. Mauldin at (202) 418–5120; FAX: (202) 418–5524; email: *mailto:lmauldin@cftc.gov* lmauldin@cftc.gov and refer to OMB Control No. 3038–0025.

SUPPLEMENTARY INFORMATION:

Title: Practice by Former Members and Employees of the Commission (OMB Control No. 3038–0025). This is a request for extension of a currently approved information collection.

Abstract: Commission Rule 140.735–6 governs the practice before the Commission of former members and employees of the Commission and is intended to ensure that the Commission is aware of any existing conflict of interest. The rule generally requires former members and employees who are employed or retained to represent any person before the Commission within two years of the termination of their CFTC employment to file a brief written statement with the Commission's Office of General Counsel. The proposed rule was promulgated pursuant to the Commission's rulemaking authority contained in section 8a(5) of the Commodity Exchange Act, 7 U.S.C. 12a(5) (1994), as amended.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on May 16, 2001 (66 FR 27079).

Burden statement: The respondent burden for this collection is estimated to average .10 hours per response to file the brief written statement. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 3.

Estimated number of responses: 1.

Estimated total annual burden on respondents: 4.5 hours.

Frequency of collection: On occasion.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0025 in any correspondence.

Linda J. Mauldin, Office of General Counsel, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581 and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: June 4, 2001.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–14389 Filed 6–6–01; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Issuance of Policy Statement

AGENCY: Consumer Product Safety Commission.

ACTION: Final policy statement.

SUMMARY: Section 15(b) of the Consumer Product Safety Act, 15 U.S.C. 2064(b), requires manufacturers, distributors, and retailers of consumer products to report potential product hazards to the Commission. After receiving public comments, the Commission issues a final policy statement that information concerning products manufactured or sold outside of the United States that may be relevant to evaluating defects and hazards associated with products distributed within the United States should be evaluated and may be reportable under section 15(b).

DATES: This policy becomes effective June 7, 2001.

FOR FURTHER INFORMATION CONTACT: Marc Schoem, Director, Division of Recalls and Compliance, Consumer Product Safety Commission, Washington, DC 20207, telephone—(301) 504–0608, ext. 1365, fax.—(301) 504–0359, E-mail address—mschoem@cpsc.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 15(b) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2064(b) requires manufacturers, distributors, and retailers of consumer products to report potential product hazards to the Commission. In 1978, the Commission published an interpretative rule, 16 CFR 1115, that clarified the Commission's understanding of this requirement and that established policies and procedures for filing such reports and proffering remedial actions to the Commission. That rule talks generally about the types of information a firm should evaluate in considering whether to report, but does not specifically address information about experience with products manufactured or sold outside of the United States. Neither the statute, nor the rule itself, excludes such information from being evaluated or reported under section 15(b).

Over the past several years, the Commission has received section 15(b) reports that have included information on experience with products abroad. When appropriate, the agency has initiated recalls based in whole or in part on that experience. In addition, the Bridgestone/Firestone tire recall of 2000 focused public attention on the possible relevance of information generated abroad to safety issues in the United States. Accordingly, to assure that firms who obtain information generated abroad are aware that they should consider such information in deciding whether there is a need to report under section 15(b), the staff recommended that the Commission issue a policy statement. On January 3, 2001 (66 FR 351), the Commission solicited comments on a proposed policy statement stating the Commission's position that information concerning products sold outside of the United States that may be relevant to defects and hazards associated with products distributed within the United States should be evaluated and may be reportable under section 15(b).

Discussion

The Commission received seven comments in response to the proposed statement. Two supported the policy

statement. One of these commentors recommended that the Commission codify the policy as a substantive rule with specific provisions to prevent firms from circumventing the reporting obligation. A total of five commentors opposed issuing the statement as drafted. Two of these joined with the CPSC Coalition of the National Association of Manufacturers (''NAM'') in requesting that the Commission withdraw the policy statement. They also requested that, concurrent with the withdrawal, the Commission issue a clarification that no new obligations or modifications to existing rules are established, or, in the alternative, that the Commission engage in a public dialogue to review the issues and objectives raised by the policy statement. One commentor supported withdrawing the statement because it contended that the Commission had not demonstrated the need for it. The last supported the underlying rationale for the policy, but proposed limiting the policy to requiring the reporting of foreign product safety issues only when reporting would be required under the Consumer Product Safety Act. A summary of the comments and our responses appear below.

a. Interpretative Rule

In its 1978 **Federal Register** notice, the Commission specifically addressed whether the reporting regulations should be substantive or interpretative. The significance of this distinction is that, once a substantive rule goes into effect, it has the force and effect of law, and its provisions cannot be challenged in a subsequent proceeding, for example, an action to assess civil penalties. An interpretative rule, on the other hand, simply offers guidance as to what the Commission believes the law means or requires. A firm that disagrees with one or more of the provisions of an interpretative rule can, in an enforcement proceeding, challenge the reasonableness of the Commission's interpretation(s), and can prevail in the proceeding if its contention is upheld. In 1978, after seeking public comment, the Commission elected to publish the reporting rule as an interpretative rule.

NAM contends that, in issuing the proposed policy statement, the Commission is, in effect, promulgating a substantive rule, and has failed to comply with the formal rulemaking procedures of the Administrative Procedure Act , 5 U.S.C. 553. Thus, NAM claims that the policy would be invalid, if issued.

The Commission issued the policy statement because it considered it only fair that firms who might be unfamiliar with the reporting requirements be put on notice of the agency's view that information concerning foreign experience relevant to a product in the U.S. should be evaluated and *may* be reportable if it otherwise meets the criteria of section 15(b) and 16 CFR 1115. As the policy statement expressly acknowledges, this is a straight-forward interpretation of the requirements of section 15(b), and is consistent with the interpretative reporting regulation which, on its face, does not limit reporting to information derived solely from experience with products sold in the United States. Given the history of the interpretative regulation and the express acknowledgment in the policy statement that it too is interpretative, the NAM's attempt to characterize the statement as a substantive rule is misplaced.

b. Specificity of the Policy Statement

NAM posed a number of hypothetical questions that it claims the policy statement should, but does not address. In doing so, it treats the reporting rule as a substantive rule that firms must follow, even though it acknowledges in a footnote that the rule is interpretative. The short response to the NAM queries is, of course, that, as an interpretative rule, the reporting rule imposes no binding obligation on any firm. Moreover, the concerns that NAM raises—for example, whether a firm is responsible for reporting if an employee has knowledge of a reportable problem, and the extent to which a firm must investigate incidents—are not unique to multi-national business operations. They have equal applicability to domestic operations. In fact, many of those concerns are substantially the same as those that commentors on the proposed interpretative rule on reporting raised in 1977, and that the Commission addressed in the preamble to and text of the final rule in 1978. 43 FR 34988. Thus, for example, section J of the preamble discusses imputing knowledge of safety-related information to a firm only when an employee capable of appreciating the significance of the information receives it. Section L points out the Commission's views on the need for firms to exercise reasonable diligence in investigating possible product defects. It further notes that the Commission will take into account the reasonableness of a firm's behavior in the circumstances when it considers the firm's compliance with the reporting regulations. Section 1115.14 of the rule and section J of the preamble acknowledge that the time frames recommended for investigation of possible defects and the imputation of knowledge have flexibility, depending on the circumstances of a particular case.

While there may be a difference in degree in what it is reasonable to expect from reporting firms with respect to the content of and time for collecting foreign, as opposed to domestic, information, the Commission believes that the basic principles and procedures embodied in the 1978 rule and discussed in the preamble have always been and continue to be applicable to both domestic and multi-national business operations. Those principles and procedures have withstood almost a quarter of a century of experience—experience that has often involved firms obtaining and analyzing information from foreign sources, especially in cases involving products imported into the U.S. Moreover, over that period, the Commission has consistently recognized that what information it is reasonable to expect a firm to provide in a specific case depends on a number of factors. These include the size of the firm, the nature of its business, the method in which it conducts its operations, the age of the product involved, and the availability of relevant information. The location from which such information may be obtained and the difficulty in obtaining that information are simply additional factors to take into account.

The Commission notes that the process of business globalization and improvements in communication have substantially reduced the impediments to obtaining information from abroad that might have existed twenty years ago. Firms frequently communicate in seconds via the computer, telephone, and fax machine with their overseas customers, suppliers, and corporate relatives. Thus, the Commission sees no sound justification for accepting NAM's implicit premise that obtaining foreign information is so much more difficult than obtaining the same types of information generated domestically that different policies and procedures should apply. In fact, the Commission's experience demonstrates otherwise in that firms that have reported foreign information to the Commission, either on their own initiative or upon request of the staff, have been able to obtain the necessary information in a timely manner. Accordingly, for the reasons discussed above, the Commission does not believe that the concerns NAM has expressed warrant withdrawing or revising the policy statement.

c. Need for the Policy Statement

The Consumer Specialty Products Association (CSPA) suggested that the policy places an undue burden on

companies to implement monitoring programs abroad, comparable to those in the United States. The Association therefore took the position that the Commission must demonstrate the need for such a policy before establishing it.

Section 15(b) contemplates that manufacturers, distributors and retailers must consider all information relevant to the determination of whether a specific product contains a defect which could create a substantial product hazard or an unreasonable risk of serious injury or death. As the policy statement points out, neither the law nor the interpretative regulation excludes information from evaluation because of its geographic source. Accordingly, to the extent that CSPA implies that the statement imposes a burden on firms that did not previously exist, it is mistaken.

As an example of the need for the policy, the Commission recently accepted a substantial penalty to settle allegations that a company failed to report information relating to a defective water distiller in a timely manner. That information included analyses of incidents of product failure in Asia which the firm had learned about substantially before it finally reported to the Commission. Had the firm reported that information to the Commission in a timely manner, it could have expedited the subsequent recall, thus protecting consumers from the risk of fire at a much earlier date. Fires that later occurred in the U.S. could have been prevented. Examples of other cases in which information generated abroad has been relevant include corrective actions involving oil-filled radiators, stacking toys, strollers, and swimming vests, and civil penalty cases involving children's products, burners for boilers, and pacifiers. Moreover, in terms of need for the policy statement, with the volume of imported products entering the United States, information which is only available abroad, such as that related to product design, manufacturing changes, and quality assurance is essential to the evaluation of potential defects. The statement helps firms that may be unfamiliar with or unaware of this aspect of reporting to comply with their obligations under the law.

d. Additional Comments

One commenter feared that the policy statement would require firms to report products that violate safety standards issued by other countries, even if those products were in full compliance with U.S. requirements. The commenter requested that the Commission adopt a policy that would require the reporting of foreign product safety issues only when reporting would otherwise be required under section 15(b). The Commission believes that the commentor may have misconstrued the scope of the policy statement, since the commentor's suggested alternative is in effect what the policy statement contemplates.

Conclusion

The Commission does not believe that any of the comments submitted warrant withdrawing or revising the statement. Accordingly, the Commission is issuing the policy statement. The Commission has, on its own initiative, made one revision to the statement to make it clear that the policy applies to information concerning products manufactured outside of the United States, as well as to information about products distributed abroad. The text of the policy statement is as follows:

Guidance Document on Reporting Information Under 15 U.S.C. 2064(b) about Potentially Hazardous Products Manufactured or Distributed Outside the United States

Section 15(b) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2064(b), imposes specific reporting obligations on manufacturers, importers, distributors and retailers of consumer products distributed in commerce. A firm that obtains information that reasonably supports the conclusion that such a product:

- Fails to comply with an applicable consumer product safety rule or with a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the CPSA,
- Contains a defect that could create a substantial product hazard as defined in section 15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2), or
- Creates an unreasonable risk of serious injury or death

must immediately inform the Commission unless the firm has actual knowledge that the Commission has been adequately informed of the failure to comply, defect, or risk.

The purpose of reporting is to provide the Commission with the information it needs to determine whether remedial action is necessary to protect the public. To accomplish this purpose, section 15(b) contemplates that the Commission receive, at the earliest time possible, all available information that can assist it in evaluating potential product hazards. For example, in deciding whether to report a potential product defect, the law does not limit the obligation to report to those cases in which a firm has finally determined that a product in fact contains a defect that creates a substantial product hazard or has pinpointed the exact cause of such a defect. Rather, a firm must report if it obtains information which *reasonably supports* the conclusion that a product it manufactures and/or distributes contains a defect which *could* create such a hazard *or* that the product creates an unreasonable risk of serious injury or death. 15 U.S.C. 2064(b)(2) and (3); 16 CFR 1115.4 and 6. Nothing in the reporting requirements of the CPSA or the Commission's interpretive regulation at 16 CFR Part 1115 limits reporting to information derived solely from experience with products sold in the United States. The Commission's interpretative rule enumerates, at 16 CFR 1115.12(f), examples of the different types of information that a firm should consider in determining whether to report. The regulation does not exclude information from evaluation because of its geographic source. The Commission interprets the statutory reporting requirements to mean that, if a firm obtains information that meets the criteria for reporting listed above and that is relevant to a product it sells or distributes in the U.S., it must report that information to the CPSC, no matter where the information came from. Such information could include incidents or experience with the same or a substantially similar product, or a component thereof, sold in a foreign country.

Over the past several years, the Commission has received reports under section 15(b) that have included information on experience with products abroad, and, when appropriate, has initiated recalls based in whole or in part on that experience. Thus, a number of companies already view the statutory language as the Commission does. However, with the expanding global market, more firms are obtaining this type of information, but many may be unfamiliar with this aspect of reporting. Therefore, the Commission issues this policy statement to assist those firms in complying with the requirements of section 15(b) of the Consumer Product Safety Act.

Dated: June 1, 2001.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 01–14299 Filed 6–6–01; 8:45 am]

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