

*Council address:* Pacific Council, 7700 NE. Ambassador Place, Suite 101, Portland, OR 97220-1384.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kelly Ames, Pacific Council; telephone: (503) 820-2426.

**SUPPLEMENTARY INFORMATION:** The primary purpose of the Area 2A Pacific halibut manager's meeting is to prepare and develop recommendations for the January 23-27, 2017 International Pacific Halibut Commission's (IPHC) annual meeting in Victoria, British Columbia, Canada. Recommendations generated from the meeting would be communicated to the IPHC by the Pacific Council's representative, Mr. Phil Anderson. Attendees may also address other assignments relating to Pacific halibut management. No management actions will be decided by the attendees. The meeting will be open to the public, and the agenda, which will be available one week before the meeting, will provide for a public comment period.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

### Special Accommodations

The public listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820-2425 at least 10 business days prior to the meeting date.

Dated: November 28, 2016.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2016-28918 Filed 12-1-16; 8:45 am]

**BILLING CODE 3510-22-P**

## CONSUMER PRODUCT SAFETY COMMISSION

### CPSC Litigation Guidance and Recommended Best Practices for Protective Orders and Settlement Agreements in Private Civil Litigation

**AGENCY:** U.S. Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** The U.S. Consumer Product Safety Commission (CPSC or the Commission) is publishing this Litigation Guidance to provide recommendations for best practices to all parties in relevant litigation related to providing an exemption in protective orders and settlement agreements for reporting information to the CPSC.

**FOR FURTHER INFORMATION CONTACT:** Todd A. Stevenson, Secretary, U.S. Consumer Product Safety Commission, Office of the Secretary, 4330 East-West Highway, Bethesda, MD 20814, Room 820, 301-504-7923; email *tstevenson@cpsc.gov*.

### SUPPLEMENTARY INFORMATION:

#### I. Background <sup>1</sup>

The CPSC is a public-health authority with a broad mandate to protect the public against unreasonable risks of injury associated with consumer products. *See* 15 U.S.C. 2051 (2014); *See also* Public Health Authority Notification, 79 FR 11769 (March 3, 2014). The Consumer Product Safety Act (CPSA) defines consumer products broadly, making the Commission responsible for ensuring the public's safety from thousands of different ever-evolving product lines. *See* 15 U.S.C. 2052 (2014). The timely collection of information regarding consumer product-related safety hazards is essential for carrying out the Commission's public health and safety mission.

Mandatory self-reporting of potential product hazards by manufacturers (including importers), retailers, and distributors (Industry Stakeholders) is a key element of CPSC's ability to identify potential substantial product hazards and subsequently take corrective action to protect the public. Such Industry Stakeholders are best situated to discover a potential product hazard and, thus, are statutorily required to report immediately to the CPSC when they obtain information that reasonably supports the conclusion that a product fails to comply with an applicable rule or standard, contains a defect which could create a substantial product hazard, or creates an unreasonable risk of serious injury or death. 15 U.S.C. 2064(b) (2014).

Despite the mandatory reporting requirement, the Commission believes

<sup>1</sup>The Commission voted (3-2) to publish this notice in the *Federal Register*. Chairman Elliot F. Kaye and Commissioners Robert S. Adler and Marietta S. Robinson voted to approve publication of the notice. Commissioner Ann Marie Buerkle and Joseph P. Mohorovic voted against publication of the notice.

Industry Stakeholders do not always meet their reporting obligations. Industry Stakeholders may fail to report potential product hazards altogether, may fail to report them in a timely manner and/or may fail to report new incidents that occur after the initial hazard has been reported.<sup>2</sup>

If Industry Stakeholders fail to report, CPSC has limited alternative means of obtaining this critical safety information. It is therefore possible that a product hazard will never come to CPSC's attention. Information in private litigation could, thus, be a key resource for the CPSC when Industry Stakeholders have not satisfied their reporting obligations. However, in some instances, confidentiality provisions imposed or enforced by the courts or agreed upon by private litigants may have prevented parties that are not industry stakeholders from sharing with the CPSC important product safety information they have discovered. *See* S. REP. NO. 110-439, at 6-8 (2008); *see also* Footnote 2 *infra*.

The motions and hearings involved in obtaining protective orders in private litigation for specific documents may result in enormous associated costs both in terms of money and time. This often leads to the use of "blanket" or "umbrella" protective orders covering the entirety of pre-trial discovery. *See Zenith Radio Corp. v. Matsushita Elec. Indus. Co.*, 529 F. Supp. 866, 879 (E.D. Pa. 1981) (finding that without blanket protective orders, a judge becomes a "veritable hostage" required to spend years on motions for individual documents). Rather than requiring a series of individual rulings for a large number of documents, blanket protective orders may create a presumption against disclosure for all or certain groups of information that then may be challenged individually for lack of good cause. *See* MANUAL FOR COMPLEX LITIGATION § 11.432 (2004). Such umbrella protective orders have become fairly common. *See Zenith Radio Corp.*, 529 F. Supp. 866, 889 (E.D. Pa. 1981) ("We are unaware of any case in the past half-dozen years of even a modicum of complexity where an umbrella protective order . . . has not been agreed to by the parties); *see also Jepson, Inc. v. Makita Elec. Works, LTD.*, 30 F.3d 854, 858 (7th Cir. 1994) ("stipulated protective orders are relatively common."). Additionally, if incriminating documents outside the

<sup>2</sup>The CPSA recognizes that failures to report and delays in reporting may occur, and authorizes civil penalties up to \$15,150,000 for any related series of violations for stakeholders who violate their reporting obligations. *See* 15 U.S.C. 2068-2069 (2014).

scope of a protective order are discovered before trial, defendants often demand blanket protective orders as a condition of settlement. *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 785–786 (3rd Cir. 1994). In order to facilitate settlements, courts are often willing to grant these blanket orders without significantly analyzing the public interests involved. *Id.*

The Commission believes that general acceptance of “blanket” or “umbrella” protective orders in private litigation increases the likelihood that such agreements will bar the reporting to the Commission by those who are not Industry Stakeholders of consumer product safety information that the CPSC needs to protect the public. Although a party could pursue a good-cause challenge to allow the reporting of such information, the practicalities involved create a significant disincentive—the party’s attorneys must first recognize the information’s relevance to the CPSC and then pursue a potentially costly series of motions and hearings that are unlikely to benefit their client directly. See Nick Saccone, Comment, *Somewhere Between Florida, Texas, and Federal Rule of Civil Procedure 26(c): A Balanced Approach to Protective Orders and Confidentiality Settlements*, 39 U. Tol. L. Rev. 729, 740 (2008) (“Satellite litigation concerning contested discovery requests often has little or no bearing on the ultimate result of the lawsuit, other than increasing the cost of litigation for both injured plaintiffs and defendants.”). Few parties will therefore even attempt to lift protective orders in order to inform the CPSC of relevant product safety information.

According to a report submitted by the United States Senate Committee on the Judiciary on the proposed Sunshine in Litigation Act of 2008, safety information related to dangerous playground equipment, collapsible cribs, and all-terrain vehicle design defects was kept from the CPSC by protective orders in private litigation. S. REP. NO. 110–439, at 6–8 (2008). A cursory review of other civil product liability cases reveals that protective orders are in place in cases involving additional consumer products that fall under the CPSC’s jurisdiction.<sup>3</sup> These

<sup>3</sup> For example, the following is a select (and by no means exhaustive) list of protective orders that have been entered into in ongoing litigation or settlements related to consumer products within the CPSC’s jurisdiction. Any relevant information discovered in these cases is covered by the protective orders and plaintiffs would be prohibited from sharing such information with the CPSC. *Hampton v. Crescent Cleaners, Inc., et al.*, USDC Western District of Tennessee, Case 2:08–cv–02696–SHM–cgc, Document 89, Filed 08/17/2009

protective orders prohibit parties from reporting to the CPSC information they obtain in the course of litigation that concerns potentially hazardous consumer products, including incident reports.

The Commission believes the best way to protect public health and safety is to preemptively exclude or exempt the reporting of relevant consumer product safety information to the CPSC (and other government public health and safety agencies) from all confidentiality provisions.

## II. The Model: NHTSA’s Enforcement Guidance Bulletin

The Commission has reviewed the National Highway Transportation Safety Administration’s (NHTSA) guidance on this issue. NHTSA is situated similarly to the CPSC with a public health and safety mission to reduce traffic accidents and the deaths and injuries resulting from them. See 49 U.S.C. 30101 (2014). NHTSA’s “ability to identify and define safety-related motor vehicle defects relies in large part on manufacturers’ self-reporting.” *NHTSA Enforcement Guidance Bulletin 2015–01: Recommended Best Practices for Protective Orders and Settlement Agreements in Civil Litigation*, 81 FR 13026, 13026 (March 11, 2016) (hereinafter NHTSA Enforcement Guidance Bulletin). NHTSA found that it does not always receive such information from their industry stakeholders. *Id.* NHTSA recently issued an Enforcement Guidance Bulletin in an attempt to address the use of “protective orders, settlement agreements, or other confidentiality provisions” barring reporting to the agency. *Id.*

The NHTSA Enforcement Guidance Bulletin laid out a detailed, comprehensive and compelling legal analysis supporting the disclosure to public health authorities, notwithstanding confidentiality provisions in protective orders, settlements, and similar agreements.

(infrared liquid propane wall-mounted heater); *Miah v. Ames True Temper, Inc., et al.*, St Ct of DeKalb County, GA, Civ Action File No. 03A05859–7, Protective Order, 7/22/2013 (wheelbarrow); *Tamayo v. Dollar Tree Stores, Inc., et al.*, USDC Eastern District of PA, Case 2:13 cv–02062–GP, Document 41, Stipulated Protective Order, (Document 41), Filed 12/05/13 (markers); *Williams v. Ideal Industries, Inc., et al.*, USDC Northern District of Georgia, Case 1:14–cv–02883–LMM, First Amended Protective Order (Document 46), Filed 02/17/15 (multimeter device); *Broughton v. Paoli, LLC, et al.*, NC Carteret County Sup Ct, 15 CVS 471, Stipulated Protected Order, 12/21/2015 (office chair); and *Gomez v. Harbor Freight Tools USA, Inc.*, Sup Ct of CA Los Angeles County, Case no. BC616712, Stipulation and Protective Order—Confidential Designations, Filed 8/17/2016 (gas cans).

CPSC agrees with NHTSA that Rule 26 of the Federal Rules of Civil Procedure and various related state laws, as well as case law on public policy and contract law, all support the conclusion that government agencies with public health and safety missions should be excluded or exempted from the various relevant protective orders that are ubiquitous in private litigation today. NHTSA’s legal analysis of this issue is available at: <https://www.federalregister.gov/documents/2016/03/11/2016-05522/nhtsa-enforcement-guidance-bulletin-2015-01-recommended-best-practices-for-protective-orders-and>.

CPSC further agrees with NHTSA that nondisclosure provisions may be appropriately used by courts and litigants to “promote full and complete disclosure, to prevent abuses of the discovery process, and to protect legitimate privacy and proprietary interests.” 81 FR 13029. However, when such orders and agreements shield relevant and actionable safety information behind nondisclosure provisions, they violate the good-cause requirement of Rule 26 of the Federal Rules of Civil Procedure, its state corollaries, and the well-established public policy favoring protecting public health and safety.

## III. Recommendation for Best Practices

CPSC recommends, following the example set by NHTSA, that “all parties seek to include a provision in any private protective order or settlement agreement that—despite whatever restrictions on confidentiality are imposed, and whether entered into by consent or judicial fiat—specifically allows for disclosure of relevant [consumer product] safety information to [the CPSC] and other applicable authorities.” 81 FR 13029–13030. CPSC’s proposed Litigation Guidance does not impose any new or additional requirements, but sets forth CPSC’s recommendations for best practices when parties are considering confidentiality provisions in litigation related to consumer products within the CPSC’s jurisdiction.

Parties in the process of establishing or already subject to confidentiality provisions may use this Litigation Guidance and CPSC’s standing as a public-health authority to support a reporting exception to these provisions. See 79 FR 11769. For example, the exception could explicitly state “nothing herein shall be construed to prohibit any party from disclosing relevant consumer product safety information to the Consumer Product Safety Commission.” Alternatively, a

clause might more generally state that “nothing herein shall be construed to prohibit any party from disclosing relevant safety information to a regulatory agency or government entity that has an interest in the subject matter of the underlying suit.” The CPSC, however, is not endorsing any particular language since the parties themselves are in the best position to determine how that may be accomplished.

#### IV. Conclusion

The CPSC is publishing this Litigation Guidance to provide recommendations for best practices when drafting protective orders, confidentiality agreements, and settlement agreements. The Litigation Guidance should be reviewed by judges, plaintiffs, and defendants, as well as those parties wishing to submit *amicus* briefs relating to protective orders and confidentiality agreements in ongoing litigation.

The Commission believes this Litigation Guidance is simple. Protective orders, confidentiality agreements and settlements (as well as other similar documents), should include language that allows any party to report consumer product safety information, incidents, injuries and deaths to the CPSC.<sup>4</sup>

The Commission notes that this Litigation Guidance is not a binding or enforceable rule and would not change any person's rights, duties or obligations under the CPSIA or any other Act administered by the Commission.

Dated: November 29, 2016.

**Todd A. Stevenson,**  
Secretary, Consumer Product Safety Commission.

[FR Doc. 2016-29004 Filed 12-1-16; 8:45 am]

**BILLING CODE 6355-01-P**

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meeting Notice

**TIME AND DATE:** Wednesday, December 7, 2016; 9:30 a.m.–12 p.m.

**PLACE:** Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Closed to the Public.

**Matter To Be Considered:** Compliance Matters: The Commission staff will brief the Commission on the status of various compliance matters.

<sup>4</sup> The public is always encouraged to report relevant consumer product safety information to the CPSC via the CPSC's hotline [(800) 638-CPSC (2772)]; the CPSC's online reporting tool: [www.saferproducts.gov](http://www.saferproducts.gov); and by contacting the CPSC's Office of Compliance and Field Operations directly [(301) 504-7547].

**CONTACT PERSON FOR MORE INFORMATION:**  
Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504-7923.

Dated: November 29, 2016.

**Todd A. Stevenson,**  
Secretary.

[FR Doc. 2016-29061 Filed 11-30-16; 11:15 am]

**BILLING CODE 6355-01-P**

## DEPARTMENT OF DEFENSE

### Department of the Army

#### Programmatic Environmental Assessment for Construction and Operation of Solar Photovoltaic Renewable Energy Projects on Army Installations

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of availability.

**SUMMARY:** The Department of the Army has completed a Programmatic Environmental Assessment (PEA) for construction, operation, and maintenance of solar photovoltaic (PV) renewable energy projects on Army installations and is making the PEA and a draft Finding of No Significant Impact (FNSI) available for public comment. The draft FNSI incorporates the PEA, which does not identify any significant environmental impacts from the proposed action or any of the alternatives. The draft FNSI concludes that preparation of an environmental impact statement (EIS) is not required, and therefore will not be prepared.

The PEA is programmatic and nationwide in scope. For years, the Army has analyzed and implemented solar PV projects at Army installations across the country. In the PEA, the Army leveraged this experience with the goal of streamlining the National Environmental Policy Act process for future solar PV proposals, as appropriate, in a manner consistent with Council on Environmental Quality and Department of the Army regulations.

**DATES:** The public comment period will end 30 days after publication of the Notice of Availability in the **Federal Register** by the Department of the Army.

**ADDRESSES:** Written comments should be sent to: U.S. Army Environmental Command, Attn: Solar PV PEA Public Comments, 2450 Connell Road (Building 2264), JBSA—Fort Sam Houston, TX 78234-7664; email: [usarmy.jbsa.aec.nepa@mail.mil](mailto:usarmy.jbsa.aec.nepa@mail.mil).

#### FOR FURTHER INFORMATION CONTACT:

Please contact the U.S. Army Environmental Command Public Affairs Office, (210) 466-1590 or toll-free 855-846-3940, or email at [usarmy.jbsa.aec.nepa@mail.mil](mailto:usarmy.jbsa.aec.nepa@mail.mil).

**SUPPLEMENTARY INFORMATION:** The proposed action is to construct, operate, and maintain solar PV arrays and/or ancillary power systems on Army installations, to include U.S. Army Reserve facilities, Army National Guard sites, and joint bases managed by the Department of the Army (with all henceforth referred to only as “Army installations” or “installations”). The proposed action includes, for those solar PV projects where the existing infrastructure is insufficient, constructing (or upgrading) and maintaining the associated infrastructure required for the transmission and management of the generated electricity to the electric grid. Associated infrastructure includes but is not limited to electricity transformers, transmission and distribution lines, and sub or switching stations; as well as ancillary power control systems such as energy storage systems, micro-grid components, and back-up power generators. The proposed action may include real estate actions on Army lands where the projects could be funded and constructed by the Army, funded through a third party Power Purchase Agreement utilizing a lease of Army or Joint Base land to an independent power producer or the local regulated utility company, or funded via some other relationship with a private or public entity.

The projects being evaluated and analyzed would generally range from approximately 10 megawatt (MW) to 100 MW per site; however, the projects outside of this MW range (e.g., less than 10 MW) are inclusive in this proposed action. On average, seven acres of land are currently required to produce one MW of power. As this technology has evolved, the acreage requirement for one MW generating capacity has decreased; therefore, it is possible that future solar PV technologies may require even less acreage per MW; currently, approximately 70 acres of land would be required for a 10 MW site and 700 acres of land for a 100 MW site. PV systems on rooftops would generally expect to have capacity measured in watts or kilowatts (kW), not MW, and be of a much smaller size and scope.

After construction, equipment monitoring, routine maintenance (including vegetation control, snow removal, solar module washing, and periodic module/other equipment