

U.S. Department
of Homeland
Security

**United States
Coast Guard**



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COMDTINST 16703.2
September 25, 2009

COMMANDANT INSTRUCTION 16703.2

Subj: MARINE SAFETY AND SECURITY COUNCIL: DEVELOPMENT AND REVIEW OF
RULEMAKING DOCUMENTS

- Ref:
- (a) 14 United States Code, Section 2
 - (b) 33 Code of Federal Regulations, Section 1.05-1
 - (c) Department of Homeland Security Delegation No. 0170.1
 - (d) Department of Homeland Security Management Directive 0490.1 (Series)
 - (e) Delegation of Rulemaking Authority Memorandum 16704 dated 31 March 2008
 - (f) Information and Life Cycle Management Manual, COMDTINST M5212.12 (Series)
 - (g) Preparation of Field Regulations, COMDTINST M16704.3 (Series)

1. **PURPOSE.** In accordance with references (a) through (f), this Instruction describes the Marine Safety and Security Council’s (MSSC) role in developing and advising the Commandant on Coast Guard rulemaking projects. The MSSC is the Commandant’s advisory body for all Coast Guard regulatory initiatives. It approves all new rulemaking projects, amendments to active rulemaking projects, and suspension or termination of inactive rulemaking projects. The MSSC also provides policy and procedural guidance to program managers and rulemaking teams developing rulemaking projects at Headquarters units. Additionally, it provides Coast Guard personnel procedural guidance for the clearance of rulemaking documents.¹ This Instruction does not create or define any rights, privileges, duties, or benefits, either substantive or procedural, enforceable at law by any person or entity in any administrative, civil, criminal, or other matter.

¹ Additional guidance on field regulations is provided in reference (g).

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2. ACTION. Deputy and assistant commandants, directors, the Judge Advocate General, office chiefs, and commanding officers of special staff components with regulatory responsibilities will ensure that this Instruction is followed for the development and review of regulatory actions.
3. DIRECTIVES AFFECTED. Marine Safety Council: Development and Review of Headquarters Rulemakings, HQINST 16703.2 is cancelled.
4. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS. Environmental considerations were examined in the development of this Instruction and have been determined to be not applicable.
5. DEFINITIONS.
 - a. Docket. A docket is a collection or repository for documents or information related to specific Coast Guard rulemaking activity. The Department of Transportation (DOT) continues to manage the Coast Guard docket by mutual agreement with the Department of Homeland Security (DHS). Coast Guard dockets are part of the Federal Docket Management System (FDMS) and are available for public viewing at www.Regulations.gov. The docket generally consists of one or more Coast Guard documents published in the *Federal Register*, the materials specifically referenced in those documents, any public comments and submissions received, and other information used by decision-makers or otherwise related to the rulemaking activity, such as supporting and related materials and analyses. In most cases, after the project team has received approval of the work plan, Commandant (CG-0943) will obtain a docket number from DOT.
 - b. Mission Management System (MMS). An International Organization of Standards (ISO) information management tool used to continually improve the quality of Regulatory Development Program (RDP) operations. Quality policy and objectives in the MMS are applied to key processes in the regulatory development plan to ensure the plan fulfills its mission. RDP performance is measured and fed back into the MMS to facilitate effective planning and control.
 - c. Non-significant Rulemaking Project. A non-significant rulemaking project is any rulemaking that is defined as a “regulatory action,” but does not satisfy the definition of “significant regulatory action,” under Executive Order (E.O.) 12866, as determined by the Office of Management and Budget (OMB). Non-significant rulemaking projects are not reviewed by OMB.
 - d. Project Team/Rulemaking Team. The terms “Project Team” and “Rulemaking Team” may be used interchangeably. Team members coordinate their efforts to publish a rulemaking. At a minimum, teams consist of a Program Manager (the program representative), a Regulatory Development Manager (Commandant (CG-5232) representative) and a Project Counsel (Commandant (CG-0943) representative). If appropriate, a team may include an Economist (Commandant (CG-5231), Environmental Protection Specialist (Commandant (CG-5231), or a Technical Writer (Commandant (CG-5231).

- e. Proponent. In accordance with reference (e) and for purposes of this Instruction, the Proponent of a work plan, work plan change, or rulemaking document will be the Assistant Commandant for Marine Safety, Security & Stewardship (Commandant (CG-5), a deputy or assistant commandant, or other senior executive at an equivalent echelon. As indicated in Enclosure (1), proponents have signature authority for work plans, work plan changes, and non-significant rulemaking documents originating within the proponent's area of responsibility.
- f. Rulemaking Project Prioritization List. The list represents the Coast Guard's rulemaking priorities and it is updated annually based on the fiscal year.
- g. Regulatory Development Manager (RDM). The RDM acts as the project process manager and is responsible for keeping the project on schedule, identifying and solving problems that are likely to cause delays. The RDM also facilitates rulemaking team communication, coordination and document clearance. The RDM is assigned by the Regulatory Coordinator.
- h. Regulatory Coordinator (RegCo). Each proponent may designate a RegCo to coordinate rulemakings within the proponent's organization. The RegCo coordinates each rulemaking by assisting the program director in forming a rulemaking team and coordinating technical assistance, such as environmental or economic analyses. The RegCo also manages and monitors the progress of each regulatory project. Commandant (CG-5232) is the RegCo for CG-5 rulemakings.
- i. Regulation Identification Number (RIN). The Department of Transportation Federal Docket Management System assigns a RIN to each regulatory project listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions. The RIN is requested by Commandant (CG-0943) for all Coast Guard rulemakings.
- j. Rulemaking/Regulatory Action. A rulemaking or regulatory action is "any substantive action by an agency (normally published in the *Federal Register*) that promulgates or is expected to lead to the promulgation of a final regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking."²
- k. Significant Rulemaking Project. A significant rulemaking project is any rulemaking that is defined as a "significant regulatory action" by OMB in accordance with the criteria in E.O. 12866. Significant rulemaking projects are reviewed by OMB. All significant rulemaking projects require the Commandant and MSSC approval, as noted in Enclosure (1).
- l. Unified Regulatory Agenda. The Unified Regulatory Agenda is a document published in the *Federal Register* twice a year by the Office of the Federal Register (usually in April and October). It summarizes the rules and proposed rules that each Federal agency expects to issue during the next year, and is available on line at <http://www.reginfo.gov>.

² E.O. 12866 Sec. 3(e).

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m. Work Plan. A work plan is an internal planning document that defines the rulemaking project and ensures the proper resources will be available to the rulemaking team. The work plan must go through clearance to establish a new regulatory project (see Enclosure (1)).

6. MSSC MEMBERS.

a. Chair. The Judge Advocate General (Commandant (CG-094)).

b. Voting Members.

(1) The Judge Advocate General (Commandant (CG-094));

(2) Assistant Commandant for Marine Safety, Security & Stewardship (Commandant (CG-5));

(3) Director of Commercial Regulations and Standards (Commandant (CG-52)); and

(4) Director of Prevention Policy (Commandant (CG-54)).

c. Non-Voting Members.

(1) Assistant Commandant for Resources (Commandant (CG-8));

(2) Director of Governmental and Public Affairs (Commandant (CG-092)); and

(3) Director, National Pollution Funds Center (NPFC).

(4) Ad Hoc Members. The MSSC may invite other Assistant Commandants or flag-level/SES officials to serve as *ad hoc* members. Such *ad hoc* membership will be limited to specific rulemaking projects or issues.

d. Other Participants.

(1) Executive Secretary. The Executive Secretary (ExecSec) is designated by The Judge Advocate General and is a staff member of the Office of Regulations and Administrative Law (Commandant (CG-0943)).

(2) Legal Advisor. Chief, Office of Regulations and Administrative Law (Commandant (CG-0943)).

(3) Chief, Office of Standards Evaluation and Development (Commandant (CG-523)).

7. MSSC ROLES AND RESPONSIBILITIES.

a. MSSC Chair.

- (1) Oversees and facilitates MSSC activity;
- (2) Submits reports of MSSC activity and information pertaining to rulemaking actions to the Commandant;
- (3) Provides guidance to the staff of *Proceedings* on topic selection and development of articles with input from other MSSC members; and
- (4) Sponsors all MSSC meetings.

b. Assistant Commandant for Marine Safety, Security and Stewardship (Commandant (CG-5)). As head of the Coast Guard organization primarily responsible for most Headquarters regulatory actions, Commandant (CG-5) is responsible for monitoring the MMS through the periodic MMS management review. The management review enables assessment of the system for continuing suitability, adequacy, and effectiveness. Commandant (CG-5) also has signature authority for rulemaking documents as described in Enclosure (1) of this Instruction.

c. MSSC Voting Members. The MSSC voting members have responsibilities both as the advisory body to the Commandant and in their capacity as individual members.

(1) Advisory body responsibilities:

- (a) Report to the Commandant, not less than annually, the status of all Headquarters regulatory projects;
- (b) Provide policy and procedural guidance to rulemaking teams for the development and issuance of Coast Guard regulations. Develop and promulgate strategic priorities for the Coast Guard's rulemaking program;
- (c) Monitor progress of rulemaking projects and recommend appropriate course(s) of action to ensure completion of projects; and
- (d) Act on requests and make decisions regarding the *Proceedings* magazine.

(2) Individual member responsibilities:

- (a) Attend MSSC meetings;
- (b) Vote on the Rulemaking Project Prioritization List and Annual Report:

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- (i) Rulemaking Project Prioritization List Vote. Members of the MSSC will vote on the Rulemaking Project prioritization list. Not less than three members must concur with the rulemaking project ranking list before it becomes final.
 - (ii) Annual Report Vote. Members of the MSSC will vote on the annual report. Not less than three members must concur with the annual report prior to submission to the Commandant.
 - (c) Concurrently clear all Work plans, Work plan Changes, and Significant Rulemaking Documents. The MSSC members will concurrently review all rulemaking documents categorized as significant and all work plans, and work plan changes, via the concurrent clearance process set forth in the MSSC Document Clearance Procedures in Enclosure (1). As set out in those procedures, the members will normally have 14 calendar days to non-concur (with comments) or concur (with or without comments). Failure to concur or non-concur within 14 calendar days will be interpreted as concurrence unless a member affirmatively requests additional time.
 - (d) Concurrently clear quarterly reports within 14 calendar days of receipt from the MSSC ExecSec.
- d. MSSC Non-Voting Members.
- (1) Review rulemaking matters and advise the MSSC; and
 - (2) Attend MSSC meetings.
- e. Executive Secretary. As the administrative coordinator of the MSSC, the ExecSec will:
- (1) Schedule all MSSC meetings, and prepare and distribute the associated meeting agenda/read-ahead materials;
 - (2) Maintain the MSSC's administrative records (e.g., minutes, MSSC voting records, etc.);
 - (3) Maintain original copies of all Headquarters rulemaking projects within Commandant (CG-0943);
 - (4) Produce MSSC correspondence as requested by the Chair;
 - (5) Coordinate with appropriate Commandant (CG-523) personnel to develop and electronically distribute the quarterly and annual MSSC Reports;

- (6) Coordinate with Commandant (CG-523) personnel to develop the Rulemaking Project Prioritization List;
 - (7) Receive original work plans, work plan changes, and rulemaking documents from the Commandant (CG-523) RDMs and electronically distribute the same to MSSC voting members;
 - (8) Upon approval (by MSSC voting members) of work plans, work plan changes, and rulemaking documents, forward those documents to the Commandant *via* the MSSC Chair and ensure they are routed in accordance with the time frame(s) outlined in this Instruction and Enclosure (1); and
 - (9) Act as a liaison between the *Proceedings* magazine staff and the MSSC Chair.
- f. MSSC Legal Advisor. The Legal Advisor will:
- (1) Provide legal advice to the MSSC;
 - (2) Coordinate with OMB and the Department of Homeland Security, Office of General Counsel (DHS OGC), to ensure all Coast Guard Headquarters rulemaking projects are reviewed by the appropriate personnel; and
 - (3) Ensure completion of legal activities associated with rulemaking projects are in compliance with the MMS.
- g. Regulatory Coordinator. Each Regulatory Coordinator will:
- (1) Manage and monitor the progress of each regulatory project within their Proponent's area of responsibility in conjunction with the Regulatory Development Program Team; and
 - (2) Provide reports and analysis as required herein.
- h. Ad Hoc Members.
- (1) *Ad hoc* members will offer advice to the MSSC on rulemaking projects affecting or originating within their respective areas of responsibility. *Ad hoc* members will participate in discussions during MSSC meetings, but will not be permitted to vote on any matters before the MSSC; and,
 - (2) *Ad hoc* members may request a meeting by contacting the MSSC ExecSec.

8. MSSC PROCEDURES.

- a. Annual Meeting. The MSSC will convene annually on the third Wednesday in October (or as soon as practicable thereafter). During such a meeting, the MSSC will, at a minimum:
 - (1) Discuss past year regulatory performance issues;
 - (2) Discuss current year regulatory performance issues and associated resource needs;
 - (3) Vote on the Rulemaking Project Prioritization List for the upcoming year;
 - (4) Amend (if necessary) and vote upon the Annual Report; and
 - (5) Determine a recommended course of action based on the foregoing discussions and voting results.
- b. Quarterly and Ad Hoc Meetings. The MSSC may hold additional meetings (*e.g.*, quarterly meetings) during the year to address issues identified by a voting member. *Ad hoc* meetings may also be requested by any voting member.
- c. Mandatory Meeting Attendees.
 - (1) Chair;
 - (2) Voting Members - in addition to the Chair, at least two voting members (or their acting representatives) must be present at each MSSC meeting;
 - (3) Executive Secretary;
 - (4) Legal Advisor; and
 - (5) Commandant (CG-523).
- d. Discretionary Attendees.
 - (1) Non-Voting Members;
 - (2) *Ad hoc* Members; and,
 - (3) At the discretion of the MSSC, Headquarters staff members may attend MSSC meetings, but may not participate in discussions unless invited to do so by a member.
- e. Public Participation. MSSC meetings are not open to the public.

9. REPORTS.

a. The Chief, Office of Standards Evaluation and Development (Commandant (CG-523)), in coordination with the MSSC ExecSec, will create the quarterly and annual reports.³

(1) Quarterly Reports. At a minimum, quarterly reports will address the following:

- (a) The status of Headquarters rulemaking projects;
- (b) Progress and delays for rulemaking projects during the past quarter;
- (c) Anticipated progress or delays during the current quarter;
- (d) Identification of rulemaking projects of interest (e.g., projects that have gained the attention of the Commandant, DHS, OMB, or Congress);
- (e) Special resource needs for the upcoming quarter; and
- (f) The current Rulemaking Project Prioritization List.

(2) Annual Report. The annual report will be discussed, amended (if necessary), and voted upon by the MSSC Voting Members during the annual meeting. In addition to the items listed in paragraph 9.a.(1), above, the annual report will address, at a minimum, the following:

- (a) A summary of the number and type of Field Regulations published in the past fiscal year;
- (b) An analysis of the progress each Headquarters rulemaking project has made during the past fiscal year;
- (c) An analysis of the projected progress Headquarters rulemaking projects make during the current fiscal year, along with any special resource needs;
- (d) An analysis of the accuracy of the prior fiscal year projected progress for top tier projects from the Prioritization List;
- (e) MSSC strategic priorities for the upcoming fiscal year; and

³ For purposes of Quarterly and Annual Reports, Commandant (CG-523) must ensure that a quarterly report is submitted in time to ensure publication not later than four weeks after the close of each quarter. The reporting cycle will follow the fiscal year calendar (i.e., First Quarter: October 1 to December 31, Second Quarter: January 1 to March 31, Third Quarter: April 1 to June 30, Fourth Quarter/Annual Report: July 1 to September 30).

(f) An update on the *Proceedings* magazine.

b. The Commandant's Annual MSSC Report. The Commandant's Annual MSSC Report will be forwarded to the Commandant within 45 days of the annual meeting. The report will consist of:

- (1) The Annual Report (with any changes made by the voting members of the MSSC);
- (2) The recommended course of action for Headquarters rulemaking projects for the following two fiscal years; and
- (3) The minutes of the annual meeting which will include a summary of the key issues discussed during the annual meeting and the recommended resolution of those issues.

c. Ad hoc reporting. The Chief, Office of Standards Evaluation and Development (Commandant (CG-523)) will monitor progress of all rulemaking projects and report any delays or resourcing issues encountered by a rulemaking project team to the MSSC ExecSec. The ExecSec will, in turn, provide this information to MSSC members in a timely fashion to allow interventions to address the issues. This monitoring and reporting will also encompass related facets of a project such as, analysis under the National Environmental Policy Act (NEPA); collection of information under the Paperwork Reduction Act; privacy impact assessments; and incorporation by reference. The ExecSec will monitor the review of rulemaking documents by DHS and OMB and report progress to the MSSC members in a timely and regular fashion.

10. MSSC VOTING PROCEDURES. All four voting members (or their acting representatives) must vote on the Annual Report and the Rulemaking Project Prioritization List (RPPL). Not less than three voting members must approve the Annual Report and the RPPL prior to finalization. The MSSC will vote on the RPPL and cause it to be published annually. Voting members need not be present at the Annual Meeting to cast their vote. If a voting member is unable to attend the meeting, s/he must apprise the ExecSec of how their vote should be reflected in the administrative record.

11. FORMS/REPORTS. None.

W. D. BAUMGARTNER /s/
Rear Admiral, U.S. Coast Guard
Judge Advocate General

Encl: (1) MSSC Document Clearance Procedures

MSSC Document Clearance Procedures

1. CLEARANCE PROCESS.

- a. Signature Authority for Work plans, Work plan Changes, and Rulemaking Documents. Consistent with reference (b), the Commandant has signature authority for significant rulemaking documents. Commandant (CG-5), the Director of the National Pollution Funds Center, or any other deputy or assistant commandant or director (hereinafter the Proponent) has signature authority for work plans, work plan changes and non-significant rulemaking documents originating within the Proponent's areas of responsibility. They may also sign *Federal Register* notices pertaining to their areas of responsibility. Consistent with reference (e), each Proponent is authorized to delegate signature authority to any Director or other executive at an equivalent echelon within the Proponent's organization.
- b. Work plans – Clearance Process.
 - (1) Work plan Submission. After obtaining approval from all interested offices, the RDM will submit the work plan and the associated abstract to the MSSC ExecSec.
 - (2) MSSC ExecSec Distribution. Upon receipt of the work plan, the MSSC ExecSec will electronically distribute the same to the voting members of the MSSC for concurrent clearance. To promote efficiency, the MSSC ExecSec will instruct members on the preferred method of completing the concurrent clearance process.
 - (3) Concurrent Clearance. Members of the MSSC will normally have 14 calendar days to review and non-concur (with comments) or concur (with or without comments) with the work plan. Responses to the concurrent clearance should be returned to the MSSC ExecSec by close of business on the 14th calendar day. The MSSC ExecSec will interpret a non-response as concurrence unless a MSSC member affirmatively requests additional time for review.
 - (4) Forwarding Concurrent Clearance Responses. Upon receipt of the concurrent clearance responses, the MSSC ExecSec will consolidate and forward the same to the Proponent within one business day. Comments will be forwarded to the RDM as they are received, to facilitate quick resolution by the Proponent.
 - (5) Amendment of the work plan document. Contingent upon the substance yielded from the concurrent clearance process, the Proponent may direct amendment of the work plan (thereby re-initiating the concurrent clearance process), or approve the work plan.
 - (6) Proponent Signature. Once approved, the Proponent will sign and forward an original copy of the work plan to the MSSC ExecSec.

- (7) MSSC ExecSec Filing. The MSSC ExecSec will file the original copy of the work plan with the administrative record located in Commandant (CG-0943). Work plans are not placed on the public docket. Original copies of work plans will remain on file within Commandant (CG-0943) after the successful close of the rulemaking project. The MSSC ExecSec will provide a copy of the work plan to DHS Office of General Counsel for Regulatory Affairs.
 - (8) Work plan Changes. The process outlined in paragraphs 1 through 7 above will be followed for substantial changes to approved work plans.
 - (9) Meeting Request. Voting members of the MSSC may request a meeting to discuss a rulemaking project at any time before, during, or after the clearance process outlined in paragraph (1)(b) above.
- c. Rulemaking Documents (Significant) - Clearance Process.
- (1) Rulemaking Document Submission. After obtaining approval from all interested Coast Guard offices and directors, the RDM will submit the rulemaking document and the associated abstract to the MSSC ExecSec.
 - (2) MSSC ExecSec Distribution. Upon receipt of the rulemaking document, the MSSC ExecSec will electronically distribute the same to voting members of the MSSC for concurrent clearance. To promote efficiency, the MSSC ExecSec will instruct members on the preferred method of completing the concurrent clearance process.
 - (3) Concurrent Clearance. Members of the MSSC will normally have 14 calendar days to review and non-concur (with comments) or concur (with or without comments) with the rulemaking document. Responses to the concurrent clearance should be returned to the MSSC ExecSec by close of business on the 14th calendar day. The MSSC ExecSec will interpret a non-response as concurrence unless a MSSC member affirmatively requests additional time for review.
 - (4) Forwarding Concurrent Clearance Responses. Upon receipt of the concurrent clearance responses, the MSSC ExecSec will consolidate and forward responses (if any) to the Proponent within one business day. Comments will be forwarded to the RDM as they are received, to facilitate quick resolution by the Proponent.
 - (5) Amendment of the Rulemaking Document. Contingent upon the substance yielded from the concurrent clearance process, the Proponent may direct amendment of the rulemaking document, (thereby re-initiating the concurrent clearance process); or approve the rulemaking document.
 - (6) Commandant Review. Upon Proponent approval, the MSSC ExecSec will, through the Chair, forward the abstract for the rulemaking document to the Commandant for

review. The MSSC will provide four (4) business days for the Commandant to review the abstract and to approve, reject, direct amendment to the rulemaking document, or indicate the need for additional review time. The MSSC ExecSec will monitor this time period.

- (7) Forwarding to the MSSC Legal Advisor. Should the Commandant not reject, direct amendment to the rulemaking document, or indicate the need for additional review time within four (4) business days, the ExecSec will forward the rulemaking document to the Legal Advisor, with a copy to the RDM, not later than the close of business on the fifth business day after the Commandant has received the same.
 - (8) Forwarding to the DHS OGC and the OMB. Upon receipt of the rulemaking document from the ExecSec, the MSSC Legal Advisor will, as soon as practicable thereafter, forward the document, along with any supplementary analysis or documents, to the DHS OGC. DHS OGC is responsible for obtaining Secretarial approval of the document and transmitting the final version, along with supplementary analysis or documents, to OMB for review. The MSSC Legal Advisor will remain in contact with both entities, as necessary, to ensure the document is timely reviewed.
 - (9) Commandant Signature. Upon completion of review/approval by DHS OGC and OMB the MSSC ExecSec, through the Chair, will forward the significant rulemaking document to the Commandant for signature.
 - (10) Meeting Request. Voting members of the MSSC may request a meeting to discuss a rulemaking project at any time before, during, or after the clearance process outlined in paragraph (1)(c) above.
 - (11) MSSC ExecSec filing. The MSSC ExecSec will file the original copy of the rulemaking document with the administrative record located in Commandant (CG-0943).
 - (12) Substantial Changes to Approved Significant Rulemaking documents. Substantial changes to significant rulemaking documents will follow the process outlined in paragraphs 1 through 9 above.
- d. Non-significant rulemaking documents. A copy of all non-significant rulemaking documents must be provided to the MSSC via the ExecSec for its awareness.
 - e. Minimum clearance requirements. At a minimum, all documents within the scope of paragraphs 1(b) through (d) of this enclosure must clear through Commandant (CG-0943), (CG-5231), and the appropriate Regulatory Coordinator before being transmitted to the MSSC ExecSec. Typically, other offices will be interested in such documents and should be included in clearance.