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# PREPARATION OF REGULATIONS



COMDTINST M16703.1  
October 2009

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Commandant  
United States Coast Guard

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COMDTINST M16703.1  
October 29, 2009

COMMANDANT INSTRUCTION M16703.1

Subj: PREPARATION OF REGULATIONS

1. **PURPOSE.** This Manual contains procedures for developing, drafting, and clearing Coast Guard regulations and other *Federal Register* documents other than field regulations at Coast Guard Headquarters.
2. **ACTION.** All Coast Guard unit commanders, commanding officers, officers-in-charge, deputy/assistant commandants, and chiefs of Headquarters staff elements must comply with the provisions of this Manual. Internet release is authorized.
3. **DIRECTIVES AFFECTED.** *Regulatory Development and Review*, HQINST M16703.1, is hereby cancelled.
4. **DISCUSSION.** This Manual describes the process for timely development, review, and approval of rulemaking and other documents for the *Federal Register* at Coast Guard Headquarters. It does not address the procedures to be followed for field regulations or for documents in the Coast Guard Directives System, such as Commandant Instructions and Headquarters Instructions. This version of the Manual substantially revises and updates the previous version throughout, including the title. This Manual is provided solely for internal guidance and use by Coast Guard personnel involved in

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the rulemaking process. It 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.

5. REQUESTS FOR CHANGES. Suggestions for changes may be submitted in writing to the Marine Safety and Security Council, Commandant (CG-094), Attn: Executive Secretary, U.S. Coast Guard, 2100 2<sup>ND</sup> ST SW, STOP 7121, WASHINGTON, DC 20593-7121.
6. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS. Environmental considerations were examined in the development of this Manual, and have been determined to be not applicable.
7. FORMS/REPORTS AVAILABILITY. None.

W. D. BAUMGARTNER /s/  
Rear Admiral, U.S. Coast Guard  
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## 1. CONCEPTS AND GENERAL INFORMATION

### A. Purpose of this Manual

This Manual outlines the rulemaking process for Coast Guard regulations and *Federal Register* documents other than field regulations, and points you to authorities governing each aspect of the process.<sup>1</sup> In some cases, the Manual supplements those authorities by imposing policy requirements of its own. It is not intended to be a comprehensive guide to rulemaking.<sup>2</sup> In addition to this Manual, the *Mission Management System Manual*, RDP-MA-RDP-01, is an important tool in the accomplishment of the regulatory development program mission, which is timely publication of clear, effective, enforceable regulations with an emphasis on public participation.

### B. Legal basis for rulemaking

The Headquarters rulemaking process is governed by many authorities. Although relevant authorities will vary among different rulemakings, the following laws, Executive Orders, and policy directives are those you will encounter most often--

1. The Administrative Procedure Act (APA), especially 5 U.S. Code (U.S.C.) § 553;
2. Executive Order (E.O.) 12866, *Regulatory Planning and Review*;
3. 33 Code of Federal Regulations (CFR) Subpart 1.05, *Coast Guard Rulemaking Provisions*; and
4. Marine Safety and Security Council: Development and Review of Rulemaking Documents, COMDTINST 16703.2.

### C. What is rulemaking?

1. Rulemaking is a decision-making process that results in requirements that bind the public, and therefore requires and benefits from public notice and public involvement. This is an oversimplification, but you, and the Coast Guard, will stay on course if you keep this basic concept in mind.
2. The APA defines a rule as “the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency....”<sup>3</sup> It defines

<sup>1</sup> Guidance on field regulations is provided in *Preparation of Field Regulations*, COMDTINST M16704.3A.

<sup>2</sup> Two rulemaking guides are: *A Blackletter Statement of Federal Administrative Law*, Administrative Law Review, Vol. 54, No. 1 (Winter 2002), and Jeffrey S. Lubbers, *A Guide to Federal Agency Rulemaking* (4th ed., Chicago: ABA Publishing, 2007).

<sup>3</sup> 5 U.S.C. § 551 (4).

rulemaking as an “agency process for formulating, amending, or repealing a rule.”<sup>4</sup>

3. E.O. 12866 defines a regulatory action as “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.”<sup>5</sup> Coast Guard rules in 33 CFR subpart 1.05 refer both to the regulatory process and regulatory projects. The former “begins when an office chief with program responsibilities identifies a possible need for a new regulation or for changes to an existing regulation,” and the latter requires approval of the Marine Safety and Security Council (MSSC).<sup>6</sup>
4. The process of developing and issuing a rule is generally described as rulemaking. By custom, the term regulation is used narrowly to refer to a rule that has been codified in the CFR – that is, a rule published in the CFR that has taken effect. The terms rule and regulation are often used synonymously.
5. Agencies must show they have followed applicable procedures and acted rationally in adopting their rules. Failing to do either may cause the rule to be struck down by the courts on the ground that the rule is arbitrary and capricious. Agencies protect themselves and their rules by observing the letter and the spirit of administrative law, and by creating a body of documentation – the administrative record – that shows they followed proper procedures and took all relevant considerations into account before they adopted their rules.

#### **D. Authorizing statutes and delegations**

In order for your rule to be valid, it has to be issued in accordance with various legal requirements. This Manual will help you to fulfill many of those requirements. The rule must also be authorized in law, and most rules are authorized in one or more statutes. In addition, many statutes that authorize Coast Guard rulemaking actually confer authority only on the President or the Secretary of the Department in which the Coast Guard is located, in which case there needs to be a valid delegation of authority to the Commandant and, in some cases, a valid re-delegation of that authority to the individual signing the rule. Delegations and re-delegations of rulemaking authority must be in writing, and are available for review in the Office of Regulations and Administrative Law, Commandant (CG-0943). Delegation of signature authority is governed by COMDTINST 16703.2, enclosure 1, paragraph 1.a.

#### **E. Informal rulemaking – notice and comment**

1. Unlike formal rulemaking, which is governed by 5 U.S.C. 556 and 557, and involves formal hearings, evidentiary rules, and recorded testimony, most Coast Guard rulemaking is informal – commonly referred to as notice and comment rulemaking – and is governed by

<sup>4</sup> 5 U.S.C. § 551 (5).

<sup>5</sup> E.O. 12866 Sec. 3.(e).

<sup>6</sup> 33 CFR 1.05-10.

- 5 U.S.C. § 553. If you believe a formal rulemaking should be used to prepare a Headquarters regulation, contact Commandant (CG-0943).
2. There are two significant rulemaking procedural requirements in the APA that must be followed in informal rulemaking --
    - a. Publish a notice of proposed rulemaking (NPRM) that contains the text of the proposed rule and invites public comment before issuing an effective rule; and
    - b. No rule may become effective until at least 30 days after publication in the *Federal Register*.
  3. An agency may conduct a rulemaking without meeting one or both of these requirements, but only if the agency finds good cause. Good cause, in this context, is a legal term meaning that these procedures are impractical, unnecessary, or contrary to the public interest. If an agency does not publish an NPRM and/or the rule takes effect less than 30 days after publication, a detailed explanation of the good cause finding must accompany the final rule when it is published in the *Federal Register*.<sup>7</sup>
  4. According to the legislative history of the APA, the term unnecessary means unnecessary so far as the public is concerned, as would be the case with a minor or merely technical amendment in which the public is not particularly interested. Impractical means that satisfying the procedural requirement would unavoidably prevent the agency from fulfilling its statutory responsibilities.
  5. Good cause exceptions based upon the public interest are typically used for emergency health or safety rulemakings, but administrative convenience or avoiding delay, alone, is not a valid basis for claiming good cause. Emergency regulations will usually be appropriate when needed for disaster response. Claiming good cause would generally not be appropriate, however, to promulgate health and safety rules in the absence of “any dramatic change in circumstances that would ... [justify] shunting off public participation in the rulemaking.”<sup>8</sup> Whatever the basis for claiming good cause, the APA requires the Coast Guard to articulate that basis in the preamble of the rule when it is published in the *Federal Register*.
  6. It should be remembered that, subject to the good cause exception provisions of the APA, Coast Guard policy is to usually allow at least 90 days after publication of an NPRM or other proposed rule for the public to submit comments.<sup>9</sup> The same restrictions also apply to interim rules.

<sup>7</sup> 5 U.S.C. § 553(b)(3)(B).

<sup>8</sup> *American Academy of Pediatrics v. Heckler*, 561 F. Supp. 395, 401 (D.D.C. 1983).

<sup>9</sup> 33 CFR § 1.05-15.

## **F. Guidance documents**

1. A guidance document is an agency statement of general applicability and future effect other than a regulatory action that sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statutory or regulatory issue. Coast Guard personnel involved in promulgating guidance documents - such as policy letters and Navigation and Vessel Inspection Circulars (NVICs) - should be aware that these documents are not, by themselves, binding on the public. While, in rare instances, a guidance document is an appropriate vehicle for setting forth certain interpretive requirements of a particular program or policy, personnel should be careful to not use guidance documents to avoid APA procedures.
2. Under the Coast Guard's good guidance policy, guidance documents should not appear to impose binding requirements on the public, and must include the following disclaimer:

This guidance is not a substitute for applicable legal requirements, nor is it itself a rule. It is not intended to nor does it impose legally-binding requirements on any party. It represents the Coast Guard's current thinking on this topic and may assist industry, mariners, the general public, and the Coast Guard, as well as other federal and state regulators, in applying statutory and regulatory requirements. You can use an alternative approach for complying with these requirements if the approach satisfies the requirements of the applicable statutes and regulations. If you want to discuss an alternative approach (you are not required to do so), you may contact [Insert name of program POC with contact information], who is responsible for implementing this guidance.

3. All Headquarters guidance documents must be reviewed by Commandant (CG-0943) for compliance with the Coast Guard's good guidance policy.<sup>10</sup>

## **G. The Regulatory Development Program and Mission Management System**

1. The Coast Guard's Regulatory Development Program (RDP) consists of a series of processes that normally begin with identification of a possible need for a new or changed regulation, and culminate in publication of an enforceable regulation in the *Federal Register*. See *USCG Regulatory Development Program (RDP), Mission Management System Manual, RDP-MA-RDP-01(02), Enclosure D*.<sup>11</sup> The RDP has been created to anticipate and address safety, security and environmental concerns by establishing legally sufficient, effective, and enforceable rules that are economically efficient.
2. The Mission Management System (MMS) is an information management tool used to continually improve the quality of RDP operations and ensure the RDP fulfills its mission.

<sup>10</sup> Available on the CG Portal.

<sup>11</sup> Available on the CG Portal.

The processes used by Coast Guard rulemaking teams are determined by the RDP Team based upon Coast Guard policy, stakeholder needs, and feedback from the MMS.

## H. Stages of the Coast Guard rulemaking process

1. Most Coast Guard rulemakings involve the following milestones. Chapters 2 through 5 of this Manual discuss each milestone in detail.
2. Initial decision-making, which is discussed in Chapter 2, includes --
  - a. identifying a need for action; and
  - b. forming a rulemaking team.
3. Development is the process of internally staffing the identified need and the proposed action to develop the concept, to analyze the resources needed to accomplish the desired end state, to identify other consequences of implementation, and to troubleshoot issues.
4. Development is discussed in greater detail in Chapter 3 and includes --
  - a. beginning the work plan;
  - b. establishing a baseline;
  - c. beginning analysis;
  - d. considering alternatives to rulemaking;
  - e. clearing the work plan; and
  - f. drafting and clearing a proposal for publication in the *Federal Register*.
5. Public participation, which is discussed in Chapter 4, is facilitated mainly by describing proposed rulemakings in the Unified Regulatory Agenda and publishing proposals and other notices in the *Federal Register*. Other media, including press releases, may also be used to facilitate public participation. Publishing proposed rules in the *Federal Register* is generally required because the courts have decided it effectively provides the entire public with notice and makes actual notice unnecessary. Once members of the public are aware of proposed rulemakings, they have the opportunity to participate by submitting written comments to the public docket and providing oral and/or written comments at a public meeting, if one is requested and held.
6. A rulemaking project is complete, as discussed in Chapter 5, after consideration of public input, and takes the form of either --
  - a. project termination or withdrawal; or,

- b. an effective final rule.
- 7. Although an interim rule is also typically effective, a project with an interim rule in place will not be considered complete until it is replaced by a final rule.

## I. Regulatory roles and responsibilities

1. **Department of Homeland Security (DHS) General Counsel** – The DHS Deputy General Counsel for Regulatory Affairs provides legal, economic, and policy review of rulemaking documents, and coordinates rulemakings among DHS components and with other Federal agencies and the Office of Management and Budget (OMB).
2. **Marine Safety and Security Council (MSSC)** – Formerly known as the Marine Safety Council (MSC), the MSSC is the Commandant’s primary advisor on rulemaking policy. Its structure, functions, and procedures, including lists of voting and non-voting members are set forth in *Marine Safety and Security Council: Development and Review of Headquarters' Rulemaking Documents*, COMDTINST 16703.2. Commandant (CG-0943) provides staff support and counsel to the MSSC.
3. **Office of Information Management (CG-61)** – The Office of Information Management, Commandant (CG-61) is responsible for reviewing all rulemaking proposals to ensure compliance with collection of information and Privacy Act requirements. Commandant (CG-61) collaborates with Commandant (CG-0944) and the rulemaking team to initiate relevant privacy documentation, e.g. Privacy Threshold Analysis, Privacy Impact Assessment, and Systems of Records Notice for publication in the *Federal Register*.
4. **Office of Management and Budget (OMB)** – The OMB is the White House office responsible for advising agencies on regulatory matters and reviewing rulemaking documents. OMB determines whether draft rules are significant under E.O. 12866, and conducts further review of those found to be significant. E.O. 12866 further designates OMB’s Office of Information and Regulatory Affairs (OIRA) as “the repository of expertise concerning regulatory issues.”<sup>12</sup>
5. **Office of Quality Assurance (FC-75 DET 1)** – The office administers the MMS by working closely with process owners. This office conducts annual audits of the RDP to ensure efficient management.
6. **Office of Regulations and Administrative Law (CG-0943)** – The Judge Advocate General of the Coast Guard (CG-094) has designated Commandant (CG-0943) as the office responsible for providing legal advice on rulemaking to the program manager (PM), coordinating Coast Guard rulemaking with other Federal agencies, maintaining the public docket for Headquarters rulemaking, providing liaison with the Office of the Federal

<sup>12</sup> E.O. 12866 Sec.2.(b).

Register, and providing staff support and counsel to the MSSC. Any communication with DHS, OMB/OIRA, or another Federal agency concerning Coast Guard rulemakings must pass through Commandant (CG-0943). Commandant (CG-0943) also designates project counsel (PC) for each rulemaking team.

7. **Program Director (PD)** – The chief of the office or division that sponsors a rulemaking is its program director. The PD assigns a PM and subject matter expert (SME) and coordinates with the Regulatory Coordinator (RegCo) to complete staffing of the project team. The PD is responsible for guiding the PM and/or the SME and monitoring the team’s progress.
8. **Proponent** – A rulemaking proponent will be the Assistant Commandant for Marine Safety, Security & Stewardship (CG-5), a deputy or assistant commandant, or other senior executive at an equivalent echelon.<sup>13</sup> The vast majority of Headquarters rulemakings originate in program offices that now report to Commandant (CG-5). However, other Headquarters organizations may also lead a program office or division that sponsors a specific rulemaking. Proponents have signature authority for work plans, work plan changes and non-significant rulemaking documents originating within the proponent's area of responsibility.<sup>14</sup>
9. **Regulatory coordinator (RegCo)** – Each proponent may designate a RegCo to coordinate rulemakings within the proponent's organization or rely on Commandant (CG-5232) for this function. The RegCo assists the PD in forming a rulemaking team and coordinating technical assistance, such as environmental and economic analyses. The RegCo also assists the PD in managing and monitoring the progress of regulatory projects within the PD’s area of responsibility. Currently, Commandant (CG-5232) is the RegCo for Commandant (CG-5) rulemakings.

## J. Rulemaking Teams

1. Commandant (CG-523), the Office of Standards Evaluation and Development, provides regulatory development managers, economists, environmental analysts, and technical writers to projects for which the proponent is Commandant (CG-5), and may provide these resources upon request to other Headquarters proponents. Although proponents other than Commandant (CG-5) are authorized to fill rulemaking team positions with personnel from the proponents’ organizations, all Coast Guard Headquarters rulemaking teams, including those with proponents other than Commandant (CG-5), must include a PC assigned by Commandant (CG-0943).
2. Each RegCo may request rulemaking team members in addition to those listed below. Typically, these include additional SMEs to evaluate technical aspects of the rulemaking, and additional legal counsel with expertise in the subject matter of the rulemaking. For rulemaking projects originating in Commandant (CG-5) with anticipated resource implications, the CG-5 RegCo (Commandant (CG-5232)) will also request representation

<sup>13</sup> *Marine Safety and Security Council: Development and Review of Rulemaking Documents*, COMDTINST 16703.2, paragraph 5(d).

<sup>14</sup> *Id.* at Enclosure 1, para. 1(a).

from the Coast Guard Deputy Commandant of Operations, Office of Budget Development, (CG-DCO-R-2) on all rulemaking teams. Teams working on rulemakings originating in the National Pollution Funds Center (NPFC) typically will include an additional legal counsel with substantive legal expertise in NPFC regulatory matters, an economist, and a regulatory development manager (RDM) assigned by the NPFC RegCo.<sup>15</sup>

3. Each Headquarters rulemaking is developed by a team typically consisting of the following members--
  - a. The RDM is assigned by RegCo and acts as the project process manager. The RDM is responsible for keeping the project on schedule, identifying and solving problems that are likely to cause delays, and communicating potential delays to leadership. The RDM also facilitates rulemaking team communication, coordination, and document clearance by Coast Guard leadership. RDMs assigned to projects within CG-5 are responsible through the chain of command to CG-52 for the timely progress and completion of their projects;
  - b. The program manager (PM) is normally assigned by and works for the PD or program office sponsoring the rulemaking project. The PM acts as the project substance manager and is responsible for providing decisions on policy and subject matter in accordance with the program requirements. The PM defines and manages program requirements for the program office, and ensures that the project satisfies those requirements. The PM also serves as the subject matter expert (SME), who develops the content of the rulemaking when a project has one SME. When a project requires more than one SME, the PD designates one of them as PM, and that person is responsible for coordinating the SMEs and their project workload;
  - c. The PC, assigned by Commandant (CG-0943), ensures the legal sufficiency of rulemaking documents and the rulemaking process, and resolves procedural or legal issues. The PC will coordinate with other legal offices as necessary, including DHS Office of General Counsel;
  - d. An economist, assigned by the Standards Evaluation and Analysis Division (CG-5231), or by the RegCo for rulemakings outside Commandant (CG-5), prepares the economic analyses, which include cost - benefit analysis of the regulation and its alternatives, impacts to small entities, collection of information evaluation, and all other corresponding regulatory impact analyses;
  - e. An environmental analyst, assigned by Commandant (CG-5231) or by the RegCo for rulemakings outside Commandant (CG-5), evaluates the rulemaking for environmental impacts and compliance with environmental process requirements; and,
  - f. A technical writer, will normally assist the rulemaking team in drafting rulemaking documents. When technical writer support is needed, and the proponent is

<sup>15</sup> For NPFC rulemaking projects, the NPFC RegCo will coordinate with the CG-5 RegCo to ensure alignment, clearance, and prioritization of NPFC projects as part of the overall Headquarters rulemaking priority list.

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Commandant (CG-5), Commandant (CG-523) submits a request to the contractor, who then assigns a technical writer.

## 2. INITIAL DECISION-MAKING

### A. Identifying a need for action

1. 33 Code of Federal Regulations (CFR) subpart 1.05 states that “the regulatory process begins when an office chief with program responsibilities identifies a possible need for a new regulation or for changes to an existing regulation.”<sup>16</sup> In other words, only when it appears to the program office that a statute or existing regulations cannot adequately address a need should a new regulation be considered. That need may stem from any number of sources, including --
  - a. new statutory requirements;
  - b. internal review of existing policies or rules;
  - c. recommendations from an advisory group or its members;
  - d. new technology;
  - e. changes in industry operations or practices;
  - f. court decisions;
  - g. executive branch orders or policy changes; or
  - h. public suggestions or petitions for rulemaking.
2. At this early stage, it may be unclear whether the proper action is a new rule, a new policy directive, or new legislation. The program office should consult with its Regulatory Coordinator (RegCo), its Legislative Coordinator, or with Commandant (CG-0943) or the Office of Legislation, Commandant (CG-0947) to help determine the most appropriate way forward. Once a decision is made to proceed with a rulemaking, the program director (PD) should contact the RegCo to request initiation of a new rulemaking project.

### B. Forming a rulemaking team

If the PD and the RegCo agree that a rulemaking is the best way to address the need, the PD requests the RegCo convene a rulemaking team for the limited purpose of reviewing all alternatives to rulemaking and validating that determination. For this limited purpose, it may be possible to defer the assignment of certain rulemaking members. However, the program manager/subject matter expert (PM/SME) and project counsel (PC) should be designated, and they should have access to an economist. Additional team members may also be assigned at the

<sup>16</sup> 33 CFR 1.05-10(a).

RegCo's discretion. Once the determination that a rulemaking is the best way to address the need is validated, all team members will be assigned.

### 3. DEVELOPMENT

#### A. Introduction

Development is the process of internally staffing the proposed rulemaking to develop the concept, analyze the consequences of implementation, and troubleshoot issues. Development includes --

1. beginning the work plan;
2. establishing a baseline for regulatory analysis;
3. beginning analysis, which includes considering possible environmental impacts, and funding necessary for any needed studies;
4. considering alternatives;
5. clearing the work plan; and
6. drafting and clearing a proposal for publication in the *Federal Register*.

#### B. Beginning the work plan

1. When a Headquarters organization considers initiating a rulemaking, whether pursuant to statutory authority or in response to other circumstances, the rulemaking team creates a work plan. The work plan is a key internal planning document that defines a rulemaking project and ensures proper resources will be available to the rulemaking team. This includes establishing a timeline from the project's first publication through publication of the final rule.
2. The work plan should be formatted in accordance with the template available from Commandant (CG-0943) on the CG Portal, and should be consistent with the Regulatory Development Program Core Process, which is shown in *USCG Regulatory Development Program (RDP), Mission Management System Manual*, RDP-MA-RDP-01(02), enclosure D.<sup>17</sup>
3. The rulemaking team begins by marshalling the information it will need to address the "who, what, where, when, why, and how" questions that decision-makers might raise before approving the project. The team must supply enough detail so decision-makers can understand and review the proposal before they approve or modify the course of action recommended by the team. Each work plan must cover the topics listed below, and any other relevant issues --

<sup>17</sup> Located on the CG Portal.

- a. a summary of the project, consisting of a few sentences describing the problem, the desired end-state or result, and how the rulemaking will achieve that result;
- b. the statutory authority that requires or permits the rulemaking, and any necessary delegations of that authority;
- c. the Code of Federal Regulation (CFR) parts, subparts, or sections that will be affected;
- d. the name of the program director (PD);
- e. the names and titles of all team members;
- f. a discussion of the need or problem the rulemaking is intended to address (see Chapter 2, Section A);
- g. a discussion of the proposed solution, including whom will be affected, possible environmental effects, enforcement issues, and policy concerns;
- h. a discussion of the resources expected to be necessary to implement the proposed solution;
- i. a discussion of the current state or baseline conditions;
- j. the alternatives considered (see Chapter 3, Section E);
- k. whether the rule is likely to be significant under Executive Order (E.O.) 12866, and why (see Chapter 6, Section B);
- l. an estimate of the scope of the regulatory analyses required (see Chapter 3, Section B);
- m. plans for obtaining public input;
- n. any plans for obtaining input from other government agencies -- special discussion of the mandatory reviews that will be conducted by the Department of Homeland Security (DHS) and the Office of Management and Budget (OMB) is not necessary;
- o. a tentative publication schedule;
- p. a draft entry for the Unified Regulatory Agenda; and,
- q. a statement of how the rulemaking supports at least one of the Coast Guard's primary responsibilities, which are maritime safety, maritime security, and maritime stewardship.<sup>18</sup>

<sup>18</sup> *The U.S. Coast Guard Strategy for Maritime Safety, Security, and Stewardship*, p. 9.

4. Although the rulemaking team will begin drafting the work plan as it acquires information, many critical sections cannot be completed until the team conducts some initial analysis and considers alternatives to the proposed solution. The work plan process is usually the appropriate time to collect pertinent data, consider alternatives, refine the proposal, and document these early stages of development for the administrative record. A well-drafted work plan will help avoid delay later in the rulemaking.

### **C. Establishing a Baseline**

Prior to beginning a regulatory impact analysis, a point of reference should be established that captures the current conditions of the potentially impacted regions and/or sectors. This is generally referred to as the baseline of the analysis. It should reflect the world absent the regulation. This baseline provides a reference point for comparing regulatory alternatives as well as measuring benefits, costs, and behavioral responses (if needed) resulting from the regulatory action. Regulatory impacts will be measured as changes from the established baseline. Please note that a baseline can be established both quantitatively and qualitatively, depending on available information.

### **D. Beginning analysis**

1. In drafting the work plan, the rulemaking team conducts a preliminary assessment of multiple analyses that will be required to complete the project. These include quantitative analyses of the proposed rule's economic, environmental, and small business impacts as well as collection of information effects. Most of these analyses are required by statute. Other analyses are required by Executive Order and ensure the rulemaking's alignment with Executive Branch policy. It should be noted that quantitative impact analyses are dependent on existing information. In some cases the required information is not available for a thorough impact analysis. Qualitative analysis can be applied to lend support in the regulatory process but is not a substitute for quantitative analysis.
2. The Chief, Standards Evaluation and Analysis Division, Commandant (CG-5231), is responsible for performing analyses for all Headquarters rulemakings except those with proponents other than Commandant (CG-5). RegCos for proponents other than Commandant (CG-5) may elect to perform analyses using qualified personnel within their own organizations, or request Commandant (CG-5231) to perform the work (see Chapter 1, Section J, paragraph 1). Offices that conduct their own analyses must coordinate that work with CG-5231, which must approve all analytical rulemaking documents before they can be submitted for external review by DHS and OMB. The appropriate RegCo, together with Commandant (CG-0943), the Office of Environmental Law (CG-0942), and the Office of Environmental Management (CG-443) will determine the analyses required by the National Environmental Policy Act (NEPA), and other related historic preservation and environmental laws.
3. The Marine Safety and Security Council (MSSC) requires that the impact to Coast Guard resources be determined for each regulatory project before promulgating a proposed rule.

Resource impact refers to costs or savings to the Coast Guard in money or manpower associated with the proposed rule, compared to the costs or savings that relate to each of the rulemaking's alternatives. Resources used during the rulemaking process, as well as the impact to resources from the regulation itself, must be considered. Commandant (CG-523) or the proponent will ensure that all necessary resource analyses are conducted.

4. Economists and other analysts may obtain data from any relevant and reliable source. Contact information for sources of background material must be documented in the internal file. Surveys of 10 people or more require OMB approval in advance. To avoid *ex parte* communications concerns, see Chapter 6, Section D of this Manual.

#### **E. Considering alternatives**

1. The regulatory assessment cannot be completed until an exhaustive list of appropriate alternatives has been developed by the rulemaking team. In order to validate the initial determination that a rulemaking is the best way to achieve the needed change, the team takes input from the program manager (PM) and reframes it as a problem statement and discussion of the proposed rulemaking. In developing alternatives, the team must consider, at a minimum, the likely consequences of --
  - a. no action - although no action should not typically be referred to as an alternative in the economic portion of a regulatory analysis, consideration of a no action alternative is necessary in each work plan;
  - b. actions other than rulemaking, such as promulgation of guidance or other policy documents; and
  - c. regulatory approaches that are projected to be less expensive or otherwise less onerous to the public than the Coast Guard's initial regulatory approach.
2. If the rulemaking team's preliminary assessment confirms the program's initial determination that rulemaking is needed, the team drafts a work plan. If the preliminary assessment does not confirm the initial determination that rulemaking is needed, the team briefs the PD and the RegCo, before expending the time and effort needed to draft a work plan. In such cases, the PD or RegCo may be able to redirect the team, or choose to change the rulemaking to an inactive status, disband the team, and/or abandon the proposed rulemaking.

#### **F. Clearing the work plan**

1. The completed work plan goes through clearance, and is submitted to the MSSC in accordance with *Marine Safety and Security Council: Development and Review of Headquarters' Rulemaking Documents*, COMDTINST 16703.2, enclosure 1. That Instruction states requirements for obtaining the appropriate level of approval of a work plan

or work plan change.<sup>19</sup> All work plans must be cleared through the MSSC regardless of whether they are expected to be significant under E.O. 12866. See Chapter 6, Section C of this Manual for clearance procedures.

2. Once the work plan has been approved by the project's proponent, a new Coast Guard regulatory project exists, and legal restrictions on *ex parte* communications come into play (see Chapter 6, Section D). The rulemaking team then begins preparing a proposal for eventual publication in the *Federal Register*. At the appropriate time, Commandant (CG-0943) adds the project to the Unified Regulatory Agenda, obtains a Regulation Identifier Number (RIN), opens an electronic docket, and informs the team of the RIN and electronic docket numbers. Only Commandant (CG-0943) can approve the acquisition of a RIN and an electronic docket number before the work plan is approved.<sup>20</sup>
3. After work plan approval, major changes in the rulemaking team's approach or in any of the factors listed in Chapter 3, Section A of this Manual require documentation in accordance with COMDTINST 16703.2 and MSSC approval of the changes. For example, a publication delay of two months or more beyond the date listed in the tentative publication schedule constitutes a major change. Other changes in the work plan may also qualify as major changes.

#### **G. Drafting and clearing a proposal for publication in the *Federal Register***

1. Unless your rulemaking is covered by an Administrative Procedure Act (APA) exception, you must announce it to the public and solicit public comments before it can be finalized or take effect. Rulemaking is announced through the Unified Regulatory Agenda and other *Federal Register* publications (see Chapter 4, Section B and C). The rulemaking team drafts the Unified Regulatory Agenda entry as an appendix to the work plan, and works with Commandant (CG-0943) to update the entry for the semiannual update of the Agenda in the *Federal Register*. The team drafts each *Federal Register* document according to the schedule included in the work plan, and obtains clearance as described in Chapter 6, Section C of this Manual.
2. Templates for various *Federal Register* documents are available from Commandant (CG 0943) and on the CG Portal. These templates incorporate current legal and Federal Register Document Drafting Handbook (FRDDH) requirements. You may use previous *Federal Register* publications as examples of discussions, amendatory text, and internal organization of topics, but do not substitute such documents for Commandant (CG-0943) templates. Use of Commandant (CG-0943) templates is vital to ensure current format and analysis requirements are incorporated into your documents.

<sup>19</sup> 33 CFR 1.05-5.

<sup>20</sup> All Coast Guard rulemaking documents are available to the public through electronic dockets, which are provided by the Federal Docket Management System (FDMS). Coast Guard liaison with FDMS is provided by Commandant (CG-0943). For further information on dockets, see Chapter 6, Section H.

## 4. PUBLIC PARTICIPATION

### A. Introduction

1. Public participation in rulemakings is an essential component of the notice-and-comment rulemaking process established by the Administrative Procedure Act (APA).<sup>21</sup> The APA requires that interested members of the public must be given an opportunity to comment on a proposed rule unless one of the exemptions discussed in Chapter 1, Section E of this Manual applies.<sup>22</sup> Early public involvement is, moreover, encouraged by Coast Guard regulations at 33 Code of Federal Regulations (CFR) 1.05-10(a).
2. You solicit public participation in your rulemakings by --
  - a. describing proposed rulemakings in the Unified Regulatory Agenda; and/or
  - b. publishing proposals and other notices in the *Federal Register*.
3. You facilitate public participation by --
  - a. encouraging submission of written comments to the docket (including E-comments); and/or
  - b. holding public meetings.

### B. Describing proposed rulemakings in the Unified Regulatory Agenda

The Unified Regulatory Agenda lists regulatory projects throughout the Federal Government that have been assigned Regulation Identifier Number (RINs), and most Coast Guard projects are included. Each rulemaking team should obtain a RIN through Commandant (CG-0943) sometime after the work plan is approved and before the first rulemaking document is submitted for Department of Homeland Security (DHS) review. Listing a regulatory project in the Agenda makes it a matter of public knowledge, and creates an expectation on the part of the public that the rulemaking will be carried forward to completion.

### C. Types of proposed rule documents and notices

1. The most common proposed rule document is the Notice of Proposed Rulemaking (NPRM), modified forms of which are the Advance NPRM (ANPRM) and Supplemental NPRM (SNPRM). These three types of proposed rules are briefly described below. Additional information on minimum specific content requirements can be found in the templates provided by Commandant (CG-0943) on the CG Portal.

<sup>21</sup> 33 CFR 1.05-15

<sup>22</sup> 5 U.S.C. § 553(c).

2. **ANPRMs** – Issue an ANPRM when a rulemaking has been initiated, but you need more information before proposing actual regulatory text in an NPRM. An ANPRM usually does not involve an evaluation and discussion of impacts. Instead, it is usually used to solicit public comment on a description of a problem the Coast Guard is considering addressing with a regulation.<sup>23</sup>
3. **NPRMs** – The APA and other authorities require each NPRM to provide at least the following information --
  - a. information on how the public can provide input for the rulemaking, i.e. “a statement of the time, place, and nature of public rulemaking proceedings;”<sup>24</sup>
  - b. basis of the proposed rule, i.e. “reference to the legal authority under which the rule is proposed,” including necessary delegations;<sup>25</sup>
  - c. “Either the terms or substance of the proposed rule or a description of the subjects and issues involved.”<sup>26</sup> 33 CFR amplifies this by stating that a Coast Guard NPRM normally includes both a statement explaining the proposal’s purpose and the “various issues involved” and “the text of the proposed rule.”<sup>27</sup>
  - d. a determination of the economic significance of the proposed rule as required under E.O. 12866; and
  - e. 33 CFR adds a requirement that the NPRM discuss “any comments received in response to prior notices” related to the rulemaking.<sup>28</sup>
4. **SNPRMs** – Issue an SNPRM when you propose substantial changes to a previously proposed rule or to an interim rule.<sup>29</sup> An SNPRM advises the public of the revised proposal and provides an opportunity for additional comment. A supplemental notice is also often necessary when a considerable amount of time has passed since publication of an NPRM, particularly when regulatory analysis in an SNPRM would differ in a significant way from that in the NPRM.
5. **Notices** – The Coast Guard also issues *Federal Register* notices, both for rulemaking and non-rulemaking projects. The program director (PD) may want to issue a notice to request comments or schedule public meetings before making the initial determination to begin a rulemaking. Such a notice falls within the definition of the Coast Guard regulatory process

<sup>23</sup> 33 CFR 1.05-30.

<sup>24</sup> APA 5 U.S.C. § 553 (b)(1).

<sup>25</sup> 5 U.S.C. § 553 (b)(2).

<sup>26</sup> 5 U.S.C. § 553(b)(3).

<sup>27</sup> 33 CFR 1.05-35.

<sup>28</sup> 33 CFR 1.05-35.

<sup>29</sup> 33 CFR 1.05-40.

in 33 CFR 1.05-10 (see Chapter 1, Section C). It does not commit the Coast Guard to any specific course of action and does not by itself trigger the need to create a Unified Regulatory Agenda entry or obtain a RIN. It merely solicits public input on an issue that may need future action, without any predetermination that the future action will involve rulemaking.

6. On the other hand, a notice of inquiry (NOI) is considered a regulatory action under Executive Order (E.O.) 12866, Sec. 3(e), and requires a Unified Regulatory Agenda entry. If you want to avoid taking a regulatory action, Commandant (CG-0943) will guide you in drafting an appropriate notice.
7. Notices can also be used throughout a rulemaking to extend or reopen comment periods, announce meetings, or take care of other administrative matters that do not change the substance of the rulemaking.

#### **D. Taking comments**

1. When the Coast Guard publishes an ANPRM, NPRM, SNPRM, NOI, a direct final rule, or interim rule in the *Federal Register*, it places the document in the public docket for the rulemaking,<sup>30</sup> and asks for comments from interested members of the public. Except for Sensitive Security Information (SSI) or other protected information, all comments become part of the rulemaking's public docket. If SSI or other protected information is received, contact Commandant (CG-0943) immediately regarding proper handling procedures. 33 CFR 1.05-15 provides that the Coast Guard's normal public comment period is at least 90 days. E.O. 12866, though, sets at least 60 days as the norm.<sup>31</sup> An explanation of any deviation from the Coast Guard's 90 day minimum requirement must be included in the public docket (See Chapter 6, Section G for more information on dockets).
2. Public comments are normally received in writing or verbally, and the latter are usually received at public meetings. These comments may include data, opinions, or arguments. You need not accept comments over the telephone or in person. If you do, though, say so explicitly in the preamble of the effective rule, summarize all verbal comments in writing, and post them in the docket with the submitter's name and contact information. Accepting verbal comments in those ways is generally discouraged because of the added administrative burden and the possibility that the submitter's intent might not be sufficiently reflected in the written record. Additionally, such verbal communications, as well as written comments that are not submitted by the commenter to the public docket, can violate *ex parte* rules (see Chapter 6, Section D).
3. Component agencies are required to promptly copy the General Counsel's office on any Congressional criticism of a proposed rule and work with DHS on any written response. Coordinate this through Commandant (CG-0943).

<sup>30</sup> 33 CFR 1.05-25.

<sup>31</sup> E.O. 12866 Sec. 6(a).

**E. Holding public meetings**

1. Public meetings may be held to help collect verbal and written public comments for consideration during the rulemaking. Commandant (CG-0943) advises the rulemaking team on the legal requirements for these meetings. Offices interested in webcasting a public meeting must consult in advance with Commandant (CG-0943). All comments must be posted to the public rulemaking docket.
2. The following general guidelines apply to Coast Guard public meetings--
  - a. Announce meetings in the *Federal Register*. Give at least 30 days notice between publication of the meeting notice and the date of the meeting (see 33 CFR 1.05-15);
  - b. Allow the public to submit written comments for at least 15 days after the meeting;
  - c. Ensure that meeting facilities comply with the Americans with Disability Act; and include in the *Federal Register* notice an offer to provide reasonable assistance to anyone who gives timely notice that he or she will need special accommodations;
  - d. Record attendance at the meeting. Use a sign in sheet that permits each person to give, at least, their name and organizational affiliation, if any; and
  - e. Prepare a verbatim transcript or a summary of the public meeting. The transcript or summary must be placed in the public docket. If a meeting is webcast, place an audiovisual recording of the meeting in the public docket.
3. If there are any deviations from these guidelines, discuss them with Commandant (CG-0943) to determine what should be included in the public docket.

## 5. COMPLETION

### A. Introduction

Once an informal rulemaking begins, it can usually be completed only after consideration of public input. Additionally, completion of such a rulemaking project normally does not occur until one of these milestones is reached --

1. a final rule is published in the *Federal Register* and takes effect; or,
2. the project is terminated or withdrawn.

### B. Considering public input

1. In most cases, the Administrative Procedure Act (APA) requires agencies to show they considered “the relevant matter presented” in public comments before publishing an effective rule.<sup>32</sup> Additionally, where environmental assessments or impact statements are required for a proposed rule, National Environmental Policy Act (NEPA) requires agencies to consider public comments on those assessments or statements before finalizing a rule. The APA does not prescribe any specific format for answering comments in effective rules. Although some flexibility in format is permitted, every relevant comment received during the comment period must be addressed in the effective rule, either individually or as part of a category of comments. Use of a comment matrix is also not required, but may be helpful, particularly in rulemakings involving large numbers of comments. Commandant (CG-0943) advises rulemaking teams to ensure all relevant issues are addressed, and those responses are incorporated in the *Federal Register* publication that sets out the effective rule.
2. If the draft final rule is substantially different from the proposed rule - either as a result of comments or other considerations - it may be necessary to solicit a second round of public comment in a Supplemental Notice of Proposed Rulemaking (SNPRM). Publishing a final rule that differs so substantially from its Notice of Proposed Rulemaking (NPRM) that it is not a logical outgrowth of the NPRM<sup>33</sup> puts the rule at risk of being overturned by a court for violating the notice requirement in 5 U.S. Code (U.S.C.) § 553. That requirement can be satisfied by publishing an SNPRM containing the revised proposed rule.

### C. Project change, termination, or withdrawal

1. Work plan changes may be approved when significant modifications to the rulemaking project make a work plan change necessary. Work plan changes are governed by COMDTINST 16703.2<sup>34</sup> (see also Chapter 3, Section F, paragraph 3 of this Manual).

<sup>32</sup> 5 U.S.C. § 553(c).

<sup>33</sup> “Logical outgrowth” is a legal term. Coordinate with CG-0943 to determine if a final rule is a logical outgrowth of the NPRM.

<sup>34</sup> COMDTINST 16703.2, Enclosure 1, paragraph 1(a).

2. The rulemaking team can, with the approval of the program manager (PM), terminate a rulemaking at any time prior to approval of the initial work plan. If the Regulatory Coordinator (RegCo) was previously asked to initiate rulemaking however, and did so, the PM must explain the decision to terminate in a memorandum to the RegCo.
3. Once a work plan has been approved, the program director (PD) can seek the rulemaking's termination by filing a request with the project proponent in accordance with Enclosure 1 to COMDTINST 16703.2. If the termination is approved, and the rulemaking has not yet generated a *Federal Register* publication, Commandant (CG-0943) closes the docket and removes the project from the Agenda.
4. If the work plan termination is approved but the rulemaking has already generated a *Federal Register* publication, the rulemaking team prepares a *Federal Register* notice of proposed withdrawal. The notice briefly explains the reason for withdrawal, and discusses any public comments not previously discussed in a *Federal Register* publication. The public may comment on the proposal to withdraw. After the comment period, a notice of withdrawal addressing the comments received is published.
5. The Unified Regulatory Agenda entry for the project must be updated to show the withdrawal publication as final action. After publication of that update, the project will automatically be removed from the Agenda.

#### **D. Effective rules**

1. The mission of the Regulatory Development Program (RDP) is timely publication of clear, effective, enforceable regulations with an emphasis on public participation. Generally, once the effective date of regulatory text published in a final rule, direct final rule, or temporary rule has been reached, the rulemaking is complete. The effective date is the date the text becomes binding on the public. The regulatory text published in an interim rule is also binding on the public once its effective date is reached. However, the rulemaking itself is not yet complete, because an interim rule must be followed by a final rule. A rulemaking will continue to be listed on the Unified Regulatory Agenda after publication of an interim rule until a final rule is published.
2. The rulemaking team must identify anticipated difficulties in implementing an effective rule, and notify the PM in writing as soon as possible. Identification of such issues at the work plan stage is strongly preferred, but if there are any such issues the project counsel (PC) should prepare an implementation issues memo no later than submitting the proposed rule for DHS review. Route the memo to the PM through Commandant (CG-0943).
3. **Final Rules**
  - a. The APA requires each final rule to include the regulatory text and a concise general statement of the rule's basis and purpose, which is similar to the statement required for

NPRMs.<sup>35</sup> The APA further provides that most rules can take effect no sooner than 30 days after publication.<sup>36</sup> The Federal Register Document Drafting Handbook (FRDDH) requires that rule documents state the date on which the rule will take effect.<sup>37</sup>

- b. The project team must include with each final rule a discussion of comments received from the public and the Coast Guard's response to those comments (see 33 Code of Federal Regulations (CFR) 1.05-50). The same CFR provision also requires a discussion of any changes made in the previously proposed regulatory text.
4. **Direct Final Rules** – A direct final rule is not preceded by a request for public comments, and is permitted under limited circumstances by 5 U.S.C. § 553(b)(B). Instead, a DFR must include a request for public comments. If a single adverse comment or notice of intent to file an adverse comment is received during the comment period, all or part of the direct final rule must be withdrawn before becoming effective in accordance with 33 CFR 1.05-55. Direct final rules should be used only when confidence is high that no adverse comments will result. For that reason, Commandant (CG-0943) generally discourages their use and requires that each direct final rule state why the Coast Guard thinks it will not result in adverse public comment. Once effective, a direct final rule is fully enforceable. 33 CFR provides that a direct final rule normally will not take effect until at least 90 days after publication and will give the public at least 60 days in which to comment.<sup>38</sup> PMs must closely coordinate with Commandant (CG-0943) if they believe a direct final rule would be the most appropriate approach in a rulemaking.
  5. **Temporary Rules** – Issue a temporary rule when it is your intention that the rule have only a temporary lifespan, after which it will expire by its own terms. The temporary rule states its expiration date and may require use of temporary section numbers. If a temporary rule is still in effect when the Office of the Federal Register issues its annual update of the CFR title affected by the temporary rule, it will require the use of special CFR section numbers, and it may be difficult to ensure that the permanent version of the CFR is restored upon the temporary rule's expiration. Consult Commandant (CG-0943) to minimize the risk of codification complications from the issuance of a temporary rule.
  6. **Interim Rules**
    - a. Like a final rule, an interim rule normally can take effect at least 30 days after publication and is fully enforceable. An interim rule may be appropriate when it will implement portions of a proposed rule while other parts of the rule are still under development, or when an effective rule is needed expeditiously but is expected to be revised in the future.

<sup>35</sup> A final rule need not include regulatory text when that rule is identical to the preceding interim rule. In those cases, the final rule can adopt the interim rule using the short form shown on page 2-57 of the *Federal Register Document Drafting Handbook*. Although a final rule could also use the short form to adopt the regulatory text set out in an NPRM, this approach could only be used in those rare instances when there are no changes to the proposed regulatory text.

<sup>36</sup> APA 5 U.S.C. § 553 (c) and (d).

<sup>37</sup> FRDDH, Chapter 2.5.

<sup>38</sup> 33 CFR 1.05-55.

Occasionally, an interim rule may become effective without a preceding comment period. These interim rules rely upon a good cause exception to the APA's requirement to publish an NPRM and afford the public an opportunity to comment before publishing an effective rule (see Chapter 1, Section E).<sup>39</sup> A good cause exception to compliance with the APA notice and comment requirements is available only when they are impractical, unnecessary, or contrary to the public interest. An interim rule will not be cleared unless the claimed exception is fully supported.

- b. There is no statutory deadline for issuing the subsequent final rule, but if more than two years have elapsed since publication of the interim rule, Commandant (CG-0943) requires publication of either a notice reopening the comment period, or an SNPRM reopening the comment period and proposing additional changes. Consider issuing an interim rule when you think a rule is likely to need subsequent modification, and you want to keep the same Regulatory Identifier Number (RIN) and electronic docket open in order to facilitate returning to the rule at a later date.

<sup>39</sup> APA 5 U.S.C. § 553 (b).

## 6. MISCELLANEOUS

### A. Introduction

Chapter 1 introduced the subject of rulemaking, and Chapters 2 through 5 described the rulemaking process sequentially. This chapter provides additional information about issues related to rulemaking that either arise out of sequence or that may be of interest only to certain members of a rulemaking team. Topics covered by this chapter include --

1. rulemaking significance and major rules;
2. clearance procedures;
3. *ex parte* considerations;
4. petitions for rulemaking;
5. *Federal Register* issues;
6. project dockets and the administrative record;
7. negotiated rulemaking;
8. social media in rulemaking;
9. retention of records; and
10. additional references.

### B. Rulemaking significance and major rules

1. A rulemaking receives increased scrutiny and generally takes longer to process if it is significant under the criteria provided in Executive Order (E.O.) 12866. The Office of Management and Budget (OMB) has final authority to determine whether a rule is significant under that Order. A rulemaking can be labeled significant at any stage, from its inception to its completion. For every proposed rule and effective rule document the Coast Guard believes to be nonsignificant, the Department of Homeland Security (DHS) and OMB require a nonsignificance determination request. The rulemaking team normally writes the request, explaining why OMB should determine that the rulemaking document in question is nonsignificant. Commandant (CG-0943) maintains a template for these requests.
2. Under E.O. 12866, significant rulemakings are those likely to result in rules that may --
  - a. have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the

- environment, public health or safety, or State, local or tribal governments or communities;
- b. create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
  - c. materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
  - d. raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.<sup>40</sup>
3. Depending on when the determination of significance is made, take the following steps for a significant rulemaking --
    - a. route the work plan in accordance with COMDTINST 16703.2, *Marine Safety and Security Council: Development and Review of Rulemaking Documents*;
    - b. prepare additional documents for DHS review. Commandant (CG-0943) is responsible for ensuring compliance with these requirements;
    - c. perform additional economic analysis in accordance with E.O. 12866. Commandant (CG-5231) is responsible for ensuring the appropriate economic analysis is performed;
    - d. estimate 60 days for DHS, and 90 days for OMB to review a proposed or effective rule. In practice, OMB may need more or less time depending on current workload and priorities; and,
    - e. designate the project as significant in the Unified Regulatory Agenda entry and consider inclusion in the DHS Regulatory Plan as a significant regulatory action DHS plans to propose or finalize in the coming year.<sup>41</sup>
  4. The Congressional Review Act (CRA) requires a determination of whether a rule is major.<sup>42</sup> If OMB determines that a rule is major under the CRA, 5 U.S.C. § 801 will apply and the rule's effective date will likely be delayed in order to comply with the requirements of that statute. The criteria for major rules are similar but not identical to the E.O. 12866 criteria for significant rules. Commandant (CG-0943) provides advice to program managers (PMs) on a project's categorization as significant or major.

<sup>40</sup> E.O. 12866 § 3 (f).

<sup>41</sup> E.O. 12866, § 4(c)(1).

<sup>42</sup> CRA 5 U.S.C. §§ 801-808.

### C. Clearance procedures

1. Clearance procedures are governed by *Marine Safety and Security Council: Development and Review of Rulemaking Documents*, COMDTINST 16703.2 Enclosure 1, and any clearance required beyond RegCo will be conducted in accordance with that Instruction. The standard 30-day electronic clearance sequence for a rulemaking document, including the work plan, which originates in Commandant (CG-5), is, at a minimum: Rulemaking team → Program office → CG-5231 → CG-DCO-R-2 → CG-47 → CG-0943 and RegCo.
2. The standard 30-day electronic clearance sequence for a rulemaking document, including a work plan, which does not originate in Commandant (CG-5) is, at a minimum: Rulemaking team → Program office → CG-5231 → CG-47 → CG-0943 and RegCo.
3. Additional offices may be added by RegCo and Commandant (CG-0943). After a document is cleared by the rulemaking team, concurrent clearance is the norm for offices added to the sequence ahead of Commandant (CG-0943), though the team may opt to seek consecutive clearance from those offices instead. The team sets a date by which concurrent electronic clearance offices must respond in writing to the team. The written response may be an e-mail that can be printed for inclusion in the clearance package.
4. In special circumstances and with Commandant's (CG-0943) prior approval, the rulemaking team may indicate on the electronic clearance package that a concurrent clearance office's failure to respond by the deadline will be taken as that office's consent. Inferring clearance from silence, however, provides incomplete documentation for your administrative record of clearance and review and is not encouraged. Commandant (CG-0943) only reviews a document after completion of any concurrent review. Once cleared by Commandant (CG-0943), subsequent clearance of the document is consecutive.
5. Clearance office reviewers may request modifications to the document. The rulemaking team must contact the reviewer if it does not intend to incorporate the requested modification. The RDM ensures that previous reviewers are notified of subsequent substantive changes, so that clearances can be rescinded and additional comments provided, if desired. Program office reviewers must give highest priority to reviewing rulemaking documents. Lengthy delays in the rulemaking clearance process are not acceptable.
6. For document clearance by DHS or other offices external to Headquarters, the RDM must coordinate with Commandant (CG-0943). All communications with DHS, OMB and the Office of Information and Regulatory Affairs (OIRA), or another federal agency concerning Coast Guard rulemakings must pass through Commandant (CG-0943). For many projects, the project counsel (PC) will arrange for Commandant (CG-0943) to send a draft copy of the rulemaking document to DHS immediately after Commandant (CG-0943) has reviewed it, with the caveat that final Coast Guard clearance has not yet occurred. This DHS pre-review may speed external review of the document once final approval is granted internally.

7. Once the rulemaking team approves a significant draft document, an average time of six months is required to complete clearance. Although a nonsignificant rulemaking document may clear DHS and OMB in less time than that required for a significant one, that will not always be the case. The following is a guide to expected clearance timelines for significant actions (note that estimated clearance timelines for b and c may vary)--
  - a. 30 days in Coast Guard Headquarters clearance;
  - b. 60 days in clearance with DHS; and
  - c. 90 days in clearance with OMB (significant rulemakings only).

#### **D. Public and Congressional communications**

After the clearance process is complete, but before sending a document for publication, the RDM ensures coordination with Commandant (CG-092S), Strategic Communications Staff and Commandant (CG-0922), Office of Congressional Affairs, which will normally include preparation of talking points, a press release and Congressional notification transmittals.

#### **E. *Ex parte* communications**

1. Coast Guard policy severely restricts *ex parte* communications. The Administrative Procedure Act (APA) defines an *ex parte* communication as “an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports...”<sup>43</sup> Rulemakings suspected of having been influenced by *ex parte* communications can be challenged in court and invalidated. In addition to the potential legal consequences of such communications, the Coast Guard is also concerned about the appearance of impropriety that such communications can generate. Although the Coast Guard solicits and welcomes public input regarding potential rulemakings,<sup>44</sup> legal restrictions on *ex parte* communications come into play once a work plan is approved.
2. Before approval of the work plan, you may communicate with the general public about a possible rulemaking. However, immediately after doing so, you should document significant communications that influenced, or may have influenced, either the initiation or direction of the rulemaking. Communication includes meetings, telephone calls, emails, or other conversations. Document these communications by preparing a Memo to the File stating whom the communication was with, where it occurred, and what was discussed. E-mail communication is documented by printing a copy of the correspondence. The documentation is then given to the rulemaking team for inclusion and retention in the Commandant (CG-0943) project file. *Ex parte* communications must also be described in the proposed rule preamble, and it may be necessary to place the memo or some other summary of the

<sup>43</sup> APA 5 U.S.C. § 551 (14).

<sup>44</sup> 33 CFR 1.05-15.

communication in the public docket after one is opened. The Commandant (CG-0943) project counsel will assist in those determinations.

3. Communications with members of the public after the close of a public comment period are a particular concern, and could raise issues that may require reopening the comment period.
4. With the exception described below concerning Congressional inquiries, never disclose the details of a rulemaking to someone outside the Executive Branch of the Federal Government unless the matter has been made public through *Federal Register* publication or placement on the *Federal Register*'s pre-publication public inspection list. This includes disclosing any portion of the text of a rulemaking document. Similarly, do not release copies of the document until it has actually been placed on the *Federal Register*'s pre-publication public inspection list.
5. Disclosure to another Federal agency prior to publication in the *Federal Register* is permitted when the other agency is participating in a joint rulemaking or otherwise collaborating with the Coast Guard on a rulemaking. Collaboration between Federal agencies on rulemaking is generally not subject to *ex parte* restrictions.
6. Before discussing a pending rulemaking with parties outside the Coast Guard, including other Federal agencies, be aware that doing so increases the risk of a legal challenge to the rule's legitimacy. Consult with Commandant (CG-0943) prior to any such discussion to help assess and manage that risk. Risk management depends heavily on documenting external discussions for the public docket; therefore Commandant (CG-0943) will also provide guidance on that topic. Finally, Commandant (CG-0943) will determine whether further coordination with the DHS Office of General Counsel is necessary.
7. Some of these prohibitions may not apply if the Coast Guard has received an official inquiry from a Congressional committee that has oversight responsibility for the Coast Guard. In that case, consult Commandant (CG-0943) for guidance.

## **F. Petitions for rulemaking**

The APA allows any member of the public to petition an agency for a rulemaking. The Coast Guard regulation governing these petitions is 33 CFR 1.05-20. This section advises the public to send petitions directly to the Executive Secretary of the Marine Safety and Security Council (MSSC), a Commandant (CG-0943) staff member. Refer all petitions received to Commandant (CG-0943), which coordinates with the Executive Secretary on a response to each petition. Upon receiving a petition, Commandant (CG-0943) opens an electronic docket, and forwards the petition to the program office for a substantive response to the Executive Secretary within the next 30 days. The substantive response will either grant the petition and describe what steps have been taken under 33 Code of Federal Regulations (CFR)1.05-10 to begin the regulatory process, or will set forth reasons for denying the petition. The petition and the substantive response are placed in the public docket.

### **G. *Federal Register* issues**

1. Commandant (CG-0943) provides liaison between all Coast Guard units and the Office of the Federal Register. All Coast Guard documents submitted for *Federal Register* publication require Commandant (CG-0943) approval and must conform to the style requirements of the Federal Register Document Drafting Handbook (FRDDH). Coast Guard policy is to open an electronic docket for any Headquarters project that involves a *Federal Register* publication, whether or not the project involves rulemaking.
2. Immediately following publication of any *Federal Register* notice or rule document, the PM must proofread the *Federal Register* publication against the file copy of the document, and report errors to Commandant (CG-0943). In the case of a rule document, the RDM must also check the electronic version of the CFR, the e-CFR, to make sure it correctly sets out any regulatory text. The rulemaking team is responsible for preparing any correction documents that may be needed.

### **H. Project dockets and the administrative record**

1. Commandant (CG-0943) oversees the opening, closing, and archiving of a project docket for each rulemaking. The project docket is the core of the Coast Guard's administrative record, and contains many of the documents the Coast Guard would rely upon to defend a rulemaking in the event it is challenged in court.
2. A project docket consists of a public file, which usually consists entirely of documents in electronic format, and a non-public file which is maintained by Commandant (CG-0943). Any document the public is entitled to see while the rulemaking is in progress belongs in the public file, which is commonly referred to as the public docket. Generally speaking, this includes items like *Federal Register* notices, public comments, and economic or environmental analyses, and any relevant studies or reports relied upon by the Coast Guard when drafting the proposed rule. Each rulemaking team is responsible for promptly checking completeness and legibility to assure the quality of the electronic uploads to the public docket. If errors in the electronic documents uploaded to the docket are noted, coordinate with Commandant (CG-0943) to correct the errors.
3. Videotapes, physical exhibits, or other items that cannot easily be converted into digital form must be kept in Commandant (CG-0943), where they are available for public inspection during regular business hours. The rulemaking team prepares a short memo describing each such item including when and where it may be viewed by the public. The memo is placed in the electronic docket.
4. The non-public file contains material that is not available for public inspection, but that nevertheless needs to be kept for administrative record purposes. Work plans and Sensitive Security Information (SSI) are examples of material that belong only in the internal docket.

Commandant (CG-0943) maintains the internal docket file for each rulemaking. This file cannot be removed from Commandant (CG-0943) spaces until it is transferred to the archives.

5. All Coast Guard electronic public dockets are maintained on the U.S. Department of Transportation Federal Docket Management System (FDMS), and are open to the public at <http://www.regulations.gov>.

## **I. Negotiated Rulemaking**

1. Negotiated rulemaking is a process that brings together those stakeholders who would be significantly affected by a new regulation, including the government, with the goal of reaching consensus on the provisions of the new regulation before it is formally proposed. The process is a voluntary one, except where Congress specifically provides otherwise, and the participants establish their own rules of procedure. An impartial convener is often used to assist a government agency to determine whether to propose the establishment of a negotiated rulemaking committee. Once a committee is established, an impartial facilitator must be used to mediate negotiations between the committee members, whose meetings are open to the public. The mediator chairs the committee, while the Federal agency proposing the new rule is represented as a committee member. In short, negotiated rulemaking is a form of alternative dispute resolution in which an impartial third party facilitates settlement of disagreements between a government agency and outside parties about the terms of a proposed rule before it is published for public comment.
2. The most distinctive aspect of negotiated rulemaking is the agreement the committee members enter into at the inception of the committee. The agency agrees that, if the committee reaches consensus on a recommended rule, the agency will use that recommendation as the basis of a Notice of Proposed Rulemaking (NPRM). The agency further agrees to adopt the proposed rule as the final rule, unless the committee agrees that comments from the public warrant amendment. For their part, the members of the committee other than the agency agree to support the new rule to the extent that it embodies the committee's recommendation.
3. By soliciting information from outside the agency and attempting to resolve disputes before a rule is proposed, negotiated rulemaking can provide several advantages over traditional informal rulemaking. First, a negotiated rulemaking may defuse disagreements that would otherwise result in expensive and time consuming litigation. Additionally, the more extensive exchange of information between the parties typically leads to a rule that is technically more accurate and clear. A more cooperative relationship between the agency and outside parties, the improved accuracy of the rule, and the investment of time and energy by outside parties often lead to quicker and easier implementation of the new rule and higher rates of compliance by regulated parties. Disadvantages of negotiated rulemaking may include the time and other resources necessary, and the possibility that consensus on a proposed rule won't be reached.

4. The use of negotiated rulemaking is authorized generally by the Negotiated Rulemaking Act (NRA), 5 U.S. Code (U.S.C.) §§ 561 – 570a. In addition, the Coast Guard is specifically authorized to establish negotiated rulemaking committees pursuant to 33 C.F.R. § 1.05-60. The establishment and conduct of negotiated rulemaking committees are governed by the NRA and the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix 2, and the NRA provides that agencies may use negotiated rulemaking when it is in the public interest.<sup>45</sup> Use of negotiated rulemaking must be approved by the DHS Office of General Counsel for Regulatory Affairs.

## **J. Social media in rulemaking**

1. Social media generally consists of Internet applications meant for sharing information, which often consist, at least in part, of user-generated content. Examples include blogs, Internet forums and wikis, which are collections of interconnected web pages that allow anyone with the appropriate permissions to add, modify, and reorganize content. Although use of social media to solicit and receive public input during rulemaking is a relatively new idea, it is an approach that can be expected to provide expanded opportunities for public participation in the rulemaking process.
2. Regulatory decision-making can be improved by facilitating the ability of a larger segment of the public to monitor rulemakings and share potentially valuable information and insights. For this reason, the Coast Guard encourages rulemaking teams to consider whether the use of social media to obtain public comment before publication of a proposed rule in the *Federal Register* would improve the rulemaking. Teams interested in using social media after publication of a proposed rule must obtain approval through Commandant (CG-0943), and comply with Coast Guard, DHS, and OMB guidance on the use of social media in rulemaking.
3. The Governmental and Public Affairs Directorate (CG-092) is coordinating the Coast Guard's engagement in the social media environment with interim policy, guidance, tools, and processes.

## **K. Periodic review**

E.O. 12866 requires periodic review of published rules that are significant and have a significant economic impact on a substantial number of small entities.<sup>46</sup> They are reviewed at least once every 10 years to monitor the impact and determine if the regulation can be modified or rescinded. Commandant (CG-0943) ensures Coast Guard compliance with these requirements

<sup>45</sup> 563(a) and 33 CFR §1.05-60(a).

<sup>46</sup> E.O. 12866 § 5.

**L. Retention of Records**

Rulemaking records should be maintained in accordance with the Information and Life Cycle Management Manual, COMDTINST M5212.12 series.

**M. Additional references**

Additional resources, which are located in CG Portal, include--

1. Title 5, U.S.C. Section 601, et seq., “Regulatory Flexibility Act”;
2. Title 42 U.S.C., Section 4321, et seq., “National Environmental Policy Act of 1969”;
3. Title 44, U.S.C. Chapter 15, “Federal Register and Code of Federal Regulations” [“Federal Register Act”];
4. Title 44, U.S.C., Chapter 35, Subchapter I, “Federal Information Policy [“Paperwork Reduction Act”];
5. OMB Circular A-4, “Regulatory Analysis,” September 17, 2003;
6. the 2002 E-Government Act, especially § 208;
7. OMB Bulletin “Final Bulletin for Agency Good Guidance Practices,” January 25, 2007 (72 FR 3432); and
8. the Federal Records Act of 1950 (44 U.S.C. ,Chapters 21, 29, 31, and 33).

## 7. GLOSSARY

This list is not exhaustive, but will aid you with understanding some of the less common terms used in the rulemaking process. For further explanation of the terms, please refer to the page references in parentheses.

1. **ANPRM** – Advance Notice of Proposed Rulemaking; a document an agency may choose to publish in the *Federal Register* before a Notice of Proposed Rulemaking (NPRM), a vehicle for obtaining public participation of a regulatory change before agency has done significant investigation of their own (see Chapter 4, Section D).
2. **APA** – Administrative Procedure Act, 5 U.S.C. Subchapter II; passed in 1946, the basic law directing Federal agencies on how they must operate when they issue rules.
3. **CFR** – Code of Federal Regulations; the publication that contains the rules and regulations of Federal agencies. A link to an electronic version of the CFR is provided by the Office of the Federal Register on their web site. Coast Guard regulations can be found in CFR titles 33, 46 and 49.
4. **CRA** – Congressional Review Act, 5 U.S. Code (U.S.C.) §§ 801 – 808; allows Congress to review every new federal regulation issued by government agencies and, by passage of a joint resolution, overrule a regulation. Under § 801 of this statute, Congressional notification is required before a rule is to take effect.
7. **Direct Final Rule** – a rule published as final together with a request for public comments, and without a previous solicitation for comment. DFRs are generally effective 90 days after publication unless an adverse public comment is submitted within 60 days after its publication (see Chapter 5, Section D).
8. **DHS** – Department of Homeland Security; a Cabinet department of the Federal Government with the responsibility of protecting the U.S. from terrorist attacks and responding to hazards and disasters. The Coast Guard is a component of DHS. DHS is responsible for legal and policy review of Coast Guard rulemaking documents (see Chapter 1, Section I).
9. **Docket** – All Coast Guard rulemaking electronic public dockets are kept on the U.S. Department of Transportation Federal Docket Management System (FDMS). The E-Government Act of 2002 requires federal agencies to use an internet accessible rulemaking docket that contains all public comments and other relevant documents. FDMS offers a single, computerized, easily accessible location where all public documents associated with a rulemaking are open to the public. Documents posted on FDMS can be viewed at <http://www.regulations.gov>. Sensitive Security Information (SSI) and other protected material will be kept in a file maintained by Commandant (CG-0943), see Chapter 6, Section G.
10. **Docket number** - Each rulemaking must have its own docket number. Note that all documents associated with a particular rulemaking and published in the *Federal Register* should use the

same docket number. All Coast Guard rulemakings are assigned unique docket numbers by FDMS when requested by Commandant (CG-0943) (see Chapter 3, Section B).

11. **E.O.** – Executive Order; a formal means for the President to direct executive branch agencies to act.
12. **Ex parte communications** – an oral or written communication not on the public record, when reasonable prior notice to all parties has not been given; off-the-record communication from one party to a decision-maker (see Chapter 6, Section D).
13. **Federal Docket Management System** - All Coast Guard electronic public dockets are maintained on the U.S. Department of Transportation Federal Docket Management System (FDMS), and are open to the public at <http://www.regulations.gov>.
14. **Federal Register** – a daily publication of the Federal Government providing official notification and record of Federal agency rulemaking documents including, but not limited to, proposed and effective rules. Publication of an effective rule in the *Federal Register* provides constructive notice of the rule to the public.
15. **FOIA** – Freedom of Information Act, 5 U.S.C. § 552; requires that Federal agencies make certain information available to the public by request.
16. **Final Rule** – an enforceable rule, usually issued after an NPRM, Supplemental Notice of Proposed Rulemaking (SNPRM), or interim rule. Final rules must include a concise general statement of the rule’s basis and purpose, a discussion of the comments received along with the Coast Guard’s response, a discussion of any changes made to the previously proposed regulatory text, and the date on which the rule will take effect. Generally, final rules will include regulatory text, and cannot take effect sooner than 30 days after publication in the *Federal Register* (see Chapter 5, Section D).
17. **FRDDH** – Federal Register Document Drafting Handbook; a handbook that provides Federal agencies with guidance and examples for complying with the Office of the Federal Register’s format and editorial requirements for *Federal Register* documents.
18. **Interim Rule** – an enforceable rule, which may be used when it is in the public interest to issue an effective rule while keeping the rulemaking open for further changes. An interim rule may occasionally be issued without a preceding NPRM, but only when good cause exists (see Chapter 5, Section D).
19. **MMS** – Mission Management System; an International Organization of Standards 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 RDP to ensure the RDP fulfills its mission. RDP performance is measured and fed back into the MMS to facilitate effective planning and control.

20. **MSSC** – Marine Safety and Security Council (formerly known as the Marine Safety Council – MSC); the Council advises the Commandant on regulatory issues and periodically reports to the Commandant the status of Headquarters’ regulatory projects. The MSSC approves or recommends Commandant approval of new projects, changes to active projects, and suspension or termination of inactive projects. The Council also provides policy and procedural guidance to program directors and rulemaking teams for the development of Headquarters rulemaking projects (see Chapter 1, Section I).
21. **NEPA** – National Environmental Policy Act, 42 U.S.C. 4321, *et seq.*; prescribes a process to ensure that Federal agencies evaluate the potential environmental impacts of proposed programs, projects, and actions before initiating them; to inform the public of Federal agency activities that affect environmental quality; and encourage and facilitate public involvement in decision-making processes that affect the environment.
22. **Notice-and-comment** – used synonymously with the term informal rulemaking, to refer to the process that agencies use to issue rules in accordance with the APA, 5 U.S.C. § 553. This generally involves giving the public notice of proposed rules and giving the public a set amount of time to comment on a proposed rule before it becomes final (see Chapter 1, Section E).
23. **NPFC** – The National Pollution Funds Center; is an independent Coast Guard Headquarters unit established in 1991 to administer the Oil Spill Liability Trust Fund and has been delegated responsibility for a number of rulemakings required by the Oil Pollution Act of 1990.
24. **NPRM** – Notice of Proposed Rulemaking; a document published in the *Federal Register* to inform the public that a Federal agency is proposing a regulatory change (see Chapter 4, Section D).
25. **NVICs** – Navigation and Vessel Inspection Circulars; a publication that provides detailed guidance about the enforcement or compliance with certain regulations and Coast Guard marine safety programs. While NVICs do not have the force of law, they are important tools for complying with the law. Non-compliance with a NVIC is not a violation of the law in and of itself; however, non-compliance with a NVIC may be an indication that there is non-compliance with a law, a regulation, or a policy (see Chapter 1, Section F).
26. **OIRA** – Office of Information and Regulatory Affairs; an office within the Office of Management and Budget (OMB), created by the Paperwork Reduction Act of 1980, Pub. L. No. 96-511. The office oversees the process of Presidential review of rules and administers the requirements of the Paperwork Reduction Act.
27. **Office of Information Management (CG-61)** – The office responsible for reviewing all rulemaking proposals to ensure consistency with existing Information Collections and compliance with the Privacy Act and the Paperwork Reduction Act (see Chapter 1, Section I).

28. **Office of Management and Budget (OMB)** – Office of Management and Budget; the White House office responsible for advising Federal agencies on regulatory matters and reviewing rulemaking documents (see Chapter 1, Section I).
29. **Office of Regulations and Administrative Law (CG-0943)** – The office responsible for providing legal advice on rulemaking to various program offices, coordinating Coast Guard rulemaking with other Federal agencies, overseeing the public docket for Headquarters rulemaking, providing liaison with the Office of the Federal Register, and providing staff support and counsel to the MSSC (see Chapter 1, Section I).
30. **Office of Standards Evaluation and Development (CG-523)** – The office responsible for supporting the development of regulations, studies, and reports implementing laws and treaties within Commandant (CG-5)'s responsibility. Commandant (CG-523) may also support rulemaking activities of proponents other than Commandant (CG-5) upon request. The Commandant (CG-5) Regulatory Coordinator (RegCo), Standards Evaluation and Analysis Division, Project Development Division, and support contractors are a part of this office.
31. **PC** – Project Counsel; a Commandant (CG-0943) lawyer assigned to a rulemaking team, ensures the legal sufficiency of rulemaking documents and the rulemaking process, and resolves procedural and legal issues (see Chapter 1, Section I).
32. **PD** - Program Director; the chief of the office or division that sponsors a rulemaking is its program director. The PD assigns a program manager (PM) and/or a subject matter expert (SME) and coordinates with the RegCo to complete staffing of the project team. The program director is responsible for guiding the PM and/or the SME and monitoring the team's progress (see Chapter 1, Section I).
33. **RDM** – Regulatory Development Manager; is assigned by RegCo and acts as the project process manager. The RDM is responsible for keeping the project on schedule, and identifying and solving problems that are likely to cause delays. The RDM also facilitates rulemaking team communication, functioning and document clearance by Coast Guard leadership (see Chapter 1, Section I)
34. **RDP** – Regulatory Development Program; consists of a series of processes that normally begins with identification of a possible need for a new or changed regulation, and culminates in publication of an enforceable regulation in the *Federal Register*. See *USCG Regulatory Development Program (RDP), Mission Management System Manual*, RDP-MA-RDP-01(02), Enclosure D.<sup>47</sup> The mission of the RDP is timely publication of clear, effective, enforceable regulations with an emphasis on public participation.
35. **RegCo** – Regulatory Coordinator; each proponent may designate a RegCo to coordinate rulemakings within the proponent's organization. RegCos coordinate rulemakings by assisting the PDs in forming rulemaking teams and coordinating technical assistance, such as environmental or economic analyses. The RegCos also manage and monitor the progress of

<sup>47</sup> Located on CG Central in the Mission Management Systems sub-menu under the Resources tab.

regulatory projects. RegCos in organizations other than Commandant (CG-5) must coordinate with the CG-5 RegCo for proper alignment, clearance, and prioritization of rulemaking projects (see Chapter 1, Section I).

36. **Regulatory action** – “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.”<sup>48</sup> (See Chapter 1, Section C)
37. **RIN** –Regulation Identifier Number; The Department of Transportation Federal Docket Management System assigns a RIN to each regulatory project listed in the Unified Regulatory Agenda. The RIN is requested by Commandant (CG-0943) for all Coast Guard rulemakings (see Chapter 3, Section F).
38. **PM/SME** – Program Manager/Subject Matter Expert; an SME is normally assigned by and works for the program director (PD) sponsoring the rulemaking project. The SME acts as the project substance manager and is responsible for providing decisions on policy and subject matter in accordance with the program requirements. The SME develops the content of the rulemaking (see Chapter 1, Section I). The Program Manager is an SME who defines and manages program requirements for the program office, and ensures that the project satisfies those requirements. In teams with one SME, that person is also the PM. When a project requires more than one SME, one of them will be designated as PM and will be responsible for coordinating other SMEs and their project workload.
39. **SNPRM** – Supplemental Notice of Proposed Rulemaking; a document published in the *Federal Register* to allow the public an additional opportunity to comment. An SNPRM may be needed when a substantial change to a previously proposed rule is made. SNPRMs allow the public to comment on the substantial change to the proposed rule (see Chapter 4, Section D).
40. **Temporary Rule** –a rule that is temporary in nature and has a set expiration date (see Chapter 5, Section D)
41. **Unified Regulatory Agenda** – a document is 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> (see Chapter 4, Section C).
42. **Work plan** – 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 Chapter 3, Sections B and F).

<sup>48</sup> E.O. 12866 Sec. 3(e).