



PREPARATION OF HEADQUARTERS REGULATIONS



COMDTINST M16703.1A
April 2020

U.S. Department of
Homeland Security

**United States
Coast Guard**



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United States Coast Guard

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COMDTINST M16703.1A
20 APR 2020

COMMANDANT INSTRUCTION M16703.1A

Subj: PREPARATION OF HEADQUARTERS REGULATIONS

1. **PURPOSE.** This Manual provides procedures for developing, drafting, and clearing rulemaking and related documents to be issued by Coast Guard Headquarters officials and to be published in the *Federal Register*. This Manual does not apply to field regulations issued by District Commanders or Captains of the Port.
2. **ACTION.** All Coast Guard unit commanders, commanding officers, officers-in-charge, deputy and assistant commandants, and chiefs of Headquarters staff elements must comply with the provisions of this Manual. Internet release is authorized.
3. **DIRECTIVES AFFECTED.** *Preparation of Regulations*, COMDTINST 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 the rulemaking process.
5. **DISCLAIMER.** This Manual intends to provide operational requirements for Coast Guard personnel and neither intends to nor does it impose legally binding requirements on any party outside the Coast Guard. This Manual 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.
6. **MAJOR CHANGES.** This Manual has been revised throughout. Executive Orders 13771, *Reducing*

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NON-STANDARD DISTRIBUTION:

Regulations and Controlling Regulatory Costs, 13777, Enforcing the Regulatory Reform Agenda, and 13783, Promoting Energy Independence and Economic Growth, necessitated the addition of Paragraph 1(I)(3) concerning the Regulatory Reform Task Force, and changes to Sections 4(B) and 6(M) concerning the Unified Agenda and periodic review of regulations, respectively.

7. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS.

- a. The development of this Manual and the general policies contained within it have been thoroughly reviewed by the originating office in conjunction with the Office of Environmental Management, Commandant (CG-47). This Manual is categorically excluded under current Department of Homeland Security (DHS) categorical exclusion DHS (CATEX) A3 from further environmental analysis in accordance with the U.S. Coast Guard Environmental Planning Policy, COMDTINST 5090.1 and the Environmental Planning (EP) Implementing Procedures (IP).
 - b. This Manual will not have any of the following: significant cumulative impacts on the human environment; substantial controversy or substantial change to existing environmental conditions; or inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment. All future specific actions resulting from the general policy in this Manual must be individually evaluated for compliance with the National Environmental Policy Act (NEPA) and Environmental Effects Abroad of Major Federal Actions, Executive Order 12114, Department of Homeland Security (DHS) NEPA policy, Coast Guard Environmental Planning policy, and compliance with all other applicable environmental mandates.
8. DISTRIBUTION. No paper distribution will be made of this Manual. An electronic version will be located on the following Commandant (CG-612) web sites. Internet:
<http://www.dcms.uscg.mil/directives/>, and CGPortal:
<https://cg.portal.uscg.mil/library/directives/SitePages/Home.aspx>.
9. RECORDS MANAGEMENT CONSIDERATIONS. This Manual has been thoroughly reviewed during the Directives clearance process, and it has been determined there are no further records scheduling requirements, in accordance with Federal Records Act, 44 U.S.C. 3101 et seq., NARA requirements, and Information and Life Cycle Management Manual, COMDTINST M5212.12 (series). This policy does not have any significant or substantial change to existing records management requirements.
10. FORMS/REPORTS. None.
11. 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 Stop 7213, 2703 Martin Luther King Jr. Ave SE Stop 7213, Washington, DC 20593-7213.

STEVEN. J. ANDERSEN /s/
Rear Admiral, U.S. Coast Guard
Judge Advocate General

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1. CONCEPTS AND GENERAL INFORMATION

A. Purpose of this Manual

This Manual outlines the process that the Coast Guard has implemented to properly develop and publish regulations and *Federal Register* documents other than field regulations, and points to the legal authorities governing each aspect of the process.¹ 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.² In addition to this Manual, the *Mission Management System Quality Manual*, RDP-MA-01(02), is an important tool that provides further detail 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 most encountered are--

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: Oversight of the Coast Guard Regulatory Program, COMDTINST 16703.2A (series).

C. What is rulemaking?

1. Rulemaking is a decision-making process used to establish requirements that bind the public. Before issuing a binding rule, Federal agencies including the Coast Guard are generally required to provide public notice of a proposed rule in the *Federal Register* and to consider the comments received from interested persons in response to that notice.
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....”³ It defines

¹ Guidance on field regulations is provided in *Preparation of Field Regulations*, COMDTINST M16704.3A (series).

² 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* (5th ed., Chicago: ABA Book Publishing, 2012).

³ 5 U.S.C. § 551 (4).

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

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.”⁵ 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) unless the project is a technical amendment.⁶
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 a rule to be valid, it has to be issued in accordance with various legal requirements. The rule must also be authorized in law, and most rules are authorized in one or more statutes. In addition, most 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 copies should be sent to the Office of General Law, Commandant (CG-LGL) and the Office of Regulations and Administrative Law, Commandant (CG-LRA). Delegation of signature authority is governed by COMDTINST 16703.2A (series), Enclosure 1, Paragraph 1.a.

E. Informal rulemaking – notice and comment

1. Most Coast Guard rulemaking is informal – commonly referred to as notice-and-comment rulemaking – and is governed by 5 U.S.C. § 553. The name can be misleading – informal rulemaking still follows a very prescriptive process. Formal rulemaking is governed by 5 U.S.C. 556 and 557, and involves formal hearings, evidentiary rules, and recorded testimony. If you believe a formal rulemaking should be used to prepare a Headquarters regulation, contact Commandant (CG-LRA).

⁴ 5 U.S.C. § 551 (5).

⁵ E.O. 12866 Sec. 3.(e).

⁶ 33 CFR 1.05-10.

2. There are two significant APA informal rulemaking procedural requirements--
 - a. Publish a notice of proposed rulemaking (NPRM) that both describes and contains the text of the proposed rule, invites public comment, and provides time for you to consider comments received before issuing an effective rule; and
 - b. Do not make a rule 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 or another APA exception. 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, makes the rule takes effect less than 30 days after publication, or does both of these things, a detailed explanation of the good cause finding(s) must accompany the final or interim rule when it is published in the *Federal Register*.⁷
4. Impractical means that satisfying the procedural requirement would unavoidably prevent the agency from fulfilling its statutory responsibilities. Unnecessary means that issuing an NPRM would serve no purpose. For example, if we have a statutory mandate to issue a rule that provides no discretion on the wording of the regulation, it would be unnecessary to seek comments because we would not have any discretion to make changes from the proposed rule.
5. Good cause exceptions based upon the public interest are typically used when responding to emergency health or safety situations. Administrative convenience or avoiding delay, alone, is not a valid basis for claiming good cause. Regulations based on good cause will usually be appropriate when they are 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.”⁸ 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. 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.⁹ The same policy calling for a 90-day comment period applies to interim rules, which like NPRMs, solicit comments.

⁷ 5 U.S.C. § 553(b)(3)(B).

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

⁹ 33 CFR § 1.05-15. Note that 5 U.S.C. § 553(b)(3)(B) contains exception provisions, including good cause, that allow us in limited circumstances to publish an effective rule without first publishing an NPRM.

F. 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-01(02) (series), Section 6.0.¹⁰ The Coast Guard created the RDP 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. The processes used by Coast Guard rulemaking teams are determined by the Office of Regulatory and Administrative Law (CG-LRA) and the Office of Standards Evaluation and Development (CG-REG) based upon Coast Guard policy, stakeholder needs, and feedback from the MMS.

¹⁰ Available on the CG Portal at <https://cg.portal.uscg.mil/units/cgreg/SitePages/MMS.aspx>

G. 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 begins with assigning staff who draft a proposed action to satisfy the identified need, analyze the resources needed to accomplish the desired end state, identify other consequences of implementation, and troubleshoot issues.
4. Development is discussed in greater detail in Chapter 3 and includes --
 - a. Beginning the Rulemaking Project Proposal;
 - b. Establishing a baseline;
 - c. Beginning analysis;
 - d. Considering alternatives to rulemaking;
 - e. Clearing the Rulemaking Project Proposal; 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 if we decide to hold public meetings, they will have the opportunity to provide oral comments as well.
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.

H. 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: Oversight of the Coast Guard Regulatory Program*, COMDTINST 16703.2A. Commandant (CG-LRA) provides staff support and counsel to the MSSC.
3. **Regulatory Reform Task Force (RRTF)** – The Judge Advocate General and Chairman of the MSSC established the Coast Guard RRTF (CG-RRTF) by memorandum dated 26 May 2017 to meet the deregulatory requirements of Executive Order 13771, *Reducing Regulations and Controlling Regulatory Costs*, Executive Order 13777, *Enforcing the Regulatory Reform Agenda*, Executive Order 13783, *Promoting Energy Independence and Economic Growth*, and associated OMB guidance. The MSSC is dual-hatted as the CG-RRTF. CG-5PS has been designated as the component Senior Accountable Regulatory Official (SARO) and, in that capacity, represents the Coast Guard as a member of the DHS RRTF. The CG-RRTF operates in support of the SARO and the DHS RRTF.
4. **Office of Information Management (CG-61)** – The Office of Information Management, Commandant (CG-61) is responsible for reviewing all proposed and effective rules to ensure compliance with Privacy Act requirements and those proposed and effective rules that would make changes to a collection of information. Commandant (CG-61) collaborates with the rulemaking team to initiate relevant privacy documentation-- for example, Privacy Threshold Analysis, Privacy Impact Assessment, and System of Record Notice, which is published in the *Federal Register*.
5. **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.”¹¹ Under the Paperwork Reduction Act, OMB also reviews our request for approval of a collection of information if one is associated with our rulemaking project.
6. **Office of Regulations and Administrative Law (CG-LRA)** – The Judge Advocate General of the Coast Guard (CG-094) has designated Commandant (CG-LRA) as the office responsible for providing legal advice on rulemaking to the program office, coordinating Coast Guard rulemaking with other Federal agencies, maintaining the public docket for Headquarters rulemaking, providing liaison with the Office of the Federal Register, and providing staff support and counsel to the MSSC. Any communication with DHS, OMB

¹¹ E.O. 12866 Sec.2(b).

(including OIRA), or another Federal agency concerning Coast Guard rulemakings must pass through Commandant (CG-LRA). Commandant (CG-LRA) 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 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 SME and monitoring the team’s progress.
8. **Proponent** – A rulemaking proponent will be a deputy or assistant commandant, or other senior executive at an equivalent echelon. The vast majority of Headquarters rulemakings originate in program offices that now report to Commandant (CG-5P). However, other Headquarters organizations may also lead a program office or division that sponsors a specific rulemaking. Proponents have signature authority for rulemaking project proposals (RPP), RPP changes and other non-significant rulemaking documents originating within the proponent's area of responsibility.
9. **Regulatory coordinator (RegCo)** – With the exception of the National Pollution Funds Center (NPFC), Commandant (CG-REG-2) serves as the RegCo for all Headquarters rulemakings. Because of the unique subject matter involved, NPFC assumes RegCo functions for their rulemakings. 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.

I. Rulemaking Teams

1. Commandant (CG-REG), 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-5P), and may provide these resources upon request to other Headquarters proponents. Although proponents other than Commandant (CG-5P) 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-5P), must include a PC assigned by Commandant (CG-LRA).
2. The 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 with anticipated resource implications, the RegCo will also request representation from the Coast Guard Deputy Commandant of Operations, Office of Budget Development, (CG-DCO-82). 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.
3. Each Headquarters rulemaking is developed by a team typically consisting of the following

members:

- a. The regulatory development manager (RDM) is assigned by RegCo and is responsible for keeping the project on schedule, identifying 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-5P are responsible through the chain of command to CG-5PS for the timely progress and completion of their projects.
- b. The subject matter expert (SME) is normally assigned by and works for the PD or program office sponsoring the rulemaking project. The SME acts as the project content manager and is responsible for providing decisions on policy and subject matter in accordance with the program requirements. The SME defines and manages program requirements for the program office, and ensures that the project satisfies those requirements. When a project requires more than one SME, the PD designates one of them as lead SME, and that person is responsible for coordinating the SMEs and their project workload.
- c. The project counsel (PC), assigned by Commandant (CG-LRA), 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-REG-1) or by NPFC, 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-REG-1) or by NPFC, evaluates the rulemaking for environmental impacts and compliance with environmental process requirements.
- f. A technical writer will normally assist the rulemaking team in drafting rulemaking documents. When technical writer support is needed, Commandant (CG-REG) submits a request to the contractor, who then assigns a technical writer.

2. INITIAL DECISION-MAKING

A. Identifying a need for action

1. Subpart 1.05 of 33 Code of Federal Regulations (CFR) part 1 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.”¹² 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. Amendments to international agreements to which the United States is a party;
 - h. Executive branch orders or policy changes; or
 - i. 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 document, or new legislation. The program office should consult with its Regulatory Coordinator (RegCo), its Legislative Coordinator, or with Commandant (CG-LRA) or the Office of Legislative Counsel, Commandant (CG-094LC) 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.

¹² 33 CFR 1.05-10(a).

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 the Regulatory Assistance Team (RAT) 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, but the RAT provides access to an economist and project counsel to assist in properly scoping the project. Additional team members may also be assigned at the 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 begins with assigning staff who draft a proposed action to satisfy the identified need, analyze the consequences of implementation, and troubleshoot issues. Development includes--

1. Beginning the rulemaking project proposal;
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 rulemaking project proposal; and
6. Drafting and clearing a proposal for publication in the *Federal Register*.

B. Beginning the rulemaking project proposal

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 rulemaking project proposal. The rulemaking project proposal 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-LRA) 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-01(02)*¹³
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 rulemaking project proposal must cover the topics listed below, and any other relevant issues --

¹³ 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. Whether the rule is deregulatory under E.O. 13771 and, if so, the expected amount of savings; 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.¹⁴

¹⁴ The U.S. Coast Guard Strategy for Maritime Safety, Security, and Stewardship, p. 9.

4. Although the rulemaking team will begin drafting the rulemaking project proposal 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 rulemaking project proposal 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 rulemaking project proposal will help avoid delay later in the rulemaking.

C. Establishing a Baseline

Before beginning a regulatory impact analysis, a point of reference should be established that captures the current conditions of the potentially impacted regions 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 rulemaking project proposal, 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-REG-1), is responsible for performing analyses for all Headquarters rulemakings except NPFC. Offices that conduct their own analyses must coordinate that work with the Office of Standards Evaluation and Development (CG-REG-1), 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-LRA), the Office of Environmental Law (CG-LMI-E), and the Office of Environmental Management (CG-47) 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-REG) 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 E 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. 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 rulemaking project proposal;
 - b. Actions other than rulemaking, such as issuing 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 rulemaking project proposal. 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 rulemaking project proposal. In such cases, the PD or RegCo may be able to redirect the team, or choose to change the rulemaking to an inactive status, or disband the team and abandon the proposed rulemaking.

F. Clearing the rulemaking project proposal

1. The completed rulemaking project proposal goes through clearance, and is submitted to the MSSC in accordance with *Marine Safety and Security Council: Oversight of the Coast Guard Regulatory Program*, COMDTINST 16703.2A, Enclosure 1. All rulemaking project proposals must be cleared through the MSSC regardless of whether they are expected to be significant under E.O. 12866 and regardless of the RegCo overseeing the submission. See COMDTINST 16703.2A for clearance procedures involving the MSSC.
2. Once the project's proponent has approved the rulemaking project proposal, a new Coast Guard regulatory project exists, and those involved with the project need to be aware of *ex parte* communications requirements (see Chapter 6, Section E). The rulemaking team then begins preparing a proposal for eventual publication in the *Federal Register*. At the appropriate time, Commandant (CG-LRA) 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-LRA) can approve the acquisition of a Coast Guard RIN and an electronic docket number.¹⁵

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

1. Unless a rulemaking is covered by an Administrative Procedure Act (APA) exception, the Coast Guard must announce it to the public and solicit public comments before it can be finalized or take effect. A 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 and works with Commandant (CG-LRA) 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 rulemaking project proposal, 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 LRA) and on the CG Portal. These templates incorporate current legal and Federal Register Document Drafting Handbook (FRDDH) requirements. Previous *Federal Register* publications may be useful as examples of discussions, amendatory text, and internal organization of topics, but do not substitute such documents for Commandant (CG-LRA) templates. Use of Commandant (CG-LRA) templates is vital to ensure current format and analysis requirements are incorporated into documents.
3. The Plain Writing Act of 2010¹⁶ requires federal agencies to use plain writing in every document that it issues or substantially revises that provides information about any Federal Government benefit or service, or explains to the public how to comply with a requirement the Federal Government administers or enforces. “The term “plain writing” means writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience.”¹⁷ Pursuant to the Act, OMB published the Federal Plain Language Guidelines, which are available at <https://www.plainlanguage.gov/guidelines/>, and which every rulemaking team must use when drafting documents for publication in the *Federal Register*.

¹⁵ All Coast Guard rulemaking documents published in the Federal Register are available to the public through electronic dockets, which are provided by the Federal Docket Management System (FDMS) via www.regulations.gov. Comments from interested persons on our proposed rules are placed in the docket for that rulemaking. Coast Guard liaison with FDMS is provided by Commandant (CG-LRA). For further information on dockets, see Chapter 6, Section H.

¹⁶ Public Law 111-274, 124 Stat. 2861 (Oct. 13, 2010).

¹⁷ *Id.* at Section 3, para. 3.

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).¹⁸ The APA requires that interested members of the public must be given an opportunity to submit written comments on a proposed rule unless one of the exemptions discussed in Chapter 1, Section E of this Manual applies.¹⁹ Early public involvement is, moreover, strongly encouraged by Coast Guard regulations at 33 Code of Federal Regulations (CFR) 1.05-10(a).
2. Public participation is solicited in rulemakings by --
 - a. describing proposed rulemakings in the Unified Regulatory Agenda; and
 - b. publishing proposals and other notices in the *Federal Register*.
3. Public participation is facilitated by --
 - a. soliciting for interested persons to submit written comments to the docket, which is generally required by APA; and
 - b. holding public meetings to allow for oral comments, which is optional.

B. Describing proposed rulemakings in the Unified Regulatory Agenda

1. The Unified Regulatory Agenda lists regulatory projects throughout the Federal Government that have been assigned Regulation Identifier Numbers (RINs), and most Coast Guard projects are included. Each rulemaking team should obtain a RIN through Commandant (CG-LRA) sometime after the rulemaking project proposal 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.
2. Executive Order (E.O.) 13771 requires agencies to include an entry in the most recent version of the Unified Agenda before publishing any regulation unless the Director of the Office of Management and Budget (OMB) waives that requirement.²⁰ According to OMB guidance, this requirement applies to proposed rules.²¹

¹⁸ 33 CFR 1.05-15

¹⁹ 5 U.S.C. § 553(c).

²⁰ E.O. 13771, *Reducing Regulation and Controlling Regulatory Costs*, § 3(c).

²¹ OMB Memo titled *Compliance with Section 3(c) of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs*, dated February 22, 2018.

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-LRA) on the CG Portal.
2. **ANPRMs** – Issue an ANPRM when a rulemaking has been initiated, but more information is needed 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 in response to a description of a problem the Coast Guard is considering addressing with a regulation.²²
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, that is, “a statement of the time, place, and nature of public rulemaking proceedings;”²³
 - b. basis of the proposed rule, that is, “reference to the legal authority under which the rule is proposed,” including necessary delegations;²⁴
 - c. “Either the terms or substance of the proposed rule or a description of the subjects and issues involved.”²⁵ Subpart 1.05 of 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;”²⁶
 - d. a determination of the economic significance of the proposed rule as required under E.O. 12866; and
 - e. Subpart 1.05 of 33 CFR adds a requirement that the NPRM discuss “any comments received in response to prior notices” related to the rulemaking.²⁷
4. **SNPRMs** – Issue an SNPRM when you propose substantial changes to a previously proposed rule or to an interim rule.²⁸ 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.

²² 33 CFR 1.05-30.

²³ APA 5 U.S.C. § 553 (b)(1).

²⁴ 5 U.S.C. § 553 (b)(2).

²⁵ 5 U.S.C. § 553(b)(3).

²⁶ 33 CFR 1.05-35.

²⁷ 33 CFR 1.05-35.

²⁸ 33 CFR 1.05-40.

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 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 there is a desire to avoid taking a regulatory action, Commandant (CG-LRA) will offer advice 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,²⁹ and asks for comments from interested members of the public. 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.³¹ Generally, all comments should be made part of the rulemaking's public docket. But if the docket receives a written submission or you receive one and intend to place it on the docket, and it contains personally identifiable information, sensitive security information, or other protected information, contact Commandant (CG-LRA) immediately regarding proper handling procedures (See Chapter 6, Section H for more information on dockets).
2. Public comments are normally received in writing or orally, and the latter are usually received at public meetings. These comments may include data, opinions, or arguments. An agency need not accept comments over the telephone or in person. If the Coast Guard does accept oral comment over the telephone or in person, though, say so explicitly in the preamble of the effective rule, summarize all oral comments in writing (including comment from public meetings), and post them in the docket with the submitter's name and contact information. Accepting oral 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 oral 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 E).
3. The Coast Guard is required to promptly send a copy to the DHS General Counsel's office of any Congressional criticism of a proposed rule and work with DHS on any written response. Coordinate this through Commandant (CG-LRA).

²⁹ 33 CFR 1.05-25.

E. Holding public meetings

1. Public meetings may be held to help collect oral and written public comments for consideration during the rulemaking. Commandant (CG-LRA) 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-LRA). 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-LRA) 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 or from other sources before publishing an effective rule.³⁰ 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-LRA) 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 NPRM³¹ 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 soliciting comments on the revised proposed rule.

C. Project termination and withdrawal

1. Termination of a rulemaking project must be approved by the MSSC.³² If the termination is approved, and the rulemaking has not yet generated a *Federal Register* publication, Commandant (CG-LRA) closes the docket and removes the project from the Agenda.
2. If the rulemaking project proposal termination is approved but the rulemaking has already

³⁰ 5 U.S.C. § 553(c).

³¹ “Logical outgrowth” is a legal term. Coordinate with the Office of Regulatory and Administrative Law (CG-LRA) to determine if a final rule is a logical outgrowth of the NPRM.

³² *Marine Safety and Security Council: Oversight of the Coast Guard Regulatory Program*, COMDTINST 16703.2A, Paragraph 811, and Regulatory Development Program Work Instruction 12, RDP-WI-12.

generated a *Federal Register* publication, the rulemaking team prepares and publishes a *Federal Register* notice of withdrawal that briefly explains the reason for withdrawal. The Office of Regulatory and Administrative Law (CG-LRA) then closes the docket and updates the Unified Regulatory Agenda entry for the project 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.
2. **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.³³ The APA further provides that most rules can take effect no sooner than 30 days after publication.³⁴ The Federal Register Document Drafting Handbook (FRDDH) requires that rule documents state the date on which the rule will take effect.³⁵
 - 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.
3. **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. 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-LRA) carefully scrutinizes proposals for 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. Subpart 1.05 of 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.³⁶ Program offices must closely coordinate with Commandant (CG-LRA) if they believe a direct final rule would be the most appropriate approach in a rulemaking

³³ 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 3-64 of the *Federal Register Document Drafting Handbook*.

³⁴ APA 5 U.S.C. § 553 (c) and (d).

³⁵ FRDDH, Chapter 3.4.

³⁶ See 33 CFR 1.05-55. But be sure to leave enough time between the close of the comment period and the desired effective date of the DFR to give you time to assess the comments and get the confirmation of effective date notice published at least 30 days before the effective date

4. **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 duration including an 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-LRA) to minimize the risk of codification complications from the issuance of a temporary rule.

5. 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.

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).³⁷ 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 in a memo composed by the PC and approved by the Office of Regulatory and Administrative Law (CG-LRA) and the Department of Homeland Security Office of General Counsel (DHS OGC).

- b. There is no legal requirement to follow an interim rule with a final rule unless the interim rule states that the Coast Guard will do so. There is also 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-LRA) 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.

³⁷ 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. Government Performance and Results Act;
3. electronic signature;
4. clearance procedures;
5. *ex parte* considerations;
6. petitions for rulemaking;
7. *Federal Register* issues;
8. project dockets and the administrative record;
9. negotiated rulemaking;
10. social media in rulemaking;
11. retention of records; and
12. 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. Note that OMB may decide that an effective rule is significant even if the proposed rule was not, and vice versa. 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-LRA) 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

- b. 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;
 - c. create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
 - d. materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
 - e. raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.³⁸
3. Depending on when the determination of significance is made, take the following steps for a significant rulemaking --
 - a. route the rulemaking project proposal in accordance with applicable Regulatory Development Program Work Instruction procedures then submit it to the Marine Safety and Security Council Executive Secretary for MSSC approval;
 - b. prepare additional documents for DHS review. Commandant (CG-LRA) is responsible for ensuring compliance with these requirements;
 - c. perform additional economic analysis in accordance with E.O. 12866. Commandant (CG-REG-1) 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.³⁹
4. The Congressional Review Act (CRA) requires a determination of whether a rule is major.⁴⁰ 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-LRA) provides advice to program offices on a project's categorization as significant or major.

³⁸ E.O. 12866 § 3 (f).

³⁹ E.O. 12866, § 4(c)(1).

⁴⁰ CRA 5 U.S.C. §§ 801-808.

C. Government Performance and Results Act (GPRA)

Section 4(a) of E.O. 13777, “Enforcing the Regulatory Reform Agenda,” requires DHS, and by extension the Coast Guard, to incorporate performance indicators that measure progress towards regulatory reform in the agency's performance plan, which is governed by the Government Performance and Results Act (GPRA). Among the performance indicators adopted by DHS are the number of deregulatory actions issued and the associated savings in each fiscal year. DHS Office of General Counsel, after consultation with the Office of Regulatory and Administrative Law (CG-LRA) and the Office of Standards Evaluation and Development (CG-REG), sets GPRA goals each year, and the deregulatory projects identified as actions to achieve those goals are among the Coast Guard’s highest regulatory program priorities.

D. Electronic Signature

Electronic signature of documents to be published in the *Federal Register* cuts costs, reduces processing time, and eliminates the need to courier documents to the Office of the Federal Register. For these reasons, the use of electronic signature is strongly encouraged, and is the default method of signature for all Coast Guard documents to be published in the *Federal Register*.

E. Clearance procedures

1. Clearance procedures are governed by *Marine Safety and Security Council: Oversight of the Coast Guard Regulatory Program*, COMDTINST 16703.2A Enclosure 1, and applicable Regulatory Development Program Work Instructions. Any clearance involving the MSSC, the Commandant, DHS, or OMB will be conducted in accordance with that Instruction.
2. 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.
3. For document clearance by DHS or other offices external to Headquarters, the RDM must coordinate with Commandant (CG-LRA). 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-LRA). For many projects, the project counsel (PC) will arrange for Commandant (CG-LRA) to send a draft copy of the rulemaking document to DHS immediately after Commandant (CG-LRA) 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.

4. Once the rulemaking team approves a significant draft document, an average time of six months is required to complete internal and external 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).

F. Public and Congressional communications

After the clearance process is complete, but before sending a document for publication, the RDM ensures coordination with Strategic Communications Staff (CG-0922), Office of Congressional Affairs (CG-0921), which may include an entry on the Maritime Commons website, preparation of talking points, a press release and Congressional notification transmittals.

G. *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 [does] not include requests for status reports....”⁴¹ 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,⁴² restrictions on *ex parte* communications come into play once a rulemaking project proposal is approved.
2. Before approval of the rulemaking project proposal, 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- LRA) project file. *Ex parte* communications must also be described in the proposed rule preamble, and it is usually necessary to place the memo or some other summary of the communication in the public docket after one is opened. The Commandant

⁴¹ APA 5 U.S.C. § 551 (14).

⁴² 33 CFR 1.05-15.

(CG-LRA) 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-LRA) 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-LRA) will also provide guidance on that topic. Finally, Commandant (CG-LRA) 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-LRA) for guidance.

H. Petitions for rulemaking

The APA allows any member of the public to petition an agency for a rulemaking.⁴³ 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-LRA) staff member. Refer all petitions received to Commandant (CG-LRA), which coordinates with the Executive Secretary on a response to each petition. Upon receiving a petition, Commandant (CG-LRA) opens an electronic docket, and forwards the petition to the program office for a substantive response to the Executive Secretary. The substantive response will either grant the petition or will set forth reasons for denying the petition. The petition and the substantive response are placed in the public docket.⁴⁴

⁴³ APA 5 U.S.C. § 553(e).

⁴⁴ See Regulatory Development Program Work Instruction 61, *Rulemaking Petitions Under 33 CFR 1.05-20*, for additional information on processing petitions for rulemaking.

I. *Federal Register* issues

1. Commandant (CG-LRA) 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-LRA) 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 public comment.
2. Immediately following publication of any *Federal Register* notice or rule document, the Tech Writer must proofread the *Federal Register* publication against the signed version of the document, and report errors to Commandant (CG-LRA). In the case of an effective rule, 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.

J. Project dockets and the administrative record

1. Commandant (CG-LRA) 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-LRA). 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-LRA) 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-LRA), 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. Rulemaking project proposals and Sensitive Security Information (SSI) are examples of material that belong only in the internal docket.

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

5. All Coast Guard electronic public dockets are maintained on the Federal Docket Management System (FDMS) by the DHS Docket Management Staff. These dockets are open to the public at <https://www.regulations.gov>.

K. 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 will not 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.⁴⁵ Use of negotiated rulemaking must be approved by the DHS Office of General Counsel for Regulatory Affairs.

L. 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.⁴⁶ 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 from Commandant (CG-LRA), and comply with Coast Guard, DHS, and OMB guidance on the use of social media in rulemaking.
2. 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.

M. Periodic review

E.O. 12866 requires periodic review of published rules that are significant to monitor the impact and determine if the regulation can be modified or rescinded.⁴⁷ Additionally, Executive Order 13563, *Improving Regulation and Regulatory Review*, requires agencies to submit to the Office of Management and Budget plans for periodic review of significant regulations.⁴⁸ E.O. 13777, *Enforcing the Regulatory Reform Agenda*, expanded these review requirements by mandating that agencies evaluate existing regulations for repeal, replacement, or modification, seek out public input, and incorporate in agencies' annual performance plans indicators that measure progress in carrying out regulatory reform.⁴⁹ Commandant (CG-LRA) ensures Coast Guard compliance with these requirements.

⁴⁵ 563(a) and 33 CFR §1.05-60(a).

⁴⁶ Several Federal agencies have participated in Cornell University's Regulatory Room Project, which is doing pioneer research in this field. For an assessment of this project, see Farina, Cynthia R. and Newhart, Mary J., "Rulemaking 2.0: Understanding and Getting Better Public Participation" (2013) at <http://scholarship.law.cornell.edu/cei/15>.

⁴⁷ E.O. 12866 § 5.

⁴⁸ E.O. 13563 § 6.

⁴⁹ E.O. 13777 §§ 3(d), 3(e), and 4(a). See also OMB Guidance on E.O. 13777 dated 28 April 2017.

N. Retention of Records

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

O. 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 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) as a vehicle for obtaining public participation of a regulatory change before the 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.
5. **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).
6. **DHS** – Department of Homeland Security; a 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).
7. **Docket** – All Coast Guard rulemaking electronic public dockets are maintained by the Department of Homeland Security Docket Staff on the 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 <https://www.regulations.gov>. Sensitive Security Information (SSI) and other protected material will be kept in a file maintained by Commandant (CG-LRA) (see Chapter 6, Section G).
8. **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-LRA) (see Chapter 3, Section B).

9. **E.O.** – Executive Order; a formal means for the President to direct executive branch agencies to act.
10. **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).
11. **Federal Docket Management System** - All Coast Guard electronic public dockets are maintained by the U.S. Department of Homeland Security Docket Staff on the Federal Docket Management System (FDMS), and are open to the public at <http://www.regulations.gov>.
12. **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.
13. **FOIA** – Freedom of Information Act, 5 U.S.C. § 552; requires that Federal agencies make certain information available to the public upon request.
14. **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).
15. **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.
16. **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).
17. **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.

18. **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 must approve the Coast Guard’s annual regulatory priority list the initiation of new projects, termination of projects, and whether to approve or deny rulemaking petitions. The Council also clears significant rulemaking documents for the Commandant’s approval or signature, and provides policy and procedural guidance to program directors and rulemaking teams for the development of Headquarters rulemaking projects (see Chapter 1, Section I).
19. **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.
20. **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 a set amount of time to comment on a proposed rule, and then the agency considers those comments before issuing a final rule (see Chapter 1, Section E).
21. **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.
22. **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).
23. **NVICs** – Navigation and Vessel Inspection Circulars; a publication that provides detailed guidance about enforcement of or compliance with certain regulations and Coast Guard marine safety programs. While NVICs do not have the force of law, they are important tools that may assist the regulated community in 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 policy (see Chapter 1, Section F).
24. **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.
25. **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).

26. **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).
27. **Office of Regulations and Administrative Law (CG-LRA)** – The office responsible for providing legal advice on rulemaking to program offices and field units, 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).
28. **Office of Standards Evaluation and Development (CG-REG)** – The office responsible for supporting the development of regulations, studies, and reports implementing laws and treaties within Commandant (CG-5P)'s responsibility. Commandant (CG-REG) may also support rulemaking activities of proponents other than Commandant (CG-5P) upon request, and the Office of Standards Evaluation and Development (CG-REG-1) produces or reviews all Coast Guard regulatory economic analyses. The Commandant (CG-5P) Regulatory Coordinator (RegCo), Standards Evaluation and Analysis Division, Project Development Division, and support contractors are a part of this office.
29. **PC** – Project Counsel; a Commandant (CG-LRA) lawyer assigned to a rulemaking team, who ensures the legal sufficiency of rulemaking documents and the rulemaking process, and resolves procedural and legal issues (see Chapter 1, Section I).
30. **PD** - Program Director; the chief of the office or division that sponsors a rulemaking is its program director. The PD assigns 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 SME and monitoring the team's progress (see Chapter 1, Section I).
31. **RDM** – Regulatory Development Manager; is assigned by RegCo and is responsible for keeping the project on schedule, and identifying 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)
32. **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- 01(02), Section 6.0.⁵⁰ The mission of the RDP is timely publication of clear, effective, enforceable regulations with an emphasis on public participation.
33. **RegCo** – Regulatory Coordinator; the Office of Standards Evaluation and Development (CG-REG-2) is designated as RegCo for all headquarters rulemakings except those originating in NPFC. The Director of NPFC designated a RegCo for rulemakings within that organizations' area of responsibility. 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 regulatory projects. Both RegCos must coordinate with each other and the

⁵⁰ Located on CG Central in the Mission Management Systems sub-menu under the Resources tab.

Office of Regulatory and Administrative Law (CG-LRA) for proper alignment, clearance, and prioritization of rulemaking projects (see Chapter 1, Section I).

34. **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.”⁵¹ (See Chapter 1, Section C)
35. **RIN** –Regulation Identifier Number; The Regulatory Information Service Center assigns a RIN to each regulatory project listed in the Unified Regulatory Agenda. The RIN is requested by Commandant (CG-LRA) for all Coast Guard rulemakings (see Chapter 3, Section F).
36. **Rulemaking Project Proposal** – an internal planning document that defines the rulemaking project and ensures the proper resources will be available to the rulemaking team. The rulemaking project proposal must go through clearance and be approved by the MSSC to establish a new regulatory project (see Chapter 3, Sections B and F).
37. **SME** – 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 SME defines and manages program requirements for the program office, and ensures that the project satisfies those requirements. When a project requires more than one SME, one of them will be designated as lead SME and will be responsible for coordinating other SMEs and their project workload.
38. **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 or to comment on possible changes in events since an NPRM was published that warrant consideration (see Chapter 4, Section D).
39. **Temporary Rule** –a rule that is temporary in nature and has a set expiration date (see Chapter 5, Section D)
40. **Unified Regulatory Agenda** – a document that is issued twice a year by the Office of Information and Regulatory Affairs in OMB and the Regulatory Information Service Center of GSA, usually in the Spring and Fall. The entries summarize the effective and proposed rules that each Federal agency expects to issue during the next year, and is published in the *Federal Register* and available on line at <http://www.reginfo.gov> (see Chapter 4, Section C).

⁵¹ E.O. 12866 Sec. 3(e).