

MARINE SAFETY AND SECURITY COUNCIL: OVERSIGHT OF THE COAST GUARD REGULATORY PROGRAM



**COMDTINST 16703.2B
December 2021**



Commandant
United States Coast Guard

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COMMANDANT INSTRUCTION 16703.2B

Subj: MARINE SAFETY AND SECURITY COUNCIL: OVERSIGHT OF THE COAST
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- Ref: (a) 33 Code of Federal Regulations, section 1.05-1
 (b) Department of Homeland Security Delegation No.00170.1, Revision No. 01.2
 (c) Delegation of Rulemaking Authority Memorandum 16704 dtd 31 March 2008
 (d) Executive Order No. 12866, "Regulatory Planning and Review"
 (e) Preparation of Field Regulations Manual, COMDTINST M16704.3 (series)
 (f) Records & Information Management Program Roles and Responsibilities, COMDTINST 5212.12 (series)

- PURPOSE.** Per References (a) through (f), this Instruction describes the Marine Safety and Security Council's (MSSC) role in overseeing the Coast Guard regulatory program, and advising the Commandant on that program and individual Coast Guard rulemaking projects. This Instruction is intended to advise members of the MSSC and their staffs on their respective roles and responsibilities. The MSSC is the Commandant's advisory body for all Coast Guard regulatory initiatives. It approves establishment of, significant amendments to, and termination of all rulemaking projects, including those initiated in response to a petition for rulemaking. The MSSC also provides policy and procedural guidance to rulemaking teams at Headquarters units.¹ The MSSC is supported by the Office of Regulations and Administrative Law (CG-LRA), the Office of Standards Evaluation and Development (CG-REG), and the Executive Secretary (ExecSec). This Instruction does not create or define any rights, privileges, duties, or benefits, either substantive or procedural, enforceable at law by any person or entity in any administrative, civil, criminal, or other matter.
- ACTION.** All Coast Guard unit commanders, commanding officers, officers-in-charge, deputy/assistant commandants, chief of headquarter directorates must comply with the policies contained.

DISTRIBUTION – SDL No. 170

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NON-STANDARD DISTRIBUTION:

¹ Guidance on field regulations is provided in reference (e).

3. AUTHORIZED RELEASE. Internet release is authorized.
4. DIRECTIVES AFFECTED. Marine Safety and Security Council: Oversight of the Coast Guard Regulatory Program, COMDTINST 16703.2A is cancelled.
5. BACKGROUND. On January 20, 2021, President Biden issued Executive Order 13992, revoking certain Executive Orders concerning Federal Regulation, including E.O. 13771 and E.O. 13777 (86 FR 7049, Jan. 25, 2021).
6. DISCLAIMER. This guidance is not a substitute for applicable legal requirements, nor is it itself a rule. It is intended to provide administrative guidance for Coast Guard personnel and is not intended to nor does it impose legally-binding requirements on any party outside the Coast Guard.
7. MAJOR CHANGES. This Instruction has been revised to reflect the revocation, by Executive Order 13992, of Executive Orders 13771 and 13777, and of the Regulatory Reform Task Force (RRTF) and roles established pursuant to Executive Order 13777.
8. SCOPE AND AUTHORITIES. It is recommended the reader become familiar with the directives and publications noted throughout this Instruction: 33 CFR 1.05-1; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2; Delegation of Rulemaking Authority Memorandum 16704 dtd 31 March 2008; Executive Order No. 12866, "Regulatory Planning and Review"; Preparation of Field Regulations Manual, COMDTINST M16704.3 (series); and Records & Information Management Program Roles and Responsibilities, COMDTINST 5212.12B (series).
9. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS.
 - a. Commandant CG-612 reviewed the development of this Instruction, and the general policies contained within it, and determined that this policy falls under the Department of Homeland Security (DHS) categorical exclusion A3.
 - b. This Instruction will not result in any substantial change to existing environmental conditions or violation of any applicable federal, state, or local laws relating to the protection of the environment. It is the responsibility of the action proponent to evaluate all future specific actions resulting from this policy for compliance with the National Environmental Policy Act (NEPA), other applicable environmental mandates, and the U.S. Coast Guard Environmental Planning Policy, (COMDTIST 5090.1 (series)).
10. DISTRIBUTION. No paper distribution will be made of this Instruction. 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>.
11. RECORDS MANAGEMENT CONSIDERATIONS. Records created as a result of this Instruction, regardless of format or media, must be managed in accordance with the records

retention schedule located on the Records Resource Center CGPortal site:
<https://cg.portal.uscg.mil/library/directives/SitePages/Home.aspx> .

12. DEFINITIONS.

- a. Rulemaking/Regulatory Action. “[A]ny substantive action by an agency (normally published in the *Federal Register*) that promulgates or is expected to lead to the promulgation of a final regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.”²
- b. Significant Rulemaking Document. A document that the Office of Management and Budget (OMB) determines to be a “significant regulatory action” in accordance with the criteria in Executive Order 12866.³ It includes notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking, as well as effective rule documents such as final rules. All significant rulemaking documents are reviewed by DHS and OMB and require approval by the Commandant and MSSC.
- c. Nonsignificant Rulemaking Document. Any rulemaking document that OMB determines does not satisfy the definition of “significant regulatory action” under Executive Order 12866. OMB does not review nonsignificant rulemaking documents, but nonsignificant rulemaking documents do receive DHS review. Nonsignificant documents are reviewed by DHS and signed by a Deputy or Assistant Commandant or a Director, but do not need to be approved by the MSSC or Commandant. See Enclosure 1, Paragraph 1.a, concerning authority to sign non-significant documents.
- d. Rulemaking Project Priority List. A prioritized list of numerically scored Coast Guard rulemaking projects that is updated annually on or about the beginning of the fiscal year.⁴

² Ref. (d) section 3(e).

³ Ref. (d), section 3(f), defines “significant regulatory action” to mean “any regulatory action that is likely to result in a regulation rule that may--

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

⁴ Projects are scored in accordance with the RDP Specification entitled, “Priority Score Ranking Criteria,” which is approved by the MSSC.

13. MSSC MEMBERS.

- a. Chair. The Judge Advocate General (TJAG) (Commandant (CG-094)).
- b. Voting Members.
 - (1) The Judge Advocate General (Commandant (CG-094));
 - (2) Assistant Commandant for Prevention Policy (Commandant (CG-5P));
 - (3) Assistant Commandant for Response Policy (Commandant (CG-5R));
 - (4) Assistant Commandant for Resources (Commandant (CG-8));
 - (5) Director of Commercial Regulations and Standards (Commandant (CG-5PS));
and
 - (6) Director of Governmental and Public Affairs (Commandant (CG-092)).
- c. Non-voting Members.
 - (1) Director of the National Pollution Funds Center (Commandant (NPFC));
 - (2) Director of Inspections and Compliance (Commandant (CG-5PC));
 - (3) Director of Marine Transportation Systems Management
(Commandant (CG-5PW));
 - (4) Director, Emergency Management (Commandant (CG-5RI));
and
 - (5) Ad Hoc Members. The MSSC may invite other Assistant Commandants or flag-level/SES officials to serve as ad hoc members. Such ad hoc membership will be limited to specific rulemaking projects or issues.

d. Other Participants.

- (1) Executive Secretary. The Executive Secretary (ExecSec) is designated by the Judge Advocate General and is a staff member of the Office of Regulations and Administrative Law (CG-LRA);
- (2) Legal Advisor. Chief of the Office of Regulations and Administrative Law (CG-LRA); and
- (3) Chief of the Office of Standards Evaluation and Development (CG-REG).

14. MSSC RESPONSIBILITIES.a. MSSC:

- (1) Report to the Commandant, at least annually, the status of the Headquarters regulatory program including the Rulemaking Project Priority List. The report and list must be approved by a majority of the voting members;
- (2) Oversee the Coast Guard regulatory program;
- (3) Provide policy and procedural guidance to rulemaking teams for the development and issuance of Coast Guard regulatory actions. Develop and promulgate strategic priorities for the Coast Guard's rulemaking program;
- (4) Review and clear all significant rulemaking documents following the clearance process set forth in Enclosure (1);
- (5) Monitor progress of rulemaking projects and recommend appropriate course(s) of action to ensure completion of projects;
- (6) Authorize the initiation of regulatory projects by reviewing and approving all Rulemaking Project Proposals;
- (7) Vote on proposals to terminate regulatory projects;
- (8) Approve the disposition of all petitions for rulemaking under 5 CFR § 1.05-20 pertaining to Headquarters unit functions; and
- (9) Oversee the operations of *Proceedings* magazine, including topic selection.

b. MSSC Chair:

- (1) Oversee and facilitate MSSC activity; and
- (2) Submit to the Commandant reports of MSSC activity and information pertaining to rulemaking actions.

c. MSSC Voting Members:

- (1) Attend MSSC meetings; and
- (2) Vote on matters listed in Paragraph 11.a. above.

d. MSSC Non-voting Members:

- (1) Attend MSSC meetings; and
- (2) Review rulemaking matters and advise the MSSC.

e. Executive Secretary (ExecSec). As the administrative coordinator of the MSSC, the ExecSec:

- (1) Schedules all MSSC meetings and prepares and distributes the associated meeting agenda and read-ahead materials;
- (2) Maintains the MSSC's administrative records;
- (3) Routes documents to the MSSC for action, including, but not limited to, the Annual Report to the Commandant, significant rulemaking documents, RPPs, proposals to terminate rulemaking projects, and petitions for rulemaking;
- (4) Produces MSSC correspondence as requested by the Chair;
- (5) Coordinates with the Office of Standards Evaluation and Development (CG-REG) to develop the Annual Report for MSSC review;
- (6) Coordinates with the Office of Standards Evaluation and Development (CG-REG) to develop the Rulemaking Project Priority List;
- (7) Upon MSSC approval of the Annual Report to the Commandant and significant rulemaking documents, forwards those documents to the Commandant via the MSSC Chair;
- (8) Processes and tracks petitions for rulemaking, and reports to the MSSC the status of petitions pending a Council decision; and,
- (9) Acts as a liaison between the Proceedings magazine staff and the MSSC Chair.

f. MSSC Legal Advisor:

- (1) Provides legal advice to the MSSC;
- (2) Coordinates with OMB and the Department of Homeland Security, Office of General Counsel (DHS OGC), to facilitate the advancement of Coast Guard Headquarters rulemaking projects; and

- (3) Selects the Executive Secretary.
- g. Chief, Office of Standards Evaluation and Development (CG-REG):
- (1) Tracks the progress of rulemaking actions and of MSSC goals and reports to the MSSC;
 - (2) Coordinates with the Office of Regulations and Administrative Law (CG-LRA) to develop the Rulemaking Project Priority List; and
 - (3) Coordinates with the Office of Regulations and Administrative Law (CG-LRA) to develop the Annual Report for MSSC review
- h. Ad Hoc Members:
- (1) Offer advice to the MSSC as appropriate and may participate in discussions during MSSC meetings, but will not be permitted to vote on any matters before the MSSC; and,
 - (2) May request a meeting by contacting the MSSC ExecSec.
15. MSSC PROCEDURES.
- a. Annual Meeting. The MSSC will convene annually on or about the beginning of each fiscal year. Members may participate by phone or video teleconference if the necessary equipment is available. During such meetings, the MSSC will, at a minimum:
- (1) Discuss past year regulatory performance;

- (2) Discuss upcoming year regulatory performance, goals, and associated resource needs;
 - (3) Vote on the Rulemaking Project Priority List for the upcoming year;
 - (4) Amend, if necessary, and vote on the Annual Report; and,
 - b. Determine recommended courses of action based on the foregoing discussions and voting results.
 - c. Quarterly and Ad Hoc Meetings. The MSSC may hold additional meetings during the year to receive updates from the Legal Advisor and the Chief of the Office of Standards Evaluation and Development (CG-REG), or their representatives, on the status of the Coast Guard regulatory program, or address issues identified by a voting member. Ad hoc meetings may also be requested by any voting member at any time.
 - d. Quorum and Mandatory Meeting Attendees. In addition to the Chair, at least three voting members must be present at each MSSC meeting to form a quorum. Any member, including the Chair, may designate a representative whose presence counts for purposes of forming a quorum. The Chair, Legal Advisor, Chief of the Office of Standards Evaluation and Development (CG-REG), and the Executive Secretary are required to be present at all meetings. The Legal Advisor, Chief of the Office of Standards Evaluation and Development (CG-REG), and the Executive Secretary may also designate a representative for any meeting.
 - e. Discretionary Attendees.
 - (1) Non-voting Members;
 - (2) Ad hoc Members; and,
 - (3) At the discretion of the MSSC, Headquarters staff members may attend MSSC meetings, but may not participate in discussions unless invited to do so by a member.
 - f. Public Participation. MSSC meetings are not open to the public.
16. REPORTS.
- a. The Chief, Office of Standards Evaluation and Development (CG-REG), and the MSSC ExecSec, will coordinate to create the Annual Report to the Commandant.
 - b. The MSSC Annual Report to the Commandant. After approval by at least four voting members, the Chair will forward the MSSC Annual Report to the Commandant within 60 days of the annual meeting. The report will include the following:
 - (1) Strategic priorities for Headquarters rulemaking projects for the upcoming fiscal year;

- (2) An updated Rulemaking Project Priority List for the upcoming year; and,
 - (3) Analysis on the prior year's performance.
17. MSSC VOTING PROCEDURES. Decisions of the MSSC, including approval of the Annual Report and the Rulemaking Project Priority List, are made by a majority, which is at least four of the six voting members. The Executive Secretary will facilitate electronic voting on petitions for rulemaking upon the request of any member, and on any other matter when the consensus of the Council is in favor of doing so. If voting members are unable to attend a meeting, they may vote in absentia either through a representative or by sending voting instructions in writing to the ExecSec.
 18. FORMS/REPORTS. None.
 19. SECTION 508. This Instruction was created to adhere to Accessibility guidelines and standards as promulgated by the U.S. Access Board. If changes are needed, please communicate with the Coast Guard Section 508 Program Management Office at Section.508@uscg.mil.
 20. REQUEST FOR CHANGES. Submit recommended changes to the MSSC Executive Secretary in the Office of Regulations and Administrative Law (CG-LRA) in writing to the address at the top of this Instruction.

/MELISSA BERT/
Rear Admiral, U. S. Coast Guard
JUDGE ADVOCATE GENERAL AND CHIEF
COUNSEL

Encl: (1) MSSC Document Clearance Procedures

MSSC Document Clearance Procedures

1. SIGNIFICANT DOCUMENT SIGNATURE AUTHORITY AND CLEARANCE.
 - a. Signature Authority for Rulemaking Documents. Authority to sign rulemaking documents depends on delegation from the Secretary to the Commandant in Reference (b) and from the Commandant to subordinate officers in Reference (c). Consistent with those delegations, Coast Guard rulemaking document signature authority is as follows:
 - (1) Reference (a) provides that only the Commandant has signature authority for significant rulemaking documents.
 - (2) Any deputy or assistant commandant or director with properly delegated signature authority may sign non-significant rulemaking documents within that executive's areas of responsibility as outlined in the appropriate delegation. They may also sign *Federal Register* notices pertaining to their areas of responsibility as outlined in the appropriate delegation.¹
 - b. Significant Rulemaking Document Clearance Process. The Regulatory Development Program Mission Management System provides detailed guidance implementing this paragraph.
 - (1) Rulemaking Document Submission. After obtaining approval from all interested Coast Guard offices and directors, the Regulatory Development Manager (RDM) will submit the rulemaking document with the associated digest and routing slip to the MSSC ExecSec.
 - (2) MSSC ExecSec Distribution. Upon receipt of the rulemaking document, the MSSC ExecSec will electronically distribute the rulemaking document to members of the MSSC for a vote. At the request of any voting member, the vote will be conducted at the next scheduled MSSC meeting or an ad hoc meeting instead of via e-mail.
 - (3) Commandant Review. Upon approval by the MSSC by a majority vote, the Chair will forward the rulemaking document and digest through the Vice Commandant to the Commandant for approval to submit the rule to DHS/OMB.
 - (4) Forwarding to the Project Counsel. After Commandant approval, the MSSC ExecSec will forward the rulemaking document to the Project Counsel and the Office of Standards Evaluation and Development (CG-REG), with a copy to the Legal Advisor.
 - (5) Forwarding to the DHS OGC and the OMB. Upon receipt of the rulemaking document from the MSSC ExecSec, the Project Counsel will, as soon as practicable thereafter, forward the document, along with any supplementary analysis or documents, to the DHS OGC. DHS OGC is responsible for obtaining

¹ The MSSC does not clear or otherwise oversee non-significant field regulations. See Reference (e) for guidance on field regulations.

Secretarial approval of the document and transmitting the final version to OMB for review.

- (6) Commandant Signature. Upon clearance by DHS OGC and OMB, the Chair will forward the significant rulemaking document to the Commandant for signature. Documents cleared by OMB must be accompanied by a track-changes version showing revisions made after the Commandant's initial approval.