



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
2 NAVY ANNEX  
WASHINGTON, DC 20380-1775

MCO 5720.63  
JAR:TGH:wls  
22 Aug 1983

MARINE CORPS ORDER 5720.63 W/CH 1

From: Commandant of the Marine Corps  
To: Distribution List

Subj: Publication in the Federal Register, Indexing, and  
Public Inspection of Marine Corps Directives

Ref: (a) SECNAVINST 5720.45  
(b) SECNAVINST 5720.42D  
(c) MCO P5211.2A  
(d) OPNAVINST 5510.1H  
(e) Federal Register Document Drafting Handbook (NOTAL)  
(f) MCO P5215.1G

Encl: (1) Potential Topics for Publication in the Federal  
Register

1. Purpose. To establish policies, responsibilities, and procedures for publication in the Federal Register, indexing, and public inspection of Marine Corps directives and local directives.

2. Cancellation. HQO 5720.8 (NOTAL).

3. Scope and Applicability. This Order implements paragraphs (a)(1) and (a)(2) of the Freedom of Information Act, 5 U.S.C. 552(a)(1)-(a)(2), and reference (a). This Order does not apply to:

a. Requests for records under paragraph (a)(3) of the Freedom of Information Act, which are governed by reference (b).

b. Publication requirements of the Privacy Act of 1974, which are governed by reference (c).

c. Directives and other documents classified pursuant to Executive Order 12356 and reference (d); i.e., classified information.

Refer to the enclosure for examples of topics which may require publication in the Federal Register.

4. Definitions

a. Federal Register. The term "Federal Register" includes the daily publication entitled "Federal Register", the Code of Federal Regulations (C.F.R.), the United States Government

Manual, the "Weekly Compilation of Presidential Documents," and the Public Papers of the Presidents of the United States.

b. General Applicability. Directives and other documents having "general applicability" refer to any document issued under proper authority prescribing a penalty or course of conduct, conferring a right, privilege, authority, or immunity, or imposing an obligation, and relevant or applicable to the general public, members of a class, or persons in a locality, as distinguished from named individuals or organizations.

c. FOR OFFICIAL USE ONLY (FOUO). "FOR OFFICIAL USE ONLY" applies to information, records, and other material which have not been given a security classification under the criteria of an Executive Order, but which contain information which may be withheld from the public for one or more of the reasons cited in Exemptions 2 through 9 of the Freedom of Information Act. No other material shall be considered or marked "FOR OFFICIAL USE ONLY" (FOUO).

## 5. Background

a. Paragraph (a)(1) of the Freedom of Information Act requires each federal agency, including military departments, to publish material in the Federal Register consisting of:

(1) Descriptions of central and field organizations and the places and methods by which the public can request information.

(2) Descriptions of the course and method by which its functions are channeled and determined.

(3) Rules of procedure and descriptions of forms available.

(4) Substantive rules of general applicability.

(5) Statements of general policy or interpretations of general applicability.

b. Paragraph (a)(2) of the Freedom of Information Act requires each federal agency, including military departments, to index and make available the following for public inspection and copying:

(1) Final opinions, including concurring and dissenting opinions, as well as orders made in the adjudication of cases.

(2) Those statements of policy and interpretation that have been adopted by the agency and are not published in the Federal Register.

(3) Administrative staff manuals and instructions to staff that affect a member of the public.

(4) An index of the material described in subparagraphs (b)(1) through (b)(3) above.

c. Subsection (b) of the Freedom of Information Act provides nine exemptions from the publication, indexing, and public inspection requirements of the Freedom of Information Act. The first seven of these exemptions are pertinent to the Marine Corps. A general discussion of these exemptions is contained in enclosure (3) of reference (b). Normally only Exemption 2 (Internal practices and personnel rules) provides a basis for withholding a directive or similar document from the publication, indexing, and public inspection requirements of the Freedom of Information Act.

d. Significance of Compliance with the Freedom of Information Act

(1) Publication in the Federal Register has certain legal effects pursuant to the Federal Register Act, 44 U.S.C. 1501-1511:

(a) It provides official notice to the public of a document's existence and its content.

(b) It indicates that the copy contained in the Federal Register is a true copy of the original document.

(c) It provides prima facie evidence in a court of law.

(2) Noncompliance with paragraphs (a)(1) or (a)(2) of the Freedom of Information Act, including failure to amend, revise, or repeal directives and other documents subject to the publication or indexing and public inspection requirements, also has certain legal effects. Except to the extent a person has actual and timely notice thereof, the Marine Corps cannot rely on or require a member of the public (as distinguished from members of the Naval establishment) to comply with or be adversely affected by its directives or similar documents.

e. Reference (a) implements paragraphs (a)(1) and (a)(2) of the Freedom of Information Act in the Department of the Navy.

f. Reference (a) also implements a public rulemaking procedure established within the Department of Defense when a directive or other document in a class described in subparagraph 5a above would originate (rather than implement) a requirement of general applicability and future effect having a substantial and direct impact on the public or a significant segment of the public. Subject to several exceptions, this

rulemaking procedure may require prepublication in the Federal Register of proposed directives for public comment.

6. Responsibilities

a. The Director, Judge Advocate Division (CMC (Code JA)) is responsible for overseeing Marine Corps compliance with the publication requirements provided in reference (a) and supervising the selection, review, and codification of directives and other documents required to be published in the Federal Register by paragraph (a)(1) and (a)(2) of the Freedom of Information Act. The Director, Judge Advocate Division is delegated authority to:

(1) Review directives and other documents to determine which directives and what portions thereof will be submitted for publication in the Federal Register.

(2) Determine whether the rulemaking procedures provided in reference (a) require prepublication of proposed directives for public comment and certify, in appropriate cases, that public comment is not warranted.

b. The Deputy Chief of Staff for Manpower and Reserve Affairs (DC/S, M&RA) (CMC (Code MI-3)) is responsible for:

(1) Furnishing documents to the Judge Advocate General of the Navy for publication in the Federal Register.

(2) Conducting the annual verification of the Code of Federal Regulations and the United States Government Manual with the assistance of the Director, Judge Advocate Division.

(3) Providing the Marine Corps point of contact to the Judge Advocate General of the Navy for matters relating to publication in the Federal Register.

c. The Director of Administration and Resource Management (CMC (Code AR)) is responsible for:

(1) Developing, maintaining, publishing, and distributing indexes of directives required by paragraph (a)(2) of the Freedom of Information Act.

(2) Making Marine Corps and Headquarters Marine Corps directives available for public inspection and copying at the seat of government.

d. Heads of Headquarters staff agencies originating Marine Corps or Headquarters Marine Corps directives or other documents meeting the criteria contained in paragraph 7 below are responsible for:

(1) Furnishing such documents to the Director, Judge Advocate Division for review for possible publication in the Federal Register in accordance with paragraph 7, below.

(2) Drafting documents to be submitted for publication in the Federal Register with the assistance of the Deputy Chief of Staff for Manpower and Reserve Affairs (DC/S, M&RA) (Code MI-3).

(3) Determining whether directives or other documents should be designated "FOR OFFICIAL USE ONLY" in accordance with paragraph 8, below, with the advice of the Director, Judge Advocate Division, if requested.

(4) Assisting the Deputy Chief of Staff for Manpower in the annual verification of the Code of Federal Regulations and United States Government Manual.

e. Installation commanders are responsible for:

(1) Nominating local directives for publication in the Federal Register in accordance with paragraph 7, below. Directives which affect the public but are strictly local in nature are not required to be submitted in accordance with this Order unless the installation commander believes that extraordinary circumstances exist which would warrant publication. This includes, but is not limited to, situations where publication is required to ensure adequate notice and enforcement of a proposed directive.

(2) Drafting documents to be submitted for publication in the Federal Register with the assistance of the Commandant of the Marine Corps (Code MI-3).

(3) Designating local directives "FOR OFFICIAL USE ONLY" when such directives are exempt from disclosure under the Freedom of Information Act.

f. Commanding officers of supporting establishment activities and inspector-instructors of Reserve units are responsible for making Marine Corps directives, directives of less than general applicability, and related indexes available for public inspection and copying.

7. Publication in the Federal Register

a. Criteria. Directives and other documents described in any one of the following classes of documents should be published in the Federal Register, unless the directive or other document is exempt from publication pursuant to a properly applied exemption contained in the Freedom of Information Act.

(1) Classes of Directives and Other Documents to be Published

(a) Marine Corps Organization and Points of Contact. Descriptions of the central and field organization of the Marine Corps and the established places at which, the members or employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions.

(b) Methods and Procedures for Business with the Public. Statements of the general course and methods by which Marine Corps functions relating to members of the public are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(c) Procedural Rules and Forms. Rules of procedure for functions affecting members of the public, descriptions of forms available and the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations required to be submitted pursuant to such rules of procedure.

(d) Substantive and Interpretive Rules and Policies. Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Marine Corps.

(2) Exemptions. Although the Freedom of Information Act contains nine exemptions, normally, Freedom of Information Act Exemption 2 provides the only basis to withhold a document within one of the classes described above from publication. Exemption 2 provides an exemption from matters "related solely to the internal personnel rules and practices of an agency."

(3) The enclosure contains an illustrative list of topics which have the potential to meet the criteria for publication in the Federal Register for Headquarters staff agencies and installation commanders.

b. Procedures

(1) Marine Corps and Headquarters Marine Corps Directives. Heads of Headquarters staff agencies will promptly submit a copy of all proposed Marine Corps and Headquarters Marine Corps orders and bulletins, including "ALMAR's", meeting the criteria for publication in the Federal Register to the Director, Judge Advocate Division.

(2) Other Documents. Other documents meeting the criteria for publication in the Federal Register will be promptly submitted to the Director, Judge Advocate Division by the cognizant Headquarters staff agency.

(3) Local Regulations. Installation commanders may nominate local directives for publication in the Federal Register to the Commandant of the Marine Corps (Code JAR) if the directive meets the criteria for publication contained in subparagraph 7(a) above and regulates one or more of the subjects listed in the enclosure for installation commanders. Correspondence forwarding local directives for publication should indicate whether the effective date of the proposed directive is being delayed until publication of the local regulation in the Federal Register.

(4) The Director, Judge Advocate Division will review the directives and other documents submitted in accordance with subparagraphs 7b(1) through 7b(3) above, and determine what portions thereof, if any, will be furnished for publication in the Federal Register and whether publication for public comment in accordance with reference (a) is required prior to implementation. The originator of the directive or other document is responsible for drafting the submission to the Office of the Federal Register in accordance with the format prescribed in reference (e) with the assistance of the Deputy Chief of Staff of Manpower and Reserve Affairs (DC/S, M&RA) (Code MI-3). Maximum use of the technique of incorporation by reference, when applicable, will be used in publication in the Federal Register. The Deputy Chief of Staff for Manpower and Reserve Affairs (DC/S, M&RA) will submit directives and other documents for publication in the Federal Register in accordance with reference (a).

(5) Unless prepublication in the Federal Register for public comment is determined to be necessary by the Director, Judge Advocate Division, new and revised directives may be promulgated in advance of any required publication in the Federal Register. In such cases, the consequences discussed in paragraph 5d, above, apply until the directive is published in the Federal Register.

(6) Copies of reference (e) may be obtained from the Office of the Federal Register, National Archives and Records Service, Washington, D.C. 20408.

## 8. Indexing Directives Affecting the Public

a. Policy. In accordance with paragraph 10 of reference (a), the Catalog of Publications, NAVMC 2761, Chapter 2, will be used as the basic index of all Marine Corps directives not published in the Federal Register but which must be made available for public inspection pursuant to subsection (a)(2) of the Freedom of Information Act.

### b. Procedures

(1) The Director of Administration and Resource Management shall revise and issue the Marine Corps Catalog of Publications, NAVMC 2761, semiannually.

(2) Publication and distribution to the public will be accomplished by one of the following methods:

(a) Publication in the Federal Register.

(b) Commercial publication, provided that such commercial publication is readily available to members of the public, or will be made available upon request and payment of cost. If this method is utilized, information on the cost of copies and the address from which they may be obtained shall be published in the Federal Register.

(c) Furnishing internally reproduced copies upon request, at a cost not to exceed the direct cost of duplication in accordance with enclosure (2) of reference (c), provided that it is determined, by an order published in the Federal Register, that the publication of the index by methods (a) or (b) above would be unnecessary or impracticable. Such order shall state the cost of copies and the address from which they may be obtained.

(3) To ensure matters properly exempt from the indexing and public inspection requirement are not made available to the public and to avoid misleading the public, Headquarters staff agencies will designate directives "FOR OFFICIAL USE ONLY" if they contain material exempt from the indexing and public inspection requirements of the Freedom of Information Act. Normally, rules, regulations, and instructions relating to internal practices and personnel rules of the Marine Corps are exempt from indexing and public inspection, if their release to the public would substantially hinder the effective performance of a significant function of the Marine Corps and they do not impose requirements directly on the general public. Examples of the application of this exemption include operating rules, guidelines and manuals for investigators, inspectors, auditors, or examiners, and schedules or methods of operation which would reveal negotiating and bargaining limitations and positions, inspection schedules and methods, and audit schedules and methods.

(4) Instructions for marking a directive "FOR OFFICIAL USE ONLY" are contained in paragraph 1208 of reference (f).

(5) All Marine Corps and Headquarters Marine Corps directives will contain one of the following statements on the Headquarters Marine Corps routing sheet used to obtain final clearance, decision, or signature:

(a) "The attached [order, bulletin, ALMAR] has been designated "FOR OFFICIAL USE ONLY" because portions thereof contain material exempt from disclosure under Exemption [2] of the Freedom of Information Act: [Internal practices or personnel rules of the Marine Corps which do not impose requirements of general applicability to the public.] Release

to the public would substantially hinder the effective performance of a significant function of the Marine Corps."

(b) "No portion of the attached [order, bulletin, ALMAR] has been designated "FOR OFFICIAL USE ONLY" because [the directive imposes requirements of general applicability to the public] [or] [release to the public would not substantially hinder the effective performance of a significant function of the Marine Corps]."

c. Content of NAVMC 2761. The Marine Corps Catalog of Publications, NAVMC 2761, will:

(1) Conspicuously indicate those directives designated FOR OFFICIAL USE ONLY and state that portions of such directives are not available to the public for inspection or copying.

(2) Contain a complete list (index) of descriptive words so that members of the public may be able to locate desired documents by subject rather than by standard subject identification codes.

9. Public Inspection and Copying of Marine Corps Directives and Related Indexes

a. Commanding officers of Marine Corps supporting establishment activities, inspector-instructors of Reserve units, and the Director Headquarters Support will make Marine Corps directives, directives of less than general applicability, and related indexes readily available for public inspection and copying during normal working hours. Fees for copying will be collected in accordance with enclosure (2) of reference (c).

b. Public inspection and copying of directives designated "FOR OFFICIAL USE ONLY" will not be permitted. Persons requesting access to such directives may, however, seek their release by submitting a Freedom of Information Act request to the originator, (e.g., Commandant of the Marine Corps (Code \_\_\_\_)) of the directive in accordance with reference (c).

10. Action. Addressees will carry out their prescribed responsibilities and adhere to the policies and procedures established herein.

11. Reserve Applicability. This Order is applicable to the Marine Corps Reserve.

D'WAYNE GRAY  
Chief of Staff

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DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
WASHINGTON, DC 20380-0001

MCO 5720.63 Ch 1  
JAR  
2 Aug 91

MARINE CORPS ORDER 5720.63 Ch 1

From: Commandant of the Marine Corps  
To: Distribution List

Subj: PUBLICATION IN THE FEDERAL REGISTER, INDEXING, AND PUBLIC  
INSPECTION OF MARINE CORPS DIRECTIVES

1. Purpose. To direct pen changes to the basic Order.
2. Action
  - a. Change reference (b) to SECNAVINST 5720.42D vice SECNAVINST 5720.42C.
  - b. Change reference (d) to OPNAVINST 5510.1H vice OPNAVINST 5510.1F
  - c. Change reference (f) to MCO 5215.1G vice MCO 5215.1F.
  - d. In subparagraphs 6b, 6d(2), and 7b(4), after "Manpower," insert "and Reserve Affairs (DC/S, M&RA)."
  - e. In subparagraphs 6b, 6d(2), 6e(2), and 7b(4) change "MPI" to "MI-3."
  - f. In subparagraphs 6c and 9a, change "Director of Headquarters Support" to "Director of Administration and Resource Management."
  - g. In subparagraph 6c, change "HQS" to "AR."
  - h. After subparagraph 6d, change next two subparagraphs to "e" and "f" vice "d" and "e."
  - i. In subparagraph 8a, change "Directives System Checklist, MCBUL 5215 series" to "Catalog of Publications, NAVMC 2761, Chapter 2."
  - j. Delete subparagraph 8b(1) and add the following: "The Director of Administration and Resource Management shall revise and issue the Marine Corps Catalog of Publications, NAVMC 2761, semiannually."
  - k. In subparagraph 8b(4), change "1012" to "1208."
  - l. In subparagraph 8c, delete first sentence and add the following sentence: "Content of NAVMC 2761. The Marine Corps Catalog of Publications, NAVMC 2761, will:"

3. Summary of Changes

a. The changes directed by paragraphs 2a to 2g and 2k update the references and reflect changes in the organization of Headquarters, U.S. Marine Corps.

b. The change directed by paragraph 2h corrects a typographical error in the basic Order.

c. The changes directed by paragraphs 2i to 2j and 2l are required by publication of the Marine Corps Catalog of Publications, NAVMC 2761, of 13 July 1990, which replaces the Marine Corps Directives System Quarterly Checklist, MCBul 5215 series.

4. Filing Instructions. This Change will be filed immediately behind the signature page of the basic Order.

G. L. MILLER  
Director  
Judge Advocate Division

DISTRIBUTION: PCN 10208951901

Copy to: 7000110 (55)  
8145004, 005 (2)  
7000144/8145001 (1)

POTENTIAL TOPICS FOR PUBLICATION IN THE FEDERAL REGISTER

1. Headquarters Staff Agencies

Decorations--Matters pertaining to persons other than members of the naval service.

Dependents--Dependency determinations, identification cards, dependents support, paternity, garnishment, Uniformed Services Former Spouses' Protection Act, death gratuity, Missing Persons Act, eligibility for base housing, etc.

Enlistment--Qualifications, terms, options, bonuses, and conditions, etc.

Marine Corps Historical Program and Operation of Marine Corps Museum(s)

Hunting and Fishing Regulations

Marine Corps Organization and Points of Contact

Postal Regulations

Private Organizations

Procurement Regulations for Acquiring Property, Goods and Services

Public Affairs and Related Regulations--Community relations, use of Marine Corps facilities by public, fundraising, use of Marine Corps insignia for commercial/unofficial purposes, etc.

Records--Availability to the public, Freedom of Information Act, Privacy Act, etc.

Security and Related Regulations--Rules granting, limiting, or conditioning access to Marine Corps installations, visitor control, dissident, protest, and political activities, Internal Security Act of 1950 matters (Restricted Areas), Armed Forces Disciplinary Control Boards, traffic regulations, etc.

Special Services Regulations--Use of special services facilities by the public.

Uniform Regulations--Matters pertaining to former members.

ENCLOSURE (1)

2. Installation Commanders

Hunting and Fishing Regulations

Private Organizations

Public Affairs and Related Regulations--Use of facilities by members of the public and dependents, fundraising, etc.

Security and Related Regulations--Rules granting, limiting, or conditioning access to Marine Corps installations, visitor control, dissident, protest, and political activities, commercial solicitation, Internal Security Act of 1950 matters (Restricted Area), Armed Forces Disciplinary Control Boards, traffic regulations, etc.

Special Services Regulations--Use of special services facilities by the public.

ENCLOSURE (1)