



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 96

### 46 CFR Parts 71, 115, and 176

### Docket No. USCG-2020-0123

### RIN 1625-AC65

### Safety Management Systems for Domestic Passenger Vessels

**AGENCY:** Coast Guard, DHS.

**ACTION:** Advance notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard is evaluating the potential use of Safety Management Systems (SMSs) to improve safety and reduce marine casualties on board U.S.-flagged passenger vessels. In this document, the Coast Guard is seeking public input and responses to specific questions on the feasibility, applicability, and nature of SMSs for potential use on U.S.-flagged passenger vessels. The Coast Guard may use this information to develop a proposed rule regarding SMSs; if so, notification of that proposed rule would appear in the **Federal Register** under this docket number.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2020-0123 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** For information about this document, call or email Lieutenant Kimberly Gates, Vessel and Facility Operating Standards Division (CG-OES-2), U.S. Coast Guard, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593; telephone 202-372-1455, email *kimberly.m.gates@uscg.mil*.

**SUPPLEMENTARY INFORMATION:**

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**I. Public Participation and Request for Comments**

The Coast Guard views public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this advance notice of proposed rulemaking (ANPRM) for alternate instructions. Public comments are available in our online docket at <https://www.regulations.gov>, and can be viewed by following that website's instructions. Additionally, if you visit the online docket and sign up for email alerts, you will be notified when comments or additional documents are posted. The Coast Guard will not issue a separate response to the comments received, but will carefully consider each comment and will address them in a proposed rule if one is developed.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see the Department of Homeland Security's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

We do not plan to hold a public meeting, but we will consider doing so if we determine that a meeting would be helpful. We would issue a separate **Federal Register** notice to announce the date, time, and location of such a meeting.

## **II. Abbreviations**

ANPRM	Advance Notice of Proposed Rulemaking
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
IMO	International Maritime Organization
ISM	International Safety Management Code
PVA	Passenger Vessel Association
SMS	Safety Management System
§	Section
U.S.C.	United States Code

## **III. Background**

### *Overview of Safety Management Systems (SMSs)*

An SMS is a structured and documented set of procedures enabling company and vessel personnel to effectively implement safety and environmental protection policies that are specific to that company or vessel. An SMS may include, among other things, procedures and policies for vessel operations, maintenance of equipment, responding to specific types of incidents, for reporting accidents or other non-conformities, and for conducting internal audits and reviews. This tool, if properly used, can reduce human factor error and subsequent harm to people, property, and the environment. Developing an SMS from inception reduces hazards and incidents through the creation of a safety culture which prevents accidents and protects the safety and health of employees. A fully functional SMS is continuously updated and evolving based on observations of current

work practices and recognizing the need for changes or additional protections. In this way, an organization can improve its safety culture and performance.<sup>1</sup>

An SMS is designed to provide a strong safety management program and an effective means to manage complex or unique operations, monitor equipment maintenance, and mitigate hazards to prevent costly harm to people, the environment, and property. Furthermore, standardized operational procedures greatly assist vessel crews in performing both routine and non-routine tasks. Lastly, an SMS that is properly implemented promotes a continuously improving safety culture. Using an SMS approach recognizes that operators are in the best position to identify risks associated with company specific operations before casualties happen. Effective use of an SMS can avoid the necessity of additional regulation (or in some cases, may possibly eliminate the need for certain existing regulations) by encouraging operators to identify and mitigate risks specific to their own operations. The Coast Guard invites comment identifying existing regulations that may no longer be needed as a result of adoption of an effective SMS.

For nearly two decades, the National Transportation Safety Board (NTSB) has identified issues associated with failed safety management and oversight as the probable cause or a contributing factor in some of the most serious casualties involving U.S. passenger vessels, such as the deadly allision of passenger ferry with a pier in 2003,<sup>2</sup> and fires on board small passenger vessels in 2000<sup>3</sup> and 2018.<sup>4</sup> This led to their issuing

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<sup>1</sup> For more on safety management systems, see the Proceedings of the Marine Safety & Security Council; Spring 2016 magazine devoted to that topic, available at [https://www.dco.uscg.mil/Portals/9/DCO%20Documents/Proceedings%20Magazine/Archive/2016/Vol73\\_No1\\_Spring2016.pdf?ver=2017-05-31-120938-307](https://www.dco.uscg.mil/Portals/9/DCO%20Documents/Proceedings%20Magazine/Archive/2016/Vol73_No1_Spring2016.pdf?ver=2017-05-31-120938-307) and in the docket.

<sup>2</sup> On October 15, 2003, the Staten Island Ferry Andrew J. Barberi allided at full speed with a maintenance pier at the St. George's ferry terminal. Eleven passengers died and 70 were injured. Property damage was in excess of \$8 million dollars. See NTSB Recommendation M05-06.

<sup>3</sup> On November 17, 2000, the U.S. small passenger vessel Port Imperial Manhattan was in route to Weehawken, New Jersey from the borough of Manhattan when a fire broke out in the engine room. There were no deaths; however, one passenger was treated for smoke inhalation. Property damage was estimated at \$1.2 million dollars. See NTSB SMS Recommendation M02-05.

several formal safety recommendations seeking the required use of SMSs on U.S. passenger vessels, and highlighting the continued problems stemming from poor safety management.

There are approximately 6,500 active and inspected passenger vessels in the U.S.-flag fleet.<sup>5</sup> Of these, 530 are already required by domestic law to have SMSs, in accordance with International Maritime Organization (IMO) treaty obligations, because they transport more than 12 passengers on foreign voyages (see below). The Coast Guard tracks accidents and incidents through the Marine Information for Safety and Law Enforcement (MISLE) database.<sup>6</sup> From 2017 to 2019, there were a total of 6 vessel-related fatal accidents on passenger vessels, resulting in 55 deaths. Of these, 34 were deaths by asphyxiation associated with a fire aboard the dive boat *MV Conception*. Five of the six fatal incidents, and 54 of the 55 deaths, involved vessels without an SMS in place. In three of the six incidents, the NTSB recommendations made in response to the incident called for SMS. The Coast Guard seeks comment on the number and type of accidents and fatalities that might be prevented by requiring SMSs on some subset of passenger vessels.

The Coast Guard believes that SMSs may encourage the spread of relevant safety information, preventing information about vessel safety from being compartmentalized (or “siloeed”) on one vessel or in one operational division of a vessel or company. The Coast Guard seeks comment on the correct approach to prevent information from being

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<sup>4</sup> On January 14, 2018, the U.S. small passenger vessel *Island Lady* was in route from Port Richey, Florida to a casino boat located about 9 miles offshore with 53 people on board when a fire broke out involving its exhaust system. The master intentionally beached the vessel near shore to evacuate the passengers. All persons escaped by entering the water and wading or crawling ashore. Fifteen people were injured and transported to local hospitals. One passenger died in the hospital several hours after the fire. The *Island Lady*, valued at \$450,000, was declared a total constructive loss. See NTSB SMS Recommendations M02-05 and M-12-03.

<sup>5</sup> See USCG-PVA Quality Partnership Annual Report 2017-2019, available in the docket and also online at <https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Inspections-Compliance-CG-5PC-/Office-of-Investigations-Casualty-Analysis/Marine-Casualty-Reports/> (last visited Jan. 11, 2021).

<sup>6</sup> Certain vessel information, including limited casualty information, is available at <https://cgmix.uscg.mil/>.

siloed within a company. We seek comment on whether it would be more beneficial to develop an SMS that covers an operator's entire fleet of passenger vessels with similar characteristics, as opposed to developing an SMS for each individual vessel.

To fully assess the benefits of an SMS, we seek public feedback on how much siloing or sharing of information occurs on a typical vessel operated by a large business and one operated by a small business. Additionally, we seek comment on whether an SMS typically imposes disproportionate costs on small businesses. We also seek comment on the scope of applicability appropriate for an SMS requirement, including such factors as vessel size and type of operation. And, we are interested in the public's input as to how an operator with a multi-vessel fleet would implement SMS across their organization.

#### *Legal Requirements for SMS*

The IMO developed the International Safety Management (ISM) Code and adopted it as part of the International Convention for the Safety of Life at Sea, making compliance with the ISM Code mandatory for certain oceangoing ships. The ISM Code was adopted in 1993 by resolution A.741(18) and entered into force July 1, 1998, and has been amended several times. In 1996, Congress enacted the requirements found in Title 46 of the United States Code (U.S.C.), Chapter 32, directing the Coast Guard to prescribe for certain vessels (including vessels transporting more than 12 passengers on foreign voyages) SMS regulations that were consistent with the ISM Code.<sup>7</sup> The Coast Guard issued those regulations in 1997, creating Title 33 of the Code of Federal Regulations (CFR) part 96.<sup>8</sup> The requirements of part 96 are discussed in the next section.

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<sup>7</sup> Pub. L. 104-324, 110 Stat. 3901 (Oct. 19, 1996), as amended by Pub. L. 108-293, 118 Stat. 1028 (Aug. 9, 2004). Prior to its amendment in 2010, 46 U.S.C. Chapter 32 applied to a vessel that is (1) transporting more than 12 "passengers" as that term is now defined in 46 U.S.C. 2101(29)(A), or is a tanker, freight vessel, or self-propelled mobile offshore drilling unit of at least 500 gross tons as measured under 46 U.S.C. 14302; and (2) is engaged on a foreign voyage, or is a foreign vessel departing from a place under the jurisdiction of the United States on a voyage, any part of which is on the high seas.

<sup>8</sup> 62 FR 67506 (Dec. 24, 1997).

In 2010, Congress amended 46 U.S.C. Chapter 32 by expanding the applicability to include a passenger vessel or small passenger vessel transporting more passengers than a number prescribed by the Secretary based on the number of individuals on the vessel that could be killed or injured in a marine casualty.<sup>9</sup> In this ANPRM, the Coast Guard is seeking information to help us specify a number consistent with 46 U.S.C. 3202.

*Existing requirements for passenger vessels in 33 CFR part 96*

Under 33 CFR part 96, as it is currently written and enforced, a vessel must implement an SMS if carrying 12 or more passengers on an international voyage.<sup>10</sup> SMS audits must be conducted as required by 33 CFR 96.320, which includes a requirement that it be consistent with IMO Resolution A.788(19), “Guidelines on Implementation of the International Safety Management (ISM) Code by Administrations.”<sup>11</sup> In cases of major non-conformities, the flag state administration (the Coast Guard, for the United States) may require a satisfactory safety management audit by either the Coast Guard or an independent third-party organization.<sup>12</sup> Third-party organizations, such as class societies, authorized by the Coast Guard may issue the Safety Management Certificate onboard the vessel, which certifies that the vessel has implemented a functioning SMS that meets the requirements of 33 CFR part 96.<sup>13</sup> Additionally, some Passenger Vessel Association (PVA) members have voluntarily implemented the Coast Guard-recognized Flagship SMS,<sup>14</sup> developed by the PVA.

#### **IV. Advance Notice of Proposed Rulemaking Discussion**

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<sup>9</sup> Pub. L. 111-281, 124 Stat. 2969 (Oct. 15, 2010).

<sup>10</sup> 33 CFR 96.210.

<sup>11</sup> Section 4.7 of the ISM Code, and 33 CFR 96.320(c)(2).

<sup>12</sup> 33 CFR 96.330(h).

<sup>13</sup> 33 CFR part 96, subpart D.

<sup>14</sup> Letter from Captain J.F. Williams, U.S. Coast Guard, to John Groundwater, Passenger Vessel Association (June 12, 2017), *available at* <https://bit.ly/2sIcT7m> (last visited July 21, 2020); *see also* Nick Blenkey, MarineLog, PVA’s Flagship SMS gains Coast Guard recognition (June 26, 2017), <https://www.marinelog.com/shipping/safety-and-security/pvas-flagship-sms-gains-coast-guard-recognition/> (last visited July 21, 2020).

The 2010 amendments to 46 U.S.C. 3202 limit the scope of regulations to passenger vessels that are “transporting more passengers than a number prescribed by the Secretary based on the number of individuals on the vessel that could be killed or injured in a marine casualty.” Further, in prescribing implementing regulations, the Secretary must consider “(1) the characteristics, methods of operation, nature of the service of these vessels; and, (2) with respect to ferries, the sizes of the ferry systems within which the vessels operate.”<sup>15</sup> The Secretary has delegated to the Coast Guard the authority to develop and issue these regulations.<sup>16</sup>

The Coast Guard is seeking public comment regarding which operations and types of passenger vessels would benefit from an SMS and why. We anticipate that regulations developed to implement the 2010 amendments would affect some or all domestically-operated vessels inspected under 46 CFR Chapter I subchapters H, K, and T.<sup>17</sup> These passenger vessels are already required to implement an SMS when carrying more than 12 passengers on international voyages.<sup>18</sup> We are considering whether a potential new rule should be limited based on: (1) presence of overnight accommodations; (2) operational risk factors such as number of passengers, type of service, or size of ferry system; (3) age of vessel; and (4) vessel design, including hull material. We believe that a limited scope would address the intent of the SMS-related recommendations from numerous National Transportation Safety Board and Coast Guard casualty investigations on passenger vessels.<sup>19</sup> The Coast Guard seeks public comment

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<sup>15</sup> 46 U.S.C. 3203(c).

<sup>16</sup> DHS Delegation No. 0170.1, Rev. 01.1, paragraph II (92)(b) (last revised May 21, 2018).

<sup>17</sup> Subchapter H applies to passenger vessels, subchapter K applies to small passenger vessels carrying more than 150 passengers or having overnight accommodations for more than 49 passengers, and subchapter T applies to small passenger vessels carrying fewer passengers than subchapter K denotes, but more than 6.

<sup>18</sup> See 33 CFR 96.210.

<sup>19</sup> See NTSB Recommendation M05-06 ([https://www.nts.gov/safety/safety-recs/reletters/M05\\_04\\_06.PDF](https://www.nts.gov/safety/safety-recs/reletters/M05_04_06.PDF)) (recommending that the Coast Guard Seek legislative authority to require all U.S.-flag ferry operators to implement safety management systems, and once obtained, require all U.S.-flag ferry operators to do so); NTSB Recommendation M12-03 (<https://www.nts.gov/safety/safety-recs/reletters/M-12-001-003.pdf>) (recommending that the Coast Guard require all operators of U.S.-flag

on vessel characteristics, including the size of vessel, that would make an SMS appropriate.

The Coast Guard also seeks public comment on additional industry standards, best practices, and regulations that should be considered or reviewed but are not already mentioned in this ANPRM. We are particularly interested in input regarding potential oversight, inspection, or auditing schemes for the SMSs as related to passenger vessel and small passenger vessel operations. When considering the content of a possible regulation, the Coast Guard may look to the current requirements of 33 CFR part 96, to the ISM Code, and to the Towing Safety Management System in 46 CFR part 138 which provides the option of having a recognized third-party conduct audits of the SMS program. The Coast Guard will use the best available information on costs and benefits to inform any future regulations for passenger vessels and small passenger vessels.

## **V. Information Requested**

Your responses to the following questions will help the Coast Guard develop a more informed rulemaking. The questions are not all-inclusive, and any supplemental information is welcome. In responding to each question, please identify the question you are responding to and explain the reasons for your answer. If responding to a question and your response includes a monetary or numerical figure, please provide us with sufficient information, data, and transparency to be able to re-create any calculations. We encourage you to let us know your specific concerns with respect to any of the requirements under consideration.

1. For which types of passenger vessels should the Coast Guard require an SMS? How should the Coast Guard consider factors such as vessel size (including but not limited to length, tonnage, or capacity), design, age, type of service, hull material, overnight

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passenger vessels to implement safety management systems, taking into account the characteristics, methods of operation, and nature of service of these vessels, and, with respect to ferries, the sizes of the ferry systems within which the vessels operate).

accommodations, size of ferry system, or number of passengers?

2. What benefits would a scalable and structured SMS provide passenger vessel owners, managers, and operators? Should fleet size be a consideration? If you have any studies or data on whether SMSs improve safety or reduce costs, please provide it with your submission.

3. Have you encountered situations in which information about safety risks or best practices was known to one vessel, or operational division of a vessel or business, but not shared with others that might use it to prevent incidents? To what extent would an SMS encourage sharing or prevent the isolation (“silo-ing”) of information? If your answer changes depending on the nature or size of the business, please include that information.

4. When a passenger vessel operator has a multi-vessel fleet, how is an SMS best implemented across the fleet?

5. Should the Coast Guard consider the ISM Code (IMO Resolution A.741(18) as amended), sections of 46 CFR parts 136–144 (Subchapter M), International Organization for Standardization 9001:2015, or any other process-based safety management alternatives or equivalencies? If so, what alternatives or equivalencies should the Coast Guard consider? Do sections of these process-based safety management standards apply to the passenger vessel industry more or less than to other industries? Please provide specific details, if possible.

6. In lieu of an SMS, should 46 CFR parts 78, 121, 122, 184, or 185 be expanded to cover items commonly found in an SMS, such as a preventative maintenance program, emergency preparedness and response procedures, and procedures for key shipboard operations?

7. If a comprehensive SMS is required, are there more prescriptive USCG regulations currently in the CFR that could be removed because the SMS would serve a similar function in promoting safety? If so, which regulations?

8. If a comprehensive SMS is not necessary or justified, what aspects of an SMS would be appropriate to include in this regulatory framework? Why would you recommend including these aspects in this regulatory framework and not others?

9. Which industry standards, such as the ISM Code, should be incorporated by reference? To what extent should an industry standard SMS, such as the PVA's Flagship SMS, be recognized?

10. What guidance should the Coast Guard make available to the passenger vessel industry in order to help owners and operators implement an SMS? Would such guidance save costs or time implementing an SMS?

11. If you are a vessel owner or operator with a Safety Management Certificate issued under the ISM Code, or if you employ another type of SMS (for example, PVA Flagship), have you seen improvements in safety and operation from implementing the SMS? Please provide any supporting data, if available.

12. How many new or additional employees would be needed to implement an SMS? What would be the potential position titles, roles, responsibilities, and training requirements of these employees? How many hours of work would be associated with each position? What additional costs would companies incur related to these employees? In your response, please indicate how company size or fleet size affects the estimate.

13. If you are an operator that has chosen not to implement an SMS, what are reasons not to use an SMS? What type of operations may not benefit from an SMS, and why? Would the implementation of an SMS have any detrimental effects on passenger vessel operations? In addition to possibly needing to hire new employees, what other costs would be incurred by an operator implementing an SMS?

14. How long do you estimate it would take to develop and fully implement an SMS in your organization? Would the SMS be developed by someone within your organization or would outside experts be contracted? In your response, please indicate how company

size or fleet size affects the estimate.

15. Should the Coast Guard require a certification process, an audit process, or both? If so, why, and who should certify or audit the SMS, how often, and what should the inspection or audit entail? Should the certification or audit requirement be limited to certain vessels? If not, why not?

16. Should the Coast Guard-required SMS be subject solely to independent third-party audits? If so, how frequently should audits take place?

17. What training or knowledge requirements are appropriate for crewmembers on passenger vessels with an SMS?

18. If you are a small business, what economic impact would an SMS requirement have on you, your business, or your organization? In your comments, please explain how and to what degree the requirement would have an economic impact. Also, please explain why these requirements affect your small business differently than it might affect a larger business.

19. How would the costs and benefits of expanding other existing regulations, as detailed in question 4, differ from the costs and benefits of requiring SMSs for all passenger vessels?

20. What costs and benefits are associated with internal or third-party audits of SMSs? To what extent is there already capacity to audit systems through industry associations? Where possible, please break down the costs and benefits associated into the different elements of SMS audits.

21. What incentives could the Coast Guard provide passenger vessel companies to adopt an SMS? And what is the most appropriate means or method for the Coast Guard to incentivize these companies to adopt an SMS?

22. Are there any additional factors that we should consider?

Dated: January 12, 2021.

Karl L. Schultz,  
Admiral, U.S. Coast Guard,  
Commandant.

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