

- (a) The CVC or LTDA type used in the transaction;
- (b) The transaction amount;
- (c) The assessed transaction value (in U.S. dollars);
- (d) The date and time of the transaction;
- (e) The transaction hash;
- (f) CVC or LTDA addresses involved in the transaction, and if they are hosted or unhosted;
- (g) The name and physical address of each counterparty to the transaction of the financial institution's customer; and
- (h) Other information readily available to the bank or MSB, which aids in identifying the specific reported transaction(s), the means by which it was conducted, and the parties involved.

A final rule implementing these proposed reporting requirements would be effective 30 days after its publication, except that the requirement to report counterparty information (if adopted) would not take effect for 60 days given the additional complexity it may present.

FinCEN also continues to invite comment on the portion of the December Notice related to proposed independent recordkeeping obligations for transactions greater than \$3,000. Any final rule implementing the recordkeeping requirements would be effective 60 days after its publication.

*Comments on the December Notice:* FinCEN reviewed and considered 7,506 comments submitted in response to the December Notice prior to January 8, 2021. Commenters included financial institutions and companies that provide services related to CVC or LTDA, academics, trade organizations, cryptocurrency development groups, non-profit organizations, customers and employees of companies that provide services related to CVC or LTDA, and cryptocurrency owners and other individuals (both domestic and foreign), as well as anonymous sources. Commenters addressed a range of considerations, including implications for technological development and other forms of innovation, the economics of the digital asset industry, U.S. economic competitiveness, compliance matters, data security and privacy, utility to law enforcement, and procedural aspects of the December Notice (including the length of the comment period).

*Determination to Reopen the Public Comment Period:* FinCEN appreciates the substantial response from commenters during the original comment period, and FinCEN welcomes further comment in the reopened comment periods. With respect to the additional 15 days for comments on the

proposed reporting requirements, FinCEN notes that these proposed requirements are essentially equivalent to the existing CTR reporting requirements that apply to transactions in currency. The proposed rule is a vital loophole-closing measure to prevent illicit transactions using CVC and LTDA, including the financing of terrorism, in light of the fact that such transactions would otherwise be subject to familiar and long-established reporting requirements if they were in cash. The proposal is also consistent with Congress's recent expansion of the definition of "monetary instrument" in the BSA, which reflects the expectation that FinCEN would bring CVC and LTDA within monetary instrument reporting requirements. FinCEN notes that a large number of commenters agreed it is fully appropriate for FinCEN to finalize a rule providing similar regulatory treatment to similar activity. FinCEN welcomes comments during this reopened comment period on FinCEN's application of new statutory authority pursuant to the BSA amendments made by the AML Act of 2020. In addition, several commenters noted the need for additional information on the nature of the reports required by the proposal in order to provide an assessment of potential costs and benefits of the proposed rule. As indicated in the supplementary information, FinCEN intends to use a form similar to the existing CTR form and requests further comment in light of this additional information.

With respect to the additional 45 days for comments on the proposed recordkeeping requirements and the proposed requirement to report counterparty information, FinCEN is providing a longer period in light of the somewhat greater complexity of those aspects of the proposed rule and various issues identified in comments received during the original comment period.

**Kenneth A. Blanco,**

*Director, Financial Crimes Enforcement Network.*

[FR Doc. 2021-01016 Filed 1-14-21; 8:45 am]

**BILLING CODE 4810-02-P**

## 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.

**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 April 15, 2021.

**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](mailto:kimberly.m.gates@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

#### Table of Contents for Preamble

- I. Public Participation and Request for Comments
- II. Abbreviations
- III. Background
- IV. Advance Notice of Proposed Rulemaking Discussion
- V. Information Requested

## 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 Federal Register  
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.

<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.

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 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

<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.

<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/>.

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 “siloe”) 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 siloe 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 siloeing 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.

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.

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).

<sup>9</sup> Public Law 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->

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

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

*security/pvas-flagship-sms-gains-coast-guard-recognition/* (last visited July 21, 2020).

<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/reclatters/M05\\_04\\_06.PDF](https://www.nts.gov/safety/safety-recs/reclatters/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/reclatters/M-12-001-003.pdf>) (recommending that the Coast Guard require all operators of U.S.-flag passenger vessels to implement safety management systems, taking into account the characteristics, methods of operation, and nature of service of these

Continued

<sup>7</sup> Public Law 104–324, 110 Stat. 3901 (Oct. 19, 1996), as amended by Public Law 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-

seeks public comment 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 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 (“siloeing”) 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

vessels, and, with respect to ferries, the sizes of the ferry systems within which the vessels operate).

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.*

[FR Doc. 2021-01058 Filed 1-14-21; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Part 7

[NPS-GUIS-28979; PPMPAS1Z.YP0000]

RIN 1024-AE55

#### Gulf Islands National Seashore; Personal Watercraft

**AGENCY:** National Park Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The National Park Service proposes to revise special regulations governing the use of personal watercraft at Gulf Islands National Seashore. The proposed rule would reduce the distance of flat wake speed zones from certain shorelines and codify existing closures at West Petit Bois Island and the Fort Pickens ferry pier.

**DATES:** Comments on the proposed rule must be received by 11:59 p.m. EST on March 16, 2021.

**ADDRESSES:** You may submit comments, identified by Regulation Identifier Number (RIN) 1024-AE55, by either of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal:

[www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments.

(2) *By hard copy:* Mail or hand deliver to: Superintendent, 1801 Gulf Breeze Parkway, Gulf Breeze, FL 32563.

*Instructions:* Comments will not be accepted by fax, email, or in any way other than those specified above. All submissions received must include the words “National Park Service” or “NPS” and must include the RIN 1024-AE55 for this rulemaking. Comments received may be posted without change to [www.regulations.gov](http://www.regulations.gov), including any personal information provided.

*Docket:* For access to the docket to read background documents or

comments received, go to [www.regulations.gov](http://www.regulations.gov) and search for “1024-AE55”.

**FOR FURTHER INFORMATION CONTACT:** Daniel R. Brown, Superintendent, Gulf Islands National Seashore, [daniel\\_r\\_brown@nps.gov](mailto:daniel_r_brown@nps.gov), (850) 934-2613.

#### SUPPLEMENTARY INFORMATION:

##### Background

Gulf Islands National Seashore (the Seashore) encompasses the longest stretch of federally protected seashore in the United States. The Seashore includes seven barrier islands that span nearly 160 miles, coastal mainland, and adjacent waters in the northeastern part of the Gulf of Mexico. The Seashore comprises 139,175 acres within Mississippi and Florida, 4,630 acres of which (consisting of Horn and Petit Bois Islands) are designated wilderness. The resources of the Seashore vary widely, including marine, bayou, salt marsh, live oak, and southern magnolia forests.

Congress established the Seashore in 1971 in order to preserve for public use and enjoyment areas possessing outstanding natural, historic, and recreational values. 16 U.S.C. 459h(a). The National Park Service (NPS) administers the Seashore as a unit of the National Park System and has the authority to regulate the use of and management of the Seashore as it considers necessary or proper. 54 U.S.C. 100751(a). This includes the authority to regulate boating and other activities on water located within NPS units that is subject to the jurisdiction of the United States. 54 U.S.C. 100751(b).

The Seashore is one of the most heavily visited units in the National Park System. The Seashore attracts several million visitors from throughout the nation, who come to enjoy the beach and cultural and historic features. More than 80% of the Seashore is marine habitat and accessible only by boat or other watercraft. Many visitors use personal watercraft (PWC) to access and enjoy the Seashore.

##### Compliance and PWC Regulations

NPS general regulation 36 CFR 3.9 states that PWC may be used only where authorized by special regulation and that special regulations authorizing PWC use may be promulgated only for the 21 NPS units that are identified in that regulation, including the Seashore. In 2006, the NPS promulgated special regulations to manage the use of PWC at the Seashore. 71 FR 26244 (May 4, 2006). These regulations, which are found at 36 CFR 7.12, establish where PWC may be used, how they may be operated, and where they may be

landed. Among other things, they permit PWC use in all waters of the Seashore where other motorized vessels are allowed.

In 2008, Bluewater Network and other environmental groups filed a lawsuit claiming that the Environmental Assessment (EA) supporting the special regulations was inadequate and violated the National Environmental Policy Act, the NPS Organic Act, and the Administrative Procedure Act. In 2010, the U.S. District Court for the District of Columbia held that the impact analysis in the EA was inadequate and remanded the EA to the NPS. *Bluewater Network v. Salazar*, 721 F. Supp.2d 7 (D.D.C. 2010). However, the court did not vacate the special regulations, which have continued to govern the use of PWC within the Seashore.

In June 2019, consistent with the court's decision, the NPS completed a Final Personal Watercraft Plan/Environmental Impact Statement (FEIS) that contains a more comprehensive analysis of the impacts of PWC use within the Seashore. The Record of Decision (ROD) for this project was originally approved by the NPS Regional Director of Interior Region 2 on August 13, 2019. Since that time, NPS revised the selected alternative to remove a prohibition on PWC landing below the mean high tide on Horn and Petit Bois Islands. On December 17, 2020, the Acting Regional Director signed an amended ROD with the PWC landing prohibition removed but all other elements of the original selected action retained. The NPS believes the selected alternative will continue to protect natural and cultural resources at the Seashore, minimize conflicts between various users, and promote visitor safety while allowing for a variety of recreational experiences. A copy of the FEIS, ROD, and amended ROD which contain a full description of the purpose and need for taking action, the alternatives considered, maps, the environmental impacts associated with the proposed rule, and the basis for the selected alternative, can be found online at <http://parkplanning.nps.gov/guis>, by clicking on the link entitled “Personal Watercraft (PWC) Use Management Plan/EIS” and then clicking on the link entitled “Document List”.

##### Proposed Rule

The proposed rule would implement the selected alternative identified in the amended ROD for the management of PWC use within the Seashore. The selected alternative would maintain the existing special regulation at 36 CFR 7.21, except as explained below.