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(3) Examine the rudders for damage, the upper and lower bearings for wear, and the rudder stock for damage or wear. Rudders need not be removed for examination if these items can be otherwise properly evaluated. This also includes other underwater components of steering and propulsion mechanisms;

(4) Examine the propellers for cracks and damage;

(5) Examine the exterior components of the machinery cooling system for leaks, damage, or deterioration;

(6) Open and examine all sea chests, through-hull fittings, and strainers for damage, deterioration, or fouling; and

(7) On wooden vessels, pull fastenings as required for examination.

(b) An internal structural examination required by this part may be conducted while the vessel is afloat or while it is out of the water. It consists of a complete examination of the vessel's main strength members, including the major internal framing, the hull plating and planking; voids; and ballast, cargo, and fuel oil tanks. Where the internal framing, plating, or planking of the vessel is concealed, sections of the lining, ceiling, or insulation may be removed or the parts otherwise probed or exposed to determine the condition of the hull structure. Fuel oil tanks need not be cleaned out and internally examined if the general condition of the tanks is determined to be satisfactory by an external examination.

§ 137.335 Underwater survey in lieu of drydocking.

(a) This section applies to all towing vessels subject to this subchapter. If a TSMS is applicable to the vessel, the TSMS may include policies and procedures for employing and documenting an underwater survey in lieu of drydocking (UWILD). A vessel is eligible for UWILD if the Coast Guard determines that:

(1) There is no obvious damage or defect in the hull adversely affecting the seaworthiness or fitness for the vessel's route or service;

(2) The vessel has been operated satisfactorily since the last drydocking;

(3) The vessel is less than 15 years of age;

(4) The vessel has a steel or aluminum hull; and

(5) The vessel is fitted with a hull protection system.

(b) The owner or managing operator must submit an application to the cognizant OCMI at least 90 days before the vessel's next required drydock examination. The application must include:

(1) The procedure for carrying out the underwater survey;

(2) The time and place of the underwater survey;

(3) The method used to accurately determine the diver's or the remotely operated vehicle's location relative to the hull;

(4) The means for examining all through-hull fittings and appurtenances;

(5) The condition of the vessel, including the anticipated draft of the vessel at the time of the survey;

(6) A description of the hull protection system; and

(7) The names and qualifications of all personnel involved in conducting the UWILD.

(c) If a vessel is 15 years of age or older, the Commandant may approve a UWILD at alternating intervals provided that:

(1) All provisions of paragraphs (a) and (b) of this section are complied with, except that the vessel does not need to be less than 15 years of age; and

(2) During the vessel's drydock examination preceding the underwater survey, a complete set of hull gauging was taken which indicated that the vessel was free from hull deterioration.

PART 138—TOWING SAFETY MANAGEMENT SYSTEM (TSMS)

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SOURCE: 81 FR 40101, June 20, 2016, unless otherwise noted.

Subpart A—General

§ 138.100 Purpose.

The purpose of this part is to prescribe requirements for owners or managing operators of towing vessels who adopt a Towing Safety Management System (TSMS) under this subchapter.

§ 138.115 Compliance.

Owners or managing operators selecting the TSMS option must obtain a TSMS certificate issued under § 138.305 at least 6 months before obtaining a Certificate of Inspection (COI) for any of their vessels covered by the TSMS certificate.

Subpart B—Towing Safety Management System (TSMS)

§ 138.205 Purpose of a TSMS.

(a) The purpose of a TSMS is to establish policies, procedures, and required documentation to ensure the owner or managing operator meets its established goals while ensuring continuous compliance with all regulatory requirements. The TSMS must contain a method to ensure all levels of the organization are working within the framework.

(b) A TSMS establishes and maintains:

(1) Management policies and procedures that serve as an operational protocol for all levels within management;

(2) Procedures to produce objective evidence that demonstrates compliance with the requirements of this subchapter;

(3) Procedures for an owner or managing operator to evaluate that they are following their own policies and procedures and complying with the requirements of this subchapter;

(4) Arrangements for a periodic evaluation by an independent third-party organization (TPO) to determine how well an owner or managing operator and their towing vessels are complying with their stated policies and procedures, and to verify that those policies and procedures comply with the requirements of this subchapter; and

(5) Procedures for correcting problems identified by management personnel and TPOs and facilitating continuous improvement.

§ 138.210 Objectives of a TSMS.

The TSMS, through policies, procedures, and documentation, must:

(a) *Demonstrate management responsibility.* The management must demonstrate that they implemented the policies and procedures as contained in the TSMS and the entire organization is adhering to their safety management program.

(b) *Document management procedures.* A TSMS must describe and document the owner or managing operator's organizational structure, responsibilities, procedures, and resources which ensure quality monitoring.

(c) *Ensure document and data control.* There must be clear identification of what types of documents and data are to be controlled, and who is responsible for controlling activities, including approval, issue, distribution, modification, removal of obsolete materials, and other related administrative functions.

(d) *Provide a process and criteria for selection of third parties.* Procedures for selection of TPOs must exist that include how third parties are evaluated, including selection criteria.

(e) *Establish a system of recordkeeping.* Records must be maintained to demonstrate effective implementation of

the TSMS. This must include audit records, non-conformity reports and corrective actions, auditor qualifications, auditor training, and other records as considered necessary.

(f) *Identify and meet training needs.* The owner or operator must establish and maintain documented procedures for identifying training needs and providing training.

(g) *Ensure adequate resources.* Identify adequate resources and procedures necessary to comply with the TSMS.

§ 138.215 Functional requirements of a TSMS.

The functional requirements of a TSMS include:

(a) Policies and procedures to provide direction for the safe operation of towing vessels and protection of the marine environment in compliance with applicable U.S. law, including the Code of Federal Regulations, and, if on an international voyage, applicable international conventions to which the United States is a party;

(b) Defined levels of authority and lines of communication between shoreside and vessel personnel;

(c) Procedures for reporting accidents and non-conformities;

(d) Procedures to prepare for and respond to emergency situations by shoreside and vessel personnel;

(e) Procedures for verification of vessel compliance with this subchapter;

(f) Procedures for internal auditing of the TSMS, including shoreside and vessel operations;

(g) Procedures for external audits;

(h) Procedures for management review of internal and external audit reports and correction of non-conformities; and

(i) Procedures to evaluate recommendations made by management and other personnel.

§ 138.220 TSMS elements.

The TSMS must include the elements listed in paragrahs (a) through (d) of this section. If an element listed is not applicable to an owner or managing operator, appropriate justification must be documented and is subject to acceptance by the TPO.

(a) *Administration and management organization.* A policy must be in place that outlines the TSMS culture and how management intends to ensure compliance with this subpart. Supporting this policy, the following procedures and documentation must be included:

(1) *Management organization*—(i) *Responsibilities.* The management organization, authority, and responsibilities of individuals must be documented.

(ii) *Designated person.* Each owner or managing operator must designate in writing the shoreside person(s) responsible for ensuring the TSMS is implemented and continuously functions throughout management and the fleet. They must also designate the shoreside person(s) responsible for ensuring that the vessels are properly maintained and in operable condition, including those responsible for emergency assistance to each towing vessel.

(iii) *Master authority.* Each owner or managing operator must define the scope of the master's authority. The master's authority must provide for the ability to make final determinations on safe operations of the towing vessel. Specifically, it must provide the authority for the master to cease operation if an unsafe condition exists.

(2) *Audits*—(i) *Procedures for conducting internal and external audits.* The TSMS must contain procedures for audits in accordance with §§ 138.310 and 138.315.

(ii) *Procedures for identifying and correcting non-conformities.* The TSMS must contain procedures for any person to report non-conformities. The procedures must describe how an initial report should be made and the actions taken to follow-up and ensure appropriate resolution.

(b) *Personnel.* Policies must be in place that cover the owner or managing operator's approach to managing personnel, including, but not limited to, employment, training, and health and safety of personnel. Supporting these polices, the following procedures and documentation must be included:

(1) *Employment procedures.* The TSMS must contain procedures related to the employment of individuals. Procedures must be in place to ensure adequate qualifications of personnel, to include background checks, compliance with drug and alcohol standards, and that

personnel are able to perform required tasks.

(2) *Training of personnel.* The TSMS must contain a policy related to the training of personnel, including:

(i) New-hire orientation;

(ii) Duties associated with the execution of the TSMS;

(iii) Execution of operational duties;

(iv) Execution of emergency procedures;

(v) Occupational health;

(vi) Crew safety; and

(vii) Training required by this Subchapter.

(c) *Verification of vessel compliance.* Policies must be in place that cover the owner or managing operator's approach for ensuring vessel compliance, including, but not limited to, policies on maintenance and survey, safety, the environment, security, and emergency preparedness. Supporting these policies, the following procedures and documentation must be included:

(1) *Maintenance and survey.* Procedures outlining the owner or managing operator's survey regime must specify all maintenance, examination, and survey requirements, including the minimum qualifications of persons assigned to carry out required surveys the owner or managing operator is using the internal examination program. Applicable documentation must be maintained for all activities for a period of 5 years.

(2) *Safety, environment, and security.* Procedures must be in place to ensure safety of property, the environment, and personnel. This must include procedures to ensure the selection of the appropriate vessel, including adequate maneuverability and horsepower, appropriate rigging and towing gear, proper management of the navigational watch, and compliance with applicable security measures.

(d) *Compliance with this subchapter.* Procedures and documentation must be in place to ensure that each towing vessel complies with the operational, equipment, and personnel requirements of this subchapter.

§ 138.225 Existing safety management systems (SMSs).

(a) A safety management system (SMS) which is fully compliant with the International Safety Management (ISM) Code requirements, implemented in 33 CFR part 96, will be deemed in compliance with TSMS-related requirements in this subchapter.

(b) Other existing SMSs may be considered for acceptance as meeting the TSMS requirements of this part. The Coast Guard may:

(1) Accept such system in full;

(2) Require modifications to the system as a condition of acceptance; or

(3) Reject the system.

(c) An owner or managing operator who seeks to meet TSMS requirements using provisions in paragraph (a) or (b) of this section must submit documentation to the Coast Guard based on the initial audit and one full audit cycle of at least 3 years.

(d) The Coast Guard may elect to inspect equipment and records, including:

(1) Contents of the SMS;

(2) Objective evidence of internal and external audits;

(3) Objective evidence that nonconformities were identified and corrected; and

(4) Objective evidence of vessel compliance with applicable regulations.

Subpart C—Documenting Compliance

§ 138.305 TSMS certificate.

(a) The owner or managing operator will be issued a TSMS certificate by a TPO when his or her organization is deemed in compliance with the TSMS requirements. It should be kept on file at the owner or managing operator's shoreside office and available for review, at the request of the Coast Guard.

(b) A TSMS certificate is valid for 5 years from the date of issue, unless suspended, revoked or rescinded as provided in paragraphs (d) and (e) of this section.

(c) The vessel owner or managing operator must maintain a list of vessels currently covered by each TSMS certificate and must provide it to the Coast Guard upon request.

(d) A TSMS certificate may be suspended or revoked by the Coast Guard at any time for non-compliance with the requirements of this part.

(e) The TPO that issued the TSMS certificate may rescind the certificate for non-compliance with the requirements of this part.

(f) A copy of the TSMS certificate must be maintained on each towing vessel that is covered by the TSMS certificate and on file at the owner or managing operator's shoreside office.

§ 138.310 Internal audits for a TSMS certificate.

(a) Internal management audits must be conducted annually, within 3 months of the anniversary date of the TSMS certificate, to ensure the owner or managing operator is effectively implementing all elements of their TSMS.

(b) The internal management audit must ensure that management has implemented the TSMS throughout all levels of the organization, including audits of all the owner or managing operator's towing vessels to which a TSMS applies to ensure implementation at the operational level.

(c) The results of internal audits must be documented and maintained for a period of 5 years and made available to the Coast Guard upon request.

(d) Internal auditors:

(1) Must have knowledge of the management, its SMS, and the standards contained in this subchapter;

(2) Must have completed an ANSI/ISO/ASQ Q9001–2000 or ISO 9001:2008(E) (incorporated by reference, see § 136.112 of this subchapter) internal auditor/assessor course or Coast Guard-recognized equivalent;

(3) May not be the designated person, or any other person, within the organization that is responsible for development or implementation of the TSMS; and

(4) Must be independent of the procedures being audited, unless this is impracticable due to the size and the nature of the organization.

§ 138.315 External audits for a TSMS certificate.

External audits for obtaining and renewing a TSMS certificate are conducted through a TPO and must include both management and vessels as follows:

(a) *Management audits.* (1) Prior to the issuance of an owner or managing operator's initial TSMS certificate, or subsequent renewals, an external management audit must be conducted by an auditor from a TPO.

(2) A mid-period external management audit must be conducted between the 27th and 33rd month of the certificate's period of validity.

(b) *Vessel audits.* (1) An external audit must be conducted prior to the issuance of the initial COI for vessels subject to an owner or managing operator's TSMS that have been owned or operated for 6 or more months prior to receiving the initial COI.

(2) An external audit must be conducted no later than 6 months after the issuance of the initial COI for vessels subject to the owner or managing operator's TSMS that have been owned or operated for fewer than 6 months prior to receiving the initial COI.

(3) An external audit of all vessels covered by a TSMS certificate must be conducted during the 5-year period of validity of the TSMS certificate. The vessels must be selected randomly and distributed as evenly as possible.

(4) External audits may include the use of objective evidence which may be available at the owner or managing operator's corporate office. Some portions of this audit require visiting each vessel at some point during the 5-year period of validity of the TSMS certificate.

(c) *Documentation.* The results of the external audit must be documented and maintained for a period of 5 years and made available to the Coast Guard or the external auditor upon request.

Subpart D—Audits

§ 138.400 General.

Management and vessels are subject to internal and external audits to assess compliance with TSMS and the vessel standards requirements of this subchapter.

§ 138.405 Conduct of internal audits.

(a) Internal audits are conducted by, or on behalf of, the management and may be performed by a designated employee or by contracted individual(s)

who conduct the audit as if an employee of the owner or managing operator.

(b) Internal audits are not necessarily conducted as one event; they can be taken in segments over time.

(c) Internal audits must be of sufficient depth and breadth to ensure the owner or managing operator established adequate procedures and documentation to comply with the TSMS requirements of this part, that the TSMS was implemented throughout all levels of the organization, and that the owner or managing operator's vessels comply with this subchapter and the TSMS.

(d) The auditor must have the authority to examine documentation, question personnel, examine vessel equipment, witness system testing, and observe personnel training, including drills, as necessary to verify TSMS effectiveness.

§ 138.410 Conduct of external audits.

(a) External audits must be conducted by an auditor from a TPO and cover all elements of the TSMS requirements of this subchapter, but may be conducted on a sampling basis of each of those TSMS elements.

(b) External audits must be of sufficient depth and breadth to ensure the owner or operating manager effectively implemented its TSMS throughout all levels of the organization, including onboard its vessels.

(c) The auditor must be provided access to examine any requested documentation, question personnel, examine vessel equipment, witness system testing, and observe personnel training, including drills, as necessary to verify TSMS effectiveness.

(d) The auditor may broaden the scope of the audit if:

(1) The TSMS is incomplete or not effectively implemented;

(2) Conditions found are not consistent with the records; or

(3) Unsafe conditions are identified.

(e) The auditor may verify compliance with vessel standards and TSMS requirements through a review of objective evidence such as checklists, invoices, and reports, and may conduct a visual sampling onboard the vessels to determine whether or not the conditions onboard the vessel are consistent with the records reviewed.

(f) If an auditor identifies a major non-conformity during the course of the external audit, then the auditor must notify the local Officer in Charge, Marine Inspection (OCMI) within 24 hours and the owner or managing operator's designated representative in accordance with the TSMS applicable to the vessel.

Subpart E—Coast Guard or Organizational Oversight and Review

§ 138.500 Notification prior to audit.

(a) The owner or managing operator of a towing vessel must notify the local OCMI at least 72 hours prior to an external audit being conducted under this part.

(b) The Coast Guard may require that a Coast Guard representative accompany the auditor during part, or all, of an external audit.

(c) The Coast Guard may conduct a separate audit of the owner or managing operator or its towing vessels, at its discretion.

§ 138.505 Submittal of external audit results.

(a) *Submission of external management audits.* The results of an external management audit as required by § 138.315 must be submitted to the Towing Vessel National Center of Expertise within 30 days of audit completion by the TPO conducting the external audit. The mailing address for the Coast Guard Towing Vessel National Center of Expertise is 504 Broadway Street, Suite 101, Paducah, Kentucky 42001.

(b) *Submission of external vessel audits.* The results of any external vessel audits required by § 138.315 must be submitted to the cognizant OCMI within 30 days of audit completion by the TPO conducting the external audit.

(c) *Electronic submissions.* The results of external audits required by this section may be submitted electronically so long as the means used allows the Coast Guard to reliably verify the person making the submission and the authenticity of the records submitted. For those seeking to submit external

audit records to the Coast Guard electronically, the TSMS must address the means to be used to make these electronic submissions.

§ 138.510 Required attendance.

(a) The TPO and the owner or managing operator may be required to explain or otherwise demonstrate areas of the TSMS to the Coast Guard if there is evidence that a TSMS, for which a TSMS certificate was issued, is not in compliance with the provisions of this part. The Coast Guard may require a third party's attendance at the vessel or the office of the owner or managing operator for this purpose.

(b) The Coast Guard will not bear any of the costs for a third party's attendance at the vessel or the office of the owner or managing operator when complying with this provision.

PART 139—THIRD-PARTY ORGANIZATIONS

Sec.

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SOURCE: 81 FR 40101, June 20, 2016, unless otherwise noted.

§ 139.100 Purpose.

(a) This part states the requirements applicable to third-party organizations (TPOs) that conduct audits and surveys for towing vessels as required by this subchapter.

(b) The Commandant delegates to the Towing Vessel National Center of Expertise (TVNCOE) the authority to carry out the functions of this part associated with approval of TPOs, including revocation and suspension of approval.

§ 139.110 Organizations not subject to further approval.

(a) A recognized classification society, which has satisfied the requirements in 46 CFR 8.230, meets the requirements of a TPO for the purposes of this part and may perform the work as a third-party auditor.

(b) An authorized classification society, which has been authorized under 46 CFR part 8, subpart C or D, meets the requirements of a TPO for the purposes of this part and may perform the work as a third-party surveyor.

(c) The organizations qualifying as TPOs under paragraph (a) or (b) of this section must ensure that employees providing services under this part hold proper qualifications for the particular type of service being performed.

§ 139.115 General.

(a) The Coast Guard approves TPOs to carry out functions related to ensuring that towing vessels comply with provisions of this subchapter. Organizations may be approved to:

(1) Conduct audits of a Towing Safety Management System (TSMS), and the vessels to which the TSMS applies, to verify compliance with the applicable provisions of this subchapter;

(2) Issue TSMS certificates to the owner or managing operator who is in compliance with part 138 of this subchapter;

(3) Conduct surveys of towing vessels to verify compliance with the applicable provisions of this subchapter; and

(4) Issue survey reports detailing the results of surveys, carried out in compliance with part 137 of this subchapter.

(b) An organization seeking approval under this part must provide objective evidence to the Coast Guard that its program:

(1) Is independent of the owner or managing operator and vessels that it audits or surveys;

(2) Operates within a quality management system acceptable to the Coast Guard;