



Towboat *Susie Fagan* negotiates the Cumberland River in Tennessee. Photo courtesy Radharc Images/Alamy Stock Photo.

Flexibility and Complexity

Operators need to select their Subchapter M strategy for compliance

BY CHRIS PARSONAGE

Subchapter M is a little more than a year away from being fully in effect for most commercial towing vessels over 26 ft. Towing vessel operators who have been actively preparing for Subchapter M will be in a better position than those who are just now starting to sort out what this comprehensive regulation means for them. All towing vessels subject to the regulation will need to be in full compliance with the requirements of the regulation by July 18, 2018. Subchapter M requires covered towing vessels to obtain a certificate of inspection (COI) to be able to legally operate their vessels. The United States Coast Guard (USCG) will begin to issue COIs in July 2018. Recognizing that it will take many months before the USCG can issue a COI for every towing vessel subject to the regulation, operators are required to obtain a COI for all of their vessels within four years, at a phased-in rate of 25% per year.

Subchapter M provides two pathways for operators to obtain a COI. The USCG option mandates that vessels will undergo an annual vessel inspection performed by a USCG-trained towing vessel inspector. The vessel owner or managing operator will schedule USCG COI inspections by requesting an appointment through the local officer in charge of marine inspections. While some operators see the USCG option as straightforward and less cumbersome, many in the industry have expressed concerns for choosing that option for several key reasons.

First, the USCG itself has indicated uncertainty as to its ability to meet industry demands for COI inspections, should there be large numbers of operators who pursue that option. The implications of an understaffed USCG could be catastrophic for operators large and small, as it relates to scheduling their vessel operations. Operators are required to make their vessel available to the USCG to be inspected on the USCG's schedule. If the USCG is unable to have enough inspectors available to meet demand effectively, operators will have to schedule inspections weeks to months in advance, and may be faced with unscheduled downtime on their vessels while they wait for the inspection to occur. The problem compounds itself as vessels come up for annual renewal inspections, while additional vessels prepare for their initial COI issuance, for those in the second through fourth years of implementation.

Other industry concerns about the USCG option include the implications of potential inconsistencies of inspections from one USCG sector to the next. To a single boat operator, this may be a non-issue. However, for larger operators, having Subchapter M applied inconsistently over a fleet spread out over the country, or even for a vessel moving from one sector to another each year, would be problematic. Additionally, inland operators will have to prepare for encountering USCG inspectors unfamiliar with brown water towing vessel operations. The implications of this could be serious when inspectors

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without towing vessel experience, or only blue water experience, apply lessons they have learned from other vessel inspections when making interpretations of Subchapter M requirements.

Second pathway

The other option for obtaining a COI is the path that the USCG has suggested will be best for many operators and the key to successful implementation of Subchapter M—the towing safety management system (TSMS) option. Under the TSMS, operators develop a comprehensive set of policies and procedures that cover all relevant aspects of managing their towing vessels. Instead of working solely with the USCG, operators select a third-party organization (TPO) to conduct periodic audits and surveys to verify the company is in compliance with the policies and procedures outlined in their TSMS and Subchapter M. Instead of annual USCG inspections, operators choosing the TSMS option and successfully operating under their TSMS will potentially have much less USCG involvement in their operations and on their vessels.

Companies that have been operating under a recognized existing TSMS, such as the AWO Responsible Carrier Program or the ISM code, are generally well prepared to comply with Subchapter M, particularly if they choose the TSMS option. They should expect to find their TSMSs might only need a few, if any, additional elements to be implemented before their TPO can verify their systems meet the Subchapter M requirements. Therefore, the gap for these operators will be significantly less than those starting from scratch.

Those operators that do not currently have a TSMS in place, or have not begun the process to write a Subchapter M-compliant TSMS, have a steep hill to climb if they want to take advantage of the TSMS option by July 2018. Developing a written set of policies and procedures, implementing them throughout the organization, and documenting compliance with them are difficult and time-consuming activities. Operators will need to commit appropriate resources to develop their written policies and procedures. Additional time and resources will be necessary to then train shore side and vessel personnel to operate under the TSMS and document their activities, which are critical to providing objective evidence for internal and external audits. Operators new to the TSMS world need to prepare to embrace a culture of continuous improvement, with management team's review of audit results and verification of the implementation of corrective actions within

their operations to correct non-conformities found during audits. Operators also will need to spend money for auditors and surveyors to verify their compliance. For those operators that have not budgeted previously for these expenditures, the cost of implementing a TSMS may be considerable.

However, there is a great deal of flexibility written into Subchapter M for those who do choose the TSMS route. Generally speaking, operators are able to write their TSMS so that it fits their unique operation. One example of this flexibility is in the survey program option. Subchapter M provides operators selecting the TSMS option flexibility in choosing how to conduct the survey elements of their TSMS. Operators can choose to have their annual surveys and less frequent drydock and internal structural examinations "ISE," either conducted by an independent third-party surveyor from a TPO, or they can develop their own internal survey program. Operators choosing the internal survey program can use a qualified company employee or hire an outside contractor with proper experience and training to conduct their annual vessel surveys and/or their drydock and ISE. The TPO will work with the operator to supervise the internal survey program.

Attractive alternative

The internal survey option is an attractive alternative for complying with the vessel inspection requirements for many operators, as it should prove less costly than the cost of hiring third-party surveyors, and can be designed to coordinate with the operator's normal vessel maintenance and repair practices. However, the requirements for documenting a company's internal survey program, and incorporating the documentation of survey reporting requirements while also conducting maintenance and repair may prove burdensome on company personnel. Port engineers, port captains and other company personnel involved in arranging these maintenance and repair activities have the necessary experience in resolving vessel deficiencies.

As a part of an internal survey program, though, these same individuals may find themselves tasked with not only overseeing that a repair is completed, but also having to prepare proper written documentation of the work completed and areas of the vessel that were inspected. These individuals likely will need guidance on how to appropriately document that the vessel and its systems are functioning as required by the regulation, along with training on how to

write a survey report that will provide adequate objective evidence to meet the requirements for a Subchapter M annual survey report.

Additionally, an operator's internal surveyor should be independent from the areas they will be required to survey. Operators may find achieving the appropriate level of independence difficult. The person ordering repairs and maintenance on a vessel should not be the same person writing a report on the suitability of the work performed. For smaller operators, having enough qualified, experienced personnel capable of performing the maintenance and repairs separate from doing the vessel surveys will be a challenge.

Mix and match

The scope of the surveys required by Subchapter M is the same for both internal survey programs and external survey programs. The regulation allows operators to mix and match internal surveys with external surveys to meet their operational needs and scheduling requirements. Operators and their TPO will need to work closely to coordinate an appropriate mix of internal surveys with external

both to suit the needs of the operator and satisfy their TPO that the operator is in compliance with Subchapter M. Ultimately, the goal of both the internal survey program and external survey program is to ensure operators are meeting the requirements of Subchapter M, and operating well-maintained vessels that function as designed for the route and service permitted on their COIs.

Subchapter M, without a doubt, is a very complex regulation, with a great deal of flexibility written into it to allow all operators to chart their own course to regulatory compliance. For the well-prepared operator, the next 12 months should prove relatively painless in seeking initial COI issuance. There is still time for those less ready, but July 2018 will be here soon. Now is the time for operators to choose the USCG option or the TSMS option, and prepare accordingly to deal with the complexities that may result from choosing either means for compliance. **MT**

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