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CG-CVC Policy Letter 17-02
(CH-2)
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COMDT (CG-CVC)

To: Distribution

Subj: USE OF EXISTING SAFETY MANAGEMENT SYSTEMS TO OBTAIN AN INITIAL
CERTIFICATE OF INSPECTION UNDER 46 CFR SUBCHAPTER M, CHANGE 2

1. **PURPOSE.** This policy letter provides guidance to the Officer(s) in Charge, Marine Inspection (OCMI) and Coast Guard marine inspectors as well as the towing industry on the use of existing safety management systems as permitted in 46 Code of Federal Regulations (CFR), 138.225(a) or 138.225 (b) to obtain an initial certificate of inspection (COI) under 46 CFR Subchapter M.
2. **APPLICATION.** This policy letter is intended for use by both OCMI's and the maritime industry when an owner or managing operator of a towing vessel is seeking issuance of the initial COI and is using an existing safety management system to comply with the Towing Safety Management System (TSMS) requirements of Subchapter M.
3. **DIRECTIVES AFFECTED.** CG-CVC Policy letter 17-02 (CH-1) is hereby canceled.
4. **BACKGROUND.**
 - a. Prior to the promulgation of Subchapter M, some owners and managing operators within the towing and barge industry implemented safety management systems to ensure the safe management and operation of their vessels. While certain vessels engaged on foreign voyages are required to comply with domestic requirements and international standards for safety management systems, the use of safety management systems on other vessels was voluntary in nature. The Coast Guard may recognize both types of these existing safety management systems for the purposes of compliance with Subchapter M.
 - b. In accordance with 46 CFR 138.225(a), an existing safety management system which is fully compliant with the International Safety Management (ISM) Code and implemented as detailed in 33 CFR Part 96 will be deemed in compliance with TSMS requirements. Other Coast Guard accepted existing safety management systems, such as the American Waterways Operators' Responsible Carrier Program (RCP), may also be considered as meeting the TSMS requirements as per 46 CFR 138.225 (b). Owners and managing operators with a past performance of successfully operating under a safety management system have demonstrated a structured and documented system that enables personnel involved in vessel operations or management to

effectively implement safety and environmental requirements. For vessels operating under an existing ISM or other Coast Guard accepted safety management system, the owner or managing operator must have valid ISM or TSMS certificate(s), respectively, and provide the Coast Guard objective evidence that the vessel complies with Subchapter M prior to the issuance of the initial COI.

- c. Due to the initial COI phase-in period stated in 46 CFR 136.202, there may be a gap between when a company is issued a TSMS Certificate and when its vessel(s) must comply with the requirements of Subchapter M, on July 20, 2018, or the date the vessel obtains a COI, whichever date is earlier. This policy letter reconciles that gap and provides a means for vessels using an existing safety management system to comply with Subchapter M by using audits completed within the timeframes specified below to obtain an initial COI. In addition to using these audits, vessels may need to meet other requirements to demonstrate progress toward achieving compliance with Subchapter M up to the date the vessel is scheduled for a COI inspection.

5. DISCUSSION.

- a. Prior to the issuance of an initial TSMS certificate, an external management audit must be conducted by a TPO in accordance with 46 CFR 138.315(a). The extent of the external audit by a TPO must cover all elements of the TSMS requirements, but may be conducted on a sampling basis of each of those TSMS elements. The TPO auditor selects the depth and breadth necessary to ensure the owner or managing operator effectively implemented its TSMS. The owner or managing operator's extensive use of an existing safety management system may provide the TPO with objective evidence necessary to reduce the external management audit's depth and breadth.
- b. The Coast Guard may issue an initial COI to a TSMS vessel after receiving objective evidence that the owner or managing operator is in compliance with the TSMS and the vessel meets the applicable stability, structures, and essential system requirements. Since the TSMS Certificate alone does not indicate that the vessel meets the applicable portions of Subchapter M, objective evidence, such as a survey report issued by the TPO, is necessary. Owners or managing operators that employed a Coast Guard accepted existing safety management system have experience in implementing and complying with safety and environmental requirements. As such, it may be appropriate for a TPO to reduce the scope of an audit or survey to ensure the vessel is in substantial compliance with the applicable regulations.
- c. Similarly, an owner or managing operator using a safety management system compliant with 33 CFR Part 96 on its vessel(s) may not be fully compliant with Subchapter M at the time the vessel is audited. Therefore, the Document of Compliance and Safety Management Certificate may not be a complete indication of a given vessel's level of compliance on the date the initial COI is scheduled for issuance. An OCMI may accept the company's annual verification audit as objective evidence required by 46 CFR 136.210(b)(1), that the vessel meets the external management audit requirements found in 46 CFR 138.315(a)(1).

6. POLICY. An owner or managing operator and a TPO of vessels choosing a TSMS option and seeking to obtain a vessel's initial COI may use the following options as a means to provide objective evidence

of a vessel's use of an ISM-based SMS or Coast Guard accepted SMS as provided for in 46 CFR 138.225.

- a. Coast Guard accepted existing safety management system (Such as RCP) - with an external management audit completed within three years: A TPO may reduce the breadth and depth of the external management audit required for the TSMS Certificate. This may include only a sample of the TSMS elements to verify compliance. A vessel using this option must have been credited with an external vessel audit within three years, and successfully completed a survey in accordance with 46 CFR 137.202(a) within one year prior to the date the vessel is scheduled for its initial COI issuance. Also, there must be no outstanding major non-conformities associated with either the vessel's audit or survey on the date the vessel is scheduled for its initial COI issuance. Consistent with 46 CFR 138.225(d), the OCMI, who will be conducting the initial COI inspection, must be able to examine the materials submitted by the owner or managing operator at least 30 days before the date the vessel is scheduled to be inspected to see if it contains objective evidence that non-conformities were identified and corrected. Per 46 CFR 138.410(a), any external audit (management/vessel) must be conducted by an auditor from a TPO.
- b. Coast Guard accepted existing safety management system (such as RCP) - No external vessel audit within three years: If the owner or managing operator has been issued a TSMS Certificate, but a vessel associated with the TSMS certificate has not undergone a external vessel audit, or the audit is beyond three years of the date the vessel is scheduled for its initial COI issuance, the TPO must conduct a vessel audit and confirm the completion of a satisfactory survey per Subchapter M regulations. The survey may either be an external survey performed by a TPO or an internal survey performed by appropriately-qualified in-house or contract personnel. An internal survey program is subject to the oversight of a TPO, but that oversight need not include a visit to the vessel unless the TPO has reason to question the validity of the survey report or otherwise determines a visit is needed. Consistent with 46 CFR 136.210, 137.130(c), 137.202(a), and 138.225(d), the OCMI who will be conducting the initial COI inspection must be able to examine the materials submitted by the owner or managing operator at least 30 days before the date the vessel is scheduled to be inspected to see if it contains objective evidence that non-conformities were identified and corrected.
- c. ISM Code existing safety management system: The OCMI will verify that the Document of Compliance (DOC) and Safety Management Certificate (SMC) associated with a vessel using an ISM Code SMS are current and properly endorsed. Provided the verification was completed within the time frame specified by 33 CFR 96.330(f), the OCMI may accept the most recent DOC audit as objective evidence of compliance with 46 CFR 138.315(a) (1). In addition, the OCMI may accept SMC audits conducted within three years of the date the vessel is scheduled for its initial COI issuance as objective evidence the vessel is in compliance with 46 CFR 138.315(b)(1). Additionally, the OCMI should be provided with objective evidence such as documentation of an internal or external survey that demonstrates the vessel is in compliance with the applicable portions of Subchapter M. The audit and survey must indicate that there are no outstanding major non-conformities associated with the vessel or its SMS. Consistent with 46 CFR 136.210, 137.130(c), 137.202(a), and 138.225(d), the OCMI who will be conducting the initial COI inspection must be able to examine the materials submitted by the owner or managing operator at

least 30 days prior to the date the vessel is scheduled to be inspected to see if it contains objective evidence that non-conformities were identified and corrected.

- d. For the purposes of issuance of a vessel's initial COI, 46 CFR 138.115 states, "the owners or managing operators selecting the TSMS option must obtain a TSMS Certificate at least six months before obtaining a COI for any of their vessels covered by the TSMS certificate." In lieu of meeting 46 CFR 138.115, a company may submit objective evidence to the Coast Guard that it and its vessels have been operating under an existing safety management system per 46 CFR 138.225, for a minimum of three years, as an equivalent level of safety, and will not be required to have a TSMS Certificate 6 months prior to the issuance of a vessel's initial COI. This objective evidence includes, but is not limited to, external management audit reports covering a minimum of three years prior to the date of the issuance of a vessel's initial COI. The company **must** possess a TSMS Certificate prior to the date of the issuance of a vessel's initial COI, if this "3-year objective evidence" equivalency is used by the company.
7. **ACTION.** OCMI's shall be guided by the information in this policy letter when towing vessel owners or managing operators are seeking to use ISM or other existing safety management systems to meet certain requirements under subchapter M for a vessel's issuance of an initial COI. When a COI is issued under the provisions of this policy letter, the following endorsement will be added to the vessel's COI to indicate use of this policy:

"This COI is issued in consideration of the provisions contained in 46 CFR Part 138, on the basis of objective evidence provided by [insert name of TPO or TPOs], an approved Third Party Organization, and the vessel possesses [pick one] a valid TSMS Certificate or both a valid Document of Compliance and Safety Management Certificate for the existing safety management system used on the vessel."
8. **ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS.** Environmental considerations were examined in the development of this policy letter and have been determined not to be applicable.
9. **DISCLAIMER.** This policy letter guidance is neither a substitute for applicable legal requirements, nor a rule. It is not intended nor does it impose legally-binding requirements on any party. It represents the Coast Guard's current thinking on this topic and may assist industry, mariners, the general public, and the Coast Guard, as well as other Federal and state regulators, in applying statutory and regulatory requirements. An alternative approach may be used for complying with these requirements if the approach satisfies the requirements of the applicable statutes and regulations. If you want to discuss an alternative approach (you are not required to do so), you may contact the Coast Guard Office of Commercial Vessel Compliance (CG-CVC) who is responsible for implementing this guidance.
10. **QUESTIONS.** Questions concerning this policy letter and guidance should be directed to the Office of Commercial Vessel Compliance, COMDT (CG-CVC), Domestic Compliance Division at CG-CVC-1@uscg.mil. This policy letter and other domestic vessel policy documents are posted on the CG-CVC website at http://www.uscg.mil/hq/cgcvc/cvc/policy/policy_letters.asp.