



16711/Serial No. 1567
CG-CVC Policy Letter 17-10
November 28, 2017

From: M. Edwards, CAPT
COMDT (CG-CVC)

To: Distribution

Subj: DEFICIENCY RECORDING AND REPORTING FOR VESSELS USING A TOWING
SAFETY MANAGEMENT SYSTEM (TSMS) OPTION

Ref: (a) Title 46, Code of Federal Regulations (CFR), Section 139.115
(b) Title 46, Code of Federal Regulations, Section 136.110
(c) Title 46, CFR, Section 137.120
(d) Title 46, CFR, Section 137.130
(e) Title 46, CFR, Section 136.240(a)(4)
(f) Title 46, CFR, Section 137.215(d)
(g) Title 46, CFR, Section 138.410(f)

1. PURPOSE. The purpose of this policy letter is to provide guidance to the Towing Vessel National Center of Expertise (NCOE), Officer(s) in Charge, Marine Inspection (OCMI), Third Party Organizations (TPO), and the marine industry on the recording and reporting of deficiencies and non-conformities on vessels whose owners have chosen to use the TSMS option.
2. DIRECTIVES AFFECTED. None.
3. BACKGROUND.
 - a. As discussed in reference (a), TPOs remain primarily responsible for verifying that a vessel using the TSMS option is in compliance with the applicable regulations. OCMI shall allow TPOs to ensure that deficiencies or non-conformities are corrected in a timely manner and should provide advice and technical expertise to TPOs as necessary to ensure a vessel is in compliance with the regulations.
 - b. The following definitions, found in reference (b), are germane to this policy letter: *deficiency, major non-conformity, non-conformity, third-party organization or TPO, and unsafe condition.*

4. DISCUSSION.

- a. As stipulated in reference (c), the overall responsibility for vessel compliance rests with the vessel owner and/or managing operator. TPOs conduct independent verifications of a company's TSMS and towing vessels to verify compliance with the requirements of 46 CFR Subchapter M.
- b. A successful quality system proactively identifies areas for improvement, establishes corrective actions, and documents the findings and action. As stated in reference (d), the TSMS must include procedures for reporting and correcting non-conformities and deficiencies, regardless of how they are identified.
- c. The Coast Guard's expectation is that owners and/or managing operators will actively identify non-conformities and document the items in accordance with their approved TSMS. The TPOs will then verify the non-conformities are properly addressed as well as independently verify the vessel and company are in compliance with the regulations. When a non-conformity is found, the TPOs should ensure that corrective measures have been taken, the issue is resolved in a timely manner, and the appropriate documentation is maintained.
- d. The accurate documentation of serious deficiencies or major non-conformities within the Marine Information for Safety and Law Enforcement (MISLE) database is necessary to assess vessel, company, and TPO performance and provide data for future risk based inspection programs. OCMI's are encouraged to periodically review the data within MISLE to better define the scope of inspections on all towing vessels as well as inform the industry of trends in vessel compliance.

5. ACTION. The NCOE, OCMI's, TPOs, and towing vessel owners and managing operators should refer to this Policy Letter if deficiencies, non-conformities, or major non-conformities are observed on a vessel using a TSMS option.

6. POLICY. When a condition exists that is not in compliance with the regulations or a company's safety management system, the condition must be corrected and documented. The following guidance should be used when documenting and reporting such conditions:

- a. As required by references (e) through (g), the owner, managing operator or TPO shall notify the local OCMI of any unsafe condition or major non-conformity and discuss procedures for correcting such an item in accordance with the approved TSMS. The OCMI shall document these conditions within MISLE as work list items.¹ If necessary, the OCMI may impose control actions to ensure the vessel does not pose an unnecessary safety hazard to people, the waterway, or the environment. The identification of the major non-conformity and the successful resolution of the condition, with the concurrence of the OCMI, demonstrate that the vessel's TSMS is functioning properly. Documentation of these conditions and the major non-conformities will not be displayed in the Coast Guard's public facing Port State Information Exchange (PSIX) vessel database.

¹ A MISLE upgrade will be released that will enable the user to select a box marked "Work list". Until this functionality is available, work list items should be noted in the text of the MISLE narrative.

- b. TPOs may identify non-conformities during surveys and audits. Where the TPO issues a non-conformity to the vessel, this demonstrates the TSMS program is effectively working and the OCMI shall not issue a Form CG-835.
 - c. The OCMI may identify minor deficiencies when attending COI inspections, during the course of casualty investigations, or other interactions with the vessel. These minor deficiencies shall be brought to the attention of the vessel master, owner, or managing operator so that they may take appropriate corrective action as described in their TSMS. The OCMI should not enter minor deficiencies into MISLE, but may, if necessary, address the condition of the vessel in the narrative.
 - d. If the OCMI independently identifies serious deficiencies that pose an immediate safety risk to people, the vessel, or the environment, the OCMI shall issue a Form CG-835 noting the condition, corrective action, and any corresponding control action, and expand the exam to determine if the underlying cause of the deficiencies was attributed to a failure in the vessel's TSMS. The master, owner, or managing operator shall be provided a copy of the Form CG-835 along with the TPO. If the OCMI has objective evidence that a deficiency is also attributed to the TPO's failure to take appropriate action, the OCMI may initiate a Quality Case for further action by CG-CVC and/or, in accordance with 46 CFR 138.510(a), direct the TPO to demonstrate the TSMS complies with the requirements of 46 CFR Subchapter M. The NCOE may assist the OCMI with questions regarding the initiation of a Quality Case and will work with CG-CVC regarding details for a TPO-specific review. Serious deficiencies identified by the OCMI will be documented in MISLE as deficiencies and not as work list items. These deficiencies will appear in the public facing PSIX database.
 - d. The OCMI may allow a TPO to clear an outstanding deficiency; however, the Form CG-835 must clearly state this permission. If a TPO should clear the Form CG-835, the TPO should notify the issuing OCMI that the item has been cleared within 72 hours of clearing the item.
 - e. If a major non-conformity is observed during an internal survey or audit, the company shall notify the TPO that issued the TSMS. The TPO shall make the notification as noted in paragraph 6.a.
 - f. A TPO may at any time request the OCMI issue a Form CG-835 to a vessel. The OCMI may issue the CG-835 to the vessel and provide a copy to the TPO.
7. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS. Environmental considerations were examined in the development of this policy letter and have been determined not to be applicable.
8. 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

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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.

9. **QUESTIONS.** Questions concerning this policy letter and guidance should be directed to 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 <https://Commercial-Vessel-Compliance/CG-CVC-Policy-Letters/>, then select “2017”.

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