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September 11, 2017

Mr. Jeffrey G. Lantz
Director of Commercial Regulations and Standards
U.S. Coast Guard
2703 Martin Luther King Jr. Avenue, SE
Washington, DC 20593

Re: Evaluation of Existing Coast Guard
Regulations, Guidance Documents,
Interpretative Documents, and
Collections of Information (Docket
No. USCG-2017-0480)

Dear Mr. Lantz:

On behalf of AWO's member companies, we are writing to supplement our earlier submission to this docket, dated July 25, 2017, in order to provide additional input on regulations promulgated by the U.S. Coast Guard that may be appropriate for repeal, replacement or modification in accordance with Executive Order 13777, "Enforcing the Regulatory Reform Agenda." AWO is the national trade association for the tugboat, towboat and barge industry, representing 350 member companies in an industry that operates 5,500 towing vessels and 31,000 barges on the U.S. inland and intracoastal waterways, all three coasts, and the Great Lakes, and that employs more than 50,000 Americans across the country.

AWO strongly supports the towing vessel inspection regulations at 46 CFR Subchapter M, and in particular, the well-considered approach that allows towing companies to document compliance with Subchapter M through the Towing Safety Management System, or TSMS, option. However, AWO urges the Coast Guard to amend 46 CFR §138.315(b)(3), which reads, "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" (emphasis added). The requirement for external vessel audits to be conducted randomly over the five-year period of validity of the TSMS certificate directly contradicts the requirements of the two most widely used existing safety management systems in the towing industry; limits operational flexibility and imposes unnecessary costs on towing vessel operators; and will not result in safety benefits that justify these costs.

In the preamble to the Subchapter M rule, the Coast Guard states, "We call for the vessels to be selected randomly to provide a risk-based approach and maximum flexibility for ensuring continual compliance with this subchapter." While we understand and appreciate the Coast

Guard's intention to promote continual compliance, the implementation of a safety management system is in and of itself the best way to promote continuous compliance. The purpose of a safety management system is to drive continuous improvement in safety performance, and its pillars—which are reflected in the TSMS requirements of Subchapter M—include procedures for verifying vessel compliance, assessing performance, identifying and correcting non-conformities, and applying lessons learned. Towing vessel operators who choose the TSMS option will be required to undergo regular internal and external management and vessel audits, as well as annual vessel surveys, under the ongoing oversight of Coast Guard-approved third-party organizations (TPOs).

The AWO Responsible Carrier Program (RCP), which has been accepted by the Coast Guard under 46 CFR §138.225(b) as an existing safety management system, requires 100 percent of the vessels operated by RCP-certified companies to be externally audited once in a five-year period, within three months of the audit anniversary date. This is consistent with the requirements of the International Safety Management (ISM) Code, which the Coast Guard has recognized under 46 CFR §138.225(a) as compliant with Subchapter M's TSMS-related requirements; the ISM Code requires vessels to hold a Safety Management Certificate that is valid for a five-year period and that is based on the satisfactory completion of an initial external audit and an intermediate external audit completed between the 24th and 36th month of the certificate's period of validity (33 CFR §96.340(e)). Although the frequencies differ, neither the RCP nor the ISM Code require that external vessel audits be conducted randomly in order to be effective in ensuring continuous compliance.

The Coast Guard has promoted the TSMS option as the option which provides towing vessel operators with the greatest operational flexibility. In FAQ 137-003, the Coast Guard asserts, "Companies that employ the TSMS option will be afforded greater flexibility to complete required surveys and audits, [...] which should reduce vessel out of service time." However, under 46 CFR §137.200, a vessel that chooses the Coast Guard option must undergo its annual inspection within three months of the anniversary date of its Certificate of Inspection (COI), and must work with the cognizant Officer in Charge, Marine Inspection (OCMI) to schedule an inspection at a time and place the OCMI approves. These requirements provide a company that selects the Coast Guard option with a high degree of certainty, and a significant say, regarding when and where a vessel will be inspected, relative to companies that choose the TSMS option and are subject to random external vessel audits. Depending on where a vessel that has chosen the TSMS option is engaged at the time that its TPO announces it has been selected for an audit, the costs of arranging for the transport of an auditor to that location could be significant, not to mention the costs of holding the vessel up so that an audit can be conducted.

AWO believes that these costs are unjustified because the requirement for randomization will not result in superior safety outcomes. A vessel that is audited in the first year of the initial TSMS certificate's 5-year validity period may not be audited again until the fifth year of its renewed TSMS certificate's 5-year validity period, resulting in a gap of 9 or 10 years between audits. In contrast, requiring external vessel audits to be conducted on a fixed 5-year cycle not only gives vessel operators more certainty, but provides for more consistent oversight of vessels by the Coast Guard-approved TPO.

Were the Coast Guard to strike the words “selected randomly and” from 46 CFR §138.315(b)(3), there would be no reduction in a TPO’s authority or ability to ensure a towing company’s continuous compliance with the TSMS. If the auditor is not satisfied that the company has effectively implemented its TSMS, he or she has the authority under 46 CFR §138.410(c) to broaden the scope of an audit. Under 138.305(e), the TPO that issued the TSMS certificate has absolute authority to rescind it for non-compliance with the TSMS requirements of Subchapter M.

As it is, 46 CFR §138.315(b)(3) will be a significant deterrent to choosing the TSMS option for many AWO members. Removing the words “selected randomly and” would eliminate a significant disincentive to use of the TSMS option. The experience of AWO members with the RCP has demonstrated that implementing a safety management system has produced quantifiable benefits in the form of fewer vessel incidents and personal injuries, which, in turn, lead to cost savings due to reduced insurance premiums and avoidance of expenses such as vessel repairs and time out of service. In addition, removing barriers to use of the TSMS option will free up Coast Guard resources to be deployed in targeted, risk-based ways, thereby further promoting the safety and efficiency of towing vessel operations. Revising 46 CFR §138.315(b)(3) to remove the words “selected randomly and” is thus entirely consistent with the goals of the Administration’s regulatory reform initiative.

Thank you again for the opportunity to comment on the Coast Guard’s evaluation of regulations that may be appropriate for repeal, replacement or modification. We would be pleased to answer any questions or provide further information as the Coast Guard sees fit.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Carpenter".

Jennifer A. Carpenter
Executive Vice President & COO