



801 North Quincy Street
Suite 200
Arlington, VA 22203

PHONE: 703.841.9300 Ext. 252
EMAIL: bbailey@americanwaterways.com

Brian S. Bailey
Director – Safety & Environmental Stewardship

May 3, 2018

MEMORANDUM

TO: AWO Carrier Members
AWO-Recognized Third-Party Auditing Organizations

FROM: Brian S. Bailey

CC: Tom Allegretti

RE: U.S. Coast Guard Operational Enforcement Discretion

Please be advised that this correspondence is sent on behalf of the AWO Responsible Carrier Program® Standards Board to advise its RCP-certified members and recognized third-party auditing organizations regarding recent U.S. Coast Guard field notices concerning Subchapter M-related operational enforcement discretion.

The role of the Standards Board is to make recommendations to the AWO Board of Directors on maintaining and strengthening the integrity of the RCP. This includes interpretations and changes to the RCP, the RCP audit process, oversight of AWO-recognized third-party auditing organizations, and applications from organizations seeking to become AWO-recognized third-party auditing organizations.

Recently, the U.S Coast Guard Eighth and Ninth Districts have sent notices to their operational commanders and inspectors permitting them to utilize their authority to “defer enforcement” of, or “authorize departures” from, specific requirements of Subchapter M that have been deemed to pose a minimal risk to the operational safety of the towing vessel fleet. Although it is up to each Coast Guard inspector or investigator to decide how to respond to a vessel deficiency, which is a failure to meet minimum regulatory or statutory requirements, these notices have led to questions from AWO carrier members and AWO-recognized TPOs about whether or not non-compliance with these requirements after Subchapter M takes effect on July 20, 2018, is consistent with the requirements of the RCP.

The RCP clearly states, “All carrier members, as a baseline, must follow all applicable federal laws and regulations concerning marine safety and environmental protection, including 46 CFR Subchapter M. All company policies and procedures must be consistent with applicable law and regulation and with the guidelines provided in the RCP.”¹

¹ Responsible Carrier Program A.3

Corrective action procedures, which are required under RCP Addendum C and under 46 CFR Part 138, provide a path forward by which AWO carrier members may document deficiencies and non-conformities, and continue to operate under a corrective action plan, while remaining consistent with the requirements of RCP and federal regulation. According to the procedures in their TSMS, and working with their TPO, carrier members should document Subchapter M requirements with which their vessel(s) will not be in compliance on July 20, 2018, including requirements that have been included in deferred enforcement notices. By identifying the deficiency and putting a corrective action plan in place – even if the timeframe for initiating corrective action is in the future – a company can demonstrate to the Coast Guard and to internal and external auditors that its vessel is operating consistently with both its TSMS and federal regulations.

The RCP Standards Board takes the view that identification of a non-conformity or deficiency and documentation of that non-conformity or deficiency in the company's TSMS through its corrective action procedures, even if the timeframe for corrective action extends past Subchapter M's effective date, is wholly acceptable when it comes to meeting the baseline standard of the RCP that all carrier members must follow all applicable federal laws and regulations. The Standards Board directs AWO-recognized TPOs to educate their auditors accordingly so that no AWO carrier member is penalized for violating RCP A.3 if a deficiency or non-conformity has been properly documented in a company's TSMS.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions or concerns.