

138-001

Why require the submission of documentation of the initial audit and one full audit cycle when the TSMS certificate verifies TSMS compliance?

The requirement to submit reports for an initial audit and one full audit cycle of 3-years is for those individuals wishing to show full compliance with either ISM or an alternate Safety Management System scheme as permitted under 46 CFR 138.225(b). A company using an SMS scheme accepted under §138.225(a) will not need to get a TSMS certificate. In the case of ISM, the Document of Compliance and Safety Management Certificate would serve in place of a TSMS Certificate. A company using an alternate TSMS approved under 138.225(b) will need to obtain a TSMS Certificate from a TPO.

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Answered 14 Nov 2016

138-002

What must a TPO do before issuing a TSMS Certificate?

Prior to issuance of the company's TSMS Certificate, a TPO must review the TSMS to verify compliance with the requirements of 46 CFR 138.220 and conduct a Management Audit as described in 46 CFR 138.315(a). The TPO is not required to visit individual vessels before issuing the TSMS certificate.

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138-003

The requirement for internal auditors to have no responsibility for the development or implementation of the TSMS is unclear, unnecessarily restrictive, and differs from the ISM approach. Does it apply to both internal management and vessel auditors ?

The intent of 46 CFR 138.310(d)(3), which states that the internal auditor may not be a person involved in the implementation of the TSMS, is to meet the desired objectivity of a third-party organization. The Coast Guard amended § 138.310(d)(4) in the Final Rule to include qualifying language from ISM code 12.4, stating that the auditor must be independent of the procedures being audited, unless this is impracticable due to the size and the nature of the organization. Thus, very small organizations may potentially use someone from within their organization to perform the audit.

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138-005

What are the key differences between the “audit” and “survey” requirements for towing vessels covered by Subchapter M of Chapter I of 46 CFR?

There are significant requirements for both audits and surveys throughout Subchapter M. Most survey requirements are contained in Part 137 (Vessel Compliance) and most audit requirements are found in Part 138 (TSMS), with specific definitions for audit and survey provided in Part 136 (§ 136.110). All concerned parties should review Subchapter M closely to consider the details for “internal” versus “external” audits and surveys.

Some of the highlights of the audit programs are as follows:

1. Management and vessel audits requirements in the rule are specifically intended to verify the effectiveness of the TSMS, for those companies utilizing the TSMS option.
2. Internal management audits must be conducted annually (§ 138.310).
3. External audits must be conducted prior to the issuance and renewal of the TSMS certificate.
4. A mid-period external audit is required for management (§ 138.315).
5. An external audit for all vessels covered by the TSMS certificate must be completed during the validity of the certificate. (138.315)
6. An internal audit may be conducted by an entity outside the organization being audited. However, only a USCG-approved third party organization (TPO) can conduct an external audit.
7. External management and vessel audit results must be submitted to the USCG (§ 138.505).

Surveys are an examination of the material condition of the vessel. Key highlights of survey program requirements in Subchapter M include the following:

1. The scope of the vessel survey (§ 137.220) is significant, and the same regardless of which survey program (internal or external) is implemented.
2. Internal or external surveys of vessels are required annually.
3. A satisfactory survey report is considered objective evidence that the material condition of the vessel complies with Subchapter M. This evidence is required prior to the issuance or renewal of the Certificate of Inspection (COI)- (§ 136.210 and §137.202).
4. For the internal survey program, the TPO responsible for auditing the TSMS must be notified prior to any drydock/internal structural survey activities and may elect to attend the survey (§ 137.315).
5. For the external survey program, a TPO surveyor must attend the drydock.

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138-007

Will the Coast Guard accept the AWO's Responsible Carrier Program as a TSMS? If so, when? If not, why not? Are there any other plans that the Coast Guard is considering as equivalent to a TSMS in addition to the AWO's RCP program.

AWO initially submitted their Responsible Carrier Program (RCP) for approval over a year ago and the Coast Guard responded that a final determination would need to wait until publication of the final rule and AWO could resubmit the RCP for consideration at that time. We have maintained a dialogue with AWO on this matter and recently met with them on this specific topic. AWO has resubmitted the RCP for final approval and we are preparing the Coast Guard's response. To date, no other entities have submitted an existing safety management system for our consideration.

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138-008

Why must a copy of the TSMS certificate be maintained on each towing vessel that is covered by the TSMS certificate?

Towing vessels that are inspected under the TSMS option must carry onboard a copy of the TSMS certificate as objective evidence that the vessel is enrolled under the TSMS option in accordance with 46 CFR 138.305.

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Answered 28 Dec 2016

138-010

Why must vessels be selected for external audits, randomly, if all vessels covered by the TSMS certificate must be audited?

46 CFR 138.315(b)(3) requires each vessel covered by a TSMS certificate to undergo an external audit at least once during the five year validity period of the certificate. The vessels must be selected randomly and distributed as evenly as possible. In the Preamble to the regulation, middle column of page 40034, we state that the purpose for requiring audits to be conducted randomly is to provide a risk based approach and maximum flexibility for ensuring continual compliance with this subchapter.

The flexibility provided in 46 CFR 138.315(b)(3) allows operators and TPOs the ability to schedule random audits through risk based targeting, or through other effective means, to verify that their individual management systems are functioning properly.

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138-011

The Coast Guard should clarify that auditors are not required to witness training, including drills, unless it is necessary to verify TSMS effectiveness.

Auditors are required to witness training and drills. This is discussed in the Preamble to the regulation, first column of page 40027, the auditor will focus on the operational performance of the crew to assess the competency in the performance of the assigned roles. For such an audit, the crew must be present and the vessel must be ready to demonstrate the performance upon request.

Both internal and external audits require that the auditor must be provided access to examine any requested documentation, question personnel, examine vessel equipment, witness system testing, and observe personnel training, including drills, as necessary to verify TSMS effectiveness, in accordance with §§ 138.405(d) and 138.410(c).

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138-020

Will deficiencies identified as part of the TSMS show up on PSIX?

No. Only deficiencies identified during a CG inspection will show up on PSIX. This includes inspections for certification, which will occur once every five years, all marine casualties and may also include major non-conformities or an unsafe condition as per the definitions provided in § 136.110.

Deficiencies identified by a vessel's TPO will be documented by the TPO in accordance with the vessel's TSMS. Deficiencies identified when both the TPO and Coast Guard are present will be documented by the TPO in accordance with the vessel's TSMS, with the exception of an inspection for certification.

TPO procedures and company TSMS must address how to document and resolve non-conformities identified during audits and surveys. As long as Companies take corrective actions as required by their TSMS to rectify the non-conformity; they will not be entered into the MISLE system.

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138-024

Will the Coast Guard document deficiencies found while onboard inspected towing vessels utilizing a Third Party Organization and Towing Safety Management System, and if so, how?

Documentation of deficiencies by the Coast Guard will depend on the type of inspection and presence of the vessel's TPO.

- Deficiencies identified by a vessel's TPO will be documented by the TPO in accordance with the vessel's TSMS.
- Deficiencies identified when both the TPO and Coast Guard are present will be documented by the TPO in accordance with the vessel's TSMS, with the exception of an inspection for certification.
- Deficiencies identified during an inspection for certification, which will occur once every five years, will be documented by the Coast Guard.
- The Coast Guard will document all marine casualties and may document major non-conformities or an unsafe condition as per the definitions provided in § 136.110.

Coast Guard inspectors will typically inspect TSMS vessels only once in five years, unless involved in a marine casualty. However, when deficiencies are found during those inspections, it may be indicative of a failed or failing system. To ensure effective oversight of vessels that utilize a TSMS and effective oversight of their Third Party Organizations (TPO), deficiencies issued to towing vessels during Coast Guard inspections must be documented and tracked. The CG-835, Notice of Merchant Marine Inspection Requirements, is the method to document deficiencies identified during Coast Guard inspections onboard U.S. vessels. Marine Safety Manual Volume II, Section A, Chapter 3, requires all outstanding deficiencies issued on a CG-835 to be entered into MISLE.

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