



16711/Serial No. 1522
CG-CVC Policy Letter 17-04
(CH-2)
December 31, 2019

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

To: Distribution

Subj: SUBCHAPTER M THIRD PARTY ORGANIZATION (TPO) GUIDANCE, CHANGE 1

Ref: (a) Inspection of Towing Vessels Final Rule, 81 FR 40005, published 20JUN16
(b) Title 46, Code of Federal Regulations (CFR), Part 139
(c) Title 46, CFR, Section 139.155
(d) CG-CVC Policy Letter 17-10, 28NOV17

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), and the marine industry on TPO requirements as discussed in reference (a).
2. **APPLICATION.** This policy letter is intended for use by the NCOE, OCMI, and entities within the maritime industry that are or want to become TPOs in accordance with reference (b).
3. **DIRECTIVES AFFECTED.** CG-CVC Policy Letter 17-04 Change 1 is hereby cancelled and superseded by CG-CVC Policy Letter 17-04 Change 2. The update is limited to the policy letter enclosure: Subchapter M Third Party Organization Guidebook, "Internal Survey Program" (section 5, first paragraph), which discusses intervals for surveys conducted as one event versus as multiple events.
4. **BACKGROUND.**
 - a. As discussed in reference (a), vessel operators have the choice of two inspection regimes. Under the Towing Safety Management System (TSMS) option, routine surveys and audits are primarily performed by a TPO, including certain classification societies, with limited oversight and audits by the Coast Guard. Alternatively, under the Coast Guard inspection option, all inspections are conducted by the Coast Guard.
 - b. As part of the TSMS option, the company management undergoes an audit while vessels enrolled in an external survey program or internal survey program receive a survey or audit respectively. TPOs provide the necessary oversight, on behalf of the Coast Guard, to ensure vessel owners and managing operators as well as their vessels have systems in place to meet the requirements in 46 CFR Subchapter M.

5. DISCUSSION.

- a. The Coast Guard's expectation is that TPOs will conduct independent verifications to assess if a TSMS, the company management, and the associated towing vessels comply with the applicable requirements contained in 46 CFR Subchapter M. To accomplish this, the TPO must have a strong understanding of reference (a) and be able to apply applicable regulations to the approval of a TSMS and continuing oversight of both company management and the associated vessels.
- b. Neither the regulations nor this guidebook could outline the requirements for every scenario a TPO may encounter. TPOs should use their professional judgment to assess the circumstances presented along with good marine practice to promote safety and environmental compliance.
- c. To assist TPOs in meeting Coast Guard expectations, the Coast Guard will, from time-to-time engage with TPOs to provide clarification on policy to promote consistency. The NCOE is the primary Coast Guard contact for a TPO as questions arise regarding TPO applications, TSMS certificates, audits, and surveys. For specific issues related to a vessel or operating requirements, it may be necessary for a TPO to contact the local OCMI.

6. ACTION. The NCOE, OCMI and TPOs should refer to this policy letter and its enclosure when they have questions concerning work done on the part of a TPO to assist an owner or managing operator and their vessels achieve compliance with Subchapter M, 46 CFR Parts 136 through 144.

7. POLICY. This policy letter and its enclosure are meant to clarify the roles and responsibilities of a TPO outlined in reference (b). In addition, the following items pertain to the use of this policy letter:

- a. In the event there is a conflict with this policy letter or its enclosure with the regulations found in reference (b), the regulations take precedence. The conflict should be brought to the attention of the NCOE or CG-CVC at the earliest possible opportunity.
- b. TPOs and prospective TPOs may use the procedures identified in reference (c) relating to appeals of suspended or revoked approvals granted in reference (b). Inquiries other than appeals should be sent to the NCOE. Electronic submissions are acceptable.

8. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS. Environmental considerations were reviewed regarding this policy letter and determined to be not 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.

Subj: SUBCHAPTER M THIRD PARTY ORGANIZATION
(TPO) GUIDANCE

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10. **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@uscg.mil. This policy letter and other Domestic Vessel Policy documents are posted on the CG-CVC website at <http://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Inspections-Compliance-CG-5PC-/cgcvc/>.

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Enclosure: Subchapter M Third Party Organization (TPO) Guidebook V.3 December 2019

THIRD PARTY ORGANIZATION (TPO) GUIDEBOOK



V.3 December 2019

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To suggest additions or corrections or if you have questions or concerns, please contact the Coast Guard's Towing Vessel National Center of Expertise (TVNCOE) in Paducah, Kentucky at:

Detachment Chief
U.S. Coast Guard
Towing Vessel National Center of Expertise
504 Broadway Street, Suite 101
Paducah, KY 42001

Main Phone: 270-444-7715 Fax: 270-444-8094
Email: tvncoe@uscg.mil
Website: <https://www.dco.uscg.mil/tvncoe/>

1. What is the purpose of this guidebook?

The information in the guidebook is meant to aid in the understanding of the Third Party Organization (TPO) requirements within Subchapter M of 46 Code of Federal Regulations (CFR), Chapter I. This guidebook is intended to be a living document and may be updated by the Coast Guard based on lessons learned throughout the implementation process. Also, this guidebook is a companion document and, therefore, does not restate all regulatory requirements. Section IV of the preamble to the Inspection of Towing Vessels final rule (81 FR 40004, June 20, 2016) and its Subchapter M regulations should be read before using this guidebook.

The primary audience for this guidebook is organizations interested in applying to become TPOs to conduct compliance activities on towing vessels subject to Subchapter M.

This guidance is not a substitute for applicable legal requirements, nor is it itself a rule. It is not intended to nor does it impose legally binding requirements on any party. It represents the Coast Guard's current stance on the topics 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. You may use an alternative approach for complying with these requirements if the approach satisfies the requirements of the applicable statutes and regulations. If you wish to discuss an alternative approach, you may contact the Coast Guard's Towing Vessel National Center of Expertise (TVNCOE), which is responsible for implementing this guidance.

Unless otherwise stated, all regulatory citations (e.g., "§136.110" or "part 139") in this guidebook refer to 46 CFR Subchapter M regulations.

2. What is a Towing Safety Management System (TSMS)?

A Towing Safety Management System (TSMS) is described in §138.205(a) as a system whose purpose is to promote continuous regulatory compliance. The TSMS provides early detection of problems or deficiencies through continuous attention to preventative vessel maintenance. A TSMS also provides a means to identify risks and implement sustainable procedures to reduce these risks in the context of the vessel's operations and company oversight. A fully implemented TSMS is not a checklist or just a book on the shelf, it is meant to compliment the vessel operations and provide the company and crew with a clearly defined system that promotes safety and environmental compliance. With a TSMS, a towing vessel's company or managing operator develops measures aimed at reducing errors so that the vessel will be more likely to continue operations without unplanned interruptions.

What are the advantages of the TSMS option?

Companies that employ the TSMS option are afforded greater scheduling flexibility to complete required surveys and audits using designated company employees or a TPO, which may reduce vessel downtime. TSMS vessels will generally not need to schedule a Coast Guard marine inspector for annual, drydock, or internal structural exams thereby reducing time the vessel may remain idle waiting for Coast Guard resources. TSMS vessels are also afforded greater flexibility to resolve incidents that might otherwise delay a towing vessel that uses the Coast Guard option, as these vessels may be compelled to wait on the availability of a Coast Guard marine inspector

prior to resuming operations. In the event a non-conformity is identified, vessel owners and operators may work through the TPO to resolve the issue.

3. What is a Third Party Organization (TPO)?

TPOs are organizations approved by the Coast Guard to conduct independent verifications to assess whether a company's TSMS or towing vessels meet Subchapter M requirements, which includes operations, manning, structural, engineering, lifesaving, firefighting equipment, and other similar requirements.

The TPO plays a key role helping to ensure that a towing company operating under the TSMS maintains compliance with the regulatory requirements, including requirements for audits and surveys. The TPO documentation requirements in §139.165 also help to ensure that non-conformities or substandard conditions are identified, tracked, and corrected. The TPO should provide a method for the Coast Guard to have access to vessel records at any time, including required documentation outlined in §§137.135 and 138.220(d).

The USCG will notify TPOs upon publication of new Subchapter M related regulations, policies, and guidance and will routinely post updates on the TVNCOE website (<https://www.dco.uscg.mil/tvncoe/>).

4. How do I become a TPO?

An organization, other than a recognized or authorized classification society, seeking to be approved as a TPO must submit a written request to the TVNCOE in accordance with §139.120 and indicate which authorities they are applying for as described in §139.115. The documentation may be hard copy or electronic format (for example, MS Word or .pdf files). Electronic submissions (less than 10 MB) can be submitted to the TVNCOE Email, tvncoe@uscg.mil, and hard copy requests may be mailed to:

Detachment Chief
U.S. Coast Guard
Towing Vessel National Center of Expertise,
504 Broadway Street, Suite 101
Paducah, KY 42001

The TPO application must include the information found in §139.120. A TPO Application Job Aid is attached to this guidebook and may also be downloaded from the TVNCOE website.

Section 139.110 provides that any classification society that is recognized or authorized under 46 CFR part 8 is approved to act as a TPO. These organizations should contact the TVNCOE to discuss their desire to act as a TPO. The TVNCOE will, in turn, identify any additional information, including lists of auditors and surveyors, which may be required to be submitted prior to conducting Subchapter M compliance activities as a TPO.

TPOs must maintain a list of current and former auditors and surveyors. Section §139.135(c) requires a TPO to notify the TVNCOE upon removal of a member from the TPO's list of approved auditors or surveyors. This notification should be made as soon as practicable. An initial notification may be via email, but should be followed up in writing and include a copy of the TPO's revised list of auditors and surveyors required by §139.135(a). For new auditors or surveyors, TPOs must submit their experience, background and qualifications to the TVNCOE upon placement on the list of auditors and surveyors.

The TVNCOE will assist applicants throughout the application process and will notify the applicant if any of the required documents or information are missing. If approved, the TPO's approval letter will state the specific authority granted to the organization under part 139 and the date such authority expires as well as the functions the TPO may perform. Any person directly affected by a decision or action of the TVNCOE, after requesting re-consideration of the decision or action by the TVNCOE, may make formal appeal of that decision or action to Commandant (CG-CVC) in accordance with the procedures contained in 46 CFR 1.03-15.

5. What are the main responsibilities of a TPO?

The primary TPO function, as found in 46 CFR 139.115, is to ensure that towing vessels comply with provisions of Subchapter M. TPOs may be authorized to do any or all of the following:

- Audit the TSMS and the vessels to which they apply to verify compliance to the applicable provisions of Subchapter M.
- Issue TSMS certificates to owners or managing operators who are in compliance with part 138 (TSMS) of Subchapter M.
- Conduct surveys of towing vessels to verify compliance with the applicable provisions of Subchapter M.
- Issue survey reports that detail the results of surveys that are carried out in compliance with part 137 (Vessel Compliance) of Subchapter M.

The regulations define the scope of the vessel surveys (see §§137.215 and 137.220) and audits (see §§138.315, 138.410, and 138.505). A TPO may be involved in a variety of surveys and audits on a particular vessel or with the owners or managing operators. TPOs, its managers, and employees engaged in audits and/or surveys are not permitted to be involved in activities that create or otherwise limit the auditor, surveyor, or organization's independent judgment (See 46 CFR 139.120). Authorized Classification Societies approved under 46 CFR Part 8 that are considered approved TPOs pursuant to 46 CFR 139.110, are reminded to refer to their respective agreements with the Coast Guard for any additional provisions related to the exclusivity of surveyors/auditors and avoiding conflicts of interest.

Review of a company's TSMS

Prior to the issuance of a TSMS certificate, the TPO will review a company's TSMS to ensure it contains all TSMS elements in accordance with §138.220. As part of this evaluation, the TPO will conduct an external management audit of the towing company as specified in §138.315. The TPO will assess towing vessels, if any, covered by the TSMS certificate for compliance with the TSMS requirements in part 138, subpart B. This assessment is for issuing the TSMS certificate and does not require a TPO to visit each vessel. Further, this assessment is not a vessel audit but rather

verification that the company has implemented the management requirements outlined in the TSMS. The TPO's established procedures will determine which and how many towing vessels should be visited during the external management audit.

Issuance or Rescission of a TSMS Certificate

When the TPO is satisfied that the towing company is in compliance with both the TSMS and applicable sections of Subchapter M, the TPO may issue a TSMS certificate to the towing company. The towing company must maintain a list of towing vessels covered by the TSMS certificate in accordance with §138.305(c). Additional guidance for Coast Guard accepted existing safety management systems can be found in CG-CVC Policy Letter 17-02.

If a TPO that issued the TSMS certificate determines that a towing company has not maintained compliance with part 138 requirements, the TPO may rescind the TSMS certificate as provided in §138.305. The TPO should identify the reasons for rescission of the certificate and what must be done in order for the certificate to be reissued. Major non-conformities that lead to rescission of a TSMS certificate must be reported to the local OCMI within 24 hours and to the owner or managing operator's designated representative in accordance with the TSMS applicable to the vessel. In addition, the Coast Guard recommends that the TPO notify the TVNCOE as soon as practicable of a towing company TSMS certificate rescission. The owner or managing operator with the rescinded TSMS will be responsible for ensuring all vessels under that TSMS are notified that their COIs are now invalid and must cease operations until concerns are remedied. The company will also be responsible for locating all vessels operating under the TSMS certificate and to notify the cognizant OCMI(s) where those vessels are located.

Audits (Part 138, subpart D)

Management and vessels are subject to internal and external audits to assess compliance with the TSMS and the vessel standards of Subchapter M. External audits are defined in §136.110 and must be conducted by "a party with no direct affiliation to the vessel, owner, or managing operator being audited." Although contracted parties may conduct internal audits, they will not be credited as external audits for the purposes of subchapter M. Internal audits shall be of sufficient breadth and depth to document the periodic review and evaluation of the company's TSMS to ensure it has been effectively implemented. Management review of audits may lead to additional measures to further improve the effectiveness of the TSMS. Any deficiency or non-conformity found during management review should be provided with appropriate corrective action.

Per §138.410(a), external audits must be conducted by an auditor from a TPO or Recognized Class Society within three years prior to the date the vessel is scheduled for its initial COI issuance. Audits completed by a Responsible Carrier Program (RCP) Auditor prior to the TPO's approval may be accepted.

An *external management audit* may include:

- An opening meeting including an audit plan discussion with senior management;
- An audit-participant list noting each person's position in the company and role in the audit;
- A verification that the TSMS complies with Subchapter M;
- A tour of the towing vessel company to establish familiarization;
- Procedures for determining which towing vessels should be visited during the external management audit;
- A verification that all required records are being maintained (including internal company audits specified in §138.405) and the company has completed any other record keeping obligations in their TSMS;
- Interviews with towing company personnel, in accordance with the audit plan or based on preliminary audit findings;
- If applicable, a review of non-conformities reported during previous audits to verify that the company's investigation, analysis, and resolution of the non-conformities were done in accordance to their TSMS;
- If applicable, verification that corrective action for outstanding non-conformities is completed or is in process. If the corrective action has been implemented, the auditor should indicate the satisfactory implementation (closing out) in the audit report;
- Preparation of observations and determination of any non-conformities;
- A closing meeting; and
- Distribution of the audit report to towing company, TPO senior management, and the TVNCOE. The report should include a recommendation from the auditor(s) to TPO senior management as to whether or not a TSMS certificate should be issued, renewed or suspended, as appropriate.

An *external vessel audit* may include:

- Verification the vessel is on the list, which indicates it is covered by a specific TSMS certificate, along with a copy of that TSMS certificate on board;
- An opening meeting to ensure the master understands the audit plan;
- A list of the crew members' names that participated in the audit and their positions onboard the vessel. The crew list should be attached to the audit plan;
- A tour of the vessel to establish the overall condition;
- Verification that statutory and classification certificates, if applicable, are valid and no surveys are overdue and that conditions of class or corrective actions are addressed;
- Verify all required records including previous internal and external audits, personnel records, vendor safety, etc. are being maintained, and verify that the company has completed any other record keeping obligations with respect to elements of their TSMS;
- Review of specific procedures outlined in the vessel's TSMS for compliance;
- Observation of equipment tests specified in the audit plan;
- Observation of emergency drills;
- Crew interviews according to the audit plan;
- If applicable, review of non-conformities reported during previously conducted audits to verify that the company's investigation, analysis, and resolution of the non-conformities were done in according to the TSMS;
- If applicable, verification that outstanding corrective action for non-conformities are complete or are in process. If the corrective action has been implemented, the auditor should indicate the satisfactory implementation (closing out) in the audit report.

- Determination if there were any non-conformities;
- A closing meeting; and
- Forwarding copies of audit results, non-conformity note(s) and observation(s) to the Coast Guard Officer in Charge, Marine Inspection (OCMI) that issued the COI as well as vessel ownership or management. If any major non-conformities are found during the audit, notifications must be made in accordance with §138.410(f) and the TSMS applicable to the vessel.

Sampling (§138.410)

External audits may be conducted on a sampling basis and should be consistent with the TPO's written audit procedures and supported by both the audit plan and the written audit procedures. Sampling within elements is allowed and should follow guidelines the TPO has set forth. Until sufficient data is available to identify company or vessel trends, sampling should focus on those elements that present the most risk to people, property, and the environment. Once a TPO has had sufficient audits with a vessel owner or managing operator, judgmental sampling could be supported as problem areas are identified, but it should not distract the auditor from assessing other areas. Differences between planned and actual samples are allowed as TPOs adjust the audit trail based on responses, practices, evidence, and observations. Actual samples should be recorded for use in reports and in guiding future audits.

Surveys (Part 137, subparts B and C)

Under the TSMS option, either an internal or external survey program is chosen by the towing company. The surveyor, internal or external, conducts an examination of the vessel, including its systems and equipment, to verify compliance with applicable regulations and requirements. An external survey program employs a TPO surveyor while the internal survey program uses a company-employed surveyor or contracted resources, as detailed in the TSMS, to conduct surveys.

External Survey Program (§137.205)

An external survey program includes the annual vessel surveys required by §§ 137.205(a)(1) and 137.215(b)(1)-(4), and prescribed drydock examinations under §137.310 on each vessel. Companies electing to implement the external survey program must outline, in the TSMS that covers the vessel, the procedures for selecting and using an approved TPO, the duties of that TPO, the process to schedule surveys, and the documentation and recordkeeping requirements of the program in accordance with §137.205. The TSMS procedures applicable to the vessel should be on board the vessel (version-controlled electronic format is acceptable) and available to the crew and surveyor. It is intended that annual surveys under the external survey program take place as one event and will address all of the items described in §137.220. The annual survey due date is based on the anniversary date of the Certificate of Inspection (COI) and may take place within a six-month window, between 90 days prior to and 90 days after the anniversary date. However, surveys for renewal, which occur every five years, must be completed prior to the COI expiration date but not sooner than 90 days prior to the expiration date.

Surveys conducted under the external program must be documented in a report that meets the requirements of §137.135(a). A copy of the report shall be delivered to the vessel owner or managing operator and be made available to the OCMI if requested.

Because annual external surveys are conducted by the TPO for TSMS option vessels, the Coast Guard does not conduct annual inspections or issue an annual endorsement of the COI. The TPO does not endorse the COI; however, objective evidence of annual external surveys conducted in accordance with §137.205 must be maintained for five years, to include vessels certificated under an ISM based system. This objective evidence need not be appended to the COI, but should be kept onboard the vessel and made available to the Coast Guard upon request. At a minimum, this objective evidence must be provided in a report and include the items listed in §137.135.

Internal Survey Program (§137.210)

Under the internal survey program, surveys are conducted by internal or contracted towing company resources as outlined in the TSMS and may take place either as one event or over time during several short visits. If surveys are conducted over time, the interval between successive surveys of any item shall not exceed one year (365 days). If the TSMS prescribes the internal survey be conducted as a single event, then the survey shall be based on the anniversary date of the COI and may take place within a six-month window, between 90 days prior to and 90 days after the anniversary date. However, surveys for renewal, which occur every five years, must be completed within 90 days before the expiration date of the COI. For an internal survey program, the TSMS must outline specific procedures for conducting surveys in accordance with §§137.210, 137.315, and 138.220(c)(1), including how surveys are conducted, scheduled, sequence of scope, documentation, who may conduct surveys, training and qualifications of those persons conducting the survey, what is examined, how non-conformities are reported, and recordkeeping. Of key importance to this program is the designation of a responsible person or persons to oversee the internal survey program compliance and, if necessary, restrict vessel operations in accordance with §§137.210(a)(6) and 137.315(a)(5). The scope of the surveys under the internal program does not differ from that of the external survey program.

An internal survey program includes less frequent interaction between the TPO and the towing company's vessels than an external survey program. Therefore, the audits are the primary method for the TPO to ensure that the TSMS is implemented effectively and follows the required schedule and scope, uses qualified persons, and adequately addresses and reports non-conformities. If, during management and vessel audits, the TPO detects major non-conformities, patterns of improperly maintained or defective equipment, deficient training, or substandard vessel material conditions, the audit should be expanded and proper notifications should be made, as applicable. The TPO may recommend to the OCM I that the vessel be required to transition from an internal survey program to an external survey program.

An internal survey program must be conducted with the oversight of a TPO. The TPO has latitude to determine how they will conduct oversight of a company's internal survey program. TPOs overseeing internal survey programs as specified in §137.130(b) may attend surveys to confirm the vessel's condition and survey methods used by the towing company. TPOs should also periodically interact with the responsible person or persons in management, as stated in the TSMS applicable to the vessel, to ensure the internal survey program complies with the TSMS and Subchapter M (§§ 137.210 and 138.220). A safety management system (SMS) which is in full compliance with the International Safety Management (ISM) Code requirements will be deemed in compliance with the TSMS-related requirements in part 138 of Subchapter M. If an owner or managing operator selects ISM to comply with the TSMS-related requirements of Subchapter M and they elect to employ an internal survey program, then TPO oversight is required for that program and must be reflected in the SMS. The TPO that oversees an internal survey program

must verify that the vessel's structure, stability, and essential systems comply with the applicable requirements for Subchapter M for the intended route and service. Surveys conducted under the internal survey program are required to be documented by the owner or managing operator in a report that meets §137.135. Internal survey reports must be maintained as objective evidence of compliance with §137.210 and should be submitted by the owner or managing operator to the TPO responsible for oversight of internal survey programs. Objective evidence need not be appended to the COI, but should be kept onboard the vessel and made available to the Coast Guard upon request.

Internal management audits (§138.310)

Internal management audits must be conducted annually, within 3 months of the anniversary date of the TSMS certificate and must include audits of all of the owner or managing operator's vessels to which a TSMS applies. When internal management audits are conducted, the results shall be documented and maintained for a period of five years and made available to the Coast Guard upon request. The internal management audit is subject to review by the TPO or the Coast Guard to ensure compliance with Subchapter M.

Drydock/Internal Structural Examinations (§§137.310, 137.315 & 137.325)

Drydock and internal structural examinations are required as part of either an external survey program or an internal survey program. An internal structural examination is intended to establish whether internally accessible plating, tanks, structural members, etc., are in satisfactory condition. The internal structural examination may be conducted concurrently or separately from the drydock examination. For external survey programs, the TSMS must address how a TPO will carry out drydock and internal structural examinations, including a process for selection and scheduling of the TPO. The procedure should also include any special conditions either on the vessel or required by the TPO, such as confined space entry procedures, hull gauging, or surface preparation. Any other procedures pertaining to hull and structural maintenance in the TSMS must be available to the surveyor for assessment of vessel compliance with the TSMS as specified in §137.205.

For internal survey programs, the TPO that is responsible for auditing the TSMS must be notified by vessel management prior to commencement of any credit examination per §137.315(b). If the cognizant OCMI has reasonable cause to believe the program for the drydock examination survey is deficient, the OCMI may require an examination by a TPO. The cognizant OCMI may also require the owner or managing operator to provide a TPO to assist with verifying vessel compliance with drydock and ISE surveys. Reports of drydock and internal structural examination for external survey program vessels must meet the requirements of §137.135(a).

Additional TPO Functions

TPOs may be involved in the verification of vessel suitability with respect to an owner or managing operator's request for a permit to proceed (PTP) or an excursion permit. As specified in §136.240 and §136.245, the owner or operator must contact the cognizant OCMI prior to movement for a PTP related issue and not less than 48 hours for an excursion permit related matter. The cognizant OCMI may also require an inspection of the vessel by a Coast Guard Marine Inspector or an examination by a surveyor from a TPO prior to the vessel proceeding.

TPOs may endorse, but shall not approve equivalencies, and may approve alternative means for complying with: (§141.225(b))

- Lifejackets (§141.340)
- Immersion Suits (§141.350)
- Lifebuoys (§141.360)

An equivalency is any arrangement, fitting, appliance, apparatus, equipment, calculation, information, or test that provides a level of safety equivalent to that established by any specific provision of Subchapter M and must be approved by the Coast Guard. If the TPO elects to approve alternative means for compliance for these subparts, then the alternative means must be documented in the TSMS applicable to the vessel. Minimum requirements for alternative means for complying with lifejackets are in §141.340(c); for immersion suits see §141.350(3); and for lifebuoys see §141.360(4). In the event that the TPO elects not to approve alternative means for compliance, they must annotate the deficiency or nonconformity in the TSMS applicable to the vessel along with the plan and timeline to mitigate the risk. Should the risk be considered too high, the TPO may withhold the vessel from inclusion on the TSMS certificate pending appropriate measures to mitigate the risk.

If the owner or managing operator seeks an equivalence determination, he or she is encouraged to coordinate with their TPO to submit an equivalency request per §136.115 to the cognizant OCMI to be routed to Commandant for a final decision. The TPO's recommendation regarding the equivalency will help to expedite the request. While an equivalency request is being considered, the vessel may be permitted to operate so long as the arrangement does not pose a risk to people or the environment.

TPOs may not perform their approved functions when: (Part 139)

- Their approval has expired, regardless of whether or not the organization has made application for renewal;
- The TPO has given the TVNCOE a formal notification that they will no longer provide the Subchapter M services it has been approved to perform;
- The TPO's approval has been suspended or revoked by the Coast Guard; or
- The TPO ownership changes. If ownership changes, as defined in §136.110, the new owner will have to resubmit an updated application for approval. The new owner may begin the application process before the ownership change is implemented so that vessels covered by the TPO will not be negatively impacted by the ownership change. The new owner may issue new TSMS certificates to replace existing ones without conducting new audits or surveys of the impacted towing vessel company, if the new owner chooses to do so. However, the new TSMS certificates need to maintain the original expiration dates unless the new TPO owner conducts the audits required for the issuance of an initial TSMS certificate.

6. What does the TPO provide to the Coast Guard after an external audit?

In accordance with §138.505, the results of an external *management* audit must be submitted to the TVNCOE (email tvncoe@uscg.mil or mailed to the TVNCOE mailing address) within thirty (30) calendar days from the audit completion. The external *vessel* audit results shall be submitted to the local OCMI no later than thirty (30) calendar days from the audit completion. External audits must be documented and retained by the owner or managing operator for at least five years as per §138.315, and meet any other requirements prescribed by the TSMS.

The preferred method of submitting external audit results to the Coast Guard is electronically in portable document format (.pdf). Paper hard copy is acceptable.

A recommended format of external management and external vessels audit results for submission can be found in Appendix 2 of the Enclosure.

7. What does the TPO auditor or surveyor do when they identify a problem?

In addition to required audit and survey reporting requirements, the TPO auditor or surveyor should inform the vessel's management representative and vessel's master during the audit-closing meeting or upon completion of the survey, details regarding any non-conformities or deficiencies. The auditor or surveyor should indicate whether non-conformities or deficiencies observed are major or not. While non-conformities must be resolved as soon as possible, corrective actions must be carried out as detailed in the TSMS with appropriate completion dates noted. For all nonconformities, the TPO auditor will review the root cause analysis and corrective actions identified by the vessel owner.

If an auditor or surveyor identifies a deficiency of equipment, systems or operations that creates an unsafe condition (for example, presents a serious threat to safety or harm to the environment), the TPO should notify the towing vessel company, who must immediately take appropriate action as specified in their TSMS (§137.215(d)). A TPO auditor who identifies a major non-conformity during the course of an external audit should notify the cognizant OCMI immediately if possible, but in no case later than 24 hours (§138.410(f)). Time frames for resolution of deficiencies and non-conformities should be identified in the TSMS applicable to the vessel. A TPO may at any time request the OCMI issue a Form CG-835V to a vessel. In the cases where the OCMI permits the TPO to clear a deficiency or non-conformity, the time frame and conditions to clear them will be stated on the CG Form 835V.

8. What happens if a TPO's approval is suspended, revoked, or voluntarily surrendered?

To maintain approval, a TPO must comply with the provisions of part 139. Under §139.150, a TPO's approval may be revoked if it demonstrates a pattern or history of inadequate performance, such as failing to:

- Issue required documents, certificates, or reports;
- Identify, track, and document resolution of non-conformities;
- Maintain adequate resources to support all of the Subchapter M functions the TPO has been approved to carry out;
- Maintain records in accordance with §139.165;
- Notify the cognizant OCMI of major non-conformities;
- Facilitate the Coast Guard in conducting oversight activities per §139.160;
- Notify the TVNCOE when auditors or surveyors are added or removed;
- Maintain the quality management system described in §139.120(d); and
- Perform a vessel and/or company audit when directed by the Coast Guard per §137.212.

TSMS certificates issued by a TPO that has had its approval suspended, revoked, or voluntarily surrendered, will remain valid until the next external audit, or survey (whether the company has an external or internal program) is due or until the certificate expires, whichever comes first. If a TPO's approval has been suspended and reinstated before any audits or surveys are due, the towing company may continue to use the previously suspended TPO and previously issued TSMS certificate.

9. What is the process for a third party developed course to gain Coast Guard acceptance as a Coast Guard recognized equivalent course to the ANSI/ISO/ASQ Q9001-2000 or ISO 9001:2008(E) auditor/assessor course?

46 CFR §138.310, Internal audits for a TSMS certificate, and §139.130(b)(3), Qualification of auditors and surveyors, require successful completion of an appropriate level ANSI/ISO/ASQ Q9001-2000 or an ISO 9001:2008(E) auditor or assessor course, or a Coast Guard recognized equivalent, for employment as external or internal auditor.

A third party may request to develop a Coast Guard recognized equivalent course to the ANSI/ISO/ASQ Q9001-2000 or ISO 9001:2008(E) auditor or assessor course as discussed in §139.130(b)(3) for external TSMS auditors, and §138.310(d)(2) for internal auditors.

Equivalent determination requests for an auditor or assessor course may be obtained by providing supporting documentation, such as an independent assessment by an appropriately accredited third party assessor, to the TVNCOE. The Flag State Control Division (CG-CVC-4) will then make a determination based upon a recommendation from TVNCOE. Should there be a disagreement with CG-CVC-4's findings, an appeal may be directed to CG-CVC.

Appendix 1 – Third Party Organization Application Job Aid

REF (§)	Question	YES	NO
139.115(a)	Does the application indicate the functions the organization is seeking approval for?		
139.120(a)	Does the application include a description of the organization? a) Ownership b) Structure c) Organizational components <i>(This information may be part of the organizations quality manual or be separate. It should contain an organizational chart and objective evidence that the TPO is independent of owners or managing operators and vessels that it audits or surveys. This may be in the form of a signed statement, findings from an external audit, etc.)</i>		
139.120(b)	General description of clients served/intended to be served? <i>(This requirement may be completed by providing a list of current and past clients, or a list of potential clients based on the services the TPO intends to offer. This can be in conjunction with (c) below.)</i>		
139.120(c)	Description of work performed by organization within last 3 years? a) Amount b) Type <i>(That is, ISM audits and Load Line surveys. If not currently operating as an established business, a description of the type and size of the operations for which the TPO intends to provide service for and any experience its contingent employees may possess would suffice. This description should also include the geographic region of operations.)</i>		

REF (§)	Question	YES	NO
139.120(d)	<p>Objective evidence of an internal quality management system?</p> <p>a) ANSI Q9001 b) ISO 9001 c) Other? (ISO 17021, etc.)</p> <p><i>(Objective evidence that the organization operates within a quality management system acceptable to the Coast Guard. Subchapter M established ISO 9001- 2000 as meeting this requirement, but others may be considered. The current version is 9001:2015. Objective evidence of conformity to earlier versions may be allowed. ISO 17021 is deemed to be an equivalent as certification bodies that meet that standard are required to operate under a quality management system, either 9001 or one outlined in Section 10 of that standard that is more closely aligned with certification bodies. Certification documents issued by accredited third parties and satisfactory external management audit reports by credible external organizations or peers are examples of acceptable objective evidence of meeting this specification. There is no requirement for certification; however, valid certification is prima facie evidence of a functioning, conformant system. Equivalent systems requests must be accompanied by an objective justification of the equivalency basis.)</i></p>		
139.120(e)	<p>Organization procedures and documentation?</p> <p>a) Describes process used to perform audits b) Records to show system effectiveness</p> <p><i>(Quality management procedures for conducting audits and surveys, including their oversight, compliance attainment, and measurement procedures. These procedures may be referenced in future audit procedures by the CG for TPO renewal.)</i></p>		
139.120(f)	<p>Copies of checklists, forms, tools for recording audit results?</p> <p><i>(Copies of all checklists, job aids, forms, etc. for use in activity monitoring and review, and to ensure their scopes match those required by regulation.)</i></p>		
139.120(g)	<p>Procedures for applicant to receive and review appeals and grievances?</p> <p><i>(Procedures for appeals and grievances, including investigation and reporting. This should include customer complaints, public complaints, self- reporting, whistleblower protection, etc., and tie into the organizations corrective action process.)</i></p>		
139.120(h)	<p>Code of ethics applicable to organization and its auditors, surveyors, or both?</p>		
139.120(i)	<p>List of organizations auditors, surveyors, or both that meet prerequisites?</p> <p><i>(Prerequisites are listed in §139.130. Could be in the form of biographies. Should indicate if each auditor or surveyor is “exclusive” or “non -exclusive” to your organization.)</i></p>		

REF (§)	Question	YES	NO
139.120(j)	Description of means for assuring continued competency or auditors, surveyors, or both? <i>(The applicant's internal training program, auditor or surveyor expectations to maintain at their cost, etc.)</i>		
139.120(k)	Procedures for terminating or removing an auditor or surveyor? <i>(To include previously noted ethics violations.)</i>		
139.120(l)	Description of means of assuring availability of personnel? <i>(A description or procedure for assuring auditor and surveyor availability to serve the applicant's clients. The surveys and audits must take place by the specified dates in regulation, along with other associated oversight work, and the applicant should have sufficient personnel to be able to field scheduled and emergent vessel and management compliance needs.)</i>		
139.120(m)	Description of apprentice or associate auditor program? <i>(Describe how organization auditors and surveyors gain and maintain qualification and experience. For internal employees it may require a training program of initial course attendance followed by a number of audits, whereas for non-exclusives it may be as simple as requiring annual submittal of proof of meeting certification expectations.)</i>		
139.120(n)	Statement agreeing to Coast Guard compliance inspection? <i>(A signed statement from management or the Organizational Representative that agrees to Coast Guard oversight visits and attendance at audits or surveys attendance for the purpose of TPO oversight.)</i>		
139.120(o)	Potential conflicts of interest disclosure submitted? <i>A listing of any identified potential conflicts of interest that could limit the judgement of auditors, surveyors, or the organization.</i>		
139.120(p)	Statement attesting to avoidance of conflicts of interest by auditors and the organization? <i>(A statement declaring that the organization, managers, and employees engaged in audits or surveys are not and will not engage in activities that create a conflict of interest or otherwise limit the auditor, surveyor, or organization's independent judgment.)</i>		
139.120(q)	Additional pertinent information included?		

AUDITOR

REF (§)	Question	YES	NO
139.130(b)(1)	Does the auditor possess a high school diploma or equivalent?		
139.130(b)(2)	Have 4 yrs. experience as Master, Mate, Engineer or other relevant experience, to include marine surveyor and military personnel with relevant maritime experience? Example: CG Marine Inspector is considered relevant experience.		
139.130 (b)(3)	Have successful completion of ANSI/ISO/ASQ Q9001-2000 or ISO 9001:2008(E) Lead Auditor course or equivalent?		
139.130(b)(4)	Successful completion of TSMS auditor training course?		
139.130(b)(5)	Audit experience as demonstrated by the following: a) Documented experience in auditing ISM (2 mgmt./ 6 vessels in past 5 years) b) Successful apprenticeship completion (1 mgmt./ 3 vessels under lead auditor)		

Auditors must have the skill and experience required by Subchapter M to analyze safety management systems and determine adherence to them by performing an audit and assessing compliance with TSMS requirements.

To comply with education requirements, a General Education Development (GED) certificate is equivalent to a high school diploma for auditors and surveyors.

For auditors, we consider 1,440 eight-hour days, or for towing vessels permitted to stand six-hours on and six-hours off watch schedules, 960 twelve-hour days, as equal to four years of working on towing vessels. Service aboard towing vessels may be in either the deck or engine department, or combination of the two in either a licensed or unlicensed capacity. Documentation may be in the form of a letter on company stationery and signed by an appropriate authority or discharge certificates signed by the vessel's master.

The TVNCOE recognizes lead auditor training for any International Standards Organization (ISO) standard as equivalent to the required lead auditor or assessor course, if the course is recognized by the American National Standards Institute-American Society of Quality Control (ANSI-ASQ) National Accreditation Board (anab.org), Exemplar Global (exemplarglobal.org), National Accreditation Board for Education and Training (nabet.qci.org.in), or International Register of Certified Auditors (irca.org). This is based on the premise that all ISO auditing schemes are built upon the auditing standards in ISO 19011 and ISO 17021. Acceptable training will be provided by an accredited certificate issuer or accredited training partner. All other requests for equivalency must be submitted to the Coast Guard, with objective evidence supporting the equivalency.

All prospective auditors must complete a TSMS auditing course, which should include, at a minimum, the following topics: roles and responsibilities of TPOs, auditors and surveyors; ethics and conflicts of interests for auditors and surveyors; use of audit tools (checklist forms, reports, etc.); TPO procedures relating to audits and surveys; and part 138 subpart B - TSMS. There is no requirement that the TSMS training course be approved by the Coast Guard. An ISM Lead Auditor course is an acceptable alternative to a TSMS course.

The minimum experience requirements are specified by §139.1 30(b)(5). Experience in auditing quality management systems based on ISO 9001, environmental management systems under ISO 14001, occupational health and safety management systems that meet OHSAS 18001, or equivalent standard are also acceptable. A lead auditor certification from a certification entity such as the International Register of Certified Auditors (IRCA), Exemplar Global, and the ASQ will be considered as objective evidence of meeting the audit experience requirements of this part.

SURVEYOR

REF (§)	Question	YES	NO
139.130(c)(1)	Does the surveyor possess a high school diploma or equivalent?		
139.130(c)(2)(i)	Have four years experience on a towing vessel as Master, Mate, Engineer; or		
139.130(c)(2)(ii)	Other relevant experience? (CG marine inspector experience, military personnel with maritime experience, accreditation by NAMS, SAMS or other accepted accredited societies, etc.)		

A marine surveyor examines vessels to assess, monitor and report on their condition. They also examine equipment intended for new or existing vessels to ensure compliance with standards or specifications and examine documents pertaining to vessel and crew compliance with the TSMS and the regulations. The surveyor typically examines the structure, machinery and equipment (navigational, safety, communication, etc.) and general condition of the vessel. Surveyors must demonstrate that they have both the skills and experience necessary to:

- Perform a survey as defined in §136.110
- Assess compliance with TSMSs as required in subparts B and C of part 137.
- Assess whether the towing vessels covered by the TSMS are in compliance with all applicable operational, equipment, and personnel requirements.

To comply with education requirements, a GED certificate is equivalent to a high school diploma for auditors and surveyors.

For experience requirements in §139.130, marine surveyor experience may include:

- Marine surveyor. Including classification surveyors or private surveyors with at least four years of commercial vessel field experience (towing vessels preferred). Surveyors who specialize in pleasure craft surveys will not normally be considered as meeting these experience requirements or;
- Accredited marine surveyor. There are a number of marine surveyor governing bodies that monitor marine surveyors and offer accreditation. They include, but are not limited to:
 - The National Association of Marine Surveyors (NAMS)
 - The Society of Accredited Marine Surveyors (SAMS)
 - Full Membership in the International Institute of Marine Surveyors (IIMS)
 - Experience in the design and/or construction of vessels of similar operating and physical characteristics.

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Appendix 2 - External Management and External Vessel Audit Result Submission

The requirement for the conduct of external audits and submission of the audit results are found at 46 CFR §§138.410 and 138.505 respectively. The Coast Guard recommends using ISO 19011:2011, Guidelines for Auditing Management Systems, to document the external audit results that must be submitted to the Coast Guard as per §138.505. While these guidelines are not mandatory, TPOs are encouraged to use them. Electronic submissions using a portable data format (.pdf) file are strongly encouraged, but the Coast Guard accepts paper results as well.

1. Both external management and external vessel audits should provide complete, accurate, concise and, clear results of the audit, submitted in an executive summary format. The results should include or refer to the following:

- The audit objectives, which are the results to be achieved.
- The audit scope, which is the extent and boundaries of the audit. The audit scope generally includes a description of the physical location(s) where the audit activities were conducted.
- The audit criteria, which is a set of policies, procedures, or requirements used as a reference against which objective evidence is compared.
- The audit conclusion, which is the outcome of the audit, after consideration of the audit objectives and all audit findings.
- A statement on the degree to which the audit criteria have been fulfilled. For example, if a certain part of the audit scope was not achievable, a written explanation should be included.
- The audit findings including observations, conformities, non-conformities (to include identifying major or minor), corrective action and, other related evidence.

2. The results should show audit evidence evaluated against audit criteria to determine audit findings.

3. Recording conformity in submitted audit results:

- Identification of the audit criteria against which conformity is shown.
- Audit evidence supporting conformity.
- Declaration of conformity, if applicable.

4. Recording non-conformities in submitted audit results.

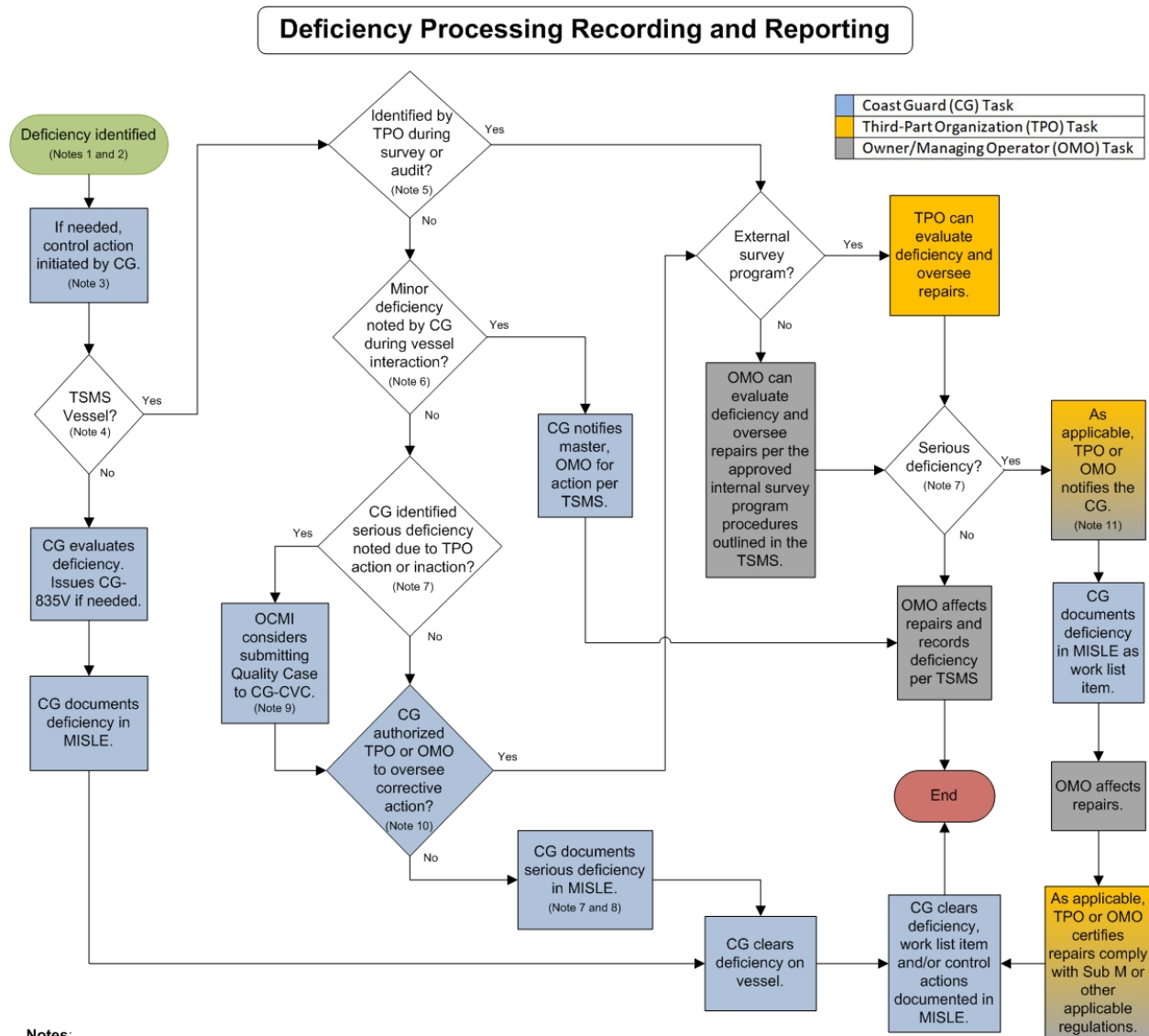
5. For records of nonconformity, the following should be considered:

- Description of or reference to audit criteria.
- Non-conformity declaration, (to include identifying major or minor).
- Audit evidence.
- Related audit findings, if applicable.

6. Statement(s) of any previous non-conformities and corrective actions taken to prevent recurrence should be included in the submitted results.

7. The use of checklists and forms should not restrict the extent of audit activities, which can change as a result of information collected during the audit.

Appendix 3 – Flowchart: Aid for Processing, Recording, and Reporting Deficiencies



Notes:

1. For the purpose of this flowchart, the terms deficiency and non-conformity are interchangeable.
2. A deficiency can present itself in numerous ways – i.e. during a COI inspection, marine casualty, TPO survey, etc. For vessels utilizing the TSMS inspection option, Subchapter M indicates when and under what circumstances the CG can require the attendance of a TPO. For other instances, the CG can request the attendance of a TPO through the vessel's owner or managing operator. A TPO should not be utilized for CG mission areas outside TPO functions authorized under Subchapter M – i.e. for initial marine casualty responses.
3. Used to ensure the vessel does not impose unnecessary safety hazard to people, the waterway, and/or the environment.
4. The vessel is considered a TSMS vessel once a COI has been issued under a TSMS inspection option. See 136.130(d)
5. Only routine audits or surveys conducted within the intervals established within 46 CFR Part 137 and 138.
6. Coast Guard vessel interactions would include COI inspections, marine casualty investigations, etc.
7. A serious deficiency is one that poses a serious threat to personnel, vessel safety, or the environment and requires immediate corrective action. Includes major non-conformities.
8. Although not required, the CG may document a minor deficiency in MISLE as a work list item.
9. For guidance on quality cases, see CG-CVC-1 MMS Work Instruction CVC-WI-005(1).
10. See CG-CVC Policy Letter 17-10.
11. Major non-conformities found during an external audit would be reported by the TPO. All other serious deficiencies and major non-conformities would be reported by the vessel OMO.