

139-001

What will be considered an equivalent quality standard to ISO? What objective evidence of an equivalent quality standard will be acceptable?

Subchapter M established ISO 9001-2008 and 2000 as the standards for meeting requirements in 46 CFR 138.310(d), 139.120(d) and 139.130(b), but evidence of meeting an equivalent quality standard may be another means of satisfying these requirements. The current ISO version is 9001:2015. Under 136.115(a), the Coast Guard has determined that for an organization seeking to become a TPO under § 139.120, ISO 17021, Conformity assessment – requirements for bodies providing audit and certification of management systems, is an equivalent to ISO 9001-2008 because certification bodies that meet ISO 17021 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.

In § 139.120, we require objective evidence of an internal quality system based on ANSI/ISO/ASQ Q9001–2000 or an equivalent quality standard. Certification documents issued by accredited third parties and external management audit reports by external organizations or peers are examples of what may be considered objective evidence of meeting this § 139.120(d) requirement. For an organization seeking to become a TPO, there is no requirement for certification; however, valid certification is prima facie evidence of a functioning, conformant system. Equivalent determination requests related to an organization’s application to become a TPO must be accompanied by an objective justification of the basis for the equivalency.

Received Jun 2016

Answered 14 Nov 2016

139-002

(1) What are the qualifications required of auditors and surveyors?

(2) Do auditors and surveyors require some kind of approval?

(1) The qualification requirements for auditors and surveyors are stated in 46 CFR 139.130.

Words given in italics are not part of the regulation but added for explanation:

§139.130 Qualifications of auditors and surveyors.

(a) A prospective auditor or surveyor must have the skills and experience necessary to assess compliance with all requirements of this subchapter.

(b) Auditors must meet the following qualifications:

(1) High school diploma or equivalent.

(2) Four years of working on towing vessels or other relevant marine experience such as (but not limited to) Coast Guard marine inspector, licensed mariner, military personnel with relevant maritime experience, or marine surveyor.

(3) Successful completion of an ANSI/ISO/ASQ Q9001-2000 or ISO 9001:2008(E) (incorporated by reference, see §136.112 of this subchapter) lead auditor/assessor course or Coast Guard recognized equivalent.

(4) Successful completion of a training course for the auditing of a TSMS.

(5) Audit experience, as demonstrated by:

(i) Documented experience in auditing the ISM Code or the American Waterways Operators Responsible Carrier Program, consisting of at least two management audits and six vessel audits within the past 5 years; or

(ii) Successful completion of an auditor apprenticeship, consisting of at least one management audit and three vessel audits under the direction of a lead auditor.

(c) Surveyors must meet the following qualifications:

(1) High school diploma or equivalent.

(2) At least one of the following:

(i) Four years of experience working on towing vessels as master, mate (pilot), or engineer; or

(ii) Other relevant marine experience such as (but not limited to) Coast Guard marine inspector, military personnel with relevant maritime experience, marine surveyor, accredited marine surveyor, experience on vessels of similar operating and physical characteristics.

(2) Auditors and surveyors are not "approved" individually. To this point, 46 CFR 139.135 and 139.145 apply. Also, as discussed in the preamble, all auditors and surveyors approved to conduct subchapter M external surveys and external audits would be part of a TPO, but not necessarily the same TPO. We set standards for auditors and surveyors in § 139.130, but these are used in conjunction with § 139.120 where we require TPO applicants to list the organization's auditors and surveyors who meet the requirements of § 139.130. On further review of § 139.130(a), the Coast Guard realized it makes sense to include "surveyor" in this lead paragraph. The specific qualifications for an auditor and a surveyor remain in paragraphs (b) and (c), respectively.

Received Jun 2016

Answered 14 Nov 2016

139-003

Can other types of auditing in addition to the ISM or RCP (e.g. internal auditing) be considered required audit experience?

Yes. A prospective auditor must demonstrate that he/she has experience in auditing safety management systems. The minimum experience requirements are specified by §139.130(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 American Society for Quality (ASQ) may be considered as objective evidence of meeting the audit experience requirements of this part."

Received Jun 2016

Answered 14 Nov 2016

139-004

Can unlicensed engineer experience be used to meet the qualifications? Are there other definitions of “other relevant marine experience” that the Coast Guard will consider, and if so, what are they?

Yes. However, for other relevant maritime experience for auditors and surveyors, we consider 1,440 eight-hour days, or for towing vessels permitted to stand 6-on-6-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.

46 CFR 139.130(b)(2) and (c)(2)(ii), provide examples of other marine experience for auditors and surveyors respectively. This list includes Coast Guard marine inspector, military personnel with relevant maritime experience, marine surveyor, accredited marine surveyor, experience on vessels of similar operating and physical characteristics.

For marine surveyors, 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.

The TPO is responsible for ensuring that surveyors and auditors meet the requirements of §139.130, and must maintain an accurate list of auditors and surveyors, with notification to the Towing Vessel National Center of Expertise when changes occur, as per §139.135.

Received June 2016

Answered 17 Jan 2017

139-005

How should a TPO auditor determine potential conflicts of interest and would these include payment structures, towing companies as board members, and QI as a TPO?

Section 139.120(o) requires TPO applicants to disclose any potential conflicts of interest. Section 139.120(p) requires applicants to submit a statement to the Coast Guard stating that their employees who are engaged in audits and surveys will not engage in any activities that could result in a conflict of interest, which we define in § 136.110, or that could otherwise limit the independent judgment of the auditor, surveyor, or organization.

In addition, ISO 17021, Conformity assessment -- Requirements for bodies providing audit and certification of management systems, which is an equivalent to ISO 9001-2008, discusses this in part 5.2.3. Where it states: "The certification body (CB) shall have a process to identify, analyze, evaluate, treat, monitor, and document the risks related to conflict of interests arising from provision of certification including any conflicts arising from its relationships on an ongoing basis. Where there are any threats to impartiality, the CB shall document and demonstrate how it eliminates or minimizes such threats and document any residual risk. The demonstration shall cover all potential threats that are identified, whether they arise from within the certification body or from the activities of other persons, bodies or organizations. When a relationship poses an unacceptable threat to impartiality (such as a wholly owned subsidiary of the CB requesting certification from its parent), then certification shall not be provided."

Received Jun 2016

Answered 11 Apr 2017

139-006**What are the TPOs roles and responsibilities in regard to oversight of repairs?**

The TSMS should document the process to oversee repairs and also procedures for corrective actions. Unlike the Coast Guard option where Marine Inspectors will oversee repair work, vessels that choose the TSMS option may have a TPO, company personnel, or contracted resources witness repairs of damage.

As discussed on page 40030 of the preamble, this rule does not require that independent surveyors are involved in minor repairs. The repairs that may require the presence of the Coast Guard or TPO would involve damage that directly affected the vessel's seaworthiness, fitness or suitability for its route or service, or when the condition of the vessel may create an unsafe condition.

As discussed in §136.240, permission to proceed to another port for repairs may be necessary in certain situations, including damage to the vessel or failure of an essential system. The cognizant OCMI may require an examination by a surveyor or from a TPO prior to the vessel proceeding to another port for repairs.

In cases where the vessel's seaworthiness or fitness or suitability for its route or service is in question or when the condition of the vessel may create an unsafe condition, notification shall be made to the OCMI in accordance with § 137.325 (d). As discussed in § 137.325 (e) the TPO should be prepared to attend the vessel if the OCMI directs the vessel to have repairs witnessed by an authorized person in accordance with their TSMS.

In all occurrences where damage involves a reportable marine casualty, notification shall be made to the Coast Guard in accordance with 46 CFR 4.03-1 (a). Additionally, it must be considered whether notification to report a hazardous condition required by 33 CFR 160.216 is also required.

We anticipate more detailed information on repairs to be included in the Subchapter M compliance guide.

Received Aug 2016

Answered 2 Dec 2016

139-007

What are the qualifications of an internal surveyor?

For those companies choosing to use the Internal Survey Program, in accordance with 137.210(a)(8), their TSMS must contain procedures for assigning personnel to conduct surveys. Per 138.220(c)(1), the TSMS must list the minimum qualifications of a surveyor if the surveyor is not from a TPO.

The easiest way for a company utilizing the Internal Survey program to establish a minimum set of qualifications for their internal survey personnel is to meet the qualifications for an external surveyor provided for in 46 CFR 139.130(c).

Questions regarding “relevant maritime experience” or “vessels of similar operating and physical characteristics” should be referred to the Towing Vessel National Center of Expertise.

Received Jul 2016

Answered 14 Nov 2016

139-008

Will TPOs have to understand blue water vs. brown water?

Yes, perspective TPOs will be expected to provide to the Coast Guard, as part of their application, a description and history of the types of work performed by the organization, including the geographic regions of operations. However, the individual towing companies need to select a TPO based on their own safety management system and other factors to include, but not be limited to, geographic proximity, towing company operations, vessel classification status, and areas of operation in accordance with 46 CFR 138.210(d).

The requirements for application for approval as a TPO are listed in 46 CFR 139.120.

Received Aug 2016

Answered 14 Nov 2016

139-009

Class societies seem to be given authority to function as a TPO without further approval.

Will a pre-Approved TPO be required to submit any paperwork before they can conduct work as a TPO?

All TPOs, regardless of the method used to achieve approved status, must furnish a list of current auditors and surveyors to the Coast Guard prior to conducting any TPO activity.

Received Jun 2016

Answered 31 Aug 2016

139-010

Would there be a conflict of interest if a company that provides QI, VRP and incident management services was also an approved TPO? If so, in what capacities could these organizations serve?

The standards in part 139 allow organizations to apply to become TPOs. TPO applications are submitted to and evaluated by the Towing Vessel National Center of Expertise (TVNCOE). The TPO application should address any potential conflicts of interest as outlined in §139.120 (o) and (p). A conflict of interest, as defined in §136.110, means a conflict between an individual's or an organization's private interests and the interests of another party they are providing a service to or for, including when acting in a capacity which serves the public good.

Received 21 Jul 2016

Answered 28 Feb 2017

139-011

When will the Coast Guard publish a list of Third Party Organizations?

Once a Third Party Organizations (TPO) is approved, it will be listed and shared on the TVNCOE website at <https://www.dco.uscg.mil/tvncoe/>. Currently, all Authorized Classification Societies are automatically approved to act as TPOs as permitted by the Subchapter M requirements. As part of an initiative to support a smooth rollout of Subchapter M, the Coast Guard is drafting additional implementation guidance for TPOs. See also CG-CVC Policy Letter 17-04, Subchapter M TPO Guidance. This line of effort should facilitate the TSMS Option and the 24-month phased-in compliance timeline.

Received Jun 2016

Answered 31 Aug 2016, updated 29 May 2018

139-012

Where the regulation references auditing, is it appropriate to substitute ISO 9001:2015 for 2008?

There is no overarching policy in place to allow for the automatic acceptance of an updated edition of a standard that is listed in 46 CFR Subchapter M's Incorporated by Reference (IBR) section (46 CFR 136.112).

Under the equivalency determination provisions of 46 CFR 136.115, however, an owner or managing operator may submit a request to the Coast Guard via the cognizant Officer in Charge, Marine Inspections (OCMI) for approval of the updated standards as equivalent to those that are incorporated by reference in 46 CFR Subchapter M. Current editions of recognized standards are normally considered equivalent to those listed in 46 CFR 136.112.

Received 29 July 2016

Answered 21 June 2017

139-013

Does TPO having supporting organizations as members paying dues to a TPO present a problem?

139-014

Does a TPO having supporting organizations as board members on the TPOs Board of Directors present a problem?

46 CFR 139.120(o) and (p) requires the TPO to address any potential conflicts of interest. A conflict of interest, as defined in §136.110, means a conflict between an individual's or an organization's private interests and the interests of another party they are providing a service to or for, including when acting in a capacity which serves the public good (See FAQ 139-010). For further guidance, you may refer to ISO 17021, clause 5.2, Impartiality.

Received 28 July 2016

Answered 4 May 2017

139-015

Does TVIB need to obtain CG acceptance of their TSMS course to meet auditor minimum training requirements, or is reference in our TPO application as part of our required training for certification by TVIB sufficient?

There is no requirement for Coast Guard acceptance or approval of a training course for the auditing of a TSMS required by 46 CFR 139.130(b)(4). The training should, at a minimum, address standards found in 46 CFR 138 Subpart B, acceptable forms of objective evidence, and any policies specific to accepted management systems that the TPO would expect to be auditing. The TPO's quality system must address how this and all other required training is accomplished, to include objective evidence that each auditor has completed a TSMS course. The Coast Guard considers the Responsible Carrier Program (RCP) Auditor course and International Safety Management (ISM) Code Auditor course as meeting this requirement as both standards have been accepted as "existing safety management systems" in accordance with 46 CFR 138.225 and are therefore TSMS courses.

Received 28 July 2016

Answered 4 May 2017

139-016

Will CG allow auditors that the TPO approves for vessel audits to perform vessel audits if they do not have management audit experience? "TVIB certified vessel auditor"

Use of subject matter experts to complete portions of audits and surveys under the oversight of qualified personnel may be allowed. TPOs are required to employ persons qualified in accordance with 46 CFR 139.130 to complete management audits, vessel audits, and vessel surveys. The TPO must maintain procedures for auditing and surveying in accordance with 46 CFR 139.120(e) which should include details regarding qualifications of personnel performing tasks under that procedure. Further guidance for a TPO to grow and maintain qualified auditors through an apprenticeship program is found in 46 CFR 139.120(m).

Received 28 July 2016

Answered 4 May 2017

139-019

The TPO application requires a description of the apprentice program for less experienced auditors and surveyors being developed by the TPO. Is work performed by an apprentice auditor and or surveyors under the direction of an experienced auditor or surveyor acceptable for the portion of the audit or survey conducted by the apprentice?

Yes. If the TPO application is approved and within the application the apprentice program stipulates that the lead auditor or surveyor has authority to delegate experienced auditors and surveyors to train apprentices, this would be acceptable. The lead auditor or surveyor retains responsibility for the outcome of the audit and should have complete trust and confidence in his/her experienced personnel to accomplish the audit or survey.

Received 28 Jul 2016

Answered 6 Mar 2017

139-020

Would current checklists used by TVIB auditors for performing RCP audits, be acceptable documentation of the type checklist we intend to use for TSMS audits, given that we don't know exactly what modifications might be required for Subchapter M audits and surveys?

While an audit checklist may be an effective tool to verify required elements of a TSMS, the determination of conformity with a system requires a more comprehensive review of the individual TSMS and its integration within the vessel/company. Required TSMS elements are listed in part 138.220.

During the course of a TSMS audit an approved TPO auditor may use any appropriate method or resource necessary to adequately and objectively determine compliance with Subchapter M, and conformity with the individualized TSMS. This may include sampling of documentation and records, observing specific tasks, examination of equipment, crew interviews, etc. (138.410). For this reason the CG does not prescribe or approve specific TPO auditing tools.

Received 28 Jul 2016

Answered 16 Feb 2017

139-021

Will the CG accept ISM lead auditor training for the requirement for TSMS training in 139.130(b)(4)?

There is no requirement that the TSMS auditor training course requirement from § 139.130(b)(4) be approved by the Coast Guard. An ISM Lead Auditor course is an acceptable alternative to a TSMS course. 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.

However, the lead auditor/assessor course discussed in § 139.130(b)(3) does require a Coast Guard recognized equivalent if the ANSI/ISO/ASW Q9001-2000 or ISO 9001:2008(E) options are not selected. The TVNCOE recognizes lead auditor training for any ISO standard as equivalent to the required lead auditor or assessor course, if the course is recognized by the 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.

Received 9 Aug 2016

Answered 28 Dec 2016

139-022

Are the recognized classification societies (RCS) required to provide further information to the Coast Guard to begin work?

No. See FAQ G-018.

Received 22 Aug 2016

Answered 16 Feb 2017

139-023**How does the Coast Guard hold a TPO accountable for ethical considerations?**

By suspending or revoking the TPO's approval as per 46 CFR 139.145 or 139.150:

§ 139.145 Suspension of approval.

(a) The Coast Guard may suspend the approval of a TPO approved under this part whenever the Coast Guard determines that the TPO does not comply with the provisions of this part. The Coast Guard must:

- (1) Notify the TPO in writing of the intention to suspend the approval;
- (2) Provide the details of the TPO's failure to comply with this part; and
- (3) Advise the TPO of the time period, not to exceed 60 days, within which the TPO must correct its failure to comply with this part. If the TPO fails to correct its failure to comply with this part within the time period allowed, the approval will be suspended.

(b) The Coast Guard may also partially suspend the approval of a TPO, using the process described in paragraph (a) of this section. This may include suspension of an individual auditor or surveyor or suspension of the authority of the TPO to carry out specific duties whenever the Coast Guard determines that the provisions of this part are not complied with.

§ 139.150 Revocation of approval.

(a) The Coast Guard may revoke the approval of a TPO if the organization has demonstrated a pattern or history of:

- (1) Failure to comply with this part;
- (2) Substantial deviations from the terms of the approval granted under this part; or
- (3) Failures, including ethical violations, conflicts of interest, or inadequate performance, that indicate to the Coast Guard that the TPO is no longer capable of carrying out its duties as a TPO.

(b) If the Coast Guard seeks to revoke the approval of a TPO, it must:

- (1) Notify the TPO in writing of the intention to revoke the approval;
- (2) Provide the details of the TPO's demonstrated pattern or history of actions described in paragraph (a) of this section; and
- (3) Advise the TPO that it may appeal this decision to the Coast Guard in accordance with the provisions of 46 CFR subpart 1.03.

Received 15 Sep 2016

Answered 11 Apr 2017

139-024**Is it a conflict of interest for a TPO (or company trying to become a TPO) to advertise and/or push the use of certain software to help compliance with Subchapter M documentation and record keeping requirements?**

No. Any questions regarding conflicts of interest should be answered based upon the requirements of 46 CFR 139.120(h) and (o).

Received 12 Dec 2016

Answered 6 Mar 2017

139-025

I've been asking around about engineer licensing as it pertains to subchapter m and haven't seen a clear response yet. Can you define this for me? I currently hold a engineering position on a 99 ton uninspected tug with only a QMED, but likely will move to a 325 ton tug in the near future.

As indicated by regulations found below, certain towing vessels will require a chief engineer and may also require an assistant engineer. In either case, you would need an appropriately-endorsed merchant mariner credential to fill either of these positions. The extent of required engineer ratings would be determined by the Officer in Charge, Marine Inspection, and be based on a variety of factors associated with the vessel's operations. Subchapter M does not change the current licensing requirements for towing vessels.

46 CFR 15.820 Chief engineer.

(a) There must be an individual holding an MMC or license endorsed as chief engineer or other credential authorizing service as chief engineer employed onboard the following mechanically propelled inspected vessels:

- (1) Seagoing or Great Lakes vessels of 200 GRT and over;
- (2) Offshore supply vessels of more than 200 GRT;
- (3) Inland (other than Great Lakes) vessels of 300 GRT or more, if the OCMI determines that an individual with a license or the appropriate MMC officer endorsement responsible for the vessel's mechanical propulsion is necessary.

The preamble to the regulation also discusses this topic on the third column of page 40008, clarifying the requirements of 46 CFR 15.820(a)(3) for vessels operating on the Western Rivers.

46 CFR 15.825 Engineers.

(a) An individual in charge of an engineering watch on a mechanically propelled, seagoing, documented vessel of 200 GRT or more, other than an individual described in §15.820 (Chief engineer) of this subpart, must hold an appropriately endorsed license or MMC authorizing service as an assistant engineer.

For additional information on engineering licensing requirements, see FAQ 139-004.

Received 6 Feb 2017

Answered 21 June 2017

139-026

Some organizations will wish to apply to the Coast Guard to become a Subchapter M third-party organization to be able to provide Subchapter M compliance verification services immediately upon publication of the final rule. Will the Coast Guard offer additional guidance on this application process, and if so, when will this guidance be issued?

Yes. Section 139.120 of this rule sets out third-party organization (TPO) application requirements. Amplifying guidance, including an application checklist for TPOs can be found in CG-CVC Policy Letter 17-04, Subchapter M TPO Guidance, posted on the Towing Vessel National Center of Expertise's website (<https://www.dco.uscg.mil/tvncoe/>). We expect to update this guidebook frequently based on lessons learned as the TPO program is established.

Received Jun 2016

Answered 31 Aug 2016, updated on 29 May 2018

139-027

Who may do business as an “approved third party?”

Recognized and Authorized Classification Societies, and other private commercial companies that meet the requirements and are approved by the Coast Guard, may conduct work as prescribed in Subchapter M as a TPO. Part 139 of Subchapter M sets the requirements for TPOs. CG-CVC Policy Letter 17-04, Subchapter M TPO Guidance provides further information.

Received Jun 2016

Answered 31 Aug 2016, updated 29 May 2018