



# Navigating Subchapter M

**Daniel Fitzgerald**, a Partner with Freehill Hogan & Mahar LLP, New York, discusses the US Coast Guard's towing vessel inspection rule.

After 12 years in the making, the US Coast Guard ("USCG") has published the new inspection regime for towing vessels, which will be located in a new Subchapter M within Title 46 of the Code of Federal Regulations ("Subchapter M"). The new regulations are scheduled to be published on June 20, 2016. Back in 2004, Congress passed the Coast Guard and Maritime Transportation Act of 2004, requiring more stringent regulation of uninspected towing vessels. Congress reclassified towing vessels as vessels subject to inspection and authorized the Secretary of Homeland Security to

establish requirements after highlighting several fatal towing vessel incidents. In September of 2001, a towing vessel struck a bridge at South Padre Island, Texas. The bridge collapsed, and five people died when their cars entered the water. On May 26, 2002, a towing vessel struck the I-40 highway bridge over the Arkansas River. The bridge collapsed and 14 people died when their cars or trucks went into the Arkansas River. The USCG and several towing industry groups (including the Towing Safety Advisory Committee (TSAC), American Waterways Operators (AWO) and the American

Bureau of Shipping) have been working hard to finalize the rulemaking.

### Cost of compliance?

It is estimated that this development will affect 5,509 towing vessels operated by 1096 different companies. Notably, the new rules added several "grandfathering" provisions for many items, so some requirements will not apply to existing vessels or vessels whose construction began before the effective date of the rule. This should result in reduced implementation costs for most operators. The USCG had to

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consider over 3,000 comments before it could finalize Subchapter M and established a voluntary Towing Vessel Bridging Program in 2009 to ease the transition. The annual inspection fee for towing vessels subject to Subchapter M will be \$1,030 and will start a year after the initial inspection. The USCG estimates that the average cost of compliance per vessel during the phase in period is \$16,267 with an additional \$5,045 cost per company.

## Safer working?

The stated intent of the rulemaking is to promote safer work practices and reduce casualties on towing vessels by requiring that vessels adhere to prescribed safety standards and safety management systems or to an alternative, annual Coast Guard inspection regime. Subchapter M creates a fairly comprehensive safety system that includes company compliance, vessel compliance, vessel standards, and oversight in a new subchapter dedicated exclusively to towing vessels. The new Subchapter will generally apply to all US flagged towing vessels 26 feet or more, and those less than 26 feet moving a barge carrying oil or hazardous materials in bulk. The new rulemaking lays out different inspection mechanisms and sets forth new equipment, construction and operational requirement for towing vessels.

There is some flexibility as operators will have the choice of two inspection regimes. Under the Towing Safety Management System (TSMS) option, routine inspections will primarily be performed by qualified third party organizations, including classification societies, with periodic audits by the USCG. Alternatively, operators can choose not to develop and implement their own TSMS and may undergo a more traditional inspection by the USCG. The USCG inspection option is likely to be more appealing to smaller companies who may not be able to implement a comprehensive safety management system.

Inspected towing vessels will now be issued a Certificate of Inspection (“COI”), which will specify the minimum manning for each vessel in all

of the vessel’s areas of operation. Significantly, the rulemaking provides that “We do not envision an appreciable increase in the number of qualified individuals needed to man inspected towing vessels.” It is anticipated that some operators will notice and object to changes in manning levels and decision makers would be well-advised to work very closely with companies when establishing initial manning levels. Notably, the USCG declined to implement any hours of service requirement or crew endurance management system requirement at this time.

Subchapter “M” will promote safer work practices and should reduce casualties throughout the towing industry. It is yet to be determined how some aspects of the new inspection program will be implemented and whether the estimated average compliance costs were accurate. Navigating the implementation of Subchapter M will present some challenges for the USCG and towing companies but ultimately, the towing vessel industry and its insurers should take comfort in the achievement of minimum safety standards, which should help protect lives, the environment and property. ■

