

# International Regulation News Update

## 2001 Anti-Fouling Systems (AFS) Conference

<u>Regulatory Development</u>	<u>Ship Application</u>
<i>Entry Into Force</i>	<i>All ships</i> <sup>+</sup>
<i>General Provisions</i>	<i>All ships</i> <sup>+</sup>
<i>Controlled Compounds</i>	<i>All ships</i> <sup>+</sup>
<i>Approval of Compounds</i>	<i>All ships</i> <sup>+</sup>
<i>Certification Provisions</i>	<i>All ships</i> $\geq 24m$ <sup>*</sup>
<i>Port State Control</i>	<i>All ships</i> $\geq 24m$ <sup>*</sup>
<i>Pre-Convention Certification</i>	<i>All ships</i> $\geq 400$ <i>gt</i> <sup>*</sup> <i>(trading internationally)</i>
<i>( + includes all barges, drill rigs, submersibles, fixed and floating platforms)</i>	
<i>( * excludes all barges, drill rigs, submersibles, fixed and floating platforms)</i>	

### Entry Into Force

An international diplomatic conference was held at the Headquarters of IMO in London from 1 to 5 October 2001. The 75 States in attendance adopted a new international treaty which will enter into force 12 months after 25 States representing 25% of the world's merchant shipping gross tonnage ratify the Anti-Fouling Systems (AFS) Convention. This compromised agreement aims to achieve a more timely entry into force period recognizing the lengthy time experienced with other Conventions which had more onerous provisions (*15 States with 50% of the world's gross tonnage*). It also attempts to avoid a single group of countries from either preventing entry into force or bringing into force the Convention. The period for States to become Parties to the AFS Convention starts on 2 February 2002.

### General Provisions

Upon entry into force, the Convention will prohibit application of “*controlled*” anti-fouling coatings to all new and existing ships, including fixed and floating platforms and floating production and/or storage units, regardless of size, after 1 January 2003. All ships (including fixed and floating platforms and floating production and/or storage units constructed before 1 January 2003 that are dry docked after 1 January 2003) will need to have their non-compliant coating removed or covered with a sealer coating by 1 January 2008.

In effect, the AFS Convention will **RETROACTIVELY** regulate the coatings of ships in a manner similar to the certification of diesel engines required under the NOx Code provisions of MARPOL Annex VI.

After considerable discussion concerning the legality of the “retroactive” dates proposed to be used in the Convention, an assessment of any legal implications was provided to the Conference by IMO's Legal Division. The assessment concluded that although there were no legal barriers to prohibit the adoption of the retroactive dates, until such time as the AFS Convention comes into effect States cannot apply the requirements of the Convention to foreign ships calling at a State's ports.

### Controlled Compounds

Annex 1 of the Convention contains a listing of “*controlled*” compounds which have been found to pose an adverse effect on the environment

and/or pose a risk to human health and must therefore be collected, handled and disposed of in a safe and environmentally sound manner.

Currently, Annex 1 contains only one prohibited compound: organotin compounds which act as biocides.

Other compounds, which demonstrate a potential for unreasonable risk of adverse effects on non-target organisms or human health can be added to Annex 1. Approval of additional prohibited compounds will fall under the jurisdiction of the Marine Environment Protection Committee (MEPC).

Ships coated with a compound which has since become prohibited by an amendment to Annex 1 have until their next scheduled renewal of that coating, but not more than 5 years following its application, to remove the coating. However, the ship is to be issued with a certificate within 2 years of the entry into force of a controlled compound under Annex 1. In such an instance, the certificate of ships with a non-compliant coating will indicate the date, before which, the non-compliant coating is to be removed or covered with a sealer coat.

### Approval of Compounds

Only a Party to the Convention can propose to the MEPC that a new compound be added to Annex 1. The proposal must include information on the risk that it may adversely affect human health, non-target organisms, or water quality. This can be documented by the results of toxicity studies on representative species or bioaccumulation data on the persistence in the water and sediments.

The MEPC may establish a technical group of experts to evaluate physical and chemical properties of the compound relative to the risk it may pose on environmental fate, chronic human toxicity, non-target organisms and marine life, based either on observations or through controlled studies. The technical group is generally to be comprised of experts in the fields of environmental fate and toxicity, marine biology, economic analysis and risk management.

Recommendations from the technical group to restrict additional compounds under Annex 1 are reported to the MEPC for approval. The principles for approval embrace the “*precautionary approach*” (i.e., preservation of the environment receives the benefit of the doubt without waiting for conclusive evidence) in

that a lack of scientific certainty as to the threat of serious or irreversible damage, in and of itself, does not justify inaction to add a new compound to Annex 1.

A new controlled (prohibited) compound requires approval by at least 2/3 majority of the signatory Parties attending the particular MEPC session and at least 1/3 of the Parties must be present. The amendment to Annex 1 enters into force 6 months after approval unless more than 1/3 of the Parties register an objection.

### Certification Provisions

Two different types of certification schemes apply according to the size of ships engaged in international voyages. Although fixed and floating platforms and floating production and/or storage units are exempted from survey and certification, they are subject to the control measures for coating application, removal and/or sealing discussed above under **General Provisions**.

Ships less than 400gt, but having a length (as defined by the Load Line Convention) of 24m or more are to carry an AFS Declaration signed by the owner or owner's agent. The Declaration is to indicate that the ship does not bear a prohibited anti-fouling system as well as the type and date of coating applied throughout the ownership period. Supporting documentation, such as a signed contract with the paint manufacturer, is to accompany the Declaration

Ships of 400 gt and above are required to be surveyed before the ship is placed into service -- after completion of construction – and after the anti-fouling systems are changed or replaced. The survey is to determine that coatings controlled by Annex 1 have been removed or coated with a sealer coat.

Upon satisfactory completion of the survey, an International AFS Certificate is issued and remains valid until the coating is changed or replaced or upon transfer of flag to another State. The Certificate is to be accompanied by a Record of AFS, completed by the Administration or recognized organization, indicating the name, type, manufacturer, active ingredients and respective Chemical Abstract Service (CAS) Registry Number ([www.cas.org](http://www.cas.org)) and application date/location of the coating and/or sealer coat.

Completion of the Record of AFS will generally rely on two sources of information: (1) Material Safety Data Sheet (MSDS) which is normally supplied to the dry-dock applying the

anti-fouling coating; and (2) the periodic reports of approved AFS which will be available through IMO as Parties to the Convention are obligated to send such reports annually to the IMO.

### Port State Control

Ships engaged in international voyages may be subject to port State inspections which, unless clear grounds exist for believing that the anti-fouling system violates the Convention, are limited to verifying that there is a valid AFS Certificate or Declaration on board.

This verification may include a 'brief' sampling of the anti-fouling system such that the sampling and evaluation process does not prevent the movement/departure of the ship and does not compromise the integrity of the ship's structure or its anti-fouling system. Because of the different methods that may be available to port States to evaluate the chemical composition of coatings and its possible impact on the sampled ship, guidelines on paint sampling and enforcement are scheduled to be developed at IMO's Flag State Implementation Sub-Committee meeting in April 2002.

Early on, there was an attempt to regulate the extent to which a Party is obligated to restore the integrity of an anti-fouling system and/or compensate the ship for delay/damage as a consequence of sampling the anti-fouling system. Ultimately, it was agreed to exclude this provision in the Convention due to the legal complications that might ensue which were considered to be more appropriately handled according to the legal system of the individual State.

### Pre-Convention Certification

It is estimated that over 33,000 ships have coatings with TBT that would need to be removed or sealed between 2003 and 2008 if the Convention were to enter into force on 1 January 2003. Based on requests already being received from some ship owners and recommendations from the International Chamber of Shipping to achieve early compliance before the Convention comes into force, IACS is developing a common basis to provide AFS certification either on behalf of an Administration or, when the Administration has not authorized its recognized organizations to do so, at the request of a ship owner.

