Sjøfartsdirektoratet
Norwegian Maritime Authority

Circular - Series R

Circular Series R (Regulations) supersedes previous Series F. In the new Series R, relevant legal amendments and amendments to conventions are also published.

Circular recipients: (check box)

Sdir:	Norwegian Maritime Authority
A:	16 specially authorised employment
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H.i.	Bodies or agencies for their comments
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Reference to:	Regulations of 30 May 2012 No. 488 on environmental safety for ships and mobile offshore units.

The Circular should be entered into a special diagram or as appropriate in the latest editions of relevant NMA publications and kept until the next editions.

Corrected Circular Series R (RSR) 17-2022 concerning amendments to the Regulations on environmental safety for ships and mobile offshore units

This Circular corrects the wording of RSR 17-2022, which was signed 14 December 2022. Compared to the wording of RSR 17-2022, this corrected Circular includes more detailed descriptions of the amendments to the AFS Convention laid down in IMO Res.MEPC.331(76), which forms the basis for the amendments to the Regulations of 30 May 2012 No. 488 on environmental safety for ships and mobile offshore units (Environmental Safety Regulations) section 17. The following text should be considered as having been written on 14 December 2022.

The Norwegian Maritime Authority (NMA) has adopted amendments to the Regulations of 30 May 2012 No. 488 on environmental safety for ships and mobile offshore units (Environmental Safety Regulations) section 17. The legal basis of the Regulations is the Ship Safety and Security Act.

The proposed amendments were circulated for review from 30 September to 7 December 2022. The NMA received five consultative statements, one of which included comments on the proposal. A list of relevant consultative bodies and their comments is provided in the attached consultation matrix.

Background for the amendments

IMO Resolution MEPC.331(76) (hereafter referred to as MEPC.331(76)) introduces amendments to the AFS Convention Annexes 1 and 4, addressing the use of cybutryne in anti-fouling systems. The resolution will come into effect on 1 January 2023.

The amendments were discussed in the relevant IMO committees and adopted in plenary at the MEPC. Norway, in cooperation with the industry, helped shape positions and participated in the negotiations. The industry has been informed of these amendments through special interest organisations and the NMA. Given the impending 1 January 2023 deadline and industry's awareness of the changes, the consultation period was slightly shorter than three months.

Details on the amendments to the AFS Convention

The amendments to the AFS Convention under MEPC.331(76), effective 1 January 2023, prohibit the use of anti-fouling systems containing cybutryne (CAS No. 28159-98-0). Ships with anti-fouling systems containing cybutryne in the top layer of the hull, or external surfaces as of 1 January 2023, must either remove the anti-fouling system or apply a barrier to prevent the leakage of cybutryne from the underlying system.

These actions must be taken at the ship's first scheduled renewal of the anti-fouling system after 1 January 2023, but no later than 60 months after the last application of anti-fouling containing cybutryne.

Fixed and floating installations, FSUs and FSPOs constructed before 1 January 2023, and that have not been in dry-dock on or after 1 January 2003, are exempt from the requirements to remove the anti-fouling system or apply a barrier coating to prevent cybutryne from leaking from prohibited anti-fouling systems. Ships engaged on domestic voyages may also be exempt from the above-mentioned requirements. The same applies to ships of less than 400 gross tonnage engaged on international voyages, provided that the coastal state(s) where they operate accept the exemption.

Annex 4 Regulation 2(3) of the AFS Convention, as amended by MEPC.331(76), mandates that surveys of anti-fouling systems containing cybutryne applied before 1 January 2023 must be carried out by the Administration, which in Norway will be the Norwegian Maritime Authority or recognised organisations. The surveys apply to ships of 400 gross tonnage and upwards engaged on international voyages, cf. the AFS Convention Annex 4 Regulation 1 and must be completed by 31 December 2024. The results of the surveys must be recorded on the ship's Certificate, in accordance with the AFS Convention Annex 4 Regulation 1, as amended by MEPC.331(76). One of the following four outcomes must be documented:

1. An anti-fouling system containing cybutryne was applied before 1 January 2023 and has since been removed mechanically at [insert the name of the facility] on [dd.mm.yyyy].
2. An anti-fouling system containing cybutryne was applied before 1 January 2023 and has since been covered by a sealing coating at [insert the name of the facility] on [dd.mm.yyyy].
3. An anti-fouling system containing cybutryne was applied before 1 January 2023, but cybutryne is not present in the top layer covering the hull, external parts or surfaces as of 1 January 2023.
4. An anti-fouling system containing cybutryne was applied before 1 January 2023, but will be removed or covered with a sealing coating by [dd.mm.yyyy].

Implementation in Norwegian legislation of the amendments to the AFS Convention
The AFS Convention, adopted on 5 October 2001, has been implemented in the Environmental Safety Regulations, section 17, by reference to Regulation (EC) No. 782/2003. The amendments to the AFS Convention resulting from MEPC.331(76) have been incorporated into Norwegian legislation through transformation. The key changes to the AFS Convention Annex 1, required for implementation in Norwegian law, are introduced as new second to fifth paragraphs in section 17 of the Environmental Safety Regulations.

Regulation (EU) No. 1062/2014 established a list of all active substances included in biocidal products covered by Regulation (EU) No. 528/2012. According to Commission Implementing Decision (EU) 2016/107, cybutryne is not approved as an active substance in biocidal products, and therefore cannot be used in anti-fouling systems applied to hulls, external parts or surfaces of ships, cf. Regulation (EU) No. 528/2012 Annex V, product-type
21. The above-mentioned regulations and decision were incorporated into Norwegian legislation via the Regulation of 30 April 2016 No. 455 concerning amendments to the Regulations of 10 April 2014 No. 548 on biocides, now the Regulations of 18April 2017 No. 480 on biocides. As a result, the sale of cybutryne in Norway has been prohibited since 17 February 2017, and its use in biocidical products has been banned since 17 August 2017. The prohibition applies generally, including to anti-fouling systems marketed in the EEA from 17 August 2017.

From 17 August 2017, it became illegal to use cybutryne in anti-fouling systems placed on the market in the EEA. Starting 1 January 2023, an international ban on cybutryne use

in such systems applies, cf. MEPC.331(76), and this is reflected in the new second paragraph of section 17 of the Environmental Safety Regulations.
Under the new third paragraph of section 17, the NMA mandates that all ships, regardless of trade area or size, bearing anti-fouling systems with cybutryne after 1 January 2023 must either mechanically remove the system or apply a barrier coating to prevent leakage from the underlying prohibited system.

The AFS Convention's survey and certification requirements apply to ships of 400 gross tonnage and upwards engaged on international voyages. Therefore, ships on domestic voyages are not required to undergo these surveys or be certified to prove compliance with the Convention.

AFS Convention Article 1 (3) states: *"No provision of this Convention shall be interpreted as preventing a State from taking, individually or jointly, more stringent measures with respect to the reduction or elimination of adverse effects of anti-fouling systems on the environment, consistent with international law."*

Cybutryne has been prohibited in the EEA and Norway for use in anti-fouling systems since 17. August 2017. Therefore, the NMA expects that very few, if any, ships engaged in domestic voyages will have cybutryne in the top layer of the anti-fouling system applied before 1 January 2023. Should there, however, be any ships engaged on domestic voyages with an anti-fouling system applied before 1 January 2023 that contains cybutryne in the top layer, section 17 third paragraph of the Environmental Safety Regulations will apply to such ships.

Ships of less than 400 gross tonnage engaged on international voyages are not required to have an AFS Certificate. These ships, with anti-fouling systems containing cybutryne applied before 1 January 2023, may be exempt from the requirements pursuant to the Environmental Safety Regulations section 17 third paragraph, cf. section 17 fourth paragraph. One condition for the exemption is acceptance from the coastal state(s) concerned with ports called at by foreign vessels of less than 400 gross tonnage.

The ban on cybutryne in anti-fouling systems necessitates changes to the survey and certification procedures for ships of 400 gross tonnage and above engaged on international voyages.

Administrative and financial implications
As mentioned, the NMA expects that the parties familiar with the AFS Convention are aware of the amendments discussed. Therefore, the NMA anticipates that these amendments will incur minimal costs for the industry. Both the authorities and industry will need to adapt to legislative controls, but since the control and certification of anti-fouling systems are already part of an established inspection regime under the AFS Convention, the impact is limited. The issuance of ASF certificates has been delegated to recognised organisations. The administrative impact is considered moderate.

The amendments enter into force on 1 January 2023.

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