

After the May 2024 Notice of Investigation, the investigation proceeded, and the FMC received 14 comments in June 2024. The Canadian government and those representing the interests of Canadian carriers, as well as those representing environmental interests, opposed the potential imposition of sanctions. On the other hand, those representing the interests of U.S. carriers and workers were supportive of such measures. At the same time Transport Canada, the responsible Canadian agency, established a procedure for seeking exemptions that became available to affected U.S. carriers in late July 2024, although the Commission understands that a comparable process had been available to Canadian carriers much earlier. See Procedure to request an exemption to install Ballast Water Management Systems under Ballast Water Regulations for foreign-flagged vessels in Canadian waters, Transport Canada (July 25, 2024) (Exemption Procedure), available at <https://tc.canada.ca/en/marine-transportation/marine-safety-management-system-tp-13585-e-tier-ii-procedures/tier-ii-procedure-request-exemption-install-ballast-water-management-systems-under-ballast-water-regulations-foreign-flagged-vessels-canadian-waters>. The Commission also understands that the relevant Canadian rule is due to take effect as to U.S. carriers shortly, specifically on September 8, 2024.

In light of the above, the Commission now extends the time for decision in its Chapter 423 investigation by 90 days, from the current deadline of September 19, 2024, to December 18, 2024, and it establishes a new comment period to gather more information on the apparent disparity between the exemption processes available to U.S. and Canadian carriers, including the difference in when the exemption procedures became available. In particular, the Commission seeks to gather and review more information about whether the exemption processes may have themselves led to adverse conditions in violation of 46 U.S.C. 42302(a), including information about developments occurring after the end of the initial comment period in June 2024. That will help the Commission continue to investigate whether the laws, rules, policies, or practices of Canada result in conditions that “adversely affect the operations of United States carriers in United States oceanborne trade” and that “do not exist for foreign carriers of [Canada] in the United States under the laws of the United States.” 46 U.S.C. 42302(a).

If the agency concludes that the standard of section 42302(a) is met, it is authorized to take certain actions to encourage remediation of those conditions. See May 2024 Notice of Investigation, 89 FR 44979–80. Specifically, the Commission may take actions “against any foreign carrier that is a contributing cause, or whose government is a contributing cause, to those conditions.” 46 U.S.C. 42304(a). Potential actions include imposing limits and/or fees on Canadian-flagged vessels that visit U.S. ports and requesting that the U.S. Department of Homeland Security and the U.S. Coast Guard refuse clearance and deny entry of such vessels into the U.S., or detain such vessels. See 46 U.S.C. 42304, 42305. Any such fees could be substantial, as they are authorized by law at a level up to \$2,559,636 per voyage. See 46 CFR 506.4. Before any action is taken under 46 U.S.C. 42304 or 42305, the relevant determination is submitted for Presidential review, within 10 days of receipt, under 46 U.S.C. 42306.

III. New Request for Comments

As explained above, the Commission determined that the above situation meets the threshold requirements for consideration under the relevant statutory and regulatory authority, and in May 2024, it initiated a Chapter 423 investigation into whether the situation has created conditions that adversely affect the operations of United States carriers. See 46 U.S.C. 42302; 46 CFR 555.3, 555.5, 555.6.

The Commission now finds that it would enhance its investigation to ask interested persons to submit written comments containing arguments, experiences, and/or data relevant to the options that have been available for carriers to seek an exemption from the Canadian ballast water management regulations going into effect in September 2024. In particular, the Commission seeks information about the extent to which such processes have differed based on whether the carrier is a U.S. carrier or a Canadian carrier, including but not limited to when the exemption processes became available for affected carriers in those categories; information that was unavailable when the last comment period closed in June 2024; and information about when specific carriers were granted or denied exemptions from the requirements at issue, as well as the basis for such decisions.

The Commission’s jurisdiction under 46 U.S.C. 42302 is broad, and the agency welcomes comments not only from the Government of Canada, but

also from container shipping interests, bulk cargo interests, vessel owners, individuals and groups with relevant information on commercial and environmental considerations, and anyone else with relevant information or perspectives on this matter.

As the Commission proceeds with this investigation, it may determine to request additional comment or gather information through other means as authorized under 46 U.S.C. 42303 and 46 CFR 555.5, 555.6.

By the Commission.

David Eng,

Secretary.

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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2 p.m., Thursday, September 19, 2024.

PLACE: The United States Department of Labor Auditorium, Frances Perkins Building, 200 Constitution Avenue NW, Washington, DC 20210.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the matter of *Geneva Rock Products, Inc.*, Docket No. WEST 2022–0097. (Issues include whether the Judge abused his discretion when he ordered a stay of the case for an indefinite duration because of a pending criminal matter.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Phone Number for Listening to Meeting: 1 (866) 236–7472, Passcode: 678–100.

(Authority: 5 U.S.C. 552b)

Dated: September 9, 2024.

Sarah L. Stewart,

Deputy General Counsel.

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