

FEDERAL MARITIME COMMISSION**46 CFR Part 502**

[Docket No. 14–12]

RIN 3072–AC58

**Amendments to Regulations
Governing the Rules of Practice and
Procedure for Dismissals of Actions****AGENCY:** Federal Maritime Commission.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its rules governing dismissals of actions by complainants, by order of the presiding officer, and by respondents when complainant fails to prosecute.

DATES: Comments are due on or before October 22, 2014.

ADDRESSES: Address all comments concerning this proposed rule to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, Phone: (202) 523–5725, Email: secretary@fmc.gov.

FOR FURTHER INFORMATION CONTACT: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, Phone: (202) 523–5725, Email: secretary@fmc.gov.

SUPPLEMENTARY INFORMATION: The Commission proposes to amend Rule 72 of its Rules of Practice and Procedure, 46 CFR 502.72, to reflect its intent with regard to review and approval of settlement agreements prior to dismissal of formal complaints. When § 502.72 was published in October 2012, the Commission stated that it “did not intend to eliminate the requirement for review of settlement.” Docket No. 11–05, Rules of Practice and Procedure, *Final Rule*, 77 FR 61519–20 (Oct. 10, 2012). The language of the rule, however, did not expressly address the procedure to follow if a stipulation of dismissal by the parties is the result of a settlement between the parties. The proposed revision reflects the Commission’s intent to adhere to its long-standing policy of reviewing settlements by adding language to clarify that when a voluntary dismissal is based on a settlement agreement, the agreement must be submitted for approval by the Commission.

Section 502.72 permits voluntary dismissals by notice, allowing a complainant to dismiss an action voluntarily before an answer or other responsive pleading is served. Additionally, the rule permits dismissal of complaints by stipulation of the

parties, thereby fostering efficient and speedy resolution of matters that have become moot (e.g., cargo has been delivered, expense of litigation, fatigue, etc.). The rule does not, however, expressly address the circumstance when a voluntary dismissal is the result of a settlement between the parties.

The Commission has followed a well-established policy of encouraging settlement agreements in proceedings brought before it. *Old Ben Coal Co. v. Sea-Land Serv., Inc.*, 18 S.R.R. 1085, 1091 (ALJ 1978). The Commission has adhered to “encourag[ing] settlements and engag[ing] in every presumption which favors a finding that they are fair, correct, and valid.” *Inlet Fish Producers, Inc. v. Sea-Land Serv., Inc.*, 29 S.R.R. 975, 978 (ALJ 2002) (quoting *Old Ben Coal*, 18 S.R.R. at 1091); see also *Ellenville Handle Works, Inc. v. Far E. Shipping Co.*, 20 S.R.R. 761, 763 (ALJ 1981) (noting that settlements may be approved upon a showing that the settlement is bona fide and not a device for rebating). The Commission has exercised oversight of these settlements to ensure that such agreements are free from “fraud, duress, undue influence, [or] mistake” and do “not contravene any law or public policy.” *Old Ben Coal*, 18 S.R.R. at 1093.

Although the Commission undertakes a relatively limited role in scrutinizing settlements, see *P.R. Shipping Ass’n v. P.R. Ports Auth.*, 27 S.R.R. 645, 647 (ALJ 1996), it has also made clear that it “does not merely rubber stamp any proffered statement, no matter how anxious the parties may be to terminate their litigation.” *Old Ben Coal*, 18 S.R.R. at 1092. Previously, the Commission required proof of a statutory violation before approving a settlement. An agreement to settle a proceeding could only “be approved . . . upon an affirmative finding that such violation occurred.” *Consolidated International Corporation v. Concordia Line, Boise Griffin Steamship Company, Inc.*, 18 F.M.C. 180, 183 (ALJ 1975); cf. *Ketchikan Spruce Mills v. Coastwise Line*, 5 F.M.B. 661(1959) (settlement was not approved because it could not be shown that the tariffs were unreasonable or violated the Shipping Act).

In *Old Ben*, the Commission modified this requirement in favor of a revised standard that allows the Commission to assess whether “the settlement offered is fair, reasonable, and adequate,” and whether the settlement is “free of fraud, duress, undue influence, [or] mistake.” 18 S.R.R. at 1091. Additionally, the Commission may weigh the likelihood of the complainant’s success if litigation were pursued, as well as balance the

adequacy of the terms of settlement against the estimated cost and complexity of continued litigation. *Id.*, 1093–94. Finally, the Commission will review the settlement to ensure that it is “proper and does not itself violate any provision of the law.” *Id.* at 1091. Settlements meeting these criteria “will probably pass muster and receive approval.” *Id.* at 1093; see also *World Chance Logistics (Hong Kong), Ltd.—Possible Violations*, 31 S.R.R. 1346, 1350 (FMC 2010).

The clarifying language reflects the Commission’s intent expressed in adopted section 502.72 that it is not changing its long standing policy with respect to review of settlement agreements, and articulates the requisite procedure for voluntary and involuntary dismissal of complaints.

List of Subjects in 46 CFR Part 502

Administrative practices and procedures, Claims, Equal access to justice, Investigations, Practice and procedure, Procedural rules, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Federal Maritime Commission proposes to revise 46 CFR Part 502 Rule 72 as follows:

PART 502—RULES OF PRACTICE AND PROCEDURE**Subpart E—Proceedings; Pleadings; Motions; Replies**

■ 1. The authority citation for part 502 continues to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–596, 5 U.S.C. 571–584; 18 U.S.C. 207; 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. 305, 40103–40104, 40304, 40306, 40501–40503, 40701–40706, 41101–41109, 41301–41309, 44101–44106; E.O. 11222 of May 8, 1965.

■ 2. Revise § 502.72 as follows:

§ 502.72 Dismissals.

(a) *Voluntary dismissal.* (1) *By the complainant.* When no settlement agreement is involved, the complainant may dismiss an action without an order from the presiding officer by filing a notice of dismissal before the opposing party serves either an answer, a motion to dismiss, or a motion for summary decision. Unless the notice or stipulation states otherwise, the dismissal is without prejudice.

(2) *By stipulation of the parties.* The parties may dismiss an action at any point without an order from the presiding officer by filing a stipulation of dismissal signed by all parties who have appeared. In the stipulation the parties must certify that no settlement

on the merits was reached. Unless the stipulation states otherwise, the dismissal is without prejudice.

(3) *By order of the presiding officer.* Except as provided in paragraphs (a)(1) and (a)(2) of this section, an action may be dismissed at the complainant's request only by order of the presiding officer, on terms the presiding officer considers proper. If the motion is based on a settlement by the parties, the settlement agreement must be submitted with the motion for determination as to whether the settlement appears to violate any law or policy and to ensure the settlement is free of fraud, duress, undue influence, mistake, or other defects which might make it unapprovable. Unless the order states otherwise, a dismissal under this paragraph is without prejudice.

(b) *Involuntary dismissal; effect.* If the complainant fails to prosecute or to comply with these rules or an order in the proceeding, a respondent may move to dismiss the action or any claim against it, or the presiding officer, after notice to the parties, may dismiss the proceeding on its own motion. Unless the dismissal order states otherwise, a dismissal under this subpart, except one for lack of jurisdiction or failure to join a party, operates as an adjudication on the merits.

(c) *Dismissing a counterclaim, crossclaim, or third-party claim.* This rule applies to dismissals of any counterclaim, crossclaim, or third-party claim.

By the Commission.

Karen V. Gregory,
Secretary.

[FR Doc. 2014-22427 Filed 9-19-14; 8:45 am]

BILLING CODE 6730-01-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 380, 383, and 384

[Docket No. FMCSA-2007-27748]

RIN 2126-AB66

Minimum Training Requirements for Entry-Level Commercial Drivers' License Applicants; Consideration of Negotiated Rulemaking Process

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of intent; correction.

SUMMARY: This document makes a correction to a notice published in the **Federal Register** on August 19, 2014,

regarding entry-level driver training; consideration of negotiated rulemaking process. The correction involves a clarification of the contractual relationship that FMCSA has with the convener, Mr. Richard Parker.

DATES: September 22, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Transportation Specialist, FMCSA, Office of Bus and Truck Standards and Operations, 202-366-4325 or mcpsd@dot.gov.

SUPPLEMENTARY INFORMATION:

For FMCSA's notice published on August 19, 2014, (79 FR 49044), the following correction is made:

On page 49044, in column 3, the first sentence of the last full paragraph, is changed to read: "FMCSA has retained a neutral convener, Mr. Richard Parker, a professor of law at the University of Connecticut School of Law, through a contractor, Strategic Consulting Alliances, LLC to undertake this initial stage in the Reg Neg process."

Issued on: September 15, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014-22304 Filed 9-19-14; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 130123065-4768-01]

RIN 0648-BC95

Fisheries Off West Coast States; West Coast Salmon Fisheries; Amendment 18 to the Pacific Coast Salmon Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 18 to the Pacific Coast Salmon Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California (FMP). Amendment 18, which was transmitted by the Pacific Fishery Management Council (PFMC) on June 10, 2014, revises the description and identification of essential fish habitat (EFH) for Pacific salmon managed under the FMP, designates habitat areas of particular concern (HAPCs), updates the

current information on fishing activities, and updates the list of non-fishing related activities that may adversely affect EFH and potential conservation and enhancement measures to minimize those effects.

DATES: Comments on this proposed rule must be received on or before October 22, 2014.

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2014-0071, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, enter NOAA-NMFS-2014-0071 in the search box. Locate the document you wish to comment on from the resulting list and click on the "Submit a Comment" icon on the right of that line.

- *Mail:* William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Information relevant to this proposed rule, which includes an EA with a regulatory impact review (RIR), is available for public review during business hours at the office of the PFMC, at 7700 NE Ambassador Place, Suite 101, Portland, OR 97220, phone: 503-820-2280, and is posted on its Web site (<http://www.pcouncil.org/salmon/fishery-management-plan/amendments-in-development/>). These documents are also linked on the NMFS West Coast Region Web site (http://www.westcoast.fisheries.noaa.gov/fisheries/salmon_steelhead/salmon_and_steelhead_fisheries.html). Copies of additional reports referred to in this