

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
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FOR FURTHER INFORMATION CONTACT:

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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 engage[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

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