INTERSTATE COMMERCE COMMISSION

49 CFR Part 1100

[Ex Parte No. 55 (Sub-No. 24a)]

Administrative Appeals in Non-Rail Proceedings

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rules.

SUMMARY: The Interstate Commerce Commission is proposing to revise paragraphs (c) and (g) of Rule 97 of its Rules of Practice. Rule 97 concerns administrative appeals in non-rail proceedings. This action is being proposed in order to eliminate confusion concerning the rule.

DATES: Comments should be filed on or before March 31, 1980.

ADDRESSES: An original and 15 copies of any comments should be sent to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275-7292.

SUPPLEMENTARY INFORMATION: The Commission recently completed a revision of its rail appellate rules, Rule 93 of the Rules of Practice (see Ex Parte No. 55 [Sub-No. 24a]; decision served June 29, 1973; revised rule published at 44 FR 37936). We had contemplated embarking on a similar effort with respect to the non-rail appellate procedures contained in Rule 97. However, there is a possibility that motor carrier regulatory reform legislation, now being developed in Congress, may contain provisions that would modify various aspects of the Commission's non-rail procedures (S. 2245 contains such provision). Consequently, it would be premature to attempt a complete revision of our non-rail appellate procedures at this time.

We are, however, undertaking this limited proceeding to eliminate confusion which has resulted from corrections to Rule 97 which were contained in a notice published January 19, 1979 (44 FR 3897). The corrections were intended to make the rule conform to the provisions of former section 17(8) of the Interstate Commerce Act, which provided that:

(8) Where application for rehearing, remand, or reconsideration of a decision, order, or requirement of a division, an individual Commissioner, or board is made in accordance with the provisions of this section and the rules and regulations of the Commission, and the decision, order, or requirement has not yet become effective, the decision, order, or requirement shall be stayed or postponed pending disposition of the matter by the Commission or appellate division; but otherwise the making of such an application shall not excuse any person from complying with or obeying the decision, order, or requirement, or operate to stay or postpone the enforcement thereof, without the special order of the Commission.

Section 17(9) clearly indicated that the time filing of an application for rehearing, remand, or reconsideration would stay a decision of a division, an individual Commissioner, or a board but would not automatically stay a decision of the entire Commission. This distinction was not as clear in Rule 97 as it was in the statute, and the Commission issued the corrections to make Rule 97 conform more closely to section 17(8). We stated at the time our belief that it would be contrary to sound regulatory practice for a party to be able to stay a decision made by the entire Commission, even in an urgent case, by merely filing a pleading which is, or purports to be, an administrative appeal.

Unfortunately the corrections inadvertently eliminated from Rule 97 any provision for filing appeals from full Commission decisions. This was clearly not our intention, and we have continued to accept petitions for review of entire Commission decisions. In an effort to correct this error and to eliminate confusion concerning whether the filing of an administrative appeal stays a decision of the entire Commission, we have rewritten and combined paragraphs (c) and (g) of Rule 97 into a new paragraph (c). We propose to adopt this rewritten rule in place of present paragraphs (c) and (g). Under the new rule, parties could, of course, continue to request that the Commission exercise its discretionary right to stay its proposed actions, with such requests to be determined under generally recognized standards. See, for example, Virginia Petroleum Jobbers Ass'n v. FPC, 359 F. 2d 921 (D.C. Cir. 1958), Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F. 2d 841 (D.C. Cir. 1977), and the Commission's recent decision in Ex Parte No. MC-96 (Sub-No. 2), Passenger Broker Entry Control, decided January 23, 1980.

Although the revised rules proposed here are procedural rules, which are exempt from the notice and comment requirements of the Administrative Procedure Act, we believe that this proceeding might benefit from public participation. The public is, therefore, encouraged to study the proposed new paragraph (c) and to file comments on the rule itself and the procedures which it contains. In particular, we encourage the public to file comments identifying any language in the rewritten rule which is ambiguous or unclear or which might be inconsistent with the provisions of former section 17(8) of the Interstate Commerce Act.

We propose to adopt the following changes in 49 CFR 1100.97:

§ 1100.97 [Amended]

Revise paragraph (c) to read as follows, and delete paragraph (g):

(c) Conclusiveness and administrative finality. The decision of the division or entire Commission affirming a prior decision is administratively final. Any party may file a petition for administrative review of (1) an initial decision of a hearing officer which becomes effective by operation of law; (2) a decision of an employee board; (3) a decision of a division or the entire Commission which reverses, changes, or modifies the prior decision; or (4) a decision, in lieu of an initial decision, issued by a division or the entire Commission. The timely filing of an administrative appeal from one of these decision shall stay the effectiveness of the decision pending disposition of the appeal, unless the decision was issued by the entire Commission. The Commission may, on its own motion or on petition, stay the effect of its decision pending disposition of an appeal.

This action does not appear to affect significantly the quality of the human environment or conservation of energy resources.


Decided February 12, 1980. By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Stafford, Clapp, Truant, and Alexsis. Agatha L. Mergenovich, Secretary.

[FR Doc. 80-5104 Filed 2-14-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of the Comment Period for the Illinois Mud Turtle Reproposal of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Reopening of the public comment period on the reproposal of Critical Habitat for the Illinois mud turtle.

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AGENCY: Fish and Wildlife Service, Interior.

ACTION: Reopening of the public comment period on the reproposal of Critical Habitat for the Illinois mud turtle.

DATES: The service will consider all comments on this reproposal between February 6, 1980, and March 7, 1980.

ADDRESSES: Comments on the reproposal of Critical Habitat for this species should be made to: Director/OES, U.S. Fish and Wildlife Service, Washington, D.C. 20240.


SUPPLEMENTARY INFORMATION: In the Federal Register of December 7, 1979 (44 FR 70680-70682), the Service reproposed Critical Habitat for the Illinois mud turtle, *Kinosternon flavescens spooneri*, and announced the time and place for public meetings on this reproposal in Springfield, Illinois, and Muscatine, Iowa, on January 30 and 31, 1980, respectively. During these meetings, information of a technical nature was presented, especially on the taxonomic status of this turtle. Requests were made to representatives of the Service who attended this meeting for an extension of the comment period in order that this information could be made available in writing, along with additional supporting information. The Service agrees that an extension of the comment period is therefore warranted in order to allow full consideration of all available data. The public comment period is accordingly reopened between February 6, 1980 and March 7, 1980; information submitted during this time will become part of the public record and will be considered before a final determination of status is made by the Director.


Lynn A. Greenwalt,
Director, U.S. Fish and Wildlife Service.