

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 69]

Fishing

The Fish and Boat Commission (Commission) proposes to amend Chapter 69 (relating to fishing in Lake Erie and boundary lakes). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

A. Effective Date

The proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2011.

B. Contact Person

For further information on the proposed rulemaking, contact Jason E. Oyler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at www.fish.state.pa.us.

C. Statutory Authority

The proposed amendment to § 69.31 (relating to seasons) is published under the statutory authority of section 2903 of the code (relating to boats and net licenses for boundary lakes).

D. Purpose and Background

The proposed rulemaking is designed to improve, enhance and update the Commission's fishing regulations. The specific purpose of the proposed amendment is described in more detail under the summary of proposal.

E. Summary of Proposal

The harvest of Lake Erie walleye and yellow perch is managed through a quota management system, where each Lake Erie jurisdiction on the Lake Erie Committee (Pennsylvania, Ohio, Michigan, New York and Ontario) is allocated a portion of a total lake-wide annual quota, based on the surface area of each jurisdictional water. Jurisdictional Total Allowable Catch (TAC) is the maximum harvest allowed by sport and commercial sources in individual jurisdictional waters.

The Commission's Lake Erie Research Unit generates an internally derived commercial TAC for this Commonwealth's yellow perch and walleye trap net fisheries. The Commission's current regulations provide that the commercial trap net TAC for this Commonwealth must be published annually in the *Pennsylvania Bulletin* by March 1. This date poses two problems: (1) the most recent year's fishery data is still being finalized at that time; and (2) this date precedes announcement of the Lake Erie Committee TAC, which sets the TAC (sport and commercial) permissible in Commonwealth waters. Extending the announcement of the walleye and yellow perch TAC for this Commonwealth until April 15 will allow the Commission's Lake Erie management biologists additional time to review and integrate contemporary fishing data into this Commonwealth's TAC calculations and provide time for the formal announcement of Lake Erie Committee TAC. This also will ensure that this Commonwealth's trap net harvest limits are aligned with

lake wide harvest strategies. The Commission therefore proposes to amend § 69.31 to read as set forth in Annex A.

F. Paperwork

The proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no new costs on the private sector or the general public.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.fishandboat.com/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

BRIAN P. BARNER,
Acting Executive Director

Fiscal Note: 48A-218. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES

Subchapter D. COMMERCIAL FISHING, SEASONS AND NETS

§ 69.31. Seasons.

* * * * *

(b) The commercial fishing season for walleye is January 1 to March 14 and 12:01 a.m. the first Saturday in May to December 31. This season will close on the date established by the Executive Director as marking the probable attainment of the total allowable catch for walleye for that year. The total allowable catch for walleye for any year will be determined by the Executive Director and announced annually on or before [**March 1**] **April 15**. After the announcement, the Executive Director may, from time to time, revise the total allowable catch for that year if he determines that conditions so warrant. The Executive Director or a designee will monitor monthly, weekly and daily reports of catch of walleye and will declare the season to be closed on a date the Director determines will probably mark attainment of the total allowable catch. It is unlawful for a person fishing under a commercial fishing license or with a device subject to licensing under section 2902 of the code (relating to net permits) to take, catch or attempt to catch

walleye except during the walleye season established under this subsection. Walleye accidentally caught out of season shall be immediately returned to the waters from which it was taken regardless of its condition and reported within 2 business days to the Commission at the address where commercial catch reports are filed.

(c) The commercial fishing season for yellow perch is January 1 until the date established by the Executive Director as marking the probable attainment of the total allowable catch for yellow perch for that year. The total allowable catch for yellow perch for any year will be determined by the Executive Director and announced on or before [**March 1**] **April 15**. After the announcement, the Executive Director may revise the total allowable catch for that year if he determines that conditions so warrant. The Executive Director or his designee will monitor monthly, weekly and daily reports of catch of yellow perch and will declare the season to be closed on the date the Director determines will probably mark attainment of the total allowable catch. It is unlawful for any person fishing under a commercial fishing license or with a device subject to licensing under section 2902 of the code [**(relating to net permits)**], to take, catch, or attempt to catch yellow perch except during the yellow perch season established under this subsection. Yellow perch accidentally caught out of season shall be immediately returned to the waters from which it was taken regardless of its condition and reported within 2 business days to the Commission at the address where commercial catch reports are filed.

[Pa.B. Doc. No. 10-500. Filed for public inspection March 19, 2010, 9:00 a.m.]

**PENNSYLVANIA PUBLIC
UTILITY COMMISSION**

[52 PA. CODE CH. 23]

[L-2008-2057661/57-267]

**Streamlining the Rate Increase Procedures for
Small Motor Carriers**

The Pennsylvania Public Utility Commission (Commission) on January 15, 2009, adopted a proposed rulemaking order which streamlines the current procedures for rate increase requests submitted by motor carriers of passengers with gross operating revenues less than \$500,000.

Executive Summary

The Commission acknowledges that some small motor carriers of passengers have had difficulty keeping the detailed business records needed to amend their tariffs for the purpose of raising rates and operating revenues. The Commission believes it is appropriate to streamline or simplify the current procedures for rate increase requests submitted by small motor passenger carriers with gross operating revenues less than \$500,000. Accordingly, based upon our experience with small motor passenger carriers, and our recent analysis of rate increase cases filed by them, the Commission proposes to amend our existing regulations in Chapter 23 of the *Pennsylvania Code*, which govern common carriers and establish the procedures for rate increase filings.

The Commission proposes to amend our existing regulations to simplify the rate process for small motor passenger carriers in the following manner:

1. Define small motor carrier of passengers by gross operating revenue. The Commission opines that the gross intrastate operating revenue threshold for the classification of a "small" carrier shall be less than \$500,000.
2. Permit a small motor passenger carrier (that is, gross intrastate operating revenue less than \$500,000) to request a revenue increase each year without filing detailed, supporting financial information, other than: 1) total gross annual intrastate revenue for the most recent fiscal year; 2) the dollar amount of increased revenue that the projected rate increase is expected to produce; 3) the total projected operating revenue after the revenue increase; 4) the total projected operating expenses; and 5) the resulting operating ratio.
3. Establish a 1-year stay-out provision for small motor passenger carriers that prohibits them from requesting another increase in rates for 1 year following a prior Commission-approved rate increase. An exception to the 1-year stay-out provision permitting carriers to come in for an increase more often would be included for small carriers with operating ratios above 93%.

The contact persons are Assistant Counsel David E. Screven, Law Bureau, (717) 787-2126 and Michael Hoffman, Director of the Bureau of Transportation and Safety (717) 783-5010.

Public Meeting held
January 15, 2009

Commissioners Present: James H. Cawley, Chairperson; Tyrone J. Christy, Vice Chairperson; Statement attached; Robert F. Powelson; Kim Pizzigrilli; Wayne E. Gardner

*Proposed Rulemaking for Streamlining the Rate Increase
Procedures for Small Motor Passenger Carriers;
Doc. No. L-2008-2057661*

Proposed Rulemaking Order

By The Commission:

The Commission acknowledges that some small motor carriers of passengers have had difficulty keeping the detailed business records needed in order to amend their tariffs for the purpose of raising rates and operating revenues. The Commission believes it is appropriate to streamline or simplify the current procedures for rate increase requests submitted by motor carriers of passengers with gross operating revenues less than \$500,000. Accordingly, the Commission proposes to amend our existing regulations in Chapter 23 of the *Pennsylvania Code*, which govern common carriers and establishes the procedures for rate increase filings.

Background

The Commission, at its public meeting held April 24, 1987, issued an Order at Docket L-860014 adopting revisions to its existing regulations governing motor carrier filing requirements for proposed increases in rates and operating revenues in 52 Pa. Code §§ 23.63 and 23.64 (relating to data required in filing proposed rate changes; and data required in filing increases in operating revenues). The amendments required motor carriers to file additional information such as income and expense statements, total interstate and intrastate passenger miles and statements generated from terminals and

facilities for the preceding 12 months when proposed rate changes or proposed revenue increase requests were filed with the Commission. The Commission adopted these revised regulations in order to elicit information from carriers that would enable the Commission to process rate matters promptly.

Discussion

The Commission notes that some “smaller” motor passenger carriers have had difficulty keeping the detailed business records needed to support their efforts to amend their tariffs for the purposes of raising rates and increasing carrier revenue. Motor carriers are required to provide detailed financial information to support their applications for rate increases. The failure to have all of the appropriate operational and financial records to support the rate increase case often results in the outright denial of the rate increase because the carrier has failed to provide the required financial documentation. It appears that their unfamiliarity with the Commission’s regulatory ratemaking process in general is one of the main obstacles for small motor passenger carriers when requesting rate increases. This lack of expertise with the ratemaking process generally results in lengthy delays in disposing of a carrier’s proposed increase in rates. Many such carriers have had to contract with consultants or tariff agents to guide them through the process, which is an added expense for such carriers.

Based upon our experience with small motor passenger carriers, and our recent analysis of rate increase cases filed by them, the Commission proposes to amend our existing regulations in order to simplify the rate process for small motor passenger carriers:

1. Define small motor carrier of passengers by gross operating revenue. The Commission opines that the gross intrastate operating revenue threshold for the classification of a “small” carrier shall be less than \$500,000.

2. Permit a small motor passenger carrier (that is, gross intrastate operating revenue less than \$500,000) to request a revenue increase each year without filing detailed, supporting financial information, other than: 1) total gross annual intrastate revenue for the most recent fiscal year; 2) the dollar amount of increased revenue that the projected rate increase is expected to produce; 3) the total projected operating revenue after the revenue increase; 4) the total projected operating expenses; and 5) the resulting operating ratio.

3. Establish a 1-year stay-out provision for small motor passenger carriers that prohibits them from requesting another increase in rates for 1 year following a prior Commission-approved rate increase. An exception to the 1-year stay-out provision permitting carriers to come in for an increase more often would be included for small carriers with operating ratios above 93%.

The Commission seeks input from interested parties and is requesting comments from them. The Commission requests that those submitting comments in this proceeding include specific section references to the Commission’s proposed regulations. Interested parties will have 30 days from the publication of this order in the *Pennsylvania Bulletin* to file their comments. The Commission informs all interested parties that it is committed to completing the revisions to its procedural regulations in a timely fashion and, therefore, no extensions will be granted for the filing of comments. Accordingly, under sections 501 of the Public Utility Code, 66 Pa.C.S. § 501, and the Commonwealth Document Law, 45 P.S. §§ 1201—1208, and regulations promulgated thereunder in 1 Pa. Code

§§ 7.1—7.4, we amend the regulations as noted previously and as set forth in Annex A; *Therefore,*

It Is Ordered That:

1. A rulemaking proceeding is hereby initiated at this docket to consider the revisions to regulations appearing in Chapter 23 of Title 52 of the *Pennsylvania Code* as set forth in Annex A.

2. The Secretary shall submit a copy of this order and Annex A to the Office of Attorney General for review as to form and legality.

3. The Secretary shall submit a copy of this order and Annex A to the Governor’s Budget Office for review of fiscal impact.

4. The Secretary shall submit this order and Annex A for review and comments by the designated standing committees of both houses of the General Assembly, and for review and comments by the Independent Regulatory Review Commission (IRRC).

5. The Secretary shall certify this order and Annex A and deposit them with Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

6. A copy of this order and Annex A shall be served upon the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff, and all jurisdictional small motor passenger carriers.

7. Within 30 days of this order’s publication in the *Pennsylvania Bulletin*, any interested person may submit an original and 15 copies of written comments to the Office of the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. One copy of a diskette containing the comments in electronic format should also be submitted. A copy of all written comments shall be served upon the Commission’s Bureau of Transportation and Safety.

8. Comments should include, where appropriate, a numerical reference to the existing regulations that the comments address, the proposed language for revision, and a clear explanation for the recommendation.

9. The contact persons for this matter are Michael Hoffman, Bureau of Transportation and Safety, (717) 783-5010 (technical) and David E. Screven, Law Bureau, (717) 787-2126 (legal).

By the Commission

JAMES J. McNULTY,
Secretary

Statement of Vice Chairperson Tyrone J. Christy

Today the Commission is issuing a Proposed Rulemaking for Streamlining the Rate Increase Procedures for Small Motor Passenger Carriers.¹ This Rulemaking will eliminate some of the highly detailed business records that small motor carriers of passengers currently are required to produce in order to receive a rate increase. In many cases, these small motor passenger carriers who demonstrated a true need for an increase were not able to receive one due to their inability to comply with our regulations.

¹ The term “small passenger carrier” is defined as “[a] person or corporation holding out, offering or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers or any class of passengers, with gross intrastate operating revenues of less than \$500,000.”

I would like to thank the Commission Staff for its work on this important Proposed Rulemaking. I believe our actions here today are a first step toward increasing efficiency within the Commission and assisting small motor passenger carriers in timely receiving necessary rate increases.

TYRONE J. CHRISTY,
Vice Chairperson

Fiscal Note: 57-267. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart B. CARRIERS OF PASSENGERS OR PROPERTY

**CHAPTER 23. TARIFFS FOR COMMON CARRIERS
GENERAL PROVISIONS**

§ 23.1. Definitions and applicability.

(a) *Definitions.* The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Operating ratio—The operating ratio at present rates shall be calculated as a ratio of intrastate operating expenses to intrastate operating revenues, where the numerator includes operations and maintenance expense, annual depreciation, applicable taxes, and the denominator consists of the utility’s intrastate operating revenues at present rates, including all surcharges.

* * * * *

Small passenger carrier—A person or corporation holding out, offering or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers or any class of passengers, with gross intrastate operating revenues of less than \$500,000.

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NOTICE OF CHANGES IN FARES

(*Editor’s Note:* The following text is new and has been printed in regular print to enhance readability.)

§ 23.68. Filing requirements for small passenger carriers.

Small passenger carriers with gross annual intrastate revenue of less than \$500,000 need not file the substantiating data required under § 23.64 (relating to data required in filing increases in operating revenues) when requesting an increase in rates, but shall submit a statement with the tariff or tariff supplement stating the following:

- (1) The information required under § 23.63 (relating to data required in filing proposed rate changes).
- (2) The total gross annual intrastate revenue for the most recent fiscal year.
- (3) The dollar amount of increased annual revenue that the rate increase is expected to produce.
- (4) The total projected operating revenue after the revenue increase.
- (5) The total projected operating expenses.
- (6) The projected operating ratio.

§ 23.69. Stay-out provision.

A small passenger carrier will not be permitted to request another increase in rates or operating revenues from the Commission for 1 year following a prior Commission approved rate increase. A small passenger carrier with gross intrastate operating revenues of less than \$500,000, but with an operating ratio that is 93% or above, shall be excepted from this 1 year stay-out restriction.

[Pa.B. Doc. No. 10-501. Filed for public inspection March 19, 2010, 9:00 a.m.]