

Notice of Proposed Rulemaking

COMMONWEALTH OF PENNSYLVANIA PENNSYLVANIA FISH AND BOAT COMMISSION

Title 58. Recreation Part II. Fish and Boat Commission Chapter 51 Administrative Provisions

Preamble

The Fish and Boat Commission (Commission) proposes to amend Chapter 51 (relating to administrative provisions). The Commission is publishing this proposed rulemaking under the authority of 30 Pa. C.S. (relating to the Fish and Boat Code) (code). The proposed amendments update the Commission's regulations concerning royalty rates for sand and gravel permits.

A. *Effective Date*

This proposed rulemaking, if approved on final-form rulemaking, will go into effect upon publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on this proposed rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's website at www.fishandboat.com.

C. *Statutory Authority*

The proposed amendments to § 51.92 (relating to royalty rates) are published under the statutory authority of section 503(c) of the Conservation and Natural Resources Act (CNRA) (71 P. S. § 1340.503(c)).

D. *Purpose and Background*

The specific purpose and background of the proposed amendments is described in more detail under the summary of proposal.

E. *Summary of Proposal*

Under section 503(c) of the Conservation and Natural Resources Act (71 P.S. § 1340.503(c)), the Pennsylvania Fish and Boat Commission (Commission), with the concurrence of the Department of Environmental Protection (DEP), is authorized to adjust the amount of royalty payments per ton or cubic yard of usable and/or merchantable sand or gravel, or both, extracted from Commonwealth waters.

There are four companies currently maintaining permits which allow the dredging of material from navigable waters of this Commonwealth. Historically, royalty rates were set in 1970 and involved establishing a flat rate of \$0.10 per adjusted dry ton that was about 6% of the selling price. The rate was adjusted \$0.05 each year from 1998 to 2001 culminating in \$0.30 per dry ton. Between January 1, 2002 and December 31, 2010, a variable calculation using the change in the producer price index (PPI) for sand and gravel from the base year (2002) was used. This was an administratively burdensome process that required the carry forward calculations from 2002 with annual adjustments to make the Commission whole due to the timing of PPI rate releases.

In 2010, dredger representatives, DEP, and the Commission simplified the process into its current configuration using a straightforward calculation with a fair rate that multiplied the

immediately preceding year's published price, average value, dollars per metric ton (converted to U.S. ton) for the commodity sand and gravel in the United States Geological Survey, Mineral Commodity Summary per dry ton, provided that the rate per dry ton is not less than \$0.48. This straightforward approach removed any ambiguity in the rate setting process and has been successful for the past decade.

As such, the current royalty rate schedule, which was adopted in 2011 and is set forth in the Commission's regulations at § 51.92, expires on December 31, 2020. The Commission and four representatives from the sand and gravel dredging industry have unanimously agreed to extend the previous fair and equitable process for setting royalty rates for the ten-year period of January 1, 2021 through December 31, 2030.

The Commission proposes that § 51.92 be amended 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.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about this 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.

For the Pennsylvania Fish and Boat Commission

/s/ Timothy D. Schaeffer
Timothy D. Schaeffer
Executive Director

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

CHAPTER 51. ADMINISTRATIVE PROVISIONS

§ 51.92. Royalty Rates.

Persons holding permits granting them nonexclusive rights and privileges of dredging, excavating, removing and carrying away merchantable sand and gravel under agreements between the permittees and the Department of Environmental Protection shall pay royalties in accordance with the following schedule:

[(1) During the period, January 1 through December 31, 2011, the greater of \$1,000 or \$0.48 per dry ton.

(2) During the period, January 1, 2012, through December 31, 2015, the greater of \$1,000 or 6.75% of the immediately preceding year's published price, average value, dollars per metric ton (converted to U.S. ton) for the commodity sand and gravel in the United States Geological Survey, Mineral Commodity Summary per dry ton, provided that the rate per dry ton is not less than \$0.48.

(3) During the period, January 1, 2016, through December 31, 2020, the greater of \$1,000 or 7.0% of the immediately preceding year's published price, average value, dollars per metric ton (converted to U.S. ton) for the commodity sand and gravel in the United States Geological Survey, Mineral Commodity Summary per dry ton, provided that the rate per dry ton is not less than \$0.48.]

(1) During the period, January 1, 2021, through December 31, 2030, the greater of \$1,000 or 7.0% of the immediately preceding year's published price, average value, dollars per metric ton (converted to U.S. ton) for the commodity sand and gravel in the United States Geological Survey, Mineral Commodity Summary per dry ton, provided that the rate per dry ton is not less than \$0.48.