

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency: Department of Environmental Protection

(2) Agency Number:

Identification Number: 7-542

IRRC Number:

(3) PA Code Cite: 25 Pa. Code Chapter 78a

(4) Short Title: Unconventional Well Permit Application Fees

(5) Agency Contacts (List Telephone Number and Email Address):

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(6) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation

- Emergency Certification Regulation;
 - Certification by the Governor
 - Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The purpose of the proposed rulemaking is to increase the unconventional well permit application fee from \$5,000 for nonvertical unconventional wells and \$4,200 for vertical unconventional wells to \$12,500 for all unconventional well permit applications. Because these proposed fee amendments only apply to Chapter 78a and not Chapter 78, conventional well operators are not affected by the amendments. This fee increase is necessary to address the current disparity between the income generated by the current well permit application fees and the cost of administering 58 Pa.C.S. Chapter 32 (relating to development) (2012 Oil and Gas Act) by the Department of Environment Protection's (Department) Office of Oil and Gas Management (collectively, the Oil and Gas Program or Program), support current Oil and Gas Program activities, fund additional positions where needed and modernize the Program.

(8) State the statutory authority for the regulation. Include specific statutory citation.

58 Pa.C.S. § 3211(d). This section provides that “each application for a well permit shall be accompanied by a permit fee, established by the Environmental Quality Board, which bears a reasonable relationship to the cost of administering this chapter.”

58 Pa.C.S. § 3274. This section directs the Environmental Quality Board to adopt regulations necessary to implement the 2012 Oil and Gas Act.

71 P.S. § 510-20 (Administrative Code § 1920-A). This section authorizes the Environmental Quality Board to promulgate regulations of the Department.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

This rulemaking is not mandated by federal law, federal or state court order, or federal regulation.

Section 3211(d) of the 2012 Oil and Gas Act provides that “each application for a well permit shall be accompanied by a permit fee, established by the Environmental Quality Board, which bears a reasonable relationship to the cost of administering this chapter.” 58 Pa.C.S. § 3211(d).

The Department has an obligation, as specified in 25 Pa.Code §§ 78.19(e) and 78a.19(b), to provide the Environmental Quality Board with an evaluation of the Chapter 78 and 78a well permit application fees at least every three years and recommend any changes to the fees necessary “to address any disparity between the program income generated by the fees and the Department’s cost of administering the program with the objective of ensuring fees meet all program costs and programs are self-sustaining.” The oil and gas well permit application fees were last modified in June 2014. Therefore, conducting such an evaluation and recommending as needed changes to the fees to the Environmental Quality Board (Board) is mandated at this time by Chapters 78 and 78a.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

This proposed rulemaking is needed because the current revenue generated by the well permit application fees are not sufficient to cover the cost of the Oil and Gas Program’s efforts to administer the 2012 Oil and Gas Act. Applicants for permits to drill oil and gas wells pay a permit application fee established by the Board. These well permit application fees, the \$6 million Impact Fee provided to the Department by 58 Pa.C.S. 2314(c.1)(3) (relating to distribution of fee), and any fines levied against the oil and gas industry are placed into the Well Plugging Fund in accordance with 58 Pa.C.S. § 3271(a). The money in the Well Plugging Fund covers the entire operation of the Program. Significantly, the Impact Fee is not dedicated solely to the Oil and Gas Program. The Department is allocated the \$6 million Impact Fee for “the administration of [58 Pa.C.S. §§ 2301–3504 (relating to oil and gas) (Act 13)] and the enforcement of acts relating to clean air and clean water.” 58 Pa.C.S. § 2314(c.1)(3). Allocation of these funds depends on the Department’s immediate needs. Therefore, the Impact Fee is not included the well permit application fee analysis.

The well permit application fee does not include the Oil and Gas Program’s costs to plug orphaned and abandoned wells. Section 3271(b) of the 2012 Oil and Gas Act requires a \$50 surcharge paid in addition to the well permit application fee. This surcharge is deposited into a restricted revenue account known as the Abandoned Well Plugging Fund to indemnify the Commonwealth for the cost of plugging abandoned wells. 58 Pa.C.S. § 3271(b). Section 3271(c) of the 2012 Oil and Gas Act requires a \$100 surcharge for oil wells and a \$200 surcharge for gas wells paid in addition to the well permit application fee. These surcharges are deposited into a restricted revenue account known as the Orphan Well Plugging Fund for the Department to plug orphan wells. 58 Pa.C.S. § 3271(c). These surcharges have not changed since the act of December 19, 1984 (P.L. 1140, No. 223) (58 P.S. §§ 601.101-601.605) (repealed by Act 13).

As noted above in response to question (9), conducting an evaluation of the well permit application fee and recommending changes to the fee to the Board is mandated at this time by Chapters 78 and 78a. Since 2015,

the Department has been monitoring the declining Well Plugging Fund balance and evaluating the need for additional staff and revenue by means of a regulatory fee package.

If the current unconventional well permit application fee of \$5,000 is not revised, the Oil and Gas Program would need to receive 5,000 horizontal unconventional well permit applications per year to be fiscally sustainable in FY 2019-2020. Indeed, through the first quarter of 2018 the Oil and Gas Program is on track to receive fewer than 1,700 unconventional well permit applications. By comparison, the Oil and Gas Program received less than 2,000 unconventional well permit applications in FY 2016-2017. In FY 2016-2017 well permit application fee (1,993 applications) and Impact Fee revenues totaled \$15.7 million but costs to run the Program exceeded \$22 million. In Fiscal Year (FY) 2015-2016, well permit application fee (1,646 applications) and Impact Fee revenues totaled \$13.9 million but costs to run the Program exceeded \$21.6 million. As stated in the *3-Year Regulatory Fee and Program Cost Analysis Report to the Environmental Quality Board* (3-Year Report) provided to the Board at its April 17, 2018 meeting, the projected cost to fund the Oil and Gas Program at current staffing levels in Fiscal Year (FY) 2019-2020 will be approximately \$25 million. Recent and current well permit application volumes will render the Well Plugging Fund insolvent by the first quarter of FY 2019-2020.

In response to declining Well Plugging Fund balance, the Oil and Gas Program reduced staff over time from 226 employees to 190 employees today. The Oil and Gas Program also reduced operating costs by 38%. Operating expenses only account for 10% of total program costs, therefore any future cost savings, absent this fee increase, would have to come from a reduction in staff. At the current disparity between fee revenues and costs to run the Program, the Oil and Gas Program would need to reduce its complement by almost 70 additional positions (or an additional 37%) in order to make up the annual net loss in the Program. This is an untenable approach that would render the Program incapable to meet its statutory obligations and the expectations of Pennsylvania citizens and the industry.

As a result of the significant reduction in staff referenced above, the Program struggles to meet its gas storage field inspection goals, consistently achieve appropriate permit review time frames, adequately fund training opportunities for staff and put on training for industry. Important program development initiatives, such as policies, best practices and technical guidance documents, have been put on hold because of a lack of sufficient staff to develop and update these important pieces of the Oil and Gas Program. In short, the Program is challenged to provide an adequate level of high quality service to the public and to the oil and gas industry. Service quality and Program capabilities will diminish significantly if no action is taken to increase funding.

In conducting its fee analysis, the Department did not include conventional well permits because the conventional industry currently submits approximately 200 permit applications per year and is unable to materially support Program costs through applicable fees. Conventional well permits provided only \$61,050 in 2017 (0.24% of needed program funding) and even less revenue in 2016. The Department does not anticipate receiving any appreciable increase in conventional oil and gas permit applications in the future.

The number of unconventional permits received by the Department fluctuates significantly each year. As such, accurately forecasting the number of permits received annually is not practical. Thus, it is entirely foreseeable that the current fee proposal will not be adequate to fund the Program. Indeed, through the first quarter of 2018 the Oil and Gas Program is on track to receive fewer than 1,700 unconventional well permit applications. This considerable uncertainty, and the additional Program needs described below, is why the \$6 million Impact Fee is not included in the Department's well permit application fee analysis. The Department also did not include penalties in its well permit application fee analysis because relying on penalties to fund program expenses is not appropriate and is contrary to sound public policy.

All the citizens of the Commonwealth will benefit through the environmental protection provided by the continued administration and enforcement of the 2012 Oil and Gas Act. Maintaining the Oil and Gas Program allows for statewide oil and gas conservation and environmental programs to facilitate the safe exploration, development, and recovery of Pennsylvania's oil and gas reservoirs in a manner that will protect the Commonwealth's natural resources, the environment, and public health, safety and welfare.

The oil and gas industry will also benefit through improved program consistency and permitting efficiency.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

N/A. There are no federal permitting or fee standards applicable to unconventional wells regulated by this rulemaking.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

Unconventional well drilling has been banned in New York and Maryland.

West Virginia charges \$10,150 for the first horizontal well on a well site and \$5,150 for subsequent wells on the same pad. West Virginia also charges fees for a variety of other activities. These fees are as follows:

\$650 for deep well and coalbed methane well permits
\$400 for shallow well permits
\$100 for a permit to dispose of well work fluids
\$550 to convert an existing shallow well to an injection well
\$800 to convert an existing deep well to an injection well

Ohio charges a variety of fees as well. Its fee schedule is as follows:

Permit to drill, reopen, convert or plug-back
Expedite fees (\$250.00)
Fees for drill, reopen, convert or plug-back (\$500.00)

Urban Fees:
Population under 10,000 (\$500.00)
Population under 15,000 (\$750.00)
Population over 15,000 or incorporated municipal area (\$1000.00)
Mandatory pooling application fee (\$5000.00)
Revision or reissuance of a permit to drill, reopen, convert or plug-back (\$250.00)

Temporary Inactive Status:
\$100.00 for first year, \$250.00 for second year, \$500.00 for third year and beyond.

Permit to Plug and Abandon a well:
Application Fee (\$250.00)
Expedite Fee (\$500.00)

Disposal of Brine
Permit fee (\$1000.00)
Disposal fee (\$.05/bbl in state)
Disposal fee (\$.20/bbl out of state)

Registration certificate and identification for brine haulers
Application fee (\$50.00)

Surface application of brine by local governments
Plan fee for application of brine (\$50.00)

Unitization:
Application filing fee (\$10,000.00)

Notice of assignment or transfer of interest in lease:
Well transfer fee (\$100.00)

Revised Unit fee (\$50.00)
Revised Location Fee (\$250.00)
Post drilling map fee-- (\$50.00)

The cost to drill a typical unconventional well is approximately \$8 million. The current unconventional well permit fee is \$5,000. An increase of \$7,500 to a flat fee of \$12,500 for an unconventional well represents .001% of the overall cost to drill a well and will have no impact on Pennsylvania's competitiveness with other states.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation will not affect any other regulations or agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Department consulted with the Oil and Gas Technical Advisory Board (TAB) in the development of this proposed rulemaking. The Department presented its Three-Year Fee Report and discussed its proposal to raise the unconventional well permit application fee to \$12,500 at TAB's February 14, 2018 meeting.

The Department also included an increase of the unconventional well permit application fee as an agenda item during the last three Oil and Gas Industry Quarterly Meetings. Attendees included representatives from all the major trade groups in the unconventional industry. Program managers have also given advance notice of this fee increase through informal discussions with the regulated community, and received feedback and suggestions for alternatives that were considered by Program staff. The plan to introduce this fee increase was also announced in a televised press conference by Governor Wolf and Secretary McDonnell on January 26, 2018.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

This regulation affects companies that operate natural gas wells in unconventional formations, such as the Marcellus Shale. According to the U.S. Small Business Administration, for NAICS codes 211120 (Crude Petroleum Extraction) and 211130 (Natural Gas Extraction), businesses with less than 1,250 employees are considered to be small businesses. According to the Department's permitting records, there are currently 80 operators of unconventional well sites in Pennsylvania, and that number is not expected to change significantly in the near term.

The Marcellus Shale Coalition, an industry association that represents the majority of exploration, production, midstream, and supply chain partners of unconventional natural gas drilling in Pennsylvania, has estimated that less than half of the operators affected may be classified as a small business. The proposed rulemaking requires payment of an increased fee to the Department for a permit to drill and operate an unconventional well. As noted above in response to questions (7) and (12), this increased well permit application fee represents a small portion of the total cost to develop an unconventional well.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

This proposed rulemaking affects companies that operate natural gas wells in unconventional formations, such as the Marcellus Shale. According to the U.S. Small Business Administration, for NAICS Codes 211120 (Crude Petroleum Extraction) and 211130 (Natural Gas Extraction), businesses with less than 1,250 employees are considered to be small businesses. According to the Department's permitting records, there are currently 80 operators of unconventional well sites in Pennsylvania, and that number is not expected to change significantly in the near term.

The Marcellus Shale Coalition, an industry association that represents the majority of exploration, production, midstream, and supply chain partners of unconventional natural gas drilling in Pennsylvania, has estimated that less than half of the operators affected may be classified as a small business.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

Increasing the well permit application fee by approximately \$7,500 for an unconventional gas well that costs approximately \$8 million to drill should have no impact on well drilling activity in Pennsylvania. Failure to increase the well permit application fee, however, will have a substantial negative impact to the unconventional shale gas industry and potentially to the public as the Department would be forced to reduce its permitting and inspection staff by more than 70 people unless other funding sources are used, such as the General Fund. This would result in increased permitting timeframes and associated slowdown of economic activity. Fewer inspectors would erode public confidence in the Department and would result in more well sites going uninspected each year.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The revenues generated from the fee increase will enable the Department to continue funding the direct and indirect costs of administering the 2012 Oil and Gas Act. Direct and indirect costs include personnel costs for carrying out Oil and Gas Program activities including processing of permits and conducting site inspections, operating expenses and the purchase of fixed assets such as sampling supplies, monitoring equipment and vehicles which are all associated with ensuring compliance with the 2012 Oil and Gas Act.

The benefits of the regulation include the ability of the Department to provide timely permit reviews and perform robust inspections at an increasing number of well sites in Pennsylvania to help prevent environmental harms to the Commonwealth's lands, waterways and air resources as well as minimizing impacts to human health, safety and welfare.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The proposed rulemaking increases the well permit application fee from \$5,000 for nonvertical unconventional wells and \$4,200 for vertical unconventional wells to \$12,500 for any unconventional well permit application.

The Department projects that approximately 2,000 well permit applications will be received annually (in comparison to approximately 200 conventional well permit applications) following this adoption of these amendments. This would result in an additional annual incremental permit cost of \$15 million to the regulated community.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no anticipated additional costs or savings for local governments to comply with these proposed regulations.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The fees that are collected by the Department are utilized solely to offset the direct and indirect costs of administering Pennsylvania's Oil and Gas Program. The fees collected will enable the Department to continue operating an effective Oil and Gas Program while enabling additional positions that will assist the Department in administering newly enacted statutory requirements.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The proposed rulemaking does not add to or change the existing reporting, recordkeeping or other paperwork requirements for the regulated community, local governments, or state government.

(22a) Are forms required for implementation of the regulation?

Minor changes to the unconventional well permit application form, *Permit Application to Drill and Operate an Unconventional Well (Document #, 8000-PM-OOGM0001bU)*, will be necessary to implement this rulemaking.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here.** If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

A draft version of the unconventional well permit application form, *Permit Application to Drill and Operate an Unconventional Well (Document #, 8000-PM-OOGM0001bU)* is attached.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Savings	\$0	\$0	\$0	\$0	\$0	\$0
COSTS:						
Regulated Community	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000
REVENUE LOSSES:						
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

(23a) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY -14/15	FY -15/16	FY -16/17	Current FY through 2/21/18)
Well Plugging Restricted Revenue Account (Fund 001-SAP Fund 60083)* * Expenditures and commitments	\$16,220,000	\$16,634,000	\$16,371,000	\$8,116,000

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

(a) An identification and estimate of the number of small businesses subject to the regulation.

This regulation affects companies that operate natural gas wells in unconventional formations, such as the Marcellus Shale. According to the U.S. Small Business Administration, for NAICS Codes 211120 (Crude Petroleum Extraction) and 211130 (Natural Gas Extraction), businesses with less than 1,250 employees are considered to be small businesses. According to the Department’s permitting records, there are currently 80 operators of unconventional well sites in Pennsylvania, and that number is not expected to change significantly in the near term. It is estimated that half of the unconventional operators in Pennsylvania may qualify as small businesses.

The Marcellus Shale Coalition, an industry association that represents the majority of exploration, production, midstream, and supply chain partners of unconventional natural gas drilling in Pennsylvania, has estimated that less than half of the operators affected may be classified as a small business.

(b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.

This rulemaking will not impose a reporting or recordkeeping requirement.

(c) A statement of probable effect on impacted small businesses.

Although unconventional well permit application fees will increase, it is not anticipated that this rulemaking will adversely impact small businesses. As noted above, the increased well permit application fee represents less than 0.001% of the capital required to drill a single unconventional well. Even though it is estimated that half of the unconventional operators in Pennsylvania may qualify as small businesses, this increased cost for such businesses is minimal when considered as part of the overall cost of the project. The universe of oil and gas operators that drill conventional oil and gas wells are more likely to qualify as small businesses. However, the proposed rulemaking does not alter the current fee structure for conventional oil and gas well permits.

(d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

There is no less intrusive alternative to this regulation.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

This rulemaking does not affect groups or persons including minorities, the elderly or farmers; therefore, this rulemaking does not include special provisions that address such needs. As noted above, the impact on unconventional well operators who qualify as small businesses, is believed to be minimal and therefore no special provisions have been developed as part of the proposed rulemaking.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The Department considered various regulatory options to amend the existing well permit application fee structure for unconventional gas well permits. The options included assessing increased permit fees, annual gas well registration fees, and fees for conventional well permits and any other authorization required of the Department, similar to the fees charged by Ohio. It was determined that the most viable option would be to simply increase the current unconventional well permit application fee. This approach is the most viable as it does not significantly change how or when the fees are currently collected; only the amount collected is changed. Also, the increase is minimal (0.001%) compared to the overall cost to drill an unconventional well and will have no impact on Pennsylvania's competitiveness with other states (see response to question (12)). The existing sliding scale fee for conventional wells will not be adjusted so will remain unchanged. This approach results in the least burdensome alternative to small businesses while providing sufficient funds to enable to Department to continue to operate an effective oil and gas regulatory program.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

a. The establishment of less stringent compliance or reporting requirements for small businesses;

While some unconventional operators may be considered a small business as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012, no changes to reporting, recordkeeping, or other administrative procedures are proposed as part of this rulemaking. As noted above, the impact on unconventional well operators who qualify as small businesses, is believed to be minimal and therefore no less stringent compliance or reporting requirements to further minimize that impact were considered.

b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

While some unconventional operators may be considered a small business as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012, no changes to reporting, recordkeeping, or other administrative procedures are included as part of this rulemaking. As noted above, the impact on unconventional well operators who qualify as small businesses, is believed to be minimal and therefore no less stringent schedules or deadlines for compliance or reporting to further minimize that impact were considered.

- c) The consolidation or simplification of compliance or reporting requirements for small businesses;

While some unconventional operators may be considered a small business as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012, no changes to reporting, recordkeeping, or other administrative procedures are included as part of this rulemaking. As noted above, the impact on unconventional well operators who qualify as small businesses, is believed to be minimal and therefore no consolidation or simplification of compliance or reporting requirements to further minimize that impact were considered.

- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and

The proposed rulemaking does not include design or operational standards.

- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

While certain unconventional operators may meet the definition of small business under the Regulatory Review Act, Act 76 of 2012, those operators are already subject to the well permit application fee imposed by 25 Pa.Code § 78a.19. As noted above, the impact on unconventional well operators who qualify as small businesses, is believed to be minimal and therefore exemption of small businesses to further minimize that impact were considered.

The universe of oil and gas operators that drill conventional oil and gas wells are more likely to qualify as small businesses. However, the proposed rulemaking does not alter the current fee structure for conventional oil and gas well permits.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Declining revenue from the collection of oil and gas well permit application fees is the basis for revising the current fee structure that has been in place since June 2014. Pursuant to sections 78.19(e) and 78a.19(b), “At least every 3 years, the Department will provide the EQB with an evaluation of the fees in this chapter and recommend regulatory changes to the EQB to address any disparity between the program income generated by the fees and the Department’s cost of administering the program with the objective of ensuring fees meet all program costs and programs are self-sustaining.” 25 Pa.Code §§ 78.19(e) and 78a.19(b).

This rulemaking, along with the 3-Year Report, is intended to meet this regulatory requirement and includes a recommendation to increase the current fee structure to ensure all costs of administering the 2012 Oil and Gas Act are met and such that the Oil and Gas Program is sustained until the next 3-year fee review.

The Department relied on standard comparative financial statements to assist in determining the solvency and of the Well Plugging Restricted Revenue Account and to conduct an analysis of the future viability of the account balance based on anticipated revenue and expenditures. The comparative financial statement included in the 3-Year Report identifies the insufficient account balance that would be expected given the current revenue collections and expenditures. The comparative financial statement also estimates the sufficient account balance that would be anticipated based on the adjusted fee structure as a result of the passage and implementation of this rulemaking.

(29) Include a schedule for review of the regulation including:

- | | |
|---|-----------------|
| A. The length of the public comment period: | 30 days |
| B. The date or dates on which any public meetings or hearings will be held: | NA |
| C. The expected date of delivery of the final-form regulation: | Quarter 2, 2019 |
| D. The expected effective date of the final-form regulation: | Quarter 3, 2019 |
| E. The expected date by which compliance with the final-form regulation will be required: | Quarter 3, 2019 |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | NA |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

Sections 78.19(e) and 78a.19(b) requires the Department to evaluate the well permit application fee every three years and recommend any changes to the fee necessary to address any disparity between program income generated by the fees and the Department's cost of administering the program with the objective of ensuring fees meet all program costs and programs are self-sustaining.

The Department intends to continue to monitor fee revenue collections and program expenditures and will conduct a re-evaluation of the fee structure within three years of the effective date of this final rulemaking as required by sections 78.19(e) and 78a.19(b).