

State Budget Office
Office of Regulatory Reinvention
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REQUEST FOR RULEMAKING (RFR)

Under the Administrative Procedures Act (APA), 1969 PA 306, the agency that has the statutory authority to promulgate rules must electronically file a RFR with the Office of Regulatory Reinvention (ORR) before initiating any changes or additions to the rules. Submit copy to the ORR at orr@michigan.gov.

1. Agency Information

Agency name:	Department of Environmental Quality (DEQ)
Division/Bureau/Office:	Oil, Gas, and Minerals Division
Agency contact person name, e-mail, and phone:	Adam W. Wygant, Director wyganta@michigan.gov 517-284-6823

2. Rule Set Information

Title of proposed rule set:	Oil and Gas Operations
Rule number(s) or range of numbers:	R 324.102, R 324.403, R 324.405, and R 324.801
Included in agency's annual regulatory plan as rule to be processed in current year?	Yes

3. Estimated timetable for completion, or statutory deadline, if applicable:

Estimated timetable for completion: six months. There is no applicable statutory deadline.

4. Describe the general purpose of these rules, including any problem(s) the changes are intended to address:

The DEQ is in the process of applying for primacy from the United States Environmental Protection Agency (U.S. EPA) to implement the Class II Underground Injection Control Program. This requires the DEQ to demonstrate that the State of Michigan has an equally effective program for the protection of underground sources of drinking water (USDWs) compared to federal standards in accordance with Section 1425 of the Safe Drinking Water Act. Definitions, in particular, are important for demonstrating the State of Michigan program is protecting the same USDWs and that USDWs are unequivocally protected from endangerment. The DEQ regulates Class II injection wells under Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, and the Oil and Gas Operations rules that are promulgated under Part 615. A USDW is described in current state rules as fresh water or mineral water that is either used for drinking water or that can potentially be used for drinking water and has fewer than 10,000 milligrams per liter total dissolved solids.

The U.S. EPA has expressed concern regarding the definition of "fresh water" and "mineral water" in Michigan regulations, as well as whether the statutory authority to prevent "waste" is adequate to protect USDWs. These rule revisions address those concerns.

The current R 324.102(s) defines "fresh water" as "water that is free of contamination in concentrations that may cause disease or harmful physiological effects and is safe for human consumption." The proposed revised rules would define fresh water as "water that contains less than 1,000 milligrams per liter of total dissolved solids." This change makes it clear that Michigan will protect water from damage related to injection wells even if the water may already be contaminated from other sources. The term "mineral water" is referenced in Part 615 but is not

defined in statute or rules. The proposed revision to R 324.102(z) defines "mineral water" as water that contains 1,000 milligrams per liter or more of total dissolved solids. These two definitions are designed to satisfy the U.S. EPA concern that the DEQ must have authority to protect all USDWs.

The revised R 324.403 requires that water that is used to drill water wells associated with oil and gas exploration must be fresh water that is “free of contamination in concentrations that may cause disease or harmful physiological effects” (because that criterion will be removed from the definition of “fresh water”) in order to protect drinking water sources from contamination from the drilling process. The revised R 324.405 applies that criterion to water used for drilling oil and gas wells through fresh water horizons, for the same reason.

The revised R 324.801(v) states that “waste” as defined in Part 615 includes “endangerment to an underground source of drinking water.” That provision clarifies that the DEQ has the requisite authority to protect USDWs under its statutory mandate to “prevent waste.”

The U.S. EPA and the DEQ is concerned that the existing definition of “endangerment to an underground source of drinking water” may imply that endangerment exists only *after* there is contamination of an underground source of drinking water. The DEQ proposes to revise the definition R 324.801(j), using the endangerment definitions from Kentucky and the Safe Drinking Water Act as a model, to ensure the term is clear that “endangerment to an underground source of drinking water” protects against contaminants that may result from injection operations.

5. Cite the specific rule promulgation authority (i.e. agency director, commission, board, etc., listing all applicable statutory references. If the rule(s) are mandated by any applicable constitutional or statutory provision, please explain.

Part 615 grants authority to the Supervisor to “promulgate and enforce rules, issue orders and instructions necessary to enforce the rules, and do whatever may be necessary with respect to the subject matter stated in this part to implement this part, whether or not indicated, specified, or enumerated in this or any other section of this part” [MCL 324.61506(a)]. Part 615 defines the Supervisor as the Department of Environmental Quality [MCL 324.61501(o)].

Executive Reorganization Order No. 2011-1 states “The Director of the Department of Environmental Quality may promulgate rules as may be necessary to carry out functions vested in the Director under this Order or other law in accordance with the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 to 24.328.

The rules are not mandated by any constitutional or statutory provision.

6. Describe the extent to which the rule(s) conflict with, duplicate, or exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level. Include applicable public act and statutory references.

These rules do not conflict with or duplicate other state or federal rules. The proposed rules are no stricter than federal rules and are being proposed only for clarity in definitions and use of the terms based on federal comments to ensure that the State of Michigan has an equally effective program for regulating Class II injection wells and protecting USDWs. The clarifications do not create any performance standards beyond current state or federal requirements, they only address some areas of potential ambiguity in the administrative code. The DEQ deems the clarifications necessary to remove ambiguity and obtain Class II primacy as described in Section 4 of this RFR.

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7. Is the subject matter of the rule(s) currently contained in any guideline, manual, handbook, instructional bulletin, form with instructions, or operational memo?

No.

8. Explain whether the rule(s) will be promulgated under Sections 44 or 48 of the APA or the full rulemaking process:

Rules will be promulgated under the full rulemaking process.
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9. Do the rule(s) incorporate the recommendations of any Advisory Rules Committee formed pursuant to Executive Order 2011-5? If yes, explain.

No.

10. Is there an applicable decision record as defined in Section 3(6) and required by Section 39(2) of the APA? If so, please attach the decision record.

No.

11. Reviewed by the following Departmental Regulatory Affairs Officer:

David Fiedler

 ↓ To be completed by the ORR ↓

Date RFR received: 3-12-19

Based on the information in this RFR, the ORR concludes that there are sufficient policy and legal bases for approving the RFR.

ORR assigned rule set number:	2019-001 EQ
Date of approval:	3/12/19

Based on the information in this RFR, the ORR is not approving the RFR at this time.

Date of disapproval:	
Explanation:	