

Office of Regulatory Reinvention
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**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RISCBA)**

PART 1: INTRODUCTION

Under the Administrative Procedures Act (APA), 1969 PA 306, the agency that has the statutory authority to promulgate the rules must complete and submit this form electronically to the Office of Regulatory Reinvention (ORR) at orr@michigan.gov no less than 28 days before the public hearing.

1. Agency Information

Agency name:	Department of Environmental Quality (DEQ)	
Division/Bureau/Office:	Oil, Gas, and Minerals Division (OGMD)	
Name, title, phone number, and e-mail of person completing this form:	Adam W. Wygant, Director, 517-284-6823, wyganta@michigan.gov	
Name of Departmental Regulatory Affairs Officer reviewing this form:	David Fiedler	

2. Rule Set Information

ORR assigned rule set number:	2019-001 EQ
Title of proposed rule set:	Oil and Gas Operations, Parts 1 through 14

PART 2: KEY SECTIONS OF THE APA

MCL 24.207a “Small business” defined.

Sec. 7a. “Small business” means a business concern incorporated or doing business in this state, including the affiliates of the business concern, which is independently owned and operated, and which employs fewer than 250 full-time employees or which has gross annual sales of less than \$6,000,000.00.

MCL 24.232 (8) Except for an emergency rule promulgated under section 48, and subject to subsection (10), if the federal government has mandated that this state promulgate rules, an agency shall not adopt or promulgate a rule more stringent than the applicable federally mandated standard unless the director of the agency determines that there is a clear and convincing need to exceed the applicable federal standard.

(9) Except for an emergency rule promulgated under section 48, and subject to subsection (10), if the federal government has not mandated that this state promulgate rules, an agency shall not adopt or promulgate a rule more stringent than an applicable federal standard unless specifically authorized by a statute of this state or unless the director of the agency determines that there is a clear and convincing need to exceed the applicable federal standard.

(10) Subsections (8) and (9) do not apply to the amendment of the special education programs and services rules, R 340.1701 to R 340.1862 of the Michigan Administrative Code. However, subsections (8) and (9) do apply to the promulgation of new rules relating to special education with the rescission of R 340.1701 to R 340.1862 of the Michigan Administrative Code.

MCL 24.240 Reducing disproportionate economic impact of rule on small business; applicability of section and MCL 24.245(3).

Sec. 40. (1) When an agency proposes to adopt a rule that will apply to a small business and the rule will have a disproportionate impact on small businesses because of the size of those businesses, the agency shall consider exempting small businesses and, if not exempted, the agency proposing to adopt the rule shall reduce

the economic impact of the rule on small businesses by doing all of the following when it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:

- (a) Identify and estimate the number of small businesses affected by the proposed rule and its probable effect on small businesses.
 - (b) Establish differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.
 - (c) Consolidate, simplify, or eliminate the compliance and reporting requirements for small businesses under the rule and identify the skills necessary to comply with the reporting requirements.
 - (d) Establish performance standards to replace design or operational standards required in the proposed rule.
- (2) The factors described in subsection (1)(a) to (d) shall be specifically addressed in the small business impact statement required under section 45.
- (3) In reducing the disproportionate economic impact on small business of a rule as provided in subsection (1), an agency shall use the following classifications of small business:
- (a) 0-9 full-time employees.
 - (b) 10-49 full-time employees.
 - (c) 50-249 full-time employees.
- (4) For purposes of subsection (3), an agency may include a small business with a greater number of full-time employees in a classification that applies to a business with fewer full-time employees.
- (5) This section and section 45(3) do not apply to a rule that is required by federal law and that an agency promulgates without imposing standards more stringent than those required by the federal law.

MCL 24.245 (3) Except for a rule promulgated under sections 33, 44, and 48, the agency shall prepare and include with the notice of transmittal a **regulatory impact statement** which shall contain specific information (information requested on the following pages).

PART 3: AGENCY RESPONSE

Please provide the required information using complete sentences. **Do not answer any question with “N/A” or “none.”**

Comparison of Rule(s) to Federal/State/Association Standards:

1. Compare the proposed rule(s) to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

Currently, Michigan has rules regulating drilling and operation of injection wells that parallel federal rules. Michigan Department of Environmental Quality (DEQ) regulates injection wells associated with oil and gas operations including disposal and secondary recovery under Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). The United States Environmental Protection Agency (USEPA) also regulates the same injection wells under the Class II Underground Injection Control (UIC) Program under authority of the federal Safe Drinking Water Act (SDWA). Michigan has long considered applying to assume delegated authority for the USEPA program (termed “primacy”) since 1983 when most other oil and gas producing states applied for and received primacy. These updates to injection rules position Michigan to apply for Class II primacy under Section 1425 of the SDWA. This type of primacy means Michigan has an equally effective program and is not adopting federal rules by reference or entirety.

A. Are these rule(s) required by state law or federal mandate?

No. These rules are not required by law or federal mandate; however, as part of the Class II UIC primacy application process, the USEPA has advised the DEQ that it may not grant primacy without some clarification of certain definitions. Specifically, USEPA has expressed concern regarding the definition of “fresh water” and “mineral water” in Michigan regulations, as well as

whether the statutory definition of “waste” is adequate to protect underground sources of drinking water (USDWs) as required under the SDWA.

B. If these rule(s) exceed a federal standard, identify the federal standard or citation, describe why it is necessary that the proposed rule(s) exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

The Oil and Gas Operations rules do not exceed federal standards or laws. This proposed rule package addresses definitions based on comments from the USEPA for clarity only as described in Section A above.

2. Compare the proposed rule(s) to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

The proposed rules are no stricter than those of neighboring states 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. In the past rule revision package for injection rules, the DEQ attempted to model definitions and rule concepts in line with those of Kentucky. Kentucky had the most recent successful delegation of Class II primacy. Even so, comments received from USEPA have indicated need to address some areas of potential ambiguity in the administrative code. The DEQ deems the clarifications necessary to remove ambiguity and obtain Class II primacy.

A. If the rule(s) exceed standards in those states, explain why and specify the costs and benefits arising out of the deviation.

Rules do not exceed standards in other states. Definition clarity is the goal of the proposed rule changes. Because administrative code and definitions are not exactly uniform from state to state, some minor changes for purpose of clarity is appropriate and does not create any additional costs nor benefits.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rule(s).

There are no other laws, rules, or other legal requirements that duplicate, overlap, or conflict with the proposed rule.

A. Explain how the rule has been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

The proposed definition revisions, for clarity purposes only, are being proposed based on specific comments made by the USEPA as part of their review of Class II UIC primacy application materials. As part of that application review process, the DEQ continues to engage with the USEPA during their review and has identified the recommended changes as being important for clarity purposes. The proposed changes are anticipated to address the comments of the USEPA.

4. If MCL 24.232(8) applies and the proposed rule(s) is more stringent than the applicable federally mandated standard, **a statement of specific facts that establish the clear and convincing need to adopt the more stringent rule(s) and an explanation of the exceptional circumstances that necessitate the more stringent standard** is required below:

The proposed rules are not more stringent than federal standards. 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.

5. If MCL 24.232(9) applies and the proposed rule(s) is more stringent than the applicable federal standard, **either the statute that specifically authorizes the more stringent rule(s) or a statement of the specific**

facts that establish the clear and convincing need to adopt the more stringent rule(s) and an explanation of the exceptional circumstances that necessitate the more stringent standard is required below:

The proposed rules are not more stringent than federal standards. 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.

Purpose and Objectives of the Rule(s):

6. Identify the behavior and frequency of behavior that the proposed rule(s) are designed to alter.

There is a potential for an oil and gas operator to attempt to construct and/or operate an injection well in a manner that could cause damage to underground water that would be otherwise useable for drinking water except that it contains some contaminant(s), or that there is some degree of intentional “endangerment” to a USDW that is “reasonable.” That has not occurred, to date, under the existing rules because DEQ staff have exercised their general regulatory authority in accordance with the underlying statutory intent to prevent damage to drinking water sources. However, the USEPA requires that Michigan rules clearly and explicitly prohibit any actions that might endanger a USDW. The purpose of the proposed rules is to address that concern of the USEPA.

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 USEPA concern that the DEQ must have authority to protect all USDWs.

The revised R 324.403 requires 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 are 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.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rule(s).

The proposed rule changes do not change the frequency of the targeted behavior; it is definition clarity only. Rule is intended to make clear that Part 615 unequivocally protects USDWs from

waste and endangerment, and that freshwater and USDW protection is not limited to those USDW's that do not contain contaminants.

B. Describe the difference between current behavior/practice and desired behavior/practice.

The proposed rules do not create a difference between current and desired behavior or practice; they provide definition clarity only to address comments made by USEPA during their review of Class II UIC primacy application materials.

C. What is the desired outcome?

The desired outcome is two-fold. First, the clarity provided by changes to the definitions address USEPA comments related to their review of the Class II UIC primacy application materials. Second and more importantly, removing potential ambiguity in definitions is important for clear regulation. Clarity in definitions is important for the DEQ, public, and regulated industry alike.

7. Identify the harm resulting from the behavior that the proposed rule(s) are designed to alter and the likelihood that the harm will occur in the absence of the rule.

The intent of preventing waste related to construction and operation of injection wells needs to be clear and unequivocal. Construction and operation of an injection well must not create waste or endanger a USDW. Likewise, to date, the present definition of freshwater has pulled double duty. It has been used not only as describing freshwater to be protected, but also freshwater as it is used when drilling wells. The USEPA has rightly pointed out, that as written the definition could be understood that if freshwater contained some contaminant, that it need not be protected with respect to injection well construction and operation. By moving the “free of contaminant” language and placing that in R 324.403 where it is intended to apply, any ambiguity is removed.

A. What is the rationale for changing the rule(s) instead of leaving them as currently written?

While not likely, an injection well operator could potentially argue in litigation that they need not protect freshwater or USDWs from injection operations. The proposed clarifications remove this potential ambiguity.

8. Describe how the proposed rule(s) protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

Part 615 is intended to allow permittees to construct and operate injection wells while protecting the environment, public health, and safety. The proposed changes to definitions are for clarity only and do not create a more burdensome standard or alternative. In a broader sense, by enabling Michigan to assume primacy for the UIC program, the proposed rules eliminate duplicative regulation and reduce unnecessary regulatory burdens for obtaining permits for injection wells.

9. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

None have been identified as obsolete or unnecessary.

Fiscal Impact on the Agency:

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursement rates, etc. over and above what is currently expended for that function. It does not include more intangible costs or benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

10. Describe the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings).

The proposed rule changes are definition clarity changes only, no fiscal impact. Michigan currently regulates Class II injection wells; definition changes don't change that.

11. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rule(s).

The proposed rule changes are definition clarity changes only, no appropriation or funding source changes apply.

12. Describe how the proposed rule(s) is necessary and suitable to accomplish its purpose, in relationship to the burden(s) it places on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

The proposed definition changes do not place burden on state or industry. It could be a savings to the agency if the clarity allows the agency to avoid unnecessary litigation over ambiguity created by definitions.

- A. Despite the identified burden(s), identify how the requirements in the rule(s) are still needed and reasonable compared to the burdens.

Not applicable; there is no identified burdens which have been identified by the agency.

Impact on Other State or Local Governmental Units:

13. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for such other state or local governmental units as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

The proposed rules will have no impact on revenues for other state and local governmental units. Further, the proposed rules should not result in the need for increased equipment, labor, or administrative costs. The Oil, Gas, and Minerals Division (OGMD) is sole administrator of Part 615, Supervisor of Wells, of the NREPA.

- A. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

The proposed rules will have no impact on the cost to other state or local governmental units, neither increase nor decrease. The proposed rule changes affect definitions only; there is no fiscal impact.

14. Discuss any program, service, duty or responsibility imposed upon any city, county, town, village, or school district by the rule(s).

The proposed rules do not have any such impact upon any city, county, town, village, or school district.

- A. Describe any actions that governmental units must take to be in compliance with the rule(s). This section should include items such as record keeping and reporting requirements or changing operational practices.

No actions will be required by governmental units for compliance. Definition changes are only for clarity.

15. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rule(s).

No appropriation for state or local government units are required for administration of the proposed administrative rules beyond the existing appropriation of the agency for oil and gas oversight pursuant to Part 615, Supervisor of Wells, of the NREPA.

Rural Impact:

16. In general, what impact will the rule(s) have on rural areas?

In general, the proposed rules are changes to definitions to ensure that they are not ambiguous as to prevention of waste and protection of an USDW. Oil and gas development is often situated in rural areas, and the proposed rules ensure continued protection of the rural environment and public health and safety under a single regulatory program for Class II injection wells by making Part 615 requirements equally effective as federal requirements for protection of underground sources of drinking water. Dual regulation often leads rural citizens to track two separate permitting processes that can lead to confusion due to duplicative permit application, public meeting, and public comment processes.

A. Describe the types of public or private interests in rural areas that will be affected by the rule(s).

The definitions changes add clarity and ensure that all USDWs and freshwater aquifers are protected, regardless of whether they have a contaminant. As described previously, the current freshwater definition has addressed two different concepts: what freshwater is in the context of being protected and what freshwater needs to be as part of a drilling fluid in the context of drilling new wells. As most rural residents utilize freshwater, the clarity ensures: freshwater and USDWs are protected with respect to injection well construction and operation and moves the contaminant language to R 324.403 where it is intended to apply.

Environmental Impact:

17. Do the proposed rule(s) have any impact on the environment? If yes, please explain.

The rules protect the environment by clarifying definitions to make clear that all freshwater and USDWs are protected even if they have contaminants and make clear that when freshwater is used in drilling fluids that it must be contaminant free. These definitions have not been challenged, and the clarifications are being proposed based on comments from the USEPA, and they could be viewed as ambiguous and/or result in non-protection of USDWs. The DEQ agrees that the clarity will ensure continued protection of the environment even though the changes do not create new standards.

Small Business Impact Statement:

18. Describe whether and how the agency considered exempting small businesses from the proposed rule(s).

The DEQ considered exemption for small business, and the proposed rules are definition clarifications that do not create new standards, do not have disproportionate impact to small businesses, and should apply universally.

19. If small businesses are not exempt, describe (a) how the agency reduced the economic impact of the proposed rule(s) on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rule(s) upon small businesses as described below, per MCL 24.240(1)(a)-(d), or (b) the reasons such a reduction was not lawful or feasible.

The proposed rules will not have a disproportionate impact on small businesses, so no exemptions were considered. Making the proposed changes to address USEPA comments on Michigan's Class II Primacy Application materials and regulations will assist DEQ in obtaining primacy and eliminating duplicative regulation which currently exists, small businesses will benefit by having single agency permitting and reporting requirements for injection wells. Duplicative regulation is more burdensome on smaller businesses who generally have less resources to complete duplicative permitting and reporting.

A. Identify and estimate the number of small businesses affected by the proposed rule(s) and the probable effect on small business.

Proposed rules are likely to impact fewer than 100 small businesses, primarily oil and gas operators, law firms, permitting companies, and testing companies. Approximately 70 percent of the state's injection wells are operated by small businesses. These companies are both Michigan and out-of-state based. In terms of the probable impact or effect on small businesses, there will be no impact to small business since the proposed rules are only proposing rule clarifications and no new standards for compliance.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

With respect to the definition clarifications, which are the substance of these proposed rules, it is not appropriate to differentiate and create lesser requirements (definitions) for small businesses than for large businesses.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

Companies, including small companies, are used to complying with all of the proposed regulations either on the state or federal level with the existing dual regulatory situation. No new skills will be necessary to comply with the proposed definition clarifications. If the State of Michigan receives primacy under Section 1425 of the SDWA for Class II injection wells, the proposed rules (definition changes) will provide an equally effective single regulatory schema that will benefit small companies as they will only have to understand and comply with one agency and statute instead of two.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rule(s).

The proposed rules, which are definition changes for clarification and moving the contaminant language from present freshwater definition to R 324.403 where it is intended to apply, do not establish new performance standards. They do address the USEPA comments that current definitions may be viewed as ambiguous and open to challenge.

20. Identify any disproportionate impact the proposed rule(s) may have on small businesses because of their size or geographic location.

The proposed rules will not have a disproportionate impact on small businesses.

21. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rule(s).

The proposed rules do not have any additional reporting requirements or associated costs for preparation. Not applicable based on this rule package being definition clarifications.

22. Analyze the costs of compliance for all small businesses affected by the proposed rule(s), including costs of equipment, supplies, labor, and increased administrative costs.

The proposed rules, which are definition clarifications, do not have costs for compliance and no analysis is appropriate.

23. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rule(s).

The proposed rules, which are definition clarifications, do not have associated legal, consulting, or accounting services. No estimated costs will be required for compliance.

24. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

Not applicable; there are no anticipated costs to absorb associated with the proposed rules which are limited to definition clarifications.

25. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

Because the proposed rules are definition clarifications and the definitions currently apply to small and large businesses alike, there is no cost anticipated to agency and a separate definition for small businesses is not appropriate.

26. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

Creating a different definition of waste or freshwater for small businesses is not appropriate. Having a lesser protection of freshwater or USDWs for small businesses who construct or operate wells would have a direct and negative impact on the public and environment.

27. Describe whether and how the agency has involved small businesses in the development of the proposed rule(s).

The DEQ OGMD utilizes the Oil and Gas Advisory Committee (OGAC) as a standing rules engagement group. The OGAC includes members who represent small businesses who are regulated by Part 615 and the proposed administrative rules. The OGAC has indicated support for these proposed definition clarifications in administrative rule.

- A. If small businesses were involved in the development of the rule(s), please identify the business(es).

No specific businesses were involved in development of rules; however, members of the OGAC, several of whom are also small business owners regulated by Part 615 and these proposed rule clarifications, indicated support.

Cost-Benefit Analysis of Rules (independent of statutory impact):

28. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

The estimated actual statewide compliance costs of the rule amendments on businesses and groups is expected to be zero, or cost neutral. The definitions which are being clarified already exist in administrative rule and the definitions do not create new standards of compliance that could have associated costs.

- A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rule(s).

The proposed rules are definition clarifications; they would apply to oil and gas operators, but there would be no direct impact or costs to them. The definitions being clarified already apply to all and lesser or different definitions are not appropriate.

- B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

No additional costs will be imposed on businesses or other groups as a result of these rules (definition clarifications). The definitions being clarified already apply to all and lesser or different definitions are not appropriate.

29. Estimate the actual statewide compliance costs of the proposed rule(s) on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

No additional costs will be created as a result of these rules (definition clarifications). The definitions being clarified already apply to all and lesser or different definitions are not appropriate.

A. How many and what category of individuals will be affected by the rules?

The definitions being clarified in the proposed rules already apply to all owners/operators regulated by Part 615.

B. What qualitative and quantitative impact does the proposed change in rule(s) have on these individuals?

The definitions being clarified in the proposed rules already apply to all owners/operators regulated by Part 615. The qualitative and quantitative impact of the definition clarifications on all individuals is zero or neutral.

30. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rule(s).

The quantified costs of definition clarifications are zero, especially considering the clarified definitions already apply to all regulated individuals.

31. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rule(s). Provide both quantitative and qualitative information, as well as your assumptions.

The proposed rules will not have any primary or direct benefits as they are only definition clarifications. Indirectly making the proposed changes to address USEPA comments on Michigan's Class II Primacy Application materials and regulations will assist DEQ in obtaining primacy and eliminating duplicative regulation which currently exist. Having single agency permitting and reporting requirements for injection wells. Duplicative regulation is more burdensome on smaller businesses who generally have less resources to complete duplicative permitting and reporting.

32. Explain how the proposed rule(s) will impact business growth and job creation (or elimination) in Michigan.

Companies are already subject to the definitions which will be clarified, the proposed rule set will not have a positive or negative impact on business growth and job creation/elimination. The elimination of duplicative regulation, in part made possible by the definition clarifications and obtaining primacy, may have positive impact on businesses developing new oil and gas prospects where new salt water disposal wells are needed to make projects economic. Some companies have had difficulty navigating federal process to obtain timely permits which creates uncertainty.

33. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

No individuals or businesses will be disproportionately affected by proposed rules/definition clarifications.

34. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of a proposed rule(s) and a cost-benefit analysis of the proposed rule(s).

The DEQ OGMD has been engaged with industry and the public for the past five years as delegation of Class II Primacy has been pursued. The proposed rules, essentially definition clarifications, are being proposed based on comments received from the USEPA in their review of primacy application materials and their review of Michigan's current regulations. Based on the very narrow scope of the proposed definition changes, a detailed analysis of cost-benefit was not needed so the methodology has been limited to evaluation of the USEPA comments, discussion of the comments and agency proposed changes with the OGAC, and a qualitative evaluation that the impact of minor changes to definitions which regulated individuals are already subject to, will be cost neutral and that there may only be some indeterminate benefit to small business if dual regulation (permitting and reporting) is eliminated. The

potential for benefit to the state, public, and industry for avoiding unnecessary litigation related to ambiguous definitions is real, but also indeterminant.

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rule(s).

As described above, due to the limited scope of the proposed rules, the estimates are qualitative and indeterminant because the proposed definition clarifications are for definitions which already apply to all regulated individuals. Clarity of already applicable definitions are assumed to have neutral cost-benefit other than the already described implication of avoiding legal challenge over potential ambiguity in definitions and potential benefit to successfully obtaining primacy to eliminate duplicative regulation.

Alternatives to Regulation:

35. Identify any reasonable alternatives to the proposed rule(s) that would achieve the same or similar goals. Include any statutory amendments that may be necessary to achieve such alternatives.

Some definitions could be removed from administrative rule and placed into statute. Because the definitions which are the subject of USEPA comments already exist in administrative rule, clarification of the definitions, addition of a mineral water definition, and moving a portion of freshwater definition to the appropriate place in R 324.403 addresses the comments without opening both statute and administrative rule. Part 615 provides rule making authority for rule clarifications of this scope.

A. In enumerating your alternatives, include any statutory amendments that may be necessary to achieve such alternatives.

If the definition amendments are accomplished in administrative rule where the definitions already exist, then no statutory amendments are necessary. The clarifications could be accomplished in statute, but that process would require opening both statute and administrative rule to avoid conflict.

36. Discuss the feasibility of establishing a regulatory program similar to that in the proposed rule(s) that would operate through private market-based mechanisms. Include a discussion of private market-based systems utilized by other states.

Not applicable, the proposed rules are definition clarifications only. The agency is not aware of any private market-based systems utilized by other states or federal government for the regulation of oil, gas, and injection wells. Some aspects of regulation are contracted out, such as witnessing of mechanical integrity testing but not the oversight of the state or federal regulatory program itself.

37. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rule(s). This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

The agency completed a more comprehensive rule package on June 6, 2018 which included many rule revisions related to injection wells in anticipation of pursuing Class II UIC primacy. The limited definition changes in this proposed rule set are the direct result of USEPA comments received after that rule making process. No other alternatives are believed to be viable or more appropriate than the proposed clarification of existing terms in administrative rule.

Additional Information:

38. As required by MCL 24.245b(1)(c), describe any instructions on complying with the rule(s), if applicable.

Proposed rules are limited in scope, and essentially definition clarification. There are no necessary instructions for compliance with the rules once in effect. Regulated individuals are already subject to

the definitions; moving the “contaminant free” language from definition to where it applies in R 324.403 also does not require any instructions for compliance.

↓ **To be completed by the ORR** ↓

PART 4: REVIEW BY THE ORR

Date RISCBA received:	3-4-2019/ REVISED 3-14-2019
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Date RISCBA approved:	3/27/19
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Date of disapproval:	
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Explanation:	
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