

State Budget Office
Office of Regulatory Reinvention
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**REGULATORY IMPACT STATEMENT (RIS)
and COST-BENEFIT ANALYSIS**

PART 1: INTRODUCTION

Under the Administrative Procedures Act (APA), 1969 PA 306, the department/agency responsible for promulgating the administrative rules must complete and submit this form electronically to the Office of Regulatory Reinvention (ORR) no less than 28 days before the public hearing (MCL 24.245(3)-(4)). Submissions should be made by the department Regulatory Affairs Officer (RAO) to orr@michigan.gov. The ORR will review the form and send its response to the RAO (see last page). Upon approval by the ORR, the agency shall make copies available to the public at the public hearing (MCL 24.245(4)).

1. ORR-assigned rule set number:

2017-017 EQ

2. ORR rule set title:

Oil and Gas Operations, Parts 1 through 14

3. Department:

Michigan Department of Environmental Quality

4. Division/agency/bureau:

Oil, Gas, and Minerals Division (OGMD)

5. Name, title, and phone number of person completing this form:

Adam W. Wygant, Permits and Technical Services Section Supervisor, 517-897-4828

6. Reviewed by department Regulatory Affairs Officer:

David Fiedler

PART 2: APPLICABLE 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 24.240 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).

[**Note:** Additional questions have been added to these statutorily-required questions to satisfy the **cost-benefit analysis** requirements of Executive Order 2011-5].

MCL 24.245b Information to be posted on office of regulatory reinvention website.

Sec. 45b. (1) The office of regulatory reinvention shall post the following on its website within 2 business days after transmittal pursuant to section 45:

- (a) The regulatory impact statement required under section 45(3).
- (b) Instructions on any existing administrative remedies or appeals available to the public.
- (c) Instructions regarding the method of complying with the rules, if available.
- (d) Any rules filed with the secretary of state and the effective date of those rules.

(2) The office of regulatory reinvention shall facilitate linking the information posted under subsection (1) to the department or agency website.

PART 3: DEPARTMENT/AGENCY RESPONSE

Please place your cursor in each box, and provide the required information, using complete sentences. Please do not answer the 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. Are these rule(s) required by state law or federal mandate? If these rule(s) exceed a federal standard, please 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.

Currently Michigan has rules regulating drilling and operation of injection wells that parallel federal rules. Michigan Department of Environmental Quality (MDEQ) regulates injection wells associated with oil and gas operations including disposal, secondary recovery, and gas storage 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 administers the Class II Underground Injection Control (UIC) Program under authority of the federal Safe Drinking Water Act (SDWA). Michigan has long considered becoming a primacy state 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. The Part 615 administrative rules do not exceed federal standards or laws. If Michigan never applies for primacy, there will be a slight increase in dual reporting. If, however, Michigan applies for and obtains primacy as anticipated, the requirements will be equal in many ways and will remove dual regulation, which is the primary goal of seeking primacy.

2. Compare the proposed rule(s) to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities. If the rule(s) exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.

Most oil and gas producing states have primacy for administration of the SDWA. Neighboring states of Ohio, Illinois, Kentucky, and Indiana have primacy. The proposed rules are very similar to adjacent states and are geared to provide an equally effective state Class II injection well regulatory program as the federal Class II UIC requirements/laws. When drafting updated injection rules, Kentucky administrative rules were used as a comparable standard since Kentucky received Class II primacy in 2017, making them the most recent state to receive primacy under Section 1425 of the SDWA.

With respect to the proposed increase to single well bonding amounts, some states within the geographic region may be either higher or lower than those proposed. The MDEQ is specifically proposing the new single well bond amounts based on a State of Michigan Auditor General audit in 2012. The bonds are intended to cover costs of well plugging, and the amounts have been determined by analyzing data from plugging projects completed by the state as well as anticipated plugging costs provided by industry, both of which indicated a

doubling of single well bond amounts are warranted. The Oil and Gas Advisory Committee was used to review data and make this recommendation as a stakeholder group. Single well bond amounts had not been increased since 1993 and no longer reflect actual plugging costs being charged in Michigan by service companies.

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

During the last major Part 615 rule revision, changes to injection rules were made in anticipation of applying for primacy. In 2015 Michigan submitted a draft application for primacy to the USEPA and received comments on the application. The comments indicated that some additional administrative rules would be necessary to prove that Michigan had an equally effective program that the USEPA believed could be enforceable by the federal government if the need arose. These proposed rules reflect an effort to address specific comments by the USEPA in anticipation of Michigan applying for primacy in early 2018. The USEPA is currently reviewing the proposed rules and will provide any additional comments during the public comment period as they pertain to Michigan seeking primacy under Section 1425 of the SDWA.

Purpose and Objectives of the Rule(s):

4. Identify the behavior and frequency of behavior that the proposed rule(s) are designed to alter. Estimate the change in the frequency of the targeted behavior expected from the proposed rule(s). Describe the difference between current behavior/practice and desired behavior/practice. What is the desired outcome?

The proposed rules, in addition to clarifying some existing rules, are designed to provide a Part 615 regulatory structure for injection well drilling and operation that is equally effective as the SDWA in protecting underground sources of drinking water in anticipation of Michigan applying for and receiving Class II primacy under Section 1425 of the SDWA. Michigan has about 1,300 existing Class II wells. Over the past year, Michigan issued five permits for new Class II wells, but that number is likely to increase in the future. Neither the number of wells nor the construction and operation standards will change in response to the proposed rules; however, the rules will eliminate duplicate regulation. Additionally, changes to single well bond amounts are intended to compel companies to submit a financial assurance for any new well adequate to cover current anticipated plugging costs. Additional changes in the proposed rule changes (R 324.206 and R 324.208) primarily change the requirements to allow flexibility for minor surface location changes and permit extensions. The R 324.208 changes are part of modernization to recognize that projects face delays such as local ordinance approvals, federal permitting, and other litigation. Similarly, minor surface location changes should be handled as a revised permit similar to a lost hole without a new permit application and fee. The revised permit for the new surface location will still require documentation and MDEQ approval; however, it streamlines workflow and also will work better with OGMD's new database and electronic permitting system so as to not create unnecessary duplicate permit records for the same well.

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

The harm of not pursuing the proposed rule changes are:

A. Not requiring a single well bond amount adequate to plug a well as intended results in the MDEQ being unable under Part 615 to perform plugging activities sometimes required as part of escalated enforcement as identified by the 2012 audit.

B. Not making changes to R 324.206 and R 324.208 creates some harm to permittees by continuing to require them to submit a new permit application and fee and wait for an additional review period due to minor surface location changes requested by property owners or delays due to issues outside of Part 615.

C. Not making updates to Part 615 injection well requirements will not necessarily create harm from behavior of the regulated entities; however, the changes are necessary for Michigan to obtain Class II primacy under Section 1425 of the SDWA. The proposed rules do strengthen Michigan's Part 615 injection well program and are necessary to make Part 615 requirements equally effective as federal requirements. In the absence of the proposed rule changes, Michigan will not be able to receive primacy for Class II wells. Seeking and obtaining Class II primacy under Section 1425 of the SDWA will remove existing duplicate regulation and provide Michigan with an equally effective single regulatory framework to protect underground sources of drinking water.

6. 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.

The rule package intent is to provide a fair regulatory framework that will protect the environment and human health and safety by assuring there is adequate evaluation, monitoring, and reporting of injection well drilling and operations. The proposed injection rules provide required authority and program requirements expected to be required to receive Class II primacy under Section 1425 of the SDWA. The proposed increases to bonding requirements to match actual anticipated costs to plug and abandon wells is necessary to protect health, safety, and welfare but are not intended to place additional financial burden on companies to account for any possible potential risk. Financial assurance in Part 615 is only intended to cover plugging costs. The proposed rules strengthen Michigan's Part 615 regulatory program for injection wells, bring requirements in line with federal requirements in anticipation of receiving primacy, and are reasonable without being more burdensome than rules that the regulated community encounters in other states. If the rules on Class II injection wells are not adopted, the regulated entities would continue to fall under existing federal as well as state rules; applying a single state regulatory structure would be more efficient and avoid duplication.

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

There are no rules in the rule set that should be rescinded. For R 324.206 and R 324.208, some minor changes are being proposed to remove unnecessary regulatory burden by allowing minor surface location changes (R 324.206) with a permit revision and no additional fee similar to handling of lost holes instead of requiring a new permit and fee and allowing for permit extensions of two years upon request (R 324.208). Allowing for permit extensions is

not currently allowed as it is in other states and by the USEPA. It is not uncommon now for some permitted oil and gas locations to experience delay due to other permitting at local or federal levels, and litigation also adds time for adjudication. Providing an extension will allow a permittee to resolve these other types of issues without their Part 615 permit expiring and having to start over with a new permit application and fee for the same proposed activity.

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, an increase in the cost of a contract, programming costs, changes in reimbursement rates, etc. over and above what is currently expended for that function. It would 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.

8. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).

Michigan currently regulates Class II injection wells; however, adoption of the proposed rules may result in a slight indeterminate increase in the amount of staff time required to review additional injection well tests and reports. If Michigan obtains Class II injection well primacy under Section 1425 of the SDWA, that will require the OGMD to allocate more resources for the program due to coordination of the Class II primacy program with the USEPA. Coordination will require annual program reviews and reporting of certain metrics to the USEPA, and the OGMD anticipates this will be a full-time equivalent position (FTE). Currently the OGMD has about 0.5 FTE associated with coordination of the oil and gas injection well program and that will need to increase to 1.0 FTE by reallocation of resources or the addition of an FTE for coordination purposes. Federal grant money is generally available to states to cover some or all of the additional costs to implement the Class II program.

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

Because the proposed rules largely streamline and strengthen testing and reporting requirements for Part 615 injection wells, there is no necessary additional cost for staffing needs and no appropriation is necessary. Similarly, no removal of appropriation is proposed, since efficiencies gained by the proposed rules will have only indeterminate or negligible impact on expenditure and appropriation and staffing appropriation. Certain portions of the rules (R 324.803, R 324.814, and R 324.815) only become effective if Michigan receives Class II injection well primacy. If Michigan does receive primacy, the OGMD will have to reallocate resources and/or seek additional funding sources to cover the anticipated expenditures associated with increased public engagement and coordination with the USEPA.

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

The only significant burden not already imposed by current regulations is the requirement to report results of tests already being required by the federal government and the SDWA. This dual reporting is not considered a significant burden since operators are already required to perform the monitoring and testing that is being reported. Testing and reporting requirements are critical for ensuring early warning of conditions within injection wells that can risk underground sources of drinking water. If the MDEQ is granted primacy for the Class II program, the rules will decrease regulatory programs by eliminating duplicative requirements. The increase in single well bond amounts is warranted by audit findings and is proposed to match current anticipated plugging costs. Not having adequate financial assurance places the State of Michigan in the potential position of having to plug an operator's well at a loss.

Impact on Other State or Local Governmental Units:

11. 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 other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Please 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 OGMD is sole administrator of Part 615, Supervisor of Wells, of the NREPA.

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

The proposed rules do not have any such impact upon any city, county, town, village, or school district. The rules do include increased notification and public engagement if Michigan receives Class II primacy under Section 1425 of the SDWA. This notice and engagement is consistent with engagement and records that local and state government already receives from the USEPA as part of their administration of the SDWA in the current situation of dual regulation of Class II injection wells by the MDEQ and USEPA.

13. 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 is 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:

14. In general, what impact will the rules have on rural areas? Describe the types of public or private interests in rural areas that will be affected by the rule(s).

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 duplicative permit application, public meeting, and public comment processes. The rules (R 324.206) also decrease potential environmental and property impacts by allowing for greater flexibility in minor changes to surface location sometimes requested by landowners.

Environmental Impact:

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

The proposed rules will have a direct positive impact on the environment by providing a sensible up-to-date regulatory framework for financial assurance and injection wells associated with oil and gas operations. Revision of R 324.206 will have a direct positive impact on the environment by allowing more flexibility in minor surface location changes of wells. These minor changes to surface location are often requested to preserve additional habitat or property elements that property owners deem important. Due to the current requirement to obtain a new permit for minor surface location changes, permittees may be reluctant to accommodate last minute requests; revision of R 324.206 resolves that issue while still being protective of public health and safety and the environment.

Small Business Impact Statement:

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

The proposed rules will not have a disproportionate impact on small businesses, so no exemptions were considered. Oil and gas businesses generally contract for services entailing evaluation, monitoring, and well drilling, and the costs are similar regardless of the size of the business. The potential environmental impacts and risks that the proposed rules are meant to address are issues largely non-biased to the size of the company and more applicable to the type of work performed. The proposed rules should apply to the practice regardless of the size of the business. In fact, most of the provisions in the revised rules are currently applicable to both small and large businesses in Michigan under existing federal regulations.

17. If small businesses are not exempt, describe (a) the manner in which 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 (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.

As noted above, the proposed rules will not have a disproportionate impact on small businesses, and the provisions are necessary to assure adequate protection of the environment and public health and safety. Currently companies are required to comply with the same requirements on the federal level for compliance with the SDWA. If Michigan obtains Class II primacy under Section 1425, small businesses may be disproportionately benefited as dual regulation and permitting is likely more of a burden on small businesses than large ones. Data provided by the Michigan Oil and Gas Association (MOGA) as part of this analysis indicated that dual regulation and delays at the federal level has tripled, at times, the cost to secure permits for injection wells. In addition, they indicated that delays that result from dual regulation can have other financial impacts due to brine hauling costs while waiting for federal permits. The information submitted that delays waiting for federal permits have cost companies over \$300,000. These economic impacts do not directly have anything to do with the proposed rule set itself, but rather speaks to the potential savings small companies may see if Michigan ultimately is approved for Class II primacy and ending dual regulation.

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% 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 a relatively small increase in the overall costs of dual reporting and increase of single well bond amounts. If Michigan follows through with an application for and receives Class II primacy, small businesses will benefit by having single agency permitting and reporting requirements for injection wells. Small businesses as well as large need disposal wells for waste fluids coproduced with oil and gas, as well as injection wells used for secondary recovery of oil.

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 injection well testing and reporting requirements, it is not appropriate to differentiate and create lesser requirements for small businesses than for large businesses. The risks associated with injection wells are unbiased by size of the company; these types of requirements are as applicable to a small company with one injection well as a large company with many injection wells. The proposed increase in single well bond amounts is also a requirement that should not be exempted or decreased for small businesses; it is solely tied to the anticipated cost to plug a well based on depth.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements 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 dual reporting requirements. If the State of Michigan receives primacy under Section 1425 of the SDWA for Class II injection wells, the proposed rules 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 rules do not change performance standards for injection wells. In order to ensure safe drilling and operation of injection wells, it is necessary for there to be some minimum design and operation standards in the administrative rules for requirements such as maximum injection pressures, mechanical integrity testing, cementing, and well construction. The proposed rules do not replace or increase the amount of design and operation standards within the Part 615 administrative rules. The rules do provide, where appropriate, flexibility for the permittee and OGMD to use best scientific judgement to meet performance standards and for protection of underground sources of drinking water.

18. 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.

19. 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 impose any new testing or reporting requirements that small and large businesses are already required to perform at the state or federal level. The primary and only impact is that companies will have to submit some additional reports to the MDEQ that they already submit to the USEPA. The OGMD will be flexible to allow for submittal of USEPA forms where possible to avoid additional cost of reporting to the state. The ultimate outcome of these regulations is to position Michigan to obtain federal Class II primacy under Section 1425 of the SDWA. If successful, small businesses should realize an overall reduction in permitting and compliance costs by removing dual regulation.

20. 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.

Costs for compliance with the proposed rules fall into the following categories:

- A. R 324.206 and R 324.208 provide flexibility to the permittee, including small businesses, and will result in not having to file new permits and fees for minor surface location changes and terminated permits when extensions are requested and granted.
- B. R 324.212 doubling of single well bond amounts will have direct impact on all businesses, but not small businesses disproportionately. Bond amounts are set by depth, and evaluation of current plugging costs indicate a necessary doubling of single well bond amounts to cover the

current costs of plugging. Current bond amounts of \$10,000, \$20,000, \$25,000, and \$30,000 will double to \$20,000, \$40,000, \$50,000, and \$60,000, respectively.

C. Proposed injection rule updates do not require new standards, testing, or reporting not already required by the state or federal agencies. The proposed injection rules will require companies to provide additional reports to the MDEQ that are currently submitted to the USEPA. If Michigan obtains Class II primacy under Section 1425, small businesses will see a small indeterminant reduction in costs by having to comply with a single permitting and regulatory program. Administrative costs for compliance with the proposed rules is limited to minor costs associated with mailing some additional monitoring data to the MDEQ that is currently only submitted to the USEPA.

21. 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 will result in negligible increases or decreases in legal, consulting, or accounting services. Each of these types of services are commonly used for compliance with Part 615, and since the proposed rules do not go beyond what is currently required by the state and federal government, it is not expected to result in any determinable increase.

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

Small businesses involved in oil and gas operations will be impacted slightly by the increase in single well bond amounts; however, the increase represents 4% or less of the cost to drill a new well. The increases are the first single well bond amount increase since 1996. They reflect actual current costs to plug a well and should not curtail small business investment or competition. The proposed injection rules do not represent an increase in regulatory burden and will not cause economic harm to small business or affect their ability to compete. If Michigan obtains Class II primacy and dual regulation comes to an end, small businesses are expected to benefit from having to comply with one regulatory program and realize some indeterminant savings.

23. 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.

As described in Item 16 of this analysis, exemptions for small businesses from this rule set are not appropriate. If there were applicable exemptions for small businesses, there would be some insignificant and indeterminant impact to the agency from tracking a separate set of standards.

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

Due to the nature of oil, gas, and injection wells, there is no lesser risk or set of standards appropriate for small businesses. The need for existing and proposed rules is for protection of public health and safety and the environment. The public would specifically be concerned if there were lesser standards of compliance for small businesses for the same type of well or operation.

25. Describe whether and how the agency has involved small businesses in the development of the proposed rule(s). If small businesses were involved in the development of the rule(s), please identify the business(es).

The OGMD utilized the Oil and Gas Advisory Committee as a standing stakeholder group to help develop the draft rules. The Oil and Gas Advisory Committee consists of 6 industry members and 2 public members. Of the 6 industry members, 5 represent small businesses. No member of the Oil and Gas Advisory Committee, including those representing small businesses, expressed a concern regarding the proposed rules. Small businesses were directly involved through the Oil and Gas Advisory Committee in the development of the proposed rules.

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

26. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rule(s). 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)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

Statewide there are approximately 1,300 injection wells active and regulated by Part 615. Although testing and monitoring requirements already exist at the state or federal level, some additional costs will be incurred by companies that will have to submit additional data being currently submitted to the USEPA to the MDEQ also. A conservative quantitative estimate for some additional dual reporting may be \$40 per well per year, for a total annual increase of \$52,000 statewide across the industry. Also, if Michigan permits 100 wells in a year and the average increase to single well bond amounts is \$30,000 and 30% of new wells utilize single well bonds as the financial assurance mechanism, then conservatively an additional \$900,000 in bonds could be required statewide. These numbers are quantitative estimates only and are conservative in nature.

27. Estimate the actual statewide compliance costs of the proposed rule(s) on individuals (regulated individuals or the public). Please include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping. How many and what category of individuals will be affected by the rules? What qualitative and quantitative impact does the proposed change in rule(s) have on these individuals?

As shown conservatively in Item 26 of this analysis, some additional costs due to dual reporting at the state and federal level are expected. If dual regulation ends by Michigan obtaining Class II primacy, a similar or much larger savings will be realized by regulated individuals/companies by having to comply with only one regulatory program. The public will not see any change in costs resulting from the proposed rules. If dual regulation ends, the regulated entities will realize some insignificant and indeterminant savings by having to engage with a single agency and regulatory program instead of two.

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

No cost reductions are anticipated by the proposed rule changes. The proposed updates to the Part 615 injection rules do position Michigan to obtain primacy, at which time some indeterminate reductions are likely due to elimination of dual permitting and reporting requirements.

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

Having a defined regulatory structure is important for investment in Michigan projects. This proposed rule package represents a reasonable regulatory burden, not inconsistent with other states with similar oversight authority. The proposed rules position Michigan to obtain federal Class II injection well primacy under Section 1425 of the SDWA, by putting in place an equally effective regulatory program. Obtaining primacy will remove duplicate regulation, and the state will provide the single regulatory program. A single, clear, and concise regulatory program that is protective of public health and safety, the environment, and underground sources of drinking water will have a direct, positive benefit to investment in Michigan. Having a single regulatory program will streamline requirements for secondary recovery projects utilizing injection wells. Quantitative data is not available to estimate potential savings to companies if Michigan obtains primacy and duplicative regulation for injection wells is ended.

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

The proposed injection rule updates will position Michigan to obtain Class II primacy under Section 1425 of the SDWA to remove duplicative regulation. By providing a single, predictable, and reasonable regulatory framework that prevents waste and protects the environment, public health and safety, and underground sources of drinking water, the rules allow the Michigan oil and gas industry to continue to function and grow as new oil and gas resources are identified and developed. Injection wells are essential to the future of Michigan oil and gas production for disposal of waste fluids and for recovery projects in existing oil fields. Having a single regulatory structure protective of underground sources of drinking water will have a positive impact on oil and gas development and will reduce the cost of regulatory compliance by elimination of duplicative regulations. The oil and gas industry in Michigan supports many additional small businesses providing services in the oil/gas field, as well as indirect jobs.

31. 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 the proposed rules. However, small businesses may be positively affected by a single regulatory framework if Michigan seeks and receives federal Class II primacy under Section 1425 of the SDWA. Some small operators may argue they will be disproportionately impacted by the single well bond increases because they may not operate a sufficient number of wells to justify a blanket bond; however, the bond amounts have not been increased since 1996 and do not reflect actual

costs to plug a well today. If an operator chooses the single well bond option as their financial assurance mechanism, it should be sufficient to cover anticipated plugging costs.

32. 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). 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).

OGMD staff worked together to address the economic costs and benefits of these rules, relying on experience and expertise in oil and gas development and environmental monitoring. R 324.212 proposed changes were based on both data generated by the OGMD during plugging operations, data provided by industry, and stakeholder engagement using the Oil and Gas Advisory Committee as a standing stakeholder group for rule changes proposed by the OGMD. In addition, MOGA was asked if they would like to provide any input on potential impacts to small business as part of compiling this regulatory impact statement. MOGA did submit a two-page memo highlighting some of the impacts that dual regulation has on the industry. The memo does not speak directly to impacts of this rule set, but rather some of the costs incurred due to dual regulation that may be reduced if Michigan applies for and receives Class II primacy under Section 1425 of the SDWA in the future. This rule update is believed necessary to position Michigan for primacy.

Alternatives to Regulation:

33. Identify any reasonable alternatives to the proposed rule(s) that would achieve the same or similar goals. In enumerating your alternatives, please include any statutory amendments that may be necessary to achieve such alternatives.

There are no alternatives to regulation that could be implemented considering the majority of this rules package is clarifying existing requirements to prevent waste in relation to Part 615 injection wells, and other changes in the proposed rules are either cost neutral or result in some savings. The only reasonable alternative for ending duplicative state and federal regulation of Class II injection wells would be to rescind all Part 615 regulations in statute and rule for injection wells equivalent to federal Class II injection wells. Updating the Part 615 injection rules to provide an equally effective program as the SDWA, in order to obtain primacy under Section 1425 of the SDWA, is the more desirable alternative to have a single regulatory program ensuring protection of underground sources of drinking water for Class II wells.

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

There are no market-based mechanisms that could operate instead of proposed rules. The proposed rules are very consistent with rules proposed in other states for the same activity. The majority of the work associated with the proposed rules is cost neutral or represents a small increase in overall project costs. R 324.206 and R 324.208 revisions will actually result in some savings through flexibility in minor well surface location changes and allowing for extension of permits for undrilled wells.

35. 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 primary alternative that was pursued was a draft Supervisor of Wells (SOW) Instruction that was submitted with a draft application for Class II primacy in August 2015 to the USEPA. USEPA comments expressed concern that some portions of the SOW Instruction were beyond clarification appropriate for an instruction and should be made part of promulgated administrative rules to ensure enforceability. This proposed rule set is intended, with respect to injection wells, to provide clear, concise, and unambiguous injection well regulatory requirements that will be equally effective as the federal SDWA should Michigan pursue primacy under Section 1425 of the SDWA.

Additional Information

36. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rule(s), if applicable.

Currently, there are no instructions proposed for compliance with the proposed rules. The rules themselves represent clarification of requirements. In a draft application for primacy, the OGMD submitted a draft SOW Instruction regarding regulation of Class II injection wells. The USEPA in their comments indicated that some items of the draft SOW Instruction would need to be in promulgated rules not within an Instruction. Therefore, the OGMD has proposed rules that are clear, concise, and unambiguous such that an Instruction should not be necessary.

PART 4: REVIEW BY THE ORR

Date Regulatory Impact Statement (RIS) received:

12-13-2017

Date RIS approved:	12/22/2017
ORR assigned rule set number:	2017-017 EQ

Date of disapproval:	Explain:
More information needed:	Explain: