

State Budget Office  
**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](mailto:orr@michigan.gov) no less than 28 days before the public hearing.

**1. Agency Information**

|   |  |  |  |
|---|--|--|--|
| Agency name:  | Licensing and Regulatory Affairs   |  |  |
| Division/Bureau/Office:   | Bureau of Professional Licensing   |  |  |
| Name, title, phone number, and e-mail of person completing this form: | Dena Marks,<br>Board Analyst<br>517-335-3679<br><a href="mailto:Marksd1@michigan.gov">Marksd1@michigan.gov</a> |  |  |
| Name of Departmental Regulatory Affairs Officer reviewing this form:  | Liz Arasim,<br>Department of Licensing<br>and Regulatory Affairs   |  |  |

**2. Rule Set Information**

|                               |                                  |
|-------------------------------|----------------------------------|
| ORR assigned rule set number: | 2018-041-LR                      |
| Title of proposed rule set:   | Respiratory Care – General Rules |

**PART 2: KEY SECTIONS OF THE APA**

**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.

**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: 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.

Each state establishes its own requirements with respect to respiratory therapists, so there are no federal rules or standards set by a national or state agency that the proposed rules can be compared to.

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

MCL 333.16148; MCL 333.16174; MCL 333.18709; Executive Reorganization Order No. 1991-9, MCL 338.3501; Executive Reorganization Order No. 1996-2, MCL 445.2001; Executive Reorganization Order No. 2003-1, MCL 445.2011; and Executive Reorganization Order No. 2011-4, MCL 445.2030.

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.

These rules do not exceed a federal standard.

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 consistent with the standards required by the Public Health Code. The rules' requirements for licensure, licensure by endorsement, and relicensure after lapse are largely consistent with the requirements of other states in the Great Lakes region.

**Licensure:** In Illinois, an applicant for licensure must have completed a respiratory care training program and successfully passed the entry level Certified Respiratory Therapist Examination (CRT) or the Registered Respiratory Therapists Examination (RRT) of the National Board for Respiratory Care (NBRC). The applicant may also submit documentation of certification as a certified respiratory therapist or as a registered respiratory therapist from the NBRC. To be licensed by endorsement, the applicant must meet the same requirements as an applicant for licensure.

In Indiana, to be licensed as a respiratory care practitioner the applicant must submit proof of the applicant's graduation from an approved respiratory care school, program, or training. The applicant may also submit credentialing by a national respiratory care practitioner organization. The applicant must also pass a respiratory care licensing or certifying examination and submit to a criminal background check. To be licensed by endorsement, the applicant must present evidence that he or she holds a license or certification to practice respiratory care in another state or province of Canada, and the applicant must have been actively engaged in the practice of respiratory care that included actual patient care in another jurisdiction, under the supervision of a physician licensed in that jurisdiction, for at least 10 of the previous 15 years.

In Kentucky, to be certified as a respiratory care practitioner, an applicant must hold a registered respiratory therapist or certified respiratory therapist credential issued by the NBRC or its equivalent. To be certified by endorsement, the applicant must submit proof of NBRC credentials and his or her current license status from every jurisdiction in which he or she is licensed or certified.

In Minnesota, to be licensed as a respiratory therapist the applicant must have completed an approved education program, passed a credentialing examination, and been credentialed by the NBRC or other board-approved national organization as a certified respiratory therapist, registered respiratory therapist, or other entry or advanced level respiratory therapist designation. To be licensed by endorsement, the applicant must be credentialed by the NBRC or other board-approved organization and have worked at least eight weeks of the previous five years as a respiratory therapist.

In Ohio, to be licensed as a respiratory care professional the applicant must have completed both portions of the RRT examination and must request Federal Bureau of Investigation and Ohio Bureau of criminal Identification and Investigation background record checks. An applicant for licensure by endorsement must hold an active and valid license issued by another state and that license must have been issued in whole or in part based upon successful completion of the RRT.

In Pennsylvania, to be licensed as a respiratory therapist the applicant must have graduated from a respiratory care program approved by the Commission on Accreditation for Respiratory Care and passed the entry level credentialing examination as determined by the NBRC. To be licensed by endorsement, the applicant must hold a valid license, certificate, or registration as a respiratory therapist in another state, territory, or the District of Columbia which has been issued based on requirements substantially the same as those required for licensure in Pennsylvania.

In Wisconsin, to be certified as a respiratory care provider the applicant must provide written verification that the he or she has passed the national board for respiratory care certification examination and the state board statutes and rules examination, with an oral examination if required. He or she must also provide satisfactory evidence that he or she is a graduate of a school with a course of instruction in respiratory care approved by the Commission on Accreditation of Allied Health Education Programs of the American Medical Association. The applicant must achieve a scaled score

of 75 or above on the NBRC CRT for certification. An individual who is certified in another state may apply for a temporary certificate to practice respiratory care with written verification that the applicant has passed the NBRC CRT.

**Relicensure after Lapse:** In Illinois, if a licensee’s license has lapsed for 5 years or less, he or she may be relicensed by applying and providing proof that he or she has accumulated 24 hours of continuing education credits.

In Indiana, an applicant for relicensure for after a lapse of less than 3 years may be relicensed by applying and providing proof that he or she has completed the required continuing education for renewal, which is an average of 7.5 credits annually. If the lapse has been 3 years or more, in addition to providing proof of continuing education for renewal, the applicant may be required to complete any remediation and additional training deemed appropriate by the board.

In Kentucky, if a respiratory care practitioner’s certification has lapsed for less than 5 years, the applicant must show compliance with the current continuing education requirement in force at the time of mandatory certification renewal application. If the certification has lapsed for more than 5 years, the current standards for mandatory certification must be met. In Minnesota, an individual whose license has lapsed for 2 years or less must document compliance with the continuing education requirements to be relicensed. If the individual’s license has lapsed for more than 2 years, he or she must obtain a new license by fulfilling all requirements for initial licensure.

In Minnesota, to be licensed as a respiratory therapist the applicant must have completed an approved education program, passed a credentialing examination, and been credentialed by the NBRC or other board-approved national organization as a certified respiratory therapist, registered respiratory therapist, or other entry or advanced level respiratory therapist designation. To be licensed by endorsement, the applicant must be credentialed by the NBRC or other board-approved organization and have worked at least eight weeks of the previous five years as a respiratory therapist.

In Ohio, a license may be renewed if it has lapsed for 2 years or less. If the license has lapsed for more than 2 years, a criminal background check is required as well as proof of continuing education hours for the renewal cycle leading up to the application for relicensure. The board may impose other conditions, such as an examination or additional training, before relicensure. A criminal background check must be completed.

In Pennsylvania, an applicant who is applying to return to active status is required to pay fees which are due for the current biennium licensing period and submit a sworn statement stating that during the period of time his or her license was lapsed he or she was not engaged in practice in Pennsylvania.

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

The standards pertaining to licensure and relicensure of a respiratory therapist differ from state to state. Overall the standards for education and examination in the proposed rules do not exceed those of the other states in the Great Lakes region. Not all jurisdictions require fingerprinting, evaluation of credentials for a foreign-trained applicant, and a demonstration of a working knowledge of the English language for a foreign-trained applicant.

If applicable to the applicant, these requirements would result in a cost of approximately \$61.60 for fingerprints, \$200.00 for credential evaluation, and \$195.00 to take the Test of English as a Foreign Language internet-based test (TOEFL-IBT). However, the costs are outweighed by the benefit of ensuring that the applicant is qualified and safe to practice. These rules are required by statute.

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 may duplicate, overlap, or conflict with these proposed rules.

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.

No coordination is needed because there are no other applicable laws that regulate the areas addressed in the proposed rules.

**Purpose and Objectives of the Rule(s):**

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

**Part 1. General Provisions:** The proposed rules will clarify definitions and update the rule pertaining to training for identifying the victims of human trafficking. The proposed rules are designed to clarify the meanings of terms used in the rules and identify for an applicant or licensee the date by which he or she must comply with the requirement to complete the training for identifying the victims of human trafficking.

**Part 2. Licensure:** The proposed rules amend this section to clarify licensing requirements and to add two new proposed rules. An applicant for licensure must have the specific education or experience, as set by statute or rule, applicable to the profession in which he or she seeks licensure, MCL 333.16174. The proposed rules will advise a foreign-trained applicant that his or her education must be evaluated by an organization accredited by the National Association of Credential Evaluation Services (NACES) to determine if his or her education is equivalent to the education approved for licensure in R 338.2206.

A new proposed rule will also be added to advise a foreign-trained applicant that he or she must demonstrate a working knowledge of the English language, pursuant to MCL 333.16174. The new proposed rule informs an applicant that he or she must score 80 or above on the TOEFL-IBT to satisfy this requirement for licensure as a respiratory therapist.

The proposed rules will rescind the rules allowing an application for a temporary license and application for a license based on the applicant's credentials. The current rules are obsolete because the time for applying for a licensure under either of these rules has expired.

The proposed rules revise the requirements for licensure by endorsement and add requirements if the applicant has been licensed in another jurisdiction for less than 5 years. The proposed rules will require an applicant who has been licensed for less than 5 years to satisfy the educational and credentialing examination requirements of R 338.2202. The applicant must also be of good moral character. The rules are designed to inform an applicant for licensure by endorsement of the requirements that he or she must meet to be licensed in Michigan.

**Part 3. Education:** The proposed rules update the accreditation standards that have been adopted by reference. The information in the current rules is outdated, and the proposed rules will provide an applicant with the current information needed to determine if his or her educational program has been approved.

**Part 4. Relicensure:** The proposed rules will require an applicant for relicensure whose license has been lapsed for more than 3 years to establish that he or she is of good moral character, submit

fingerprints, and provide verification of his or her current or past licensure in another state or province of Canada. If the applicant does not hold a current license in another jurisdiction, he or she must also provide documentation that he or she has passed the NBRC credentialing examination within the 2 years preceding relicensure. The rules are designed to inform an applicant of current relicensure requirements.

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

If an applicant for licensure by endorsement has been licensed in another jurisdiction for less than 5 years, under the proposed rules, he or she must satisfy the educational and credentialing examination requirements pursuant to R 338.2202.

If an applicant's license has been lapsed for more than 3 years, the applicant will need to establish that he or she is of good moral character, submit fingerprints, and provide verification of his or her current or past licensure in another state or province of Canada. If the applicant does not hold a current license in another jurisdiction, he or she must provide documentation that he or she passed the NBRC credentialing examination within the 2 years preceding relicensure.

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

Part 1: The proposed rules will inform an applicant for licensure or renewal of the date by which he or she must complete training pertaining to identifying victims of human trafficking. Those dates are not in the current rules. The rule is intended to assist an applicant for licensure or renewal to comply with this requirement.

Part 2: The current rules lack licensure requirements for a foreign-trained applicant. The new proposed rules will advise such an applicant that he or she must have his or her education evaluated by an organization accredited by the NACES to determine if it is equivalent to the education approved for licensure in R 338.2206. The applicant will also be advised that he or she must demonstrate a working knowledge of the English language through testing by scoring 80 or above on TOEFL-IBT. These rules are intended to inform an applicant of these licensure requirements.

The proposed rules revise the requirements for licensure by endorsement and add requirements if the applicant has been licensed in another jurisdiction for less than 5 years. The rules will clearly inform an applicant for licensure by endorsement of the requirements that he or she must meet.

Part 3: The proposed rules will give an applicant the information that he or she needs to determine if his or her educational program is accredited. The current information is outdated.

Part 4: The current rule requires an applicant whose license has lapsed for more than 3 years to provide documentation of his or her license in another state, provide documentation that the applicant has passed the NBRC credentialing examination within the 2 years preceding the application, or that the applicant become credentialed by the NBRC. The proposed rules will inform an applicant whose license has lapsed for more than 3 years that he or she must be of good moral character, submit fingerprints to the department, and provide verification of his or her current or past licensure in another state or province of Canada. If the applicant does not hold a current license in another jurisdiction, he or she must pass the NBRC credentialing examination within the 2 years preceding relicensure.

**C. What is the desired outcome?**

Part 1: The proposed rules amend this section to update and clarify definitions. The rule pertaining to training to identify the victims of human trafficking has been revised to inform an applicant for licensure or renewal of the date by which he or she must complete the training.

Part 2: The proposed rules amend this section to clarify licensing requirements. New proposed rules will be added to advise a foreign-trained applicant of the requirement that his or her education be evaluated by an organization accredited by the NACES and that he or she must demonstrate a working knowledge of the English language by scoring 80 or above on TOEFL-IBT.

The proposed rules revise the requirements for licensure by endorsement and add requirements if the applicant has been licensed in another jurisdiction for less than 5 years. The rules are intended to inform an applicant for licensure by endorsement of the requirements that he or she must meet to be licensed in Michigan.

Part 3: The proposed rules will provide updated information regarding accreditation standards.

Part 4: The proposed rules will provide the requirements for relicensure after lapse. The rules are intended to advise the applicant of the requirements if the license has been lapsed for 3 years or less, and if the license has been lapsed for 3 years or more. The desired outcome is to inform an applicant of the current requirements for relicensure.

**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.**

Part 1: The harm that could result from the current rules is that an applicant or licensee would believe that a reference to the department would be the Department of Community Health. The revised rules will clearly identify the department as the Department of Licensing and Regulatory Affairs. The current rules do not clearly state the date by which training to identify the victims of human trafficking is required for an applicant for licensure or renewal, which may lead to noncompliance. Those dates have been added in the proposed rules.

Part 2: The harm that could result from the current rules is failure to comply with all licensing requirements, which may delay licensure. The proposed rules will amend this section to clarify licensing requirements and add rules to advise a foreign-trained applicant that his or her education must be evaluated by an organization accredited by the NACES and that he or she must demonstrate a working knowledge of the English language.

The harm that could result from the current rules pertaining to licensure by endorsement is that the applicant may fail to comply because he or she was not aware of all the requirements. The proposed rules are designed to inform an applicant for licensure by endorsement of the requirements so that the applicant may comply and be licensed by endorsement.

Part 3: The proposed rules update the accreditation standards for accrediting respiratory therapist education programs to inform an applicant of the current accreditation requirements for the program.

Part 4: The harm that could result from the current rules is that an applicant is not made aware of all the requirements for relicensure after lapse. In the proposed rules, the applicant will be informed of the relicensure requirements to assist the applicant in his or her efforts to be relicensed.

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

Part 1: As currently written, the rules contain outdated, inaccurate, and incomplete information. The proposed rules will provide current information and clarify the date by which training to identify the victims of human trafficking is required for an applicant for licensure or renewal.

Part 2: The current rules lack licensing requirements for an applicant who was foreign-trained and for an applicant for licensure by endorsement. The proposed rules will inform an applicant of the licensing requirements he or she must meet, as applicable.

Part 3: The proposed rules will update outdated information on accreditation standards for respiratory therapist education programs that is contained in the current rules.

Part 4: The rules do not currently advise an applicant for relicensure of all the current requirements. The proposed rule will inform an applicant for relicensure whose license has been lapsed for more than 3 years that he or she will need to establish that he or she is of good moral character, submit fingerprints, and provide verification of his or her current or past licensure in another state or province of Canada. If the applicant does not hold a current license in another jurisdiction, he or she must provide documentation that he or she has passed the NBRC credentialing examination within the 2 years preceding relicensure.

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.

Part 1: The proposed rule will ensure that an applicant for licensure or renewal knows when he or she must complete the training to identify the victims of human trafficking. When a health professional is trained to identify a victim of human trafficking, the health, safety, and welfare of Michigan citizens is better protected.

Part 2: The proposed rules will ensure that a foreign-trained applicant for licensure possesses educational credentials equivalent to an applicant who was not foreign-trained. They will also ensure that a foreign-trained applicant possesses a working knowledge of the English language. The health, safety, and welfare of Michigan citizens is protected by ensuring that an applicant possesses sufficient knowledge to practice as a respiratory therapist. Michigan citizens are also protected by ensuring that a respiratory therapist can communicate effectively with the patient that is in his or her care.

Part 3: The proposed rules update outdated information on accreditation standards for respiratory therapist education programs which will protect the health, safety, and welfare of the public by ensuring that the licensee's education was obtained from an educational program that meets national accreditation standards.

Part 4: The proposed rules will require an applicant for relicensure whose license has been lapsed for more than 3 years to establish that he or she is of good moral character, submit fingerprints, and provide verification of his or her current or past licensure in another state or province of Canada. If the applicant does not hold a current license in another jurisdiction, he or she must provide documentation that he or she has passed the NBRC credentialing examination within the 2 years preceding relicensure. These requirements will promote the health, safety, and welfare of Michigan citizens by ensuring that the applicant possesses the knowledge and skill necessary and is safe to practice.

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

R 338.2203 and R 338.2204 will be rescinded because they are obsolete as the time for applying for licensure under either of these rules has expired.

### **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.

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

The proposed rules are not expected to have a fiscal impact on the agency.

**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).**

No agency appropriation has been made nor has a funding source been provided for expenditures associated with implementing these rules.

**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.**

Part 1: The proposed rules will clearly identify the department as the Department of Licensing and Regulatory Affairs and clearly state the date by which an applicant for licensure or renewal must complete the training to identify the victims of human trafficking. No duplicative act is required of, and no fiscal or administrative burden is placed on, an individual as a result of the proposed rules.

Part 2: The proposed rules will revise this part to clarify licensing requirements and add rules to advise a foreign-trained applicant that his or her education must be evaluated by an organization accredited by the NACES and that he or she must demonstrate a working knowledge of the English language. No duplicative act is required of an individual as a result of the proposed rules. The fee to have an educational evaluation completed by a member of the NACES is approximately \$200.00. The fee to take TOEFL-IBT at a Michigan-based location is approximately \$195.00.

Part 3: The proposed rules update accreditation standards for respiratory therapist educational programs that are adopted by reference in a rule under this part to keep accreditation requirements current. No duplicative act is required of, and no fiscal or administrative burden is placed on, an individual as a result of the proposed rules.

Part 4: The proposed rules will require an applicant for relicensure whose license has been lapsed for more than 3 years to establish that he or she is of good moral character, submit fingerprints, and provide verification of his or her current or past licensure in another state or province of Canada. If the applicant does not hold a current license in another jurisdiction, he or she must provide documentation that he or she has passed the NBRC credentialing examination within the 2 years preceding relicensure. No duplicative act is required of an individual as a result of the proposed rules. The estimated cost of fingerprinting is \$61.60.

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

Part 1: The proposed rules will clearly identify the department as the Department of Licensing and Regulatory Affairs and clearly state the date by which training to identify the victims of human trafficking is required for an applicant for licensure or renewal. No burden is placed on an individual as a result of the proposed rules.

Part 2: The proposed rules will amend this section to clarify licensing requirements by adding rules to advise a foreign-trained applicant that his or her education must be evaluated by an organization accredited by the NACES and that he or she must demonstrate a working knowledge of the English language. The fee to have an educational evaluation completed by a member of the NACES is approximately \$200.00. The fee to take TOEFL-IBT at a Michigan-based location is approximately \$195.00. The burden placed on the individual to complete the education evaluation and take TOEFL-IBT is outweighed by the benefit to Michigan citizens by ensuring

that a foreign-trained applicant has the educational background needed to be licensed as a respiratory therapist and that the applicant has a working knowledge of the English language so he or she can communicate effectively with his or her patient.

Part 3: The proposed rules update the accreditation standards for respiratory therapist educational programs that are adopted by reference in a rule under this part to inform an applicant of the accreditation requirements. No burden is placed on an individual as a result of the proposed rules.

Part 4: The proposed rules will add requirements for an applicant applying for relicensure after a lapse of more than 3 years, including the submission of fingerprints. The estimated cost of fingerprinting is \$61.60. This burden on the individual applicant is outweighed by the benefit to Michigan citizens by ensuring that an applicant for relicensure after a lapse of more than 3 years is safe to practice.

**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 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.

There are no anticipated increases or decreases in revenues to state or local governmental units as a result of the proposed rules.

- 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.

There are no anticipated increases or decreases in costs to state or local governmental units as a result of the proposed rules.

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

There are no anticipated or intended programs, services, duties, or responsibilities imposed on any city, county, township, village, or school district as a result of these proposed rules.

- 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.

There are no anticipated actions that a governmental unit must take to comply with these proposed rules.

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 appropriations have been made to any governmental units as a result of these rules. No additional expenditures are anticipated or intended with the proposed rules.

**Rural Impact:**

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

The proposed rules are not expected to impact rural areas. The proposed rules apply to individuals licensed under the Public Health Code as licensed respiratory therapists, regardless of their location.

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

The proposed rules are not expected to effect public or private interests in rural areas.

**Environmental Impact:**

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

The proposed rules do not have an environmental impact.

**Small Business Impact Statement:**

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

The proposed rules impose requirements on individual licensees rather than small businesses. Even if a licensee's work qualifies as a small business, the department could not exempt his or her business because it would create a disparity in the regulation of the profession.

17. 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 rules cannot exempt small businesses because the rules do not directly regulate small businesses. The rules regulate individual licensees. Further, the Public Health Code requires a respiratory therapist to be licensed, and he or she may work in a small business.

While a licensee may work independently or as part of a small business, the law does not allow the rules to exempt these individuals from the requirements of the rules. However, the impact on a licensee who works as part of a small business is minimized in the proposed rules, as the rules are written broadly. The proposed rule changes will have minimal or no impact on a licensee. As a result, a licensee, whether in small business or not, should not be significantly impacted by the changes.

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

There are approximately 5,204 respiratory therapists in Michigan.

The licensees work in many different work environments including hospitals, rehabilitation centers, and patients' homes. These practice areas include corporations and small businesses. No matter what type of business environment the licensee works in, he or she will have to comply with the proposed rules. The rules do not impact small businesses differently because the impact is to the individual licensee only.

**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.

The agency did not establish separate compliance or reporting requirements for small businesses. The proposed rules will apply to all respiratory therapist licensees. The rules were drafted to be the least burdensome on all affected licensees.

**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.

The agency did not consolidate or simplify compliance and reporting requirements with the proposed rules.

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

The agency did not establish performance standards to replace design or operation standards required by these rules.

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

The proposed rules do not impact small business; rather, they impact an individual licensee. Therefore, there is no disproportionate impact on a small business because of its size or geographic location.

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 affect individual licensure applications and renewals, which are already required of all licensees, regardless if they practice in a small business. There is no separate cost to small businesses.

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.

There will be no increased costs of compliance for a small business concerning the costs of equipment, supplies, labor, or administrative costs.

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).

There are no expected costs for legal, consulting, or accounting services that a small business would incur in complying with the proposed rules.

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

There are no expected costs to a small business that will cause economic harm to a small business or the marketplace as a result of the proposed rules.

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.

The proposed rules impose requirements on individual licensees rather than a small business. Even if a licensee's practice qualifies as a small business, the department could not exempt his or her business because it would create disparity in the regulation of the profession. Therefore, there is no cost to the agency for administering or enforcing the rules because exempting or setting lesser standards of compliance for a small business is not in the best interest of the public.

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

The proposed rules impose requirements on individual licensees rather than a small business. Even if a licensee's work qualifies as a small business, the department could not exempt his or her business because it would create a disparity in the regulation of the profession. Therefore, exempting or setting lesser standards of compliance for a small business is not in the best interest of the public.

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

The department worked with the Board of Respiratory Care in the development of the proposed rules. The Board is composed of members of the profession, which represents both small and large business entities in Michigan, and public members.

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

No small businesses were involved in the development of the 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.

There are no estimated compliance costs with these rule amendments on businesses or groups.

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

No businesses or groups will be directly affected or benefitted by the proposed rules. No additional costs will be imposed on any businesses or groups.

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 any businesses or groups.

27. 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.

If an applicant for licensure is foreign-trained, he or she will be required to have his or her education evaluated by an organization accredited by the NACES, and he or she must demonstrate a working knowledge of the English language. The fee to have an educational evaluation completed by a member of the NACES is approximately \$200.00. The fee to take TOEFL-IBT at a Michigan-based location is approximately \$195.00.

An applicant for relicensure after a lapse of more than 3 years will be required to submit fingerprints. The estimated cost for obtaining fingerprints is approximately \$61.60.

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

The individuals affected are applicants who were foreign-trained and applicants for relicensure after lapse of more than 3 years.

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

The fee to have an educational evaluation completed by a member of the NACES is approximately \$200.00. The fee to take TOEFL-IBT at a Michigan-based location is approximately \$195.00. The estimated cost for obtaining fingerprints is approximately \$61.60.

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

There are no cost reductions for businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

29. 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.

**Licensure of Foreign-Trained Applicants:** The proposed rules inform a foreign-trained applicant that he or she must have his or her education evaluated by an organization accredited by the NACES and demonstrate a working knowledge of the English language by scoring 80 or above on TOEFL-IBT. Michigan citizens will be benefitted by ensuring that a foreign-trained applicant has the educational background to be licensed as a respiratory therapist and that the applicant has a working knowledge of the English language so he or she can communicate effectively with his or her patient. These rules are required by MCL 333.16174.

**Requirements to be Relicensed after Lapse:** The proposed rules inform a licensee of the relicensing requirements when his or her license has lapsed. The current rule does not contain all of the requirements, including the requirement that he or she submit fingerprints for relicensure after a lapse of more than 3 years. Michigan citizens will be benefitted by ensuring that the applicant for relicensure is safe to practice.

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

The rules are not expected to have an impact on business growth or job creation.

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.

There is not expected to be a disproportionate effect due to industrial sector, segment of the public, business size, or geographic location.

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).

Illinois:

<http://ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1323&ChapAct=225%26nbsp%3BILCS%26nbsp%3B106%2F&ChapterID=24&ChapterName=PROFESSIONS+AND+OCCUPATIONS&ActName=Respiratory+Care+Practice+Act%2E>

<http://www.ilga.gov/commission/jcar/admincode/068/06801456sections.html>

<http://www.ilga.gov/commission/jcar/admincode/068/068014560000600R.html>

Indiana: <https://secure.in.gov/pla/2626.htm>

<http://iga.in.gov/legislative/laws/2015/ic/titles/025/articles/34.5/>

<http://www.in.gov/legislative/iac/T08440/A00110.PDF?>

<http://iga.in.gov/legislative/laws/2017/ic/titles/025#25-34.5>

<http://iga.in.gov/legislative/laws/2017/ic/titles/025#25-1-8-6>

Kentucky: <https://kbrc.ky.gov/LRO/Pages/default.aspx>

<https://kbrc.ky.gov/Documents/220.pdf>

Minnesota: <https://www.revisor.mn.gov/statutes/?id=147C>

<https://mn.gov/elicense/a-z/?id=1083-230890#/list/appId//filterType//filterValue//page/1/sort//order/>

Ohio: <http://www.med.ohio.gov/Respiratory-Care>

Pennsylvania: <https://www.pacode.com/secure/data/049/chapter18/subchapFtoc.html>

<http://www.dos.pa.gov/ProfessionalLicensing/BoardsCommissions/Medicine/Documents/Board%20Documents/MedM%20-%20Act.pdf>;

<https://www.pacode.com/secure/data/049/chapter18/subchapFtoc.html>

Wisconsin: [http://docs.legis.wisconsin.gov/code/admin\\_code/med/20.pdf](http://docs.legis.wisconsin.gov/code/admin_code/med/20.pdf)

<https://docs.legis.wisconsin.gov/statutes/statutes/448.pdf>

- 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).

There were no estimates made because the rules impact an individual licensee as well as an applicant for licensure. No estimate could consider the setting where an individual may use his or

her license. Because the rules only impact an individual, and impact all in the same way, the assumptions made was that no additional cost or benefit would result from the proposed rules.

**Alternatives to Regulation:**

33. 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.

The rules are required by statute; there is no reasonable alternative to the proposed rules.

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

There is no reasonable alternative to the proposed rules.

34. 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.

Since the rules are required by statute, private market-based systems cannot serve as an alternative. States regulate respiratory therapists by statute, regulation, or both. Private market-based systems are not used for licensing and regulation. The licensing and regulation of licensed respiratory therapists are state functions, so a regulatory program independent of state intervention cannot be established. There are professional associations that establish criteria for membership as a respiratory therapist, but these professional organizations would provide the public with significantly less protection because membership in many of these organizations is voluntary. This means an individual who meets the membership requirements, but does not join one of the professional organizations, would be able to practice and there would be no way to ensure their competency or hold them accountable.

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.

Since the rules are specifically required by statute, there are no alternatives to the proposed rules that the agency could consider. They are necessary for the administration and enforcement of the licensing process.

**Additional Information:**

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

**Licensure of Foreign-Trained Applicants:** The proposed rules inform a foreign-trained applicant that he or she must have his or her education evaluated by an organization accredited by the NACES and demonstrate a working knowledge of the English language by scoring 80 or above on TOEFL-IBT. An applicant who was foreign-trained should seek an evaluation of his or her education by an organization accredited by the NACES and complete the TOEFL-IBT.

**Requirements to be Relicensed after Lapse:** The proposed rules inform a licensee of the relicensing requirements when his or her license has lapsed. An applicant for relicensure, after a lapse of more than 3 years, should submit fingerprints to the department.

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↓ To be completed by the ORR ↓

**PART 4: REVIEW BY THE ORR**

Date RISCBA received: 10-8-2018

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| Date RISCBA approved: | <b>10/19/18</b> |
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| Date of disapproval: |  |
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| Explanation: |  |
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