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Business Impact Analysis

Agency, Board, or Commission Name: Ohio State Board of Registration for Professional Engineers and Surveyors

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Five-year rule review – no change

Rule Number(s): 4733-1-01, 1-02, 1-03, 1-04, 4733-3-01, 3-02, 3-03, 3-04, 3-05, 4733-9-02, 9-05, 9-06, 9-07, 9-08, 4733-17-01, 4733-19-01, 4733-20-01, 4733-21-01, 4733-23-01, 4733-31-01, 4733-35-01, 35-02, 35-03, 35-04, 35-06, 35-07, 35-08, 35-09, 4733-37-02, 37-06, 37-07, 4733-38-02, 38-02, 38-03, 38-04, 38-05, 4733-39-02, 4733-39-02, 4733-39-06, 39-07, 4733-40-01, 40-02, 40-03, 40-04, 40-05

Date of Submission for CSI Review: October 13, 2021

Public Comment Period End Date: November 13, 2021

Rule Type/Number of Rules:

New/___ rules

No Change/ 46 rules (FYR? Yes)

Amended/___ rules (FYR? ___)

Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common

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Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

- 1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☒ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☐ Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

- 2. Please briefly describe the draft regulation in plain language.**

These rules were reviewed as part of the Board's five-year rule review. After discussions with stakeholders, these rules were determined to require no change. These rules were previously reviewed by CSI during the Board's last five-year rule review and no comments were provided by CSI at that time.

- 3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

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ORC 4733.07 authorizes the board to write administrative rules to implement its statutory authority under ORC 4733.

4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

No federal requirements are imposed through these rule changes.

5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

There are no changes proposed for these rules.

7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

None of the rules in this package could be significantly changed or eliminated without resulting in a loss of public protection. In the review and modification of these rules the board was mindful of balancing the need for public protection and the need for employing a registration process that is fair and equitable that ensures that the board licenses individuals and firms that are qualified to perform engineering and surveying in Ohio in a manner that protects the public without adding unnecessary or burdensome requirements. The board relies heavily on input from the profession, the public and Ohio's universities and colleges that offer engineering and surveying programs. The board works closely with all the other U.S. states and territories to develop national model laws and rules through its association with the National Council of Examiners for Engineering and Surveying [NCEES]. The board's laws and rules closely mirror these national model laws and rules to promote consistency and mobility of licensure across the U.S.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

Not applicable.

Development of the Regulation

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9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

Approximately 30,000 individual professional engineers and surveyors and 3,200 licensed engineering and surveying firms were invited to submit comments. The Board also conducted over 70 presentations to the public, the profession, and Ohio's universities and colleges requesting input for the rule review in 2019 and 2020 before the pandemic hit. The Board also reached out and provided presentations to Ohio's technical and profession associations and societies representing engineers and surveyors in Ohio. The Board is also currently continuing to request feedback during presentations and advising licensees of the rule-making process.

10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Licensees and stakeholders were initially notified of the board's 5-year rule review beginning in January 2019. The Board received comments addressing the need to update minimum standards for boundary surveys to more closely align with the accepted standards of practice commonly used by the profession. The board reviewed the proposed changes and incorporated them into the proposed rules. There were no changes proposed for the rules submitted in this package.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

No scientific data was employed in developing the proposed rule changes.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

No specific alternatives to the proposed rules were considered.

Did the Agency specifically consider a performance-based regulation? Please explain.
Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

No specific performance-based regulations were considered. In order to ensure public protection, all licensees must be subject to the same specific regulations and requirements for licensure. The board's laws and rules are closely based on national model laws and rules developed through the collaboration of all U.S. states and territories engineering and surveying licensing boards.

13. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

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The Ohio State Board of Registration for Professional Engineers and Surveyors is the sole regulatory authority for the practice of engineering and surveying. The rules proposed pertain only to the two professions regulated by the Board.

14. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Once approved and effective, licensees will be notified via e-mail, newsletter and through the board's website of any changes to the rules. The PDF containing Ohio Revised Code Chapter 4733 maintained on the Board's website and accessible to licensees and the public will be updated to reflect any updates. If there are no changes to these rules, licensees will not be required to make any changes to their registration or business practices.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community; and

The impacted community includes members of the public, licensees, students, educators, education programs, and firms licensed to offer and provide engineering and surveying services in Ohio.

b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and

An adverse impact exists because the rules impose requirements for licensed persons and firms. Licensed persons and firms must be familiar with the rules and comply with them. Failure to comply with the rules could result in disciplinary action, including license suspension or revocation. These rules left unchanged should have no adverse financial impact or increased expenses to licensees regulated by the board. These rules should have no adverse impact on licensees' ability to operate their businesses effectively.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

The possible adverse impact cannot be quantified as the changes do not impose any expenditures or institute any fees or penalties.

16. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The adverse impact is justified because the work performed by professional engineers and surveyors is one of the few professions where the licensees' work impacts the life and well-being of the public.

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It is vital that individuals and firms licensed by the board are qualified by education, examination, and training to perform engineering and surveying work in a safe manner. These rules ensure that only qualified individuals and firms are licensed to engage in engineering and surveying. These rules do not create significant barriers to licensure for individuals or businesses.

Regulatory Flexibility

17. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Because the Board has not identified any specific adverse impact on Ohio's engineering and surveying firms as the result of these rule updates, no alternative means of compliance are proposed.

18. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

The proposed rules do not currently result in any fees or penalties that require a waiver.

19. What resources are available to assist small businesses with compliance of the regulation?

The Board issues regular guidance regarding complying with the laws and rules regarding the practice of engineering and surveying through the board's website, newsletters, social media and through presentations conducted throughout Ohio. The board also works closely with the professional associations that represent licensed individuals and businesses, as well as businesses and government agencies that perform engineering and surveying, to assist them in meeting compliance and understanding the requirements for registration.

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*** DRAFT - NOT YET FILED ***

4733-1-01

Notice for change of rule.

- (A) Before a new rule is adopted or an existing one amended or rescinded, the state board of registration for professional engineers and surveyors shall, at least thirty days prior to the date set for a hearing, as provided by section 119.03 of the Revised Code, give public notice of such hearing by ordering the publication of its intention to consider the adoption, amendment, or rescission of such rule or rules by posting such notice on the website for the register of Ohio and the website for the state board of registration for professional engineers and surveyors. Such notice will provide the date, time and place of the proposed hearing. The text of the proposed rule, amendment, or rule to be rescinded shall be made available on the website for the register of Ohio.

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4733-1-02

Name.

The name of this board as fixed by Sec. 4733.03 R.C. is the STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND SURVEYORS. For the purpose of brevity in the succeeding by-laws, this organization shall be subsequently referred to as the "Board."

4733-1-03

Headquarters.

The headquarters of the Board shall be at Columbus, Ohio.

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4733-1-04

Board seal.

The seal of the Board shall be as follows: an embossed circular seal two and one-fourth inches in diameter consisting of two concentric circles, the outer circle to be two and one-eighth inches in diameter, the inner one to be one and three-eighths inches in diameter and containing the great seal of the State of Ohio. "State Board of Registration for Professional Engineers and Surveyors."

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4733-3-01

The chairperson.

The chairperson shall, when present, preside at all meetings and shall appoint all committees and shall otherwise perform all duties pertaining to the office of chairperson and shall sign all certificates and other official documents.

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4733-3-02

The vice-chairperson.

The vice-chairperson shall, in the absence or incapacity of the chairperson, exercise the duties and shall possess all the powers of the chairperson.

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4733-3-04

The executive director.

The executive director shall be directly responsible to the secretary and shall conduct and care for all correspondence in the name of the board and shall record and file all applications, certificates of registration, examinations, registrations and revocations; keep a record of all meetings and shall maintain a proper account of all the business of the board; shall receive and account for all monies and transfer same to the state treasurer; shall present to the board upon request a report of the transactions of the board of the preceding fiscal year, and a complete statement of the receipts and expenditures of the board.

The executive director shall assemble all necessary information required for preparation of an electronic roster showing the name and address of each registered professional engineer and each registered professional surveyor, as required by law.

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4733-3-05

Vacancies.

If for any reason vacancies shall occur in the office of chairperson, vice-chairperson and/or secretary, the office or offices shall be filled by an election of the board members either at a regular stated meeting or a special meeting called for that purpose. Any officers so elected shall receive not less than three affirmative votes.

4733-9-02

Acceptable engineering experience defined.

- (A) Satisfactory engineering work shall be of a nature such that its adequate performance requires engineering education, training, or experience and must be demonstrated through the application of the mathematical, physical and engineering sciences. Satisfactory engineering experience shall include but not be limited to, an acceptable combination of the following types of engineering activities:
- (1) Design or conceptual design of engineering works, products, or systems;
 - (2) Development or optimization of plans and specifications for engineering works, products, or systems;
 - (3) Analysis, consultation, investigation, evaluation, planning or other related services for engineering works, products, or systems;
 - (4) Planning the use or alteration of land, water, or other resources;
 - (5) Engineering for development of operating and maintenance manuals;
 - (6) Engineering for construction, or inspection of construction for the purpose of assuring compliance with drawings or specifications;
 - (7) Engineering for materials testing and evaluation;
 - (8) Any other work of a mechanical, electrical, electronic, chemical, hydraulic, pneumatic, geotechnical, or thermal nature that requires engineering education, training or experience for its adequate performance;
 - (9) Teaching experience, to be creditable, must be in engineering or engineering-related subjects at an advanced level in a college or university offering an engineering program of four years or more that is approved by the board.
 - (10) Experience gained in engineering research and design projects by members of an engineering faculty where the program is approved by the board is creditable.
- (B) Experience shall not be obtained in violation of the licensure act.
- (C) Experience gained in the armed services, to be creditable, shall be of a character equivalent to that which would have been gained in the civilian sector doing similar

work. Normally, it would be expected that the applicant while in the armed services served in an engineering or engineering-related group.

- (D) Experience shall be gained under the supervision of a licensed professional engineer or, if not, an explanation shall be made showing why the experience should be considered acceptable. Experience gained under the technical supervision of an unlicensed individual shall be considered if the appropriate credentials of the unlicensed supervisor are submitted to the board.
- (E) For sales experience to be creditable, it shall be demonstrated that engineering principles were required and used in gaining the experience.
- (F) Experience in construction, to be creditable, must demonstrate the application of engineering principles.
- (G) Successful completion of graduate study leading to the master's degree in engineering which has followed a baccalaureate degree in engineering from an accredited program may be used for credit for one year's experience. If the Ph.D. in engineering is completed under the same conditions, two years total experience may be credited. The two years credit includes the one year for the master's degree. If the Ph.D. is obtained without the master's degree, the credit for experience may be two years. Credit for work experience and for undergraduate or graduate study, occurring within the same period, shall not exceed the elapsed calendar time during which this occurs.
- (H) In the review of engineering experience, the board shall consider whether the experience was sufficiently complex and diverse, and of an increasing standard of quality and responsibility and whether the quality of engineering work shows minimum technical competency.

4733-9-05

Compliance with examination policies and procedures.

Examinees shall abide by the examination administrator's published examination policies and procedures. An examinee who does not fully comply with the examination administrator's requirements may, in addition to any action by the board, be subject to dismissal from the remainder of the examination.

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4733-9-06

Noncompliant conduct in association with examinations.

An examinee may be dismissed from the examination and subject to disciplinary or other board action for conduct including, but not limited to:

- (A) Cheating on the examination;
- (B) Giving assistance to, or receiving assistance from, another person;
- (C) Compromising the integrity of the examination;
- (D) Disruptive or abusive behavior;
- (E) Participating in any form of violation of examination policies or procedures during examination.

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4733-9-07

Consequences of noncompliant conduct with examination policies and procedures.

Evidence of failing to comply with the examination administrator's policies and procedures subsequent to an examination may also be cause for action by the board. An examinee who does not fully comply with the examination administrator's policies and procedures during and after an examination will be subject to having their examination results invalidated and being prohibited from taking the examination(s) for a period of time as determined by the board.

*** DRAFT - NOT YET FILED ***

4733-9-08

Comity applications for noncompliant examinees.

Any licensure examination taken and passed in another state or jurisdiction while barred from taking an examination in Ohio will not be acceptable for licensure purposes in Ohio.

4733-19-01

Application, examination, registration and renewal fees.

- (A) The board shall establish and publish a fee schedule which will be available for all applicants and registrants.
- (B) The appropriate nonrefundable application fee must accompany each examination or reexamination request.
- (C) Make all checks payable to: "Treasurer, State of Ohio" and submit to the board office.
- (D) If an applicant is not eligible or does not schedule for the applied examination, the application fee will be retained to cover the cost of processing the application.
- (E) Unless otherwise stipulated by the board the payment of the registration fee will constitute payment of the license fee for the remainder of the licensing period in which the certificate of registration was issued. Upon successfully passing both examinations a certificate of registration will be issued by the board authorizing applicant to practice as a professional engineer or professional surveyor.
- (F) A nonrefundable renewal fee for all certificates of registration is due and payable on or before December thirty-first of each licensing period for the ensuing licensing period (See section 4733.15 of the Revised Code).
- (G) Use of the "UserID" and password issued for electronic renewals is solely the responsibility of the licensee to whom it is issued and may not be transferred, distributed, or shared with any other person. The licensee assumes responsibility for all entries and user of the "UserID" and password. The "UserID" and password shall constitute the legally recognized signature for the purpose of this rule.
- (H) Completion of the paper application for renewal shall be signed by the licensee.
- (I) Any person who knowingly makes a false statement on the renewal application form is guilty of falsification under section 4733.20 of the Revised Code.
- (J) The renewal applicant shall demonstrate in a manner prescribed by the board that the applicant has met the continuing professional development requirements for the license that the applicant holds.
- (K) A licensee is exempt from the continuing professional development requirement during the first calendar year of registration. If the licensee obtains registration during the first calendar year of the biennial renewal period, the licensee must complete fifteen hours of continuing professional development before the end of

the current renewal cycle.

- (L) If a registrant fails to renew a certificate of registration by December thirty-first of the licensing period, the fee to be paid for renewal after December thirty first, but within the following twelve months, shall be increased by fifty percent. A registrant who fails to renew a certificate of registration for a period greater than twelve months shall be assessed a reinstatement fee which shall equal the number of renewal fees that have not been paid multiplied by three times the current renewal fee. The registrant shall submit proof of completion of fifteen hours of continuing professional development for each lapsed year.
- (M) As permitted by the provisions of section 4733.15 and section 4733.151 of the Revised Code, the board may upon request waive the payment of the renewal fees and/or the continuing professional development requirement of a registrant during the time the registrant is on active duty in connection with any branch of the armed forces of the United States.

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4733-20-01

Voluntary certificate ceremony.

Applicants, who have met examination requirements, may attend a certificate presentation ceremony where certificates of registration will be presented with the administration of the creed being a part of the ceremony.

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4733-21-01

Certificate of registration.

Professional engineers or professional surveyors shall keep their certificates of registration issued by the board posted conspicuously in their places of business where the public could examine said certificates.

4733-23-01

Registrant's seal.

- (A) Each registrant may upon registration obtain a seal of the design authorized by the board, bearing the registrant's name and the legend, "Registered Professional Engineer," or "Registered Professional Surveyor." Plans, specifications, plats, reports and all other engineering or surveying work product issued by a registrant shall be stamped with the said seal and be signed and dated by the registrant, or bear a computer generated seal and electronic signature and date. No person shall stamp or seal any document with said seal after the certificate of the registrant named thereon has expired, or suspended, or has been revoked, unless said certificate of registration shall have been renewed or reissued.
- (B) Each registrant is charged with the safeguarding of their personal seal.
- (C) By affixing their seal to any document, the registrant certifies to the accuracy and completeness of the information contained in the sealed document, and by such action, assumes full responsibility thereof.
- (D) Plans, specifications, plats, reports and all other engineering or surveying work product bearing a computer generated seal and electronic signature and date shall have an electronic authentication process attached to or logically associated with the electronic document. The electronic signature must be unique to the person using it; capable of verification; under the sole control of the person using it; linked to a document in such a manner that the electronic signature is invalidated if any data in the document is changed.

4733-31-01

Surveying defined.

- (A) Surveying shall mean any professional service performed for the purpose of determining land areas, the monumenting of property boundaries, the platting and layout of lands and sub-divisions thereof, including the topography, the alignment and the preliminary grades of streets, the preparation of: maps, record plats, field note records and property descriptions representing such surveys.
- (B) The adequate performance of such work involves the application of special knowledge of the principles of mathematics, the related physical and applied sciences and the relevant requirements of law for adequate evidence to the act of measuring, and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water.

4733-35-01

Preamble.

In order to safeguard the life, health, property and welfare of the public and the state of Ohio, to maintain integrity and high standards of skills and practice in the professions of engineering and surveying, the following rules of professional conduct, promulgated in accordance with Chapter 4733. of the Revised Code, shall be binding upon every person holding a certificate of registration as a professional engineer or as a professional surveyor.

The engineer or surveyor, who holds a certificate of registration from the Ohio state board of registration for professional engineers and surveyors, is charged with having knowledge of the existence of the reasonable rules and regulations hereinafter provided for his or her professional conduct as an engineer or surveyor, and also shall be deemed to be familiar with their several provisions and to understand them. Such knowledge shall encompass the understanding that the practice of engineering, or of surveying, is a privilege, as opposed to a right, and the registrant shall be forthright and candid in statements or written responses to the board or its representatives on matters pertaining to professional conduct.

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4733-35-02

Integrity.

The engineer or surveyor is obligated to act with complete integrity in professional matters for each client or employer as a faithful agent; shall be honest and impartial, and shall serve the public, client and employer with devotion.

4733-35-03

Responsibility to the public.

The engineer or surveyor shall:

- (A) Protect the safety, health and welfare of the public in the performance of professional duties. Should the case arise where the engineer or surveyor faces a situation where the safety, health and welfare of the public is not protected, the engineer or surveyor shall:
 - (1) Sever the relationship with the employer or client;
 - (2) Refuse to accept responsibility for the design, report or statement involved;
 - (3) Notify the proper authority if, in his or her opinion, the situation is sufficiently important.
- (B) Undertake to perform assignments only when the registrant's consulting support are qualified by training and experience in the specific technical fields involved. In the event a question arises as to the competence of an engineer or surveyor to perform an engineering or surveying assignment in a specific technical field of engineering or surveying which cannot be otherwise resolved to the board's satisfaction, the board, either upon request of the engineer or surveyor or by its own volition, may require the engineer or surveyor to submit to an appropriate inquiry by or on behalf of the board;
- (C) Be completely objective in any professional report, statement or testimony and shall include all relevant and pertinent information in the report, statement or testimony when the result of omission would, or reasonably could, lead to a fallacious conclusion;
- (D) Express an opinion as a technical or expert witness before any court, commission or other tribunal, only when it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of his or her testimony.

4733-35-04

Public statements and certifications.

- (A) The engineer or surveyor will issue no statements, criticisms or arguments on engineering or surveying matters connected with public policy which are inspired or paid for by an interested party, or parties, unless the engineer or surveyor has prefaced his or her remarks by explicitly identifying himself or herself, by disclosing the identities of the party, or parties, on whose behalf the engineer or surveyor is speaking, and by revealing the existence of any pecuniary interest he or she may have in the instant matters.
 - (B) The engineer or surveyor will publicly express no opinion on an engineering or surveying subject unless it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of his or her testimony.
 - (C) The engineer or surveyor shall decline to sign and/or seal any form of certification, warranty, or guaranty that
 - (1) Relates to matters beyond his or her technical competence.
 - (2) Involves matters which are beyond the scope of services for which he or she was retained, or
 - (3) Relates to engineering or surveying work for which he or she does not have personal professional knowledge and direct supervisory control and responsibility.
- “Certification” shall mean a statement signed and/or sealed by an engineer or surveyor representing that the engineering or surveying services addressed therein have been performed, according to the engineer or surveyor's knowledge, information and belief, in accordance with commonly accepted procedures consistent with applicable standards of practice, and is not a guaranty or warranty, either expressed or implied.

4733-35-05

Conflict of interest.

- (A) The engineer or surveyor shall conscientiously avoid conflict of interest with the employer or client, but, when unavoidable, the engineer or surveyor shall forthwith disclose the circumstances to the employer or client.
- (B) The engineer or surveyor shall promptly inform the client or employer of any business association, interests, or circumstances which could influence his or her judgment or the quality of services to the client or employer.
- (C) The engineer or surveyor shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed to, and agreed to, by all interested parties or their duly authorized agents.
- (D) The engineer or surveyor shall not solicit or accept financial or other valuable considerations from material or equipment suppliers for specifying their products.
- (E) The engineer or surveyor shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents or other parties dealing with his client or employer in connection with work for which he or she is responsible.
- (F) As an elected, retained or employed public official, an engineer or a surveyor (in the capacity as a public official) shall not review or approve work that was performed by himself, or under his direction, on behalf of another employer or client.

4733-35-06

Solicitation of employment.

- (A) The engineer or surveyor shall not pay, solicit nor offer, directly or indirectly, any bribe or commission for professional employment with the exception of payment of the usual commission for securing salaried positions through licensed employment agencies.
- (B) The engineer or surveyor shall seek professional employment on the basis of qualifications and competence for proper accomplishment of the work.
- (C) The engineer or surveyor shall not falsify or permit misrepresentation of academic or professional qualifications and shall not misrepresent or exaggerate the degree of responsibility in or for the subject matter of prior assignments.
- (D) Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint-ventures, or past accomplishments with the intent and purpose of enhancing qualifications and work.

4733-35-07

Improper conduct.

- (A) The engineer or surveyor shall not sign and/or seal professional work for which he or she does not have personal professional knowledge and direct supervisory control and responsibility. This is interpreted by the board to mean that an engineer or surveyor shall not sign and/or seal professional work unless that work was prepared under his/her supervision and direction. The engineer or surveyor shall be involved in the project and must be closely involved in the preparation of the work product.
- (B) The engineer or surveyor shall not knowingly associate with, or permit the use of his or her name or firm name in, a business venture by any person or firm which he or she knows, or has reason to believe, is engaging in business or professional practices of a fraudulent or dishonest nature.
- (C) If the engineer or surveyor has knowledge or reason to believe that another person or firm is guilty of violating any of the provisions of Chapter 4733, of the Revised Code, or any of these rules of professional conduct, he or she shall present this information to the board in writing.
- (D) If a professional engineer or professional surveyor is found guilty of a felony or had his or her registration revoked or suspended by another jurisdiction, the professional engineer or professional surveyor shall notify the board in writing within sixty days.

*** DRAFT - NOT YET FILED ***

4733-37-02

Research and investigation.

- (A) The surveyor shall consult deeds and other documents, including those for adjacent parcels, in order to assemble the best possible set of written evidence of every corner and line of the property being surveyed.
- (B) After all necessary written documents have been analyzed, the survey shall be based on a field investigation of the property. The surveyor shall make a thorough search for physical monuments, and analyze evidence of monumentation and occupation. In addition, the surveyor shall, when necessary, confer with the owner(s) of the adjoining property and the owner(s) of the property being surveyed.

- (3) The area of the parcel.
- (C) Descriptions other than metes and bounds descriptions may be a reference to a recorded survey plat or a parcel on a recorded survey plat and shall include sufficient and adequate legal and technical wording so that the property can be definitely located and defined.
- (D) A statement shall appear indicating that either: the description was made in accordance with a recent survey and the date thereof, or the description was made based on a previous survey, of a certain date, and date of description, or the description was not based on a survey.
- (E) When the surveyor knows a new description is to be used for a fee transfer, the surveyor shall base the description on a current or updated survey of the property.

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4733-38-01

Preamble.

These standards are intended to be the minimum requirements for mortgage location surveys in the state of Ohio.

A "mortgage location survey" shall be defined as an instrumentality, common to the mortgage lending industry, whereby substantial proof is submitted to the mortgage lender and/or title insurer that the building(s) and/or other improvements are actually located on the land covered by the legal description in the mortgage and that said mortgage location survey is a professional service provided by professional surveyors solely for the intent of and use by the mortgagee and/or title insurer. The mortgage location survey does not constitute an improvement to the property, and is only a professional opinion which these parties may use as a guide to arrive at any decisions they may wish to make concerning said real property.

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4733-38-02

Research and investigation.

- (A) The professional surveyor shall use the description furnished by the client to perform the mortgage location survey. If the professional surveyor determines the description to contain apparent incompleteness or insufficiencies, the professional surveyor shall so advise the client.
- (B) After all necessary written documents, as furnished by the client, have been analyzed, the survey shall be based on a field investigation of the property. The professional surveyor shall make a thorough search for physical monuments and analyze evidence of occupation.

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4733-38-03

Monumentation.

The professional surveyor need not set boundary monumentation under the provision herein unless the client requests boundary monumentation be set. If requested to set boundary monumentation, the professional surveyor shall conform to all provisions of rule 4733-37-03 of the Administrative Code.

4733-38-04 **Measurement specifications.**

All measurements shall be made in accordance with the following specifications:

- (A) The professional surveyor shall keep his equipment in such repair and adjustment as to conform to the provisions of paragraph (A) of rule 4733-37-04 of the Administrative Code.
- (B) Every measurement of distance shall be made either directly or indirectly in such a manner that the linear error in the reported distance shall not exceed:
 - (1) Two-tenths of a foot for major improvements [see paragraph (G) of rule 4733-38-05 of the Administrative Code].
 - (2) One-half of a foot for major improvement location [see paragraph (J) of rule 4733-38-05 of the Administrative Code].

When a case arises wherein a greater linear error will not create ambiguity of locations (i.e., tracts where the improvements are located substantial distances from boundaries), then the professional surveyor may use a greater linear error, provided the tolerance is clearly indicated on the survey plat (e.g., 500 feet +/- 5 feet).

4733-38-05

Mortgage location survey plat.

The professional surveyor shall include the following information on the mortgage location survey plat.

- (A) A title such that the general location of the survey can be identified.
- (B) A north arrow.
- (C) The boundary lines as cited in the legal description, including pertinent references therein.
- (D) The written and graphical scale of the drawing.
- (E) The date of survey.
- (F) The professional surveyor's name, registration number, signature, and seal in accordance with paragraph (C)(10) of rule 4733-37-05 of the Administrative Code.
- (G) Major improvements (permanent structures) shall be shown with dimensions and description (e.g., residence, garages, outbuildings with foundation, in-ground pools, and the like).
- (H) Easement limits and building set-back lines as indicated on the recorded plat or as supplied by the client.
- (I) Visible utility facilities requiring an easement and located outside known easements, crossing the subject property and serving others, such as, though not limited to: pole lines, manholes, inlets and pedestals and the like.
- (J) Major improvement locations shall be shown with dimensions to the nearest property lines, with a minimum of two dimensions shown, and shall be sufficient to locate the structure (offsets shall be shown perpendicular to straight property lines and radially to curved property lines).
- (K) Apparent encroachments shall be noted and shown in an obvious manner.
- (L) The address posted on the building(s), if available.
- (M) Observed problems of ingress and egress and joint drive.
- (N) Fences or other evidence of possession when not in substantial conformance with the

legal description.

(O) A statement shall appear on the plat indicating that the survey is a mortgage location survey prepared in accordance with Chapter 4733-38 of the Administrative Code, and is not a boundary survey pursuant to Chapter 4733-37 of the Administrative Code.

(P) Number each page showing individual page numbers along with number of pages.

*** DRAFT - NOT YET FILED ***

4733-39-01

Preamble.

Pursuant to section 4733.16 of the Revised Code, these rules shall be implemented to define the filing requirements for a firm, partnership, association, limited liability company or corporation to obtain a "Certificate of Authorization" to practice professional engineering and/or professional surveying in the state of Ohio.

4733-39-02

Definitions.

As used in this rule:

- (A) "Responsible charge" means being in control of, accountable for and in either direct or indirect supervision of the engineering and/or surveying activities of the business enterprise.
- (B) "Fulltime" as stated in division (D) of section 4733.16 of the Revised Code means working more than thirty hours per week or working substantially all the engineering or surveying hours for a firm, partnership, association, limited liability company or corporation that holds a certificate of authorization.
- (C) "Corporation" or "domestic corporation" means a corporation for profit formed under the laws of this state as defined in section 1701.01 of the Revised Code or "foreign corporation" as defined by division (B) of section 1703.01 of the Revised Code which has obtained a license from the secretary of state of Ohio and has complied with all the provisions of Chapter 1703. of the Revised Code.
- (D) "Partnership" means an association of two or more persons to carry on as co-owners of a business for profit as defined in section 1775.05 of the Revised Code.
- (E) "Limited partnership" is a partnership formed by two or more persons under the provisions of section 1782.02 of the Revised Code, having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by obligation of the partnership as defined in section 1782.01 of the Revised Code.
- (F) "Limited partnership association" means when any number of persons, not less than three nor more than twenty-five form a limited partnership association as defined by Chapter 1783. of the Revised Code.
- (G) "Professional association" means any association organized under sections 1785.01 to 1785.08 of the Revised Code, for the sole purpose of rendering one of the professional services authorized under Chapters 4703. and 4733. of the Revised Code.
- (H) "Limited liability company" means any company organized under Chapter 1705. of the Revised Code.

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4733-39-06

Fees.

- (A) The application, biennial renewal, reapplication, delinquent, or duplicate certificate fee must accompany the "Certificate of Authorization" request in the amount shown below:

| | |
|--|---------|
| Application fee | \$50.00 |
| Biennial renewal fee | \$50.00 |
| Delinquent fee (within twelve months of expiration) | \$75.00 |
| Reapplication fee (beyond twelve months of expiration) | \$50.00 |
| Duplicate certificate fee | \$ 5.00 |

- (B) All checks shall be made payable to "Treasurer, State of Ohio" and submitted to the board office.

- (C) If a business enterprise is not eligible to receive a "Certificate of Authorization" the fee will be retained to cover the cost of processing.

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4733-39-07

Exemptions.

Corporations which were granted a charter prior to August 7, 1943, to engage in providing engineering and/or surveying services, or were otherwise lawfully providing engineering and/or surveying services prior to November 15, 1982 are exempt from the requirements of these rules. Professional associations which comply with Chapter 1785, of the Revised Code and were incorporated prior to November 15, 1982 are also exempted.

4733-40-01

Definitions in accordance with section 1347.15 of the Revised Code.

For the purposes of administrative rules promulgated in accordance with section 1347.15 of the Revised Code, the following definitions apply:

- (A) "Access" as a noun means an instance of copying, viewing, or otherwise perceiving whereas "access" as a verb means to copy, view, or otherwise perceive.
- (B) "Acquisition of a new computer system" means the purchase of a "computer system," as defined in this rule, that is not a computer system currently in place nor one for which the acquisition process has been initiated as of the effective date of the board rule addressing requirements in section 1347.15 of the Revised Code.
- (C) "Computer system" means a "system," as defined by section 1347.01 of the Revised Code, that stores, maintains, or retrieves personal information using electronic data processing equipment.
- (D) "Confidential personal information" (CPI) has the meaning as defined by division (A)(1) of section 1347.15 of the Revised Code and identified by rules promulgated by the board in accordance with division (B)(3) of section 1347.15 of the Revised Code that reference the federal or state statutes or administrative rules that make personal information maintained by the board confidential.
- (E) "Employee of the state board" means each employee of a state board regardless of whether he/she holds an elected or appointed office or position within the state board. "Employee of the state board" is limited to the specific employing state board.
- (F) "Incidental contact" means contact with the information that is secondary or tangential to the primary purpose of the activity that resulted in the contact.
- (G) "Individual" means a natural person or the natural person's authorized representative, legal counsel, legal custodian, or legal guardian.
- (H) "Information owner" means the individual appointed in accordance with division (A) of section 1347.05 of the Revised Code to be directly responsible for a system.
- (I) "Person" means a natural person.
- (J) "Personal information" has the same meaning as defined in division (E) of section 1347.01 of the Revised Code.

- (K) "Personal information system" means a "system" that "maintains" "personal information" as those terms are defined in section 1347.01 of the Revised Code. "System" includes manual and computer systems.
- (L) "Research" means a methodical investigation into a subject.
- (M) "Routine" means commonplace, regular, habitual, or ordinary.
- (N) "Routine information that is maintained for the purpose of internal office administration, the use of which would not adversely affect a person" as that phrase is used in division (F) of section 1347.01 of the Revised Code means personal information relating to employees and maintained by the board for internal administrative and human resource purposes.
- (O) "System" has the same meaning as defined by division (F) of section 1347.01 of the Revised Code.
- (P) "Upgrade" means a substantial redesign of an existing computer system for the purpose of providing a substantial amount of new application functionality, or application modifications that would involve substantial administrative or fiscal resources to implement, but would not include maintenance, minor updates and patches, or modifications that entail a limited addition of functionality due to changes in business or legal requirements.

4733-40-02

Procedures for accessing confidential personal information.

For personal information systems, whether manual or computer systems, that contain confidential personal information, the board shall do the following:

- (A) Criteria for accessing confidential personal information. Personal information systems of the board are managed on a "need-to-know" basis whereby the information owner determines the level of access required for an employee of the board to fulfill his/her job duties. The determination of access to confidential personal information shall be approved by the employee's supervisor and the information owner prior to providing the employee with access to confidential personal information within a personal information system. The board shall establish procedures for determining a revision to an employee's access to confidential personal information upon a change to that employee's job duties including, but not limited to, transfer or termination. Whenever an employee's job duties no longer require access to confidential personal information in a personal information system, the employee's access to confidential personal information shall be removed.
- (B) Individual's request for a list of confidential personal information. Upon the signed written request of any individual for a list of confidential personal information about the individual maintained by the board, the board shall do all of the following:
- (1) Verify the identity of the individual by a method that provides safeguards commensurate with the risk associated with the confidential personal information;
 - (2) Provide to the individual the list of confidential personal information that does not relate to an investigation about the individual or is otherwise not excluded from the scope of Chapter 1347, of the Revised Code; and
 - (3) If all information relates to an investigation about that individual, inform the individual that the board has no confidential personal information about the individual that is responsive to the individual's request.
- (C) Notice of invalid access.
- (1) Upon discovery or notification that confidential personal information of a person has been accessed by an employee for an invalid reason, the board shall notify the person whose information was invalidly accessed as soon as practical and to the extent known at the time. However, the board shall delay notification for a period of time necessary to ensure that the notification would not delay or impede an investigation or jeopardize homeland or

national security. Additionally, the board may delay the notification consistent with any measures necessary to determine the scope of the invalid access, including which individuals' confidential personal information invalidly was accessed, and to restore the reasonable integrity of the system.

"Investigation" as used in this paragraph means the investigation of the circumstances and involvement of an employee surrounding the invalid access of the confidential personal information. Once the board determines that notification would not delay or impede an investigation, the board shall disclose the access to confidential personal information made for an invalid reason to the person.

- (2) Notification provided by the board shall inform the person of the type of confidential personal information accessed and the date(s) of the invalid access.
 - (3) Notification may be made by any method reasonably designed to accurately inform the person of the invalid access, including written, electronic, or telephone notice.
- (D) Appointment of a data privacy point of contact. The board director shall designate an employee of the agency to serve as the data privacy point of contact. The data privacy point of contact shall work with the chief privacy officer within the office of information technology to assist the board with both the implementation of privacy protections for the confidential personal information that the board maintains and compliance with section 1347.15 of the Revised Code and the rules adopted pursuant to the authority provided by that chapter.
- (E) Completion of a privacy impact assessment. The board director shall designate an employee of the agency to serve as the data privacy point of contact who shall timely complete the privacy impact assessment form developed by the office of information technology.

4733-40-03

Valid reasons for accessing confidential information.

Pursuant to the requirements of division (B)(2) of section 1347.15 of the Revised Code, this rule contains a list of valid reasons, directly related to the board's exercise of its powers or duties, for which only employees of the board may access confidential personal information (CPI) regardless of whether the personal information system is a manual system or computer system:

(A) Performing the following functions constitute valid reasons for authorized employees of the board to access confidential personal information:

- (1) Responding to a public records request;
- (2) Responding to a request from an individual for the list of CPI the agency maintains on that individual;
- (3) Administering a constitutional provision or duty;
- (4) Administering a statutory provision or duty;
- (5) Administering an administrative rule provision or duty;
- (6) Complying with any state or federal program requirements;
- (7) Processing or payment of claims or otherwise administering a program with individual participants or beneficiaries;
- (8) Auditing purposes;
- (9) Licensure [permit, eligibility, filing, etc.] processes;
- (10) Investigation or law enforcement purposes;
- (11) Administrative hearings;
- (12) Litigation, complying with an order of the court, or subpoena;
- (13) Human resource matters (e.g., hiring, promotion, demotion, discharge, salary/compensation issues, leave requests/issues, time card approval/issues);
- (14) Complying with an executive order or policy;

- (15) Complying with an agency policy or a state administrative policy issued by the department of administrative services, the office of budget and management or other similar state agency; or
 - (16) Complying with a collective bargaining agreement provision.
- (B) To the extent that the general processes described in paragraph (A) of this rule do not cover the following circumstances, for the purpose of carrying out specific duties of the board, authorized employees would also have valid reasons for accessing CPI in these following circumstances:
- (1) By necessity for office management, the executive director, assistant director, and employees in human resource positions shall have access to confidential personal information contained in personnel files.
 - (2) The executive director, assistant executive director, and employees in investigative positions shall have access to confidential personal information of individuals who are subject to investigation. Such employees shall have access to confidential personal information of individuals who are not the subject of the investigation, but who otherwise may be witnesses with information related to the investigation.
 - (3) By necessity for licensure and office management, all employees of the board shall have access to confidential personal information contained in e-licensing, application documents, and any other correspondence or documents retrieved while performing their duties for the board.
 - (4) By necessity for licensure, discipline, and office management, the board members shall have access to confidential personal information contained in applications, investigative files, and personnel files. The board members shall also have access to confidential personal information contained in continuing education waiver requests.

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4733-40-04

Confidentiality statements.

The following federal statutes or regulations or state statutes and administrative rules make personal information maintained by the agency confidential and identify the confidential personal information within the scope of rules promulgated by this board in accordance with section 1347.15 of the Revised Code:

- (A) Social security numbers: pursuant to (5 U.S.C. 552a of 02/01/2010), unless the individual was told that the number would be disclosed.
- (B) Education records pursuant to the Family Educational Right to Privacy Act (FERPA).
- (C) Confidential law enforcement investigatory records pursuant to section 149.43 of the Revised Code.

4733-40-05

Restricting and logging access to confidential personal information in computerized personal information systems.

For personal information systems that are computer systems and contain confidential personal information, the board shall do the following:

- (A) Access restrictions. Access to confidential personal information that is kept electronically shall require a password or other authentication measure.
- (B) Acquisition of a new computer system. When the board acquires a new computer system that stores, manages or contains confidential personal information, the board shall include a mechanism for recording specific access by employees of the board to confidential personal information in the system.
- (C) Upgrading existing computer systems. When the board modifies an existing computer system that stores, manages or contains confidential personal information, the board shall make a determination whether the modification constitutes an upgrade. Any upgrades to a computer system shall include a mechanism for recording specific access by employees of the board to confidential personal information in the system.
- (D) Logging requirements regarding confidential personal information in existing computer systems.
 - (1) The board shall require employees of the board who access confidential personal information within computer systems to maintain a log that records that access.
 - (2) Access to confidential information is not required to be entered into the log under the following circumstances:
 - (a) The employee of the board is accessing confidential personal information for official agency purposes, including research, and the access is not specifically directed toward a specifically named individual or a group of specifically named individuals.
 - (b) The employee of the board is accessing confidential personal information for routine office procedures and the access is not specifically directed toward a specifically named individual or a group of specifically named individuals.
 - (c) The employee of the board comes into incidental contact with confidential personal information and the access of the information is not specifically directed toward a specifically named individual or a group

of specifically named individuals.

(d) The employee of the board accesses confidential personal information about an individual based upon a request made under either of the following circumstances:

(i) The individual requests confidential personal information about himself/herself.

(ii) The individual makes a request that the board takes some action on that individual's behalf and accessing the confidential personal information is required in order to consider or process that request.

(3) For purposes of this paragraph, the board may choose the form or forms of logging, whether in electronic or paper formats.

(E) Log management. The board shall issue a policy that specifies the following:

(1) Who shall maintain the log;

(2) What information shall be captured in the log;

(3) How the log is to be stored; and

(4) How long information kept in the log is to be retained.

Nothing in this rule limits the board from requiring logging in any circumstance that it deems necessary.