

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Veterinary Medical Licensing Board

Regulation/Package Title: 2015 Rules No Change

Rule Number(s): 4741-1-13, 4741-4-01, 4741-4-02, 4741-4-03, 4741-4-04, 4741-4-05,

OAC. \_\_\_\_\_

Date: \_\_\_\_\_

**Rule Type:**

New

5-Year Review

Amended

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

**Regulatory Intent**

1. **Please briefly describe the draft regulation in plain language.** All of the rules in this package are “No Change” rules filed in accordance with the five year rule review. The draft package of rules consists of rules pertaining to the practice of livestock veterinary medicine in the State of Ohio. The remainder of the rules relate to internal Board practices related to which staff can access confidential personal information (CPI). The draft rules are written in plain language so that a member of the public without additional medical education can understand the rules. The rules in this package contain:

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Rule 4741-1-13 OAC is a rule that provides guidance for those individuals performing livestock veterinary medicine.

Rule 4741-4-01 OAC defines the terms utilized in section 1347.15 of the Revised Code related to confidential personal information.

Rule 4741-4-02 OAC establishes the procedures for accessing confidential personal information.

Rule 4741-4-03 OAC provides the valid reasons for accessing confidential personal information.

Rule 4741-4-04 OAC lists the federal or state statutes or regulations that apply.

Rule 4741-4-05 OAC provides the logging access to CPI in computerized personal information systems..

**2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**

Section 4741.03 (C) (9) ORC authorizes the Board to adopt rules, in accordance with Chapter 119 of the Revised Code, which are necessary for its government and for the administration and enforcement of this chapter. Section 1347.15 ORC requires the Board to promulgate rules regarding accessing CPI.

**3. Does the regulation implement a federal requirement? No 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?**

Not applicable.

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

Not applicable

**5. 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)?**

The public purpose for these rules is to assure the public that licensed veterinarians and registered veterinary technicians (RVTs) are professional, trustworthy and competent practitioners. These no change rules provide guidelines to the Board staff and licensed practitioners for what the Board members believe are acceptable minimum standards of medical care as well as requirements for accessing and maintaining confidential information.

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

The Board will measure the success of these regulations as being written clearly and concisely so that the licensees and the public understand the rules, and therefore, there will be compliance with the rules. The Board tracks all correspondence and complaints to determine if there is a

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further need to implement or modify a rule or to educate practitioners through educational opportunities, the Board newsletter or via the web site.

### **Development of the Regulation**

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

The Ohio Veterinary Medical Association, the Ohio Association of Veterinary Technicians, and licensed practitioners (veterinarians and RVTs).

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

The rules for five year review were listed out and provided to the Board members and placed in the Board's minutes in July, 2014. The list of rules was also provided to the Ohio Veterinary Medical Association via email. There was no feedback related to "No change" rules.

The No Change rules were again reviewed by the Board members at their August, 2014 board meeting and it was determined to move forward with completing and submitting the Business Impact Analysis Form to the Common Sense Initiative Office.

**9. 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?**

These particular No Change rules have been in existence for five years. There have not been any comments received in the Board office regarding these rules. There has not been any violations of these rules that have been brought before the Board for consideration. The Board solicits input at the annual veterinary association conferences, through the associations, through the Board's web site and via the Board's newsletter.

**10. 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?** The Board did review each rule to determine if amendments were needed. In light of no inquiries or issues brought before the Board in the past five-years related to these rules, the Board did not make any changes.

**11. 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. The purpose of the rule is to provide guidance to the licensee and what veterinary actions, etc. might be required to

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comply with the statute. Veterinary medicine in herd management involves different techniques and assistance than a stationary veterinary office. Additionally, the CPI rules are mandated by statute. These rules are filed as no change due to there has been no evidence to suggest that a change is needed.

**12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?** The No Change rules are specific to the license to practice veterinary medical practice. There is no other Agency that has the authority to regulate the licensure of veterinary medicine.

**13. 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.**

Any issues that might arise as a result of the rules will come before the Board members at one of their monthly meetings for discussion. For example, inquiries as to interpreting a rule in the actual practice of veterinary medicine will be placed on the Board Agenda under correspondence and reviewed by the Board members. Additionally, interested parties are able to request time on the Board Agenda to discuss issues that might arise as a result of how a rule is written. The discussion will then be reflected in the Board minutes which are posted monthly on the Board web site at [www.ovmlb.ohio.gov](http://www.ovmlb.ohio.gov). Additionally, any pertinent issues related to the rules are done in consultation with the appropriate representative from the OVMA or OAVT, the Department of Agriculture and/or The Ohio State University College of Veterinary Medicine.

#### **Adverse Impact to Business**

**14. 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;**

Veterinarians and registered veterinary technicians

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

Compliance with the No Change involves making sure that only licensed individuals are practicing veterinary medicine in the management of livestock and permits others to perform simpler tasks such as branding, hoof trimming, etc.,. The livestock management rule provides this guidance to veterinarians. The rule provides permissible tasks for any help and the “owner’s agent”. The veterinarian is responsible for training the owner’s agent. The only adverse impact to the veterinarian is the cost of licensure (\$155 for biennial renewal) and the time for instruction. There is no adverse impact of the CPI rules to the licensee.

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and

**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.*

Rule 4741-1-13 OAC permits a person to perform certain tasks. This has no bearing on the licensee. However, the owner’s agent must be trained by the veterinarian in more extensive tasks such as intravenous fluid administration, medication administration, etc. The owner is already exempt from these requirements pursuant to ORC 4741.20(A). The cost of a biennial renewal for the veterinarian is \$155. There is no adverse impact of the CPI rules to the licensee.

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

Five years ago, the Board implemented Rule 4741-1-13 in response to multiple inquiries related to livestock management since that type of veterinary medicine is different than the typical veterinary clinic approach. The rule has been in effect without any violations reported to the Board or further inquiry. The CPI rules were originally implemented as a result of statutory requirement. There has been no need for a change in the process utilized.

**Regulatory Flexibility**

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

No. The rule is meant to provide guidance to the veterinary practitioner who performs livestock management.

**17. 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?**

If a violation of the Rules are found by the Board, the Board would issue a Notice of Opportunity for a Hearing in accordance with ORC 119.01 to 119.13 which may involve fines. However, there are no fines or penalties involved for paperwork violations of the No Change rules to a licensee.

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

The Board has a working relationship with the associations representing veterinarians and registered veterinary technicians. There is time placed on each monthly Board Agenda for the representatives of these associations to speak regarding any issue of concern or awareness. The Board has a web site that is updated frequently with important issues and resources, in addition to having the annual newsletter posted on the web site. The Board's contact information is as follows:

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Columbus, OH 43215

614-644-5281

[info@ovmlb.state.oh.us](mailto:info@ovmlb.state.oh.us)

[www.ovmlb.ohio.gov](http://www.ovmlb.ohio.gov)

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4741-1-13

**Livestock management practices.**

- (A) A person may perform the following livestock production activities: Acts of tagging, ear notching, hoof trimming, deworming, branding, artificial insemination including semen collection, preparation and freezing.
- (B) An owner's agent may perform the following accepted livestock production activities with the advice and consent of a licensed veterinarian who has provided training and oversight consistent with standard herd management practices: castration, tail docking, non-surgical dehorning, intravenous fluid administration, pregnancy detection other than by rectal technique, medication and biological administration, except for those prohibited by law, and phlebotomy.
- (C) For the purpose of this rule, the following definitions apply:
- (1) "Livestock" means an animal produced for fiber, food or other products for human consumption.
  - (2) "Owner's agent" includes a full-time, part-time or seasonal employee of the animal owner. Owner's agent does not include independent or specialty contractors.

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4741-4-01

**Definitions.**

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 the effective date of the board rule addressing requirements in section 1347.15 of the Revised Code.
- (C) "Board" means the Ohio veterinary medical licensing board.
- (D) "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.
- (E) "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.
- (F) "Employee of the state board" means each employee of the 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 Ohio veterinary medical licensing board.
- (G) "Incidental contact" means contact with the information that is secondary or tangential to the primary purpose of the activity that resulted in the contact.
- (H) "Individual" means a natural person or the natural person's authorized representative, legal counsel, legal custodian, or legal guardian.
- (I) "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.
- (J) "Person" means a natural person.
- (K) "Personal information" has the same meaning as defined in division (E) of section 1347.01 of the Revised Code.

- (L) "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.
- (M) "Research" means a methodical investigation into a subject.
- (N) "Routine" means commonplace, regular, habitual, or ordinary.
- (O) "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 the board's employees and maintained by the board for internal administrative and human resource purposes.
- (P) "System" has the same meaning as defined by division (F) of section 1347.01 of the Revised Code.
- (Q) "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.

4741-4-02

**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 board 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 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 board 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.

4741-4-03

**Valid reasons for accessing confidential personal 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.

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

- (A) Responding to a public records request;
- (B) Responding to a request from an individual for the list of CPI the board maintains on that individual;
- (C) Administering a constitutional provision or duty;
- (D) Administering a statutory provision or duty;
- (E) Administering an administrative rule provision or duty;
- (F) Complying with any state or federal program requirements;
- (G) Processing or payment of claims or otherwise administering a program with individual participants or beneficiaries;
- (H) Auditing purposes;
- (I) Licensure or eligibility for examination purposes;
- (J) Investigation or law enforcement purposes;
- (K) Administrative hearings;
- (L) Litigation, complying with an order of the court, or subpoena;
- (M) Monitoring of disciplinary cases and/or impairment program;
- (N) Human resource matters (e.g. hiring, promotion, demotion, discharge, salary/compensation issues, leave requests/issues, time card approvals/issues);

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4741-4-03

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- (O) Complying with an executive order or policy;
- (P) Complying with a board 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
- (Q) Complying with a collective bargaining agreement provision.

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4741-4-04

**Confidentiality statutes.**

The following federal statutes or regulations or state statutes make personal information maintained by the board 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: 5 U.S.C. 552a, unless the individual was told that the number would be disclosed.
- (B) "Bureau of Criminal Investigation and Information" criminal records check results: section 4776.04 of the Revised Code.
- (C) Medical Records: Health Insurance Portability and Accountability Act, Title II 45 CFR 160, 42 USC 1320.
- (D) Investigative Records: section 149.43 of the Revised Code.
- (E) College Transcripts: Family Education Rights and Privacy Act, 34 CFR Part 99.

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4741-4-05

**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 restriction. 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 agency 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 board 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 request 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.