Hearing Summary Report

Hearing Date: July 23, 2019 Today's Date: August 5, 2019

Agency: Ohio Department of Commerce

Rule Number(s): 3796:5-6-04, 3796:2-1-06, 3796:2-2-03, 3796:3-2-03, 3796:4-2-06, 3796:5-2-01, 3796:5-6-01

Speaker #	Name	Summary of comments	Affiliation
1	Patrick Skilliter	OAC 3796:5-6-01 proposed change that seeks to narrow the scope of the confidentiality requirement and remove the potential conflict for employees and licensees. Commenter states the proposed change will have a negative impact on policymakers and industry members by releasing information that was protected by this provision.	Attorney, Mac Murray & Shuster LLP
2	Felicia Hill	Commented on amendments to OAC 3796:5-6-01 stating that proposed changes would expose documents that would be trade secret and harm companies.	Unaffiliated
3	Geoff Korff	Testified in support of OAC 3796:2-2-03 stating the amendment will free up resources for operations.	Galena, Commerce Licensee
4	Lauren Devine	Testified in support of OAC 3796:5-6-04 stating flexibility by the Director granting variances is in the best interest of the patients and in support of OAC 3796:3-2-03 stating the amendments are business friendly while protecting public interest. Ms. Devine also provided comment on OAC 3796:5-6-01 stating the proposed amendment could exposes trade secrets and confidential information.	Noohra Labs, Commerce Licensee

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Consolidated Summary of Comments Received

Please review all comments received and complete a consolidated summary paragraph of the comments and indicate the rule number(s).

- **OAC 3796:5-6-01** - Several commenters stated that the amendments to the rule could potentially remove protections for trade secret and investigatory information.
- **OAC 3796:2-2-03** - One comment was received in support of the amendment indicating that allowing for other categories of employees to remove waste will provide for more flexibility to free business resources.
- **OAC 3796:5-6-04 -** One comment was received in support of this new rule, emphasizing the new rule provides the Director variance authority will allow the Director to respond to scenarios that would be overly burdensome to licensees and expedite the rolling out of the program in the best interest of the patients and licensees.
- **OAC 3796:3-2-03 -** One comment was received in support of the amendments stating the current language results in an inefficient use of resources because key staff members are required to be present for waste disposal.

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Incorporated Comments into Rule(s)

Indicate how comments received during the hearing process were incorporated into the rule(s). If no comments were incorporated, explain why not.

The Department did not make changes to the following rules:

- **OAC 3796:5-6-01** - Several commenters stated that the amendments to the rule could potentially remove protections for trade secret and investigatory information. The Department is sensitive to the concerns of the commenters however, the legislature did not include express authority to create an exception to public records law when it enacted R.C. 3796. Express statutory authority is required from the legislature to create an exception to the Public Records Act. *See* State ex rel. Gallon & Takacs Co., L.P. v. Conrad, 123 Ohio App.3d 554, 704 N.E.2d 638 (10th Dist.1997). The Department could be subjected to writ of mandamus actions if it withheld documents under currently enacted Ohio Adm.Code 3796:5-6-01(D). Under the new construction, the Department would continue to withhold public release of trade secret documents, enforcement documents, and any other documents permitted by the Public Records Act and accompanying case law.
- **OAC 3796:2-2-03** - No changes were made because the comments provided were in support of the proposed amendments.
- **OAC 3796:5-6-04** - No changes were made because the comments provided were in support of the new rule.

- **OAC 3796:3-2-03** - No changes were made because the comments provided were in support of the proposed amendments.