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5123-9-42 Home and community-based services waivers - basic employment skills training under the individual options, level one, and self-empowered life funding waivers.

(A) Purpose

This rule defines basic employment skills training and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service.

(B) Definitions

For the purposes of this rule, the following definitions apply:

- (1) "Adult day support" has the same meaning as in rule 5123-9-17 of the Administrative Code.
- (2) "Agency provider" means an entity that directly employs at least one person in addition to a director of operations for the purpose of providing services for which the entity is certified in accordance with rule 5123-2-08 of the Administrative Code.
- (3) "Basic employment skills training" means provision of learning and work experiences, including volunteer work, where an individual develops general strengths and skills that enhance the individual's opportunities to secure paid employment in integrated community settings and that are not specific to a job.
 - (a) Basic employment skills training is expected to occur over a defined period of time with specific outcomes to be achieved as determined by the individual and the team.
 - (b) Activities that constitute basic employment skills training include, but are not limited to:
 - (i) Ongoing support, that may be provided in-person or through virtual support, which includes direct supervision, monitoring and/or counseling, and the provision of some or all of the following supports to promote development of general work skills:
 - (a) Building skills necessary for competitive integrated employment such as:
 - (i) Advocate and communicate effectively with supervisors, co-workers, and customers in the workplace;
 - (ii) Develop generally accepted workplace conduct;
 - (iii) Understand and follow workplace guidelines for personal attire and grooming;
 - (iv) Follow directions and attend to tasks;

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- (v) Enhance workplace problem solving skills and strategies;
 - (vi) Build and utilize natural supports;
 - (vii) Understand and develop workplace social skills;
 - (viii) Develop general workplace safety knowledge; and
 - (ix) Navigate to and from the workplace.
- (b) Providing information about or referral to career planning services, disability benefits services, or other appropriate consultative services.
- (ii) Ongoing support, that may only be provided in-person, assisting the individual with self-administration of medication or health-related activities or performing medication administration or health-related activities in accordance with Chapter 5123-6 of the Administrative Code.
- (c) Basic employment skills training has two tiers:
 - (i) Tier I is available to an individual seeking prevocational services to advance on the path to competitive integrated employment and achieve competitive integrated employment.
 - (ii) Tier II is available only to an individual who, on the day immediately prior to the effective date of this rule, was at least fifty years of age and authorized to receive vocational habilitation.
- (4) "Budget limitation" has the same meaning as in rule 5123-9-19 of the Administrative Code.
- (5) "Career planning" has the same meaning as in rule 5123-9-13 of the Administrative Code.
- (6) "Competitive integrated employment" means work (including self-employment) that is performed on a full-time or part-time basis:
 - (a) For which an individual is:
 - (i) Compensated:
 - (a) At a rate that is not less than the higher of the rate specified in the Fair Labor Standards Act of 1938, 29 U.S.C. 206(a)(1), as in effect on the effective date of this rule, or the rate specified in the applicable state or local minimum wage law and is not less than the customary rate paid by the employer for the same or similar work performed by other employees who do not have disabilities, and who are in similar occupations by the same employer and who have similar training, experience, and skills; or

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- (b) In the case of an individual who is self-employed, yields an income that is comparable to the income received by persons without disabilities, who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and
 - (ii) Eligible for the level of benefits provided to other full-time and part-time employees;
 - (b) At a location where the individual interacts with persons without disabilities to the same extent as employees who are not receiving home and community-based services;
 - (c) That is not performed in:
 - (i) Dispersed enclaves in which individuals work in a self-contained unit within a company or service site in the community or perform multiple jobs in the company, but are not integrated with company employees without disabilities; or
 - (ii) Mobile work crews comprised solely of individuals operating as a distinct unit and/or self-contained business working in several locations within the community; and
 - (d) That, as appropriate, presents opportunities for advancement that are similar to those for company employees without disabilities who have similar positions.
- (7) "County board" means a county board of developmental disabilities.
- (8) "Daily billing unit" means a billing unit that may be used when between five and seven hours of basic employment skills training are delivered by the same provider to the same individual during one calendar day in accordance with the conditions specified in paragraph (F)(2) of this rule.
- (9) "Department" means the Ohio department of developmental disabilities.
- (10) "Fifteen-minute billing unit" means a billing unit that equals fifteen minutes of service delivery time or is greater or equal to eight minutes and less than or equal to twenty-two minutes of service delivery time. Minutes of service delivery time accrued throughout a day will be added together for the purpose of calculating the number of fifteen-minute billing units for the day.
- (11) "Group employment support" has the same meaning as in rule 5123-9-16 of the Administrative Code.
- (12) "Home and community-based setting evaluation" means a review conducted by the department, the department's designee, or the Ohio department of medicaid for the purpose of determining whether or not a service delivery site demonstrates home and community-based characteristics in accordance with criteria established by the centers for medicare and medicaid services and set forth in rule 5123-9-02 of the

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Administrative Code.

- (13) "Independent provider" means a self-employed person who provides services for which the person is certified in accordance with rule 5123-2-09 of the Administrative Code and does not employ, either directly or through contract, anyone else to provide the services.
- (14) "Individual" means a person with a developmental disability or for purposes of giving, refusing to give, or withdrawing consent for services, the person's guardian in accordance with section 5126.043 of the Revised Code or other person authorized to give consent.
- (15) "Individual employment support" has the same meaning as in rule 5123-9-15 of the Administrative Code.
- (16) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual.
- (17) "Integrated community setting" means a setting that is integrated in and supports full access of individuals to the greater community to the same degree of access as persons not receiving home and community-based services.
- (18) "Mentor" means a person employed by or under contract with the agency provider who:
 - (a) Has at least one year of experience providing direct services to persons with developmental disabilities;
 - (b) Has completed the training described in paragraph (C)(6) of this rule; and
 - (c) Is available on a regular basis to provide guidance to new direct support professionals regarding techniques and practices that enhance the effectiveness of the provision of basic employment skills training.
- (19) "Natural supports" means the personal associations and relationships typically developed in the community that enhance the quality of life for individuals. Natural supports may include family members, friends, neighbors, and others in the community or organizations that serve the general public who provide voluntary support to help an individual achieve agreed upon outcomes through the individual service plan development process.
- (20) "Path to competitive integrated employment" has the same meaning as in rule 5123-2-05 of the Administrative Code.
- (21) "Service and support administrator" means a person, regardless of title, employed by or under contract with a county board to perform the functions of service and support administration and who holds the appropriate certification in accordance with rule 5123-5-02 of the Administrative Code.

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- (22) "Service documentation" means all records and information on one or more documents, including documents that may be created or maintained in electronic software programs, created and maintained contemporaneously with the delivery of services, and kept in a manner as to fully disclose the nature and extent of services delivered that includes the items delineated in paragraph (E) of this rule to validate payment for medicaid services.
- (23) "Virtual support" means the provision of services by direct support professionals at a distant site who engage with an individual using interactive technology that has the capability for two-way, real-time audio and video communication.
- (24) "Vocational habilitation" has the same meaning as in rule 5123-9-14 of the Administrative Code.
- (25) "Waiver eligibility span" means the twelve-month period following either an individual's initial waiver enrollment date or a subsequent eligibility re-determination date.

(C) Provider qualifications

- (1) Basic employment skills training will be provided by an agency provider that meets the requirements of this rule and that has a medicaid provider agreement with the Ohio department of medicaid.
- (2) Basic employment skills training will not be provided by an independent provider.
- (3) An applicant seeking approval to provide basic employment skills training will complete and submit an application and adhere to the requirements of rule 5123-2-08 of the Administrative Code.
- (4) An applicant seeking approval to provide basic employment skills training will be subject to a home and community-based setting evaluation. When the home and community-based setting evaluation identifies required modifications, those modifications will have been implemented in accordance with the applicant's approved plan of correction.
- (5) An agency provider certified by the department on the day immediately prior to the effective date of this rule to provide vocational habilitation will be deemed certified to provide basic employment skills training on condition that the agency provider has either:
 - (a) Been determined through a home and community-based setting evaluation to be compliant; or
 - (b) Implemented required modifications identified through the home and community-based setting evaluation in accordance with the agency provider's approved plan of correction.
- (6) An agency provider will ensure that direct support professionals who provide basic

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employment skills training successfully complete, no later than thirty calendar days after hire, training in:

- (a) Services that comprise basic employment skills training including the expectation that basic employment skills training will eventually lead to competitive integrated employment;
 - (b) Signs and symptoms of illness or injury and procedure for response;
 - (c) Site-specific emergency response plans; and
 - (d) Program-specific transportation safety.
- (7) An agency provider will ensure that direct support professionals who provide basic employment skills training (other than those who have at least one year of experience providing vocational habilitation or basic employment skills training at the point of hire), during the first year after hire, are assigned and have access to a mentor.
- (8) An agency provider will ensure that direct support professionals who provide basic employment skills training (other than those who have at least one year of experience providing vocational habilitation or basic employment skills training at the point of hire), no later than one year after hire, successfully complete at least eight hours of training specific to the provision of basic employment skills training that includes, but is not limited to:
- (a) Development of individuals' strengths and skills necessary for competitive integrated employment; and
 - (b) Self-determination which includes assisting the individual to develop self-advocacy skills, to exercise civil rights, to exercise control and responsibility over the services received, and to acquire skills that enable becoming more independent, productive, and integrated within the community.
- (9) An agency provider will ensure that direct support professionals who provide basic employment skills training, commencing in the second year of hire, annually complete training in best practices related to the provision of basic employment skills training.
- (10) Failure to comply with this rule and rule 5123-2-08 of the Administrative Code may result in denial, suspension, or revocation of the agency provider's certification.

(D) Requirements for service delivery

- (1) Some requirements for basic employment skills training vary by tier:
 - (a) Tier I
 - (i) Tier I basic employment skills training is available to an individual determined through the person-centered planning process to need basic

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employment skills training.

- (ii) Tier I basic employment skills training is intended for an individual whose place on the path to competitive integrated employment is place I, place II, or place III with the stated outcome of competitive integrated employment specified in the individual service plan.
- (iii) The expected outcome of tier I basic employment skills training is the advancement of an individual on the path to competitive integrated employment in a job well-matched to the individual's interests, strengths, priorities, and abilities.
- (iv) A service and support administrator may initially authorize tier I basic employment skills training for a maximum period of two years. Beyond two years, a service and support administrator may authorize up to two one-year extensions. Beyond four years, the department will monitor authorization of tier I basic employment skills training to ensure the service is being authorized and delivered in accordance with this rule. Monitoring by the department will consist of data review, technical assistance to providers and county boards, and routine or special compliance reviews, as warranted.

(b) Tier II

- (i) Tier II basic employment skills training is available only to an individual who, on the day immediately prior to the effective date of this rule, was at least fifty years of age and authorized to receive vocational habilitation.
 - (ii) Tier II basic employment skills training is intended for an individual who:
 - (a) May be interested in exploring competitive integrated employment and advancing on the path to competitive integrated employment; or
 - (b) Has chosen to remain at place IV on the path to competitive integrated employment.
 - (iii) The expected outcome of tier II basic employment skills training is, at a minimum, maintenance of an individual's existing function and proficiency in general strengths and skills that enhance the individual's opportunities to secure competitive integrated employment.
 - (iv) An individual receiving tier II basic employment skills training will be asked on an annual basis, to consider and make an informed choice about receiving other available services in lieu of tier II basic employment skills training.
- (2) Basic employment skills training is available to individuals who are no longer eligible for educational services based on their graduation and/or receipt of a diploma or certificate of high school equivalence and/or their permanent discontinuation of

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educational services within parameters established by the Ohio department of education.

- (3) The service and support administrator will ensure that documentation is maintained to demonstrate that the service provided as basic employment skills training to an individual enrolled in a waiver is not otherwise available as vocational rehabilitation services funded under section 110 of the Rehabilitation Act of 1973, 29 U.S.C. 730, as in effect on the effective date of this rule.
- (4) Basic employment skills training will be provided pursuant to a person-centered individual service plan that conforms to the requirements of rules 5123-2-05 and 5123-4-02 of the Administrative Code and will be coordinated with other services and supports set forth in the individual service plan. The individual service plan will specify the general strengths and skills to be obtained or maintained, the location of service delivery, and the frequency with which services will be reviewed by the individual's team.
- (5) Basic employment skills training provided in-person will take place in a non-residential setting separate from any individual's home. An individual participating in basic employment skills training provided through virtual support may do so from the individual's home.
- (6) Basic employment skills training may be provided through virtual support under the following conditions:
 - (a) Virtual support does not have the effect of isolating an individual from the individual's community or preventing the individual from interacting with people with or without disabilities.
 - (b) The use of virtual support has been agreed to by an individual and the individual's team and is specified in the individual service plan.
 - (c) The use of virtual support complies with applicable laws governing an individual's right to privacy and the individual's protected health information.
 - (d) Provision of basic employment skills training through virtual support does not include assisting an individual with self-administration of medication or health-related activities or performing medication administration or health-related activities in accordance with Chapter 5123-6 of the Administrative Code.
- (7) A provider of basic employment skills training will notify the department within fourteen calendar days when there is a change in the physical address (i.e., adding a new location or closing an existing location) of any facility where basic employment skills training takes place.
- (8) A provider of basic employment skills training will complete reports and collect and submit data via the department's outcome tracking system in accordance with rule 5123-2-05 of the Administrative Code.

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- (9) Individuals receiving basic employment skills training will be compensated in accordance with applicable federal and state laws and regulations. A determination that an individual receiving basic employment skills training is eligible to be paid at special minimum wage rates in accordance with 29 C.F.R. Part 525, "Employment of Workers with Disabilities Under Special Certificates," as in effect on the effective date of this rule, will be based on documented evaluations and assessments.
 - (10) A provider of basic employment skills training will ensure that appropriate staff are knowledgeable about the Workforce Innovation and Opportunity Act as in effect on the effective date of this rule, wage and hour laws, benefits, work incentives, and employer tax credits for individuals with developmental disabilities and ensure that individuals served receive this information.
 - (11) A provider of basic employment skills training will comply with applicable laws, rules, and regulations of the federal, state, and local governments pertaining to the physical environment (building and grounds) where basic employment skills training is provided. A provider of basic employment skills training will be informed of and comply with standards applicable to the service setting.
 - (12) A provider of basic employment skills training will recognize changes in the individual's condition and behavior as well as safety and sanitation hazards, report to the service and support administrator, and record the changes in the individual's written record.
- (E) Documentation of services
- Service documentation for basic employment skills training will include each of the following to validate payment for medicaid services:
- (1) Type of service.
 - (2) Date of service.
 - (3) Place of service.
 - (4) Name of individual receiving service.
 - (5) Medicaid identification number of individual receiving service.
 - (6) Name of provider.
 - (7) Provider identifier/contract number.
 - (8) Written or electronic signature of the person delivering the service, or initials of the person delivering the service if a signature and corresponding initials are on file with the provider.
 - (9) Description and details of the services delivered that directly relate to the services specified in the approved individual service plan as the services to be provided.

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(10) Times the delivered service started and stopped.

(11) Number of units of the delivered service.

(F) Payment standards

- (1) The billing units, service codes, and payment rates for basic employment skills training are contained in appendix A to this rule. Payment rates, except payment rates for basic employment skills training provided in-person in an integrated community setting for a group of four or fewer individuals, are based on individuals' group assignments determined in accordance with rule 5123-9-19 of the Administrative Code and the county cost-of-doing-business category. Payment rates for basic employment skills training provided in-person in an integrated community setting for a group of four or fewer individuals are based on the county cost-of-doing-business category. The cost-of-doing-business category for an individual is the category assigned to the county in which the service is actually provided for the preponderance of time. The cost-of-doing-business categories are contained in appendix B to this rule.
- (2) A provider of basic employment skills training may use the daily billing unit when the provider delivers between five and seven hours of basic employment skills training in-person to the same individual during one calendar day and:
 - (a) The individual does not qualify for or the provider elects not to receive the behavioral support rate modification described in paragraph (F)(6) of this rule;
 - (b) The individual does not qualify for or the provider elects not to receive the medical assistance rate modification described in paragraph (F)(7) of this rule; and
 - (c) The provider does not provide basic employment skills training to the individual in multiple modes on the same day (i.e., in an integrated community setting when the individual is part of a group of four or fewer individuals and in another setting).
- (3) A provider of basic employment skills training will use the fifteen-minute billing unit when:
 - (a) The provider delivers less than five hours or more than seven hours of basic employment skills training to the same individual during one calendar day;
 - (b) The individual being served qualifies for and the provider elects to receive the behavioral support rate modification in accordance with paragraph (F)(6) of this rule;
 - (c) The individual being served qualifies for and the provider elects to receive the medical assistance rate modification in accordance with paragraph (F)(7) of this rule;

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- (d) The provider provides basic employment skills training to the individual in multiple modes on the same day (i.e., in an integrated community setting when the individual is part of a group of four or fewer individuals and in another setting); or
 - (e) The provider provides basic employment skills training to the individual through virtual support.
- (4) A provider of basic employment skills training will not bill a daily billing unit on the same day the provider bills fifteen-minute billing units for the same individual.
- (5) Payment for adult day support, basic employment skills training, career planning, group employment support, individual employment support, and vocational habilitation, alone or in combination, will not exceed the budget limitations contained in rule 5123-9-19 of the Administrative Code.
- (6) Payment rates for basic employment skills training provided in-person at the fifteen-minute billing unit are eligible for adjustment by the behavioral support rate modification to reflect the needs of an individual requiring behavioral support upon determination by the department that the individual meets the criteria set forth in paragraph (F)(6)(a) of this rule. The amount of the behavioral support rate modification applied to each fifteen-minute billing unit of service is contained in appendix A to this rule.
- (a) The department will determine that an individual meets the criteria for the behavioral support rate modification when:
 - (i) The individual has been assessed within the last twelve months to present a danger to self or others or have the potential to present a danger to self or others; and
 - (ii) A behavioral support strategy that is a component of the individual service plan has been developed in accordance with the requirements in rules established by the department; and
 - (iii) The individual either:
 - (a) Has a response of "yes" to at least four items in question thirty-two of the behavioral domain of the Ohio developmental disabilities profile; or
 - (b) Requires a structured environment that, if removed, will result in the individual's engagement in behavior destructive to self or others.
 - (b) The duration of the behavioral support rate modification is limited to the individual's waiver eligibility span, may be determined needed or no longer needed within that waiver eligibility span, and may be renewed annually.
 - (c) The purpose of the behavioral support rate modification is to provide funding for the implementation of behavioral support strategies by staff who have the level

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of training necessary to implement the strategies; the department retains the right to verify that staff who implement behavioral support strategies have received training (e.g., specialized training recommended by clinicians or the team or training regarding an individual's behavioral support strategy) that is adequate to meet the needs of the individuals served.

(7) Payment rates for basic employment skills training provided in-person at the fifteen-minute billing unit are eligible for adjustment by the medical assistance rate modification to reflect the needs of an individual requiring medical assistance upon determination by the county board that the individual meets the criteria set forth in paragraph (F)(7)(a) of this rule. The amount of the medical assistance rate modification applied to each fifteen-minute billing unit of service is contained in appendix A to this rule.

(a) The county board will determine that an individual meets the criteria for the medical assistance rate modification when:

(i) The individual requires the administration of fluid, nutrition, and/or prescribed medication through gastrostomy and/or jejunostomy tube; and/or requires the administration of insulin through subcutaneous injection, inhalation, or insulin pump; and/or requires the administration of medication for the treatment of metabolic glycemetic disorder by subcutaneous injection; or

(ii) The individual requires a nursing procedure or nursing task that a licensed nurse agrees to delegate in accordance with rules in Chapter 4723-13 of the Administrative Code, which is provided in accordance with section 5123.42 of the Revised Code, and when such procedure or nursing task is not the administration of oral prescribed medication, topical prescribed medication, oxygen, or metered dose inhaled medication, or a health-related activity as defined in rule 5123-6-01 of the Administrative Code.

(b) The duration of the medical assistance rate modification is limited to the individual's waiver eligibility span, may be determined needed or no longer needed within that waiver eligibility span, and may be renewed annually.

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APPENDIX A

BILLING UNITS, SERVICE CODES, AND PAYMENT RATES FOR BASIC EMPLOYMENT TRAINING SKILLS

Basic Employment Skills Training Provided In Person and in an Integrated Community Setting
for a Group of Four or Fewer Individuals

Billing Unit: Daily

Service Codes:	Individual Options Waiver	XXX
	Level One Waiver	XXX
	Self-Empowered Life Funding Waiver	XXX

Payment Rates: Listed below by cost of doing business (CODB) category. Rates are presented on a per-person basis. Rates will not be further altered to reflect actual group size.

CODB Category 1	
CODB Category 2	
CODB Category 3	
CODB Category 4	
CODB Category 5	
CODB Category 6	
CODB Category 7	
CODB Category 8	

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Basic Employment Skills Training Provided In-Person ~~But Not in an Integrated Community Setting for a Group of Four or Fewer Individuals~~ for Between Five and Seven Hours During One Calendar Day

Billing Unit: Daily

Service Codes: Individual Options Waiver AKD
Level One Waiver FKD
Self-Empowered Life Funding Waiver SKD

Payment Rates: Listed below by cost-of-doing-business (CODB) category. Rates are presented on a per-person basis, by group assignment. Rates will not be further altered to reflect actual group size.

CODB Category	Group A-1	Group A	Group B	Group C
1				
2				
3				
4				
5				
6				
7				
8				

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Basic Employment Skills Training Provided In-Person and in an Integrated Community Setting
for a Group of Four or Fewer Individuals

Billing Unit: Fifteen minutes

Service Codes: Individual Options Waiver XXX
Level One Waiver XXX
Self-Empowered Life Funding Waiver XXX

Payment Rates: Listed below by cost-of-doing-business (CODB)
category. Rates are presented on a per-person
basis. Rates will not be further altered to reflect
actual group size.

CODB Category 1	
CODB Category 2	
CODB Category 3	
CODB Category 4	
CODB Category 5	
CODB Category 6	
CODB Category 7	
CODB Category 8	

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Basic Employment Skills Training Provided In-Person or Through Virtual Support But Not in an Integrated Community Setting for a Group of Four or Fewer Individuals

Billing Unit: Fifteen minutes

Service Codes:

In-Person: Individual Options Waiver AKF
Level One Waiver FKF
Self-Empowered Life Funding Waiver SKF

Virtual Support: Individual Options Waiver XXX
Level One Waiver XXX
Self-Empowered Life Funding Waiver XXX

Payment Rates: Listed below by cost-of-doing-business (CODB) category. Rates are presented on a per-person basis, by group assignment. Rates will not be further altered to reflect actual group size.

CODB Category	Group A-1	Group A	Group B	Group C
1				
2				
3				
4				
5				
6				
7				
8				

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Behavioral Support Rate Modification

Billing Unit:	Fifteen minutes
Amount:	\$0.87
Instructions:	Indicate rate modification on the cost projection and payment authorization.

Medical Assistance Rate Modification

Billing Unit:	Fifteen minutes
Amount:	\$0.17
Instructions:	Indicate rate modification on the cost projection and payment authorization.

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APPENDIX B

COST-OF-DOING-BUSINESS CATEGORIES

Category 1: Adams
Athens
Belmont
Gallia
Guernsey
Harrison
Jefferson
Meigs
Monroe
Pike
Ross
Scioto
Tuscarawas
Vinton
Washington

Category 2: Carroll
Crawford
Defiance
Highland
Hocking
Jackson
Lawrence
Mercer
Morgan
Muskingum
Noble
Paulding
Perry
Van Wert
Wyandot

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Category 3: Allen
Auglaize
Brown
Clinton
Columbiana
Coshocton
Fayette
Hancock
Holmes
Knox
Marion
Morrow
Putnam
Richland
Seneca
Shelby
Williams

Category 4: Ashland
Darke
Erie
Fairfield
Fulton
Hardin
Henry
Huron
Licking
Logan
Mahoning
Pickaway
Sandusky
Stark
Trumbull
Wood

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Category 5: Ashtabula
Champaign
Clark
Delaware
Greene
Lucas
Madison
Miami
Montgomery
Ottawa
Preble
Union
Wayne

Category 6: Clermont
Franklin
Geauga
Lake
Lorain
Medina
Portage
Summit

Category 7: Butler
Cuyahoga
Warren

Category 8: Hamilton