

Workforce Development Rules Table of Contents

Mike DeWine, Governor

Kimberly Hall, Director

[Ohio Department of Job and Family Services](#)

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Workforce Development Rules

Effective Date: August 13, 2009 (No Change)

Most Current Prior Effective Date: [August 13, 2009](#)

- (A) "Assessment tool" means the methodology or process by which an eligible company identifies the skill deficiencies or training needs of its workforce. The tool or process must be an objective and documented source. The tool must be an industry-recognized measure of employment skill levels (for example, work-keys, national skill standard evaluations, or such tools designated\tested\validated by educational institutions, vendors, or testing associations). An eligible company may also design its own instruments or system through an employee survey, employee self-disclosure statement, or other method (for example, management observation) as long as the method meets the objective and documented requirements.
- (B) "Director" means director of the Ohio department of job and family services (ODJFS).
- (C) "Duplication of benefits" is that portion of the training tax credit approved to cover a taxpayer's eligible training costs that have been remunerated by another public funding source.
- (D) "Eligible company," "taxpayer," and "applicant" all include the following types of business entities/forms:
- (1) "C-corps," which are corporations subject to the Ohio franchise tax;
 - (2) Entities subject to the dealers in intangible tax;
 - (3) Insurance companies (domestic and foreign) subject to the franchise or premium tax;
 - (4) Public utilities subject to the gross receipts tax;
 - (5) "S-corps," which may apply on behalf of their investors subject to the Ohio income tax;
 - (6) Partnerships whose partners are subject to the Ohio income tax;
 - (7) Limited liability companies (LLCs);
 - (8) Sole-proprietorships subject to the Ohio income tax; and
 - (9) Pass-through entities, s-corps, partnerships, and LLCs having one or more investors listed in this paragraph.
- (E) "Eligible employee" means an individual who is employed in this state by a taxpayer and has been so employed by the same taxpayer for at least one hundred eighty consecutive days before the day an application for the credit is filed under section 5733.42 of the Revised Code. Eligible employee does not include any employee for whom a credit is claimed pursuant to division (A)(5) of section 5709.65 of the Revised Code for all or any part of the same year, an employee who is not a full-time employee, or an employee who is executive or managerial personnel except for the immediate supervisors of non-executive, non-managerial personnel.
- Eligible employee is further defined as an individual working at least thirty-five hours per week and excludes executive or managerial personnel who act as an immediate supervisor of executive or managerial personnel serving as decision-making or managerial personnel. Eligible employee includes first-line supervisors of clerical or support staff for non-executive or non-managerial functions. The eligible employee must be on the applicant taxpayer's payroll as of the date of application and the employer must have paid the training costs.
- (F) "Eligible training costs" means direct instructional costs, such as instructor salaries, materials and supplies, textbooks and manuals, videotapes, and other instructional media and training equipment used exclusively for the purpose of training eligible employees. Eligible training costs also means wages paid to eligible employees for time devoted exclusively to an eligible training program during normal paid working hours.

"Eligible training costs" is further defined to include costs associated with assessment tools and training-specific travel expenses. If on-the-job training is required during the course of the employee's

regular duties, the employee must be under supervision and no more than fifty per cent of the employee's time may be spent fulfilling the normal employment function. Duplication of benefits is not permitted and eligible training costs do not include expenditures funded, reimbursed, or subject to the reimbursement by another source of funding, other than the taxpayer's investment through any state or federal training program.

- (G) "Eligible training program" means a program to provide job skills to eligible employees who are unable effectively to function on the job due to skill deficiencies or who would otherwise be displaced because of their skill deficiencies or inability to use new technology, or a program to provide job training programs do not include executive, management, or personal enrichment training programs, or training programs intended exclusively for personal career development.

Eligible training program is further defined to be a designated training activity or set of training activities that enhances or furthers the eligible employee's ability to perform employment functions, the completion of which provides an additional level of security for continued employment.

Eligible training program specifically excludes any "ineligible training program" as defined in paragraph (J) of this rule.

- (H) "Engaged primarily in manufacturing" means that at least fifty-one per cent of the taxpayer's sales revenues are generated from the act of adding to the value of existing tangible personal property through the processes of refining, combining, manufacturing, or the changing of the tangible personal property and is reflected in standard industry code.
- (I) "Full-time employee" means an individual who is employed for consideration for at least thirty-five hours per week, or who renders any other standard of service generally accepted by custom or specified by contract as full-time employment.
- (J) "Ineligible training program" means a mandated governmental training program. Examples of ineligible training programs are those required by or provided pursuant to the following: occupational safety and health administration (OSHA), health insurance portability and accountability act (HIPAA), Americans with disabilities act (ADA), consolidated omnibus budget reconciliation act (COBRA), equal employment opportunity commission (EEOC), family medical leave act (FMLA), sexual harassment, human resource information system (HRIS), benefits\payroll, privacy, or drug testing. These types of training programs are considered ineligible because the taxpayer is going forward with the training primarily due to governmental mandates and not primarily due to the tax credit, as required under division (C)(3) of section 5733.42 of the Revised Code.
- (K) "Multiplier" means the applicable franchise tax rate allowed in the tax year the taxpayer uses his or her Ohio training tax credit (OTTC) certificate amount against his or her franchise tax liability. If the taxpayer first uses his or her tax credit certificate in tax year 2007, the multiplier is sixty per cent. If the taxpayer either first uses, or carries forward any portion of, his or her tax credit certificate in tax year 2008, the multiplier for that portion is forty per cent. If the taxpayer carries forward an unused portion of his or her tax credit, as permitted in division (J) of section 5733.42 of the Revised Code, in tax year 2009, the multiplier is twenty per cent.
- (L) "ODJFS" and "agency" both refer to the Ohio department of job and family services.
- (M) "Partnership" includes a limited liability company formed under Chapter 1705. of the Revised Code or under the laws of another state, provided that the company is not classified for federal income tax purposes as an association taxable as a corporation.
- (N) "Permanently transferred or relocated employee" is defined as any employee with respect to whom the employer has changed the employee's primary post of duty to an address outside the state of Ohio, and such address constitutes the employee's primary post of duty for more than one year during the two year period defined in paragraph (U) of this rule.
- (O) "Qualifying portion" means the total number of eligible employees identified on the taxpayer's 2006 OTTC application, or any subsequent year application, as reported by the taxpayer, that the taxpayer permanently relocated or transferred to another state or country within the seven hundred thirty days after the tax credit certificate is issued, divided by the total number of eligible employees trained,

identified on the applicant's OTTC application, times the tax credit certificate amount issued to the employer, times the multiplier.

- (P) "Record retention period" means the one thousand four hundred sixty-one consecutive day period following the end of the tax year for which a taxpayer has received a tax credit certificate.
- (Q) "Reissued certificate" is a replacement certificate for the lost or damaged original certificate and may be utilized by the taxpayer in place of the original document.
- (R) "Skill deficiencies" are defined as the lack of specific knowledge or ability to perform identified and necessary employment tasks. Skill deficiencies can be determined either on an individual basis or for a designated class of employees.
- (S) "Staff leasing company" is a business that provides long term contractual employment services to another company. For the purposes of the OTTC, a staff leasing company will be distinguished from a temporary employment agency and will be eligible for the training tax credit if all requirements are met. The eligible employees of a staff leasing company must be providing the employment services for the same operating company during the one hundred eighty day employment period and providing the payment for training services rendered to the eligible employees.
- (T) "Tax year" is the company's required reporting year for which the franchise tax privilege to do business in Ohio is due or in which an insurance premium or franchise tax is due to be filed. For the calendar year 2001, taxpayers may select 1998 or 1999 as their base year to determine their three year average. The OTTC program was not offered in calendar years 2002 and 2003. For calendar years 2004 and beyond, the OTTC applicant shall use the current application year and two prior calendar years to determine the three year eligible training costs.
- (U) "Taxpayer" means a business entity that is subject to the state of Ohio corporate franchise tax, an insurance premium or franchise tax, or any other operational tax, that has facilities in Ohio and that has conducted an eligible training program during the most recent tax year. Each taxpayer will be identified by its nine digit federal employer identification number or social security number.
- (V) "Within two years of receiving the certificate," as referenced in division (F) of section 5733.42 of the Revised Code, is defined as the seven hundred thirty days immediately following the date the tax credit certificate is issued to the applicant.

R.C. 119.032 review dates: 10/28/2010 and 10/01/2015

Certification: CERTIFIED ELECTRONICALLY

Date: 10/28/2010

Promulgated Under: 119.03

Statutory Authority: 5733.42(F)

Rule Amplifies: 5725.31, 5729.07, 5733.42, 5747.39

Prior Effective Dates: 12/30/99 (Emer), 10/6/00, 4/4/05, 1/1/07, 8/13/09

Effective Date: August 13, 2009 (No Change)

Most Current Prior Effective Date: [August 13, 2009](#)

- (A) A taxpayer, applicant, or eligible company may not file more than one training tax credit application for a calendar year. If the taxpayer is a subsidiary of another, but the companies share the same tax identification number, then the group of companies may share the tax credit if the application is in the name of all the companies.
- (B) A nonrefundable fee of one hundred dollars shall accompany each training tax credit application. The fee shall be made payable to the "Treasurer of the State of Ohio-Ohio Training Tax Credit Program." The director of the Ohio department of job and family services (ODJFS) may, in his or her sole discretion, return or waive the application fee.
- (C) An applicant shall file an application for a training tax credit through an ODJFS approved internet on-line application system. The ODJFS director at his or her sole discretion may allow other methods of submission after providing adequate notice. Applications submitted not in accordance with procedures established by ODJFS will not be considered for processing. Posting on the ODJFS website will constitute adequate notice for this purpose.
- (D) The application process will begin on a date determined by the ODJFS director. At a minimum, applicants shall have ten days to submit an application. The ten day application period may be extended at the sole discretion of the director. Applicants must agree to disclose information required for the award of a training tax credit. Information required to submit a complete application shall include, but not be limited to, the following:
 - (1) Applicant name, mailing address, phone and fax number, and email address;
 - (2) Information identifying the type of business in which the applicant is primarily involved;
 - (3) The size of the company based on the number of full-time and part-time employees;
 - (4) The number of eligible employees;
 - (5) The amount of eligible training costs incurred by the applicant for the previous two calendar years of training and the projected training and related costs for the current year; and
 - (6) A description of each training activity included as part of the eligible training program.
- (E) No weight or priority will be given to the order in which the applications are received. Ohio training tax credits shall be allocated by random selection of applications that are submitted within ten days of the beginning of the application period and in accordance with the funding limitations set forth by statute. If any tax credits remain available after the ten day application period, the ODJFS director may allocate the remaining tax credits based on a random selection of applications, including those applications received after the initial ten day application period, and in accordance with the funding limitations set forth by statute.
- (F) If the ODJFS director determines that an application meets the requirements for the award of the training tax credit, the applicant will be notified in writing of the preliminary estimated tax credit amount. If after issuing a preliminary tax credit amount, the director discovers any deficiencies or inaccurate information contained in the related application, the director shall send notice to the applicant by certified mail, return receipt requested, requesting additional information or corrections. The notice shall include the name and number of a contact person at ODJFS. The director shall revoke the preliminary estimated tax credit amount if the applicant fails to cure the defects in the application to the satisfaction of the director within thirty days of the mailing of the notice. If the director determines that the applicant knowingly submitted false or misleading information, the preliminary estimated tax credit shall be revoked, and additional penalties may be imposed.
- (G) If the ODJFS director determines that additional information or corrections are required in order to approve an application, the director shall send notice to the applicant by certified mail, return receipt requested. The notice shall include the additional information or corrections required to approve the

application and the name and number of a contact person at ODJFS. The applicant will have thirty days from the date of the mailing of the notice to cure the deficiencies. If the applicant fails to respond or correct the deficiencies to the satisfaction of the director, the application will be denied.

- (H) An application shall be denied if the ODJFS director determines the application does not meet the requirements for the award of a training tax credit.
- (I) If the ODJFS director denies an application or revokes a preliminary estimated tax credit, the director shall send notice by certified mail, return receipt requested, to the applicant setting forth the reason(s) for the denial or revocation. The applicant shall have two weeks from the mailing of the notice to deliver to the director a written request for additional review and a new determination with supporting documentation. The director shall issue a decision to the applicant within thirty days of receiving the request. The director's approval, modification, or disapproval shall be final and binding and shall not be subject to further review. Failure to timely deliver a request for review and new determination to the director will result in the denial or revocation becoming final and binding and not subject to further review.
- (J) Upon completion of the eligible training programs, the taxpayer shall submit to the ODJFS director a summary of eligible training costs. This shall occur no later than January thirty-first of the calendar year immediately following the calendar year in which the eligible training programs were conducted and the preliminary estimated tax credit amount was issued. The deadline for submitting the summary of eligible costs may be extended or changed at the director's sole discretion, upon good cause shown.
- (K) If the ODJFS director determines that a training program, as actually conducted, fails to meet the requirements of the law or to comply with any conditions set forth in the authorization, the director may reduce or deny the amount of the tax credit previously granted. If the director reduces a tax credit, the director shall send notice of the reduction and the reason for the reduction to the applicant by certified mail, return receipt requested, and shall certify the reduction to the tax commissioner or, in the case of the reduction of a credit claimed by an insurance company, the superintendent of insurance. The tax commissioner or superintendent of insurance shall reduce the credit that may be claimed by the applicant accordingly. Within sixty days after receiving a notice of denial or notice of reduction of the tax credit, an applicant may request, in writing, a hearing before the director to review the denial or reduction. Within sixty days of receiving a request that is filed within the prescribed time, the director shall hold such a hearing at a location to be determined by the director. Within thirty days after the hearing is adjourned, the director shall issue a redetermination affirming, reversing, or modifying the denial or reduction of the tax credit and send notice of the redetermination by certified mail, return receipt requested, and shall issue a notice of the redetermination to the tax commissioner or superintendent of insurance. If an applicant or taxpayer is aggrieved by the director's redetermination, the applicant or taxpayer may appeal the redetermination to the board of tax appeals in the manner prescribed by section 5717.02 of the Revised Code.
- (L) If the original applicant is awarded a tax credit and the business is subsequently acquired by or merged with another entity, the ODJFS director may, after consultation with the Ohio department of taxation, or the Ohio department of insurance in the case of an acquisition or merger involving an insurance company, re-issue the tax credit in the name of the new entity or approve the transfer of the tax credit.
- (M) The applicant must submit all reporting documentation in the format required by the ODJFS director following the completion of all eligible training programs that were approved in the original application. The required documentation must be submitted by the deadlines specified by the director.
- (N) If, within seven hundred thirty days after the tax credit certificate is issued, the taxpayer permanently relocates to another state or country or permanently transfers to another state or country one or more employees with respect to whom the ODJFS director issued the tax credit certificate, the taxpayer shall repay the qualifying portion of the total amount of the credit. The "qualifying portion" is that portion of the total amount of the tax credit defined by the following example formula:

The total number of eligible employees identified on the taxpayer's 2006 Ohio training tax credit (OTTC) application, as reported by the taxpayer, the taxpayer permanently relocated or transferred to another state or country within seven hundred thirty days after the tax credit certificate is issued,

divided by the total number of eligible employees trained, identified on the applicant's 2006 OTTC application, times the tax credit certificate amount issued to the employer, times the multiplier.

The taxpayer shall retain its records for the specified period required by rule 5101:10-1-01 of the Administrative Code.

To verify the employment status of employees (named on the taxpayer participant lists) for whom the eligible training costs qualified for the tax credit under the OTTC program, on or after June 30, 2009, ODJFS will contact, via certified mail, all program year 2006 OTTC applicants that received tax credit certificates.

- (O) With respect to those applicants who have not timely and fully repaid the qualifying amount, the ODJFS director will verify and report that amount to the department of taxation or in the case of a premium tax payer, the department of insurance for recovery.
- (P) With respect to those applicants who have not timely and fully repaid the qualifying amount, the ODJFS director will notify the applicant of the amount that the ODJFS director reported to the department of taxation or in the case of a premium tax payer, the department of insurance for recovery.
- (Q) If, within thirty business days of the postmark date of the certified letter, the applicant fails to pay the qualifying portion or return the certified letter, then the ODJFS director shall revoke the applicant's entire tax credit certificate.

R.C. 119.032 review dates: 10/28/2010 and 10/01/2015

Certification: CERTIFIED ELECTRONICALLY

Date: 10/28/2010

Promulgated Under: 119.03

Statutory Authority: 5733.42(F)

Rule Amplifies: 5725.31, 5729.07, 5733.42, 5747.39

Prior Effective Dates: 12/30/99 (Emer), 10/6/00, 4/4/05, 1/1/07, 8/13/09

Effective Date: January 1, 2007 (No Change)

Most Current Prior Effective Date: [January 1, 2007](#)

The director of the Ohio department of job and family services (ODJFS) will issue a training tax credit certificate to an eligible company only after ODJFS has determined that the eligible company has timely complied with all the following statutory requirements.

- (A) The eligible company has conducted an eligible training program for the eligible employees during the calendar year(s) for which the eligible company is claiming the training tax credit. ODJFS will consider only eligible training costs that the eligible company incurred during the calendar year(s) for which the eligible company is applying for the certificate.
- (B) The eligible company has timely filed a complete training tax credit application and final summary of eligible training costs with ODJFS, and the eligible company has used the appropriate application procedures that ODJFS has designated.
- (C) The training tax credit does not exceed the lowest of the following three amounts:
 - (1) One hundred thousand dollars;
 - (2) One thousand dollars average for each eligible employee over the three year period; or
 - (3) Fifty per cent of the average of the total eligible training costs for the three years prior to the tax year for which the eligible company is applying for the credit.
- (D) The training tax credit was a major factor in the taxpayer's decision to proceed with the eligible training program.
- (E) The training tax credit does not conflict with the Ohio training tax credit (OTTCC) program's annual requirements: The aggregate amount of credits authorized under sections 5733.42, 5725.31, 5729.07, and 5747.39 of the Revised Code shall not exceed twenty million dollars per calendar year. ODJFS shall not authorize more than ten million dollars in credits per calendar year for persons engaged primarily in manufacturing. ODJFS shall set aside no less than five million dollars in credits per calendar year for persons engaged primarily in activities other than manufacturing and that have fewer than five hundred employees.
- (F) Because of the need for certainty in all matters of allocation of the training tax credit, all decisions and determinations of ODJFS shall be final. ODJFS may reduce or deny a credit if the training conducted fails either to meet the requirements set forth in sections 5733.42, 5725.31, 5729.07, and 5747.39 of the Revised Code or to comply with the required conditions set forth in this rule. In the event that ODJFS denies to an applicant the amount of the credit that the applicant requested, ODJFS will notify the eligible company in writing by certified mail. The eligible company has sixty days after the receipt to file a request for a hearing. ODJFS has thirty days after the hearing to send a notice of re-determination. The re-determination may be appealed to the board of tax appeals.
- (G) The taxpayer may carry forward any credit amount in excess of its tax due after allowing for any other credits that precede the credit under section 5733.42 of the Revised Code in the order required under section 5733.98 of the Revised Code, or, if an insurance company, under sections 5725.98 and 5729.98 of the Revised Code. The excess credit may be carried forward for three years following the tax year for which it is first claimed under section 5733.42 of the Revised Code.
- (H) At the sole discretion of the ODJFS director, ODJFS may reissue a tax credit certificate for good cause. "Reissued certificate" is defined in paragraph (M) of rule 5101:10-1-01 of the Administrative Code.

R.C. 119.032 review dates: 10/28/2010 and 10/01/2015

Certification: CERTIFIED ELECTRONICALLY

Date: 10/28/2010

Promulgated Under: 119.03

Statutory Authority: 5733.42(F)

Rule Amplifies: 5725.31, 5729.07, 5733.42, 5747.39

Prior Effective Dates: 12/30/99 (Emer), 10/6/00, 4/4/05, 1/1/07

Effective Date: October 21, 2011

Most Current Prior Effective Date: [July 3, 2011](#)

- (A) "Military injury relief fund" (MIRF) means a fund created in the state treasury consisting of money contributed to it under section 5747.113 of the Revised Code and contributions made directly to it. Any person may contribute directly to the fund in addition to or independently of the income tax refund contribution system established in section 5747.113 of the Revised Code.
- (B) "Eligible individual" means any individual who establishes that he/she is an Ohio resident at the time of application, and who provides the Ohio department of job and family services (ODJFS) with "acceptable documentation of injury," as defined in paragraph (D) of this rule, to verify that he/she was injured while in active service as a member of the armed services of the United States while serving under "Operation Iraqi Freedom," "Operation New Dawn," or "Operation Enduring Freedom" and whose injury was incurred in the line of duty.
- (C) Individuals who are permitted to apply on behalf of, and in lieu of, "eligible individuals" are the following:
- (1) Executors and administrators of the estates of such "eligible individuals."
 - (2) Persons who have received validly executed powers of attorney from "eligible individuals" that authorize the actions required in this rule and rule [5101:10-2-02](#) of the Administrative Code.
- (D) "Acceptable documentation of injury" means the following:
- (1) Documentation of the awarding of the "Purple Heart" in accordance with, and pursuant to, applicable federal laws and regulations including, but not limited to, Title 10, Chapter 57 of the United States Code, and Chapter 32 of the Code of Federal Regulations.
 - (2) Documentation of a combat-related injury, along with documentation that the combat-related injury resulted in the awarding of a "Combat Infantryman Badge" (CIB), "Combat Action Ribbon" (CAR), or "Combat Action Badge" (CAB), or its equivalent.
 - (3) Documentation of a combat-related injury not covered by paragraph (D)(1) or (D)(2) of this rule, primarily including, but not limited to, traumatic brain injury, injury caused by detonation of an improvised explosive device (IED), or post-traumatic stress disorder (PTSD). Documentation of PTSD must include medical diagnosis.
- (E) "Director" means director of ODJFS.
- (F) "State fiscal year" means the period of July first of the current year and ending June thirtieth of the next year.

Effective: 10/21/2011

R.C. 119.032 review dates: 07/01/2016

Certification: CERTIFIED ELECTRONICALLY

Date: 10/11/2011

Promulgated Under: 119.03

Statutory Authority: 5101.98

Rule Amplifies: 5101.98

Prior Effective Dates: 9/24/07, 7/3/11

Effective Date: July 3, 2011

Most Current Prior Effective Date: [September 24, 2007](#)

- (A) The Ohio department of job and family services (ODJFS) may issue a one-time military injury relief fund (MIRF) grant to an individual only after ODJFS has determined that: the applicant has not previously received a MIRF grant; the applicant has met the eligibility requirements set forth in rule [5101:10-2-01](#) of the Administrative Code; the applicant has submitted a complete application ~~during the state fiscal year~~; and, there are sufficient grant funds. Applicants ~~may be~~ are required to provide documentary acceptable documentation of injury and other verifications as needed by ODJFS before the issuance of any grant award.
- ~~MIRF grant awards are contingent upon the availability of funding. Applicants must submit a complete application and meet the requirements set forth in rule 5101:10-2-01 of the Administrative Code to be eligible for a MIRF grant. Grant award preference shall first be given to those applicants who have not previously received the grant, and then to those who have received fewer grants.~~
- (B) In the case of incomplete applications, ODJFS will send a letter of explanation to the applicant detailing the additional information required for processing. Incomplete applications will not be considered "place holders" for the applicant. Partial grant awards will not be issued. Applicants
- (1) ~~Applicants~~ must apply for a MIRF grant using [JFS 33214](#), "Ohio Military Relief Fund (MIRF) Application" ~~(5/2007)~~ (rev. 7/2011) provided by ODJFS. This form may be obtained at any Ohio county veteran services office, or at the ODJFS ~~forms central~~ web site under the "Info Center" link (<http://ifs.ohio.gov/>).
- (2) ~~Applications are accepted on a state fiscal year basis, as defined in rule 5101:10-2-01 of the Administrative Code.~~
- (C) Proof of eligibility rests with the applicant. If ODJFS determines that the applicant submitted false or misleading information, ODJFS may deny the application. If a grant was issued based on false or misleading information, ODJFS may take action to collect the grant funds from the applicant and additional penalties may be imposed.
- (D) If an applicant is denied, an individual may appeal to the MIRF appeals committee. A notice of appellate rights shall be included in the decision notice denying the application. All appeals must be made in writing to the MIRF appeals committee within sixty calendar days of the date of the denial of the MIRF grant application. The MIRF appeals committee shall review the appeal request in a timely fashion. Time deadlines may be extended for good cause. The MIRF appeals committee will meet as required. Applicants will be notified in writing of the decision of the MIRF appeals committee. The ruling of the MIRF appeals committee is final. An eligibility determination, a grant approval, or a grant denial made under this rule may not be appealed under Chapter 119., section 5101.35, or any other provision of the Revised Code.
- (E) Grant award amounts ~~may vary and will be based on the number of applications and~~ will be five hundred dollars and will be awarded on a first-come, first-served basis as funds are available based on the amount of MIRF contributions received.
- (F) MIRF applications and supporting documentation containing personally identifiable information are confidential.

Effective: 07/03/2011

R.C. 119.032 review dates: 04/15/2011 and 07/01/2016

Certification: CERTIFIED ELECTRONICALLY

Date: 06/23/2011

Promulgated Under: 119.03

Statutory Authority: 5101.98

Rule Amplifies: 5101.98

Prior Effective Dates: 9/24/07