

## 402 CMR: ECONOMIC ASSISTANCE COORDINATING COUNCIL

### 402 CMR 2.00: ECONOMIC DEVELOPMENT INCENTIVE PROGRAM

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#### **2.01: Purpose**

The purpose of 402 CMR 2.01 through 2.22 is to establish the procedures by which the Economic Assistance Coordinating Council ("EACC") will administer those portions of the Economic Development Incentive Program ("EDIP") relating to the designation of areas of the Commonwealth as Economic Target Areas ("ETAs") and Economic Opportunity Areas ("EOAs") and to provide for the certification of

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projects to be undertaken by businesses thereby entitling those businesses to receive certain tax benefits. 402 CMR 2.00 also establishes the procedures by which EOA designations, project certifications, and Tax Increment Financing (“TIF”) plans may be revoked by the EACC and further clarifies that the failure of a municipality or participating business to follow proper reporting procedures and to provide requested information to the EACC may result in such revocation.

### **2.02: Scope and Applicability of the EDIP**

(1) Economic Target Area (“ETA”). To obtain ETA designation, the municipality must make a request to the EACC to designate the municipality as an ETA. This designation is based on income, unemployment, and other economic characteristics of the area, and may also be appropriate where the area contains certain special features, as identified in M.G.L. c. 23A, § 3D and in 402 CMR 2.05. The number of ETAs that can exist at any one time in the Commonwealth is limited by state law, as set forth in M.G.L. c. 23A, § 3E and in special acts of the Legislature.

(2) Economic Opportunity Area (“EOA”). To obtain EOA designation, the municipality must identify appropriate locations for economic development and request the EACC to designate these targeted development areas within the ETA as EOAs. There are no limits to the number of EOAs that may be designated within an ETA. 402 CMR 2.00 outlines the procedures and criteria required to obtain ETA and EOA designation. Since an area must be designated as both an ETA and an EOA before the benefits made available under the EDIP can be realized, municipalities may request both ETA and EOA designation in a single application to the EACC.

(3) Certified Project. Certified project designation provides a mechanism by which economic development can be stimulated by attracting new businesses into those areas and by encouraging existing businesses to expand. Designation can be obtained through a request to the EACC by a business intending to develop or expand a project that the EACC designate a particular project to be undertaken by the business as a "certified project," thereby allowing the business to benefit from the various tax relief programs made available by the EDIP. There are three different types of certified project designations available to businesses:

- A. Certified Expansion Project. Designation can be obtained through a request to the EACC by a business intending to locate or expand in an EOA. A municipality must have provided a TIF for the project and must approve the business’s application to the EACC. The business must generate substantial sales outside of the Commonwealth, as defined by 402 CMR 2.03.
- B. Enhanced Expansion Project. Designation can be obtained through a request to the EACC by a business intending to locate or expand in the Commonwealth. The business must generate substantial sales outside the Commonwealth, as defined by 402 CMR 2.03, and intend to hire at least 100 new employees through the project.
- C. Manufacturing Retention Project. Designation can be obtained through a request to the EACC by a business intending to locate or expand in a gateway municipality, as defined by 402 CMR 2.03 and in M.G.L. c. 23A, § 3A. The business must have municipal approval of the project, generate substantial sales outside the Commonwealth, as defined by 402 CMR 2.03, and intend to hire at least 100 new employees through the project.

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(4) Incentives. The EDIP provides a business with a variety of economic incentives and benefits, including:

(a) an investment tax credit of up to 10% for expansion and enhanced expansion projects for one or multiple years that may be applied to the corporate excise or personal income tax as provided in M.G.L. c. 63, § 38N, or M.G.L. c. 62, § 6(g)(1); provided that:

1. in the case of an expansion project, the amount and duration of the credit must be based on the following factors:

i. the degree to which the project is expected to generate net new economic activity within the Commonwealth by generating substantial sales from outside of the Commonwealth, or otherwise; and

ii. the degree to which the project is expected to increase employment opportunities for residents of the project ETA and of the Commonwealth; and

iii. the economic need of the project ETA as measured by the income and employment levels of the ETA.

2. in the case of an enhanced expansion project, the amount and duration of the credit must be based on the following factors:

i. the degree to which the project is expected to generate net economic activity within the Commonwealth by generating substantial sales from outside of the Commonwealth, or otherwise; and

ii. the degree to which the project is expected to increase employment opportunities for residents of the Commonwealth.

(b) an investment tax credit of up to 40% for one or multiple years for a manufacturing retention project that may be applied to the corporate excise or personal income tax as provided in M.G.L. c. 63, § 38N, or M.G.L. c. 62, §6(g)(1); provided that the amount and duration of the credit must be based on the following factors:

1. the degree to which the project is expected to generate economic activity within the Commonwealth by generating substantial sales from outside of the Commonwealth, or otherwise; and

2. the degree to which the project is expected to retain or increase manufacturing employment opportunities for residents in the project gateway municipality and the Commonwealth.

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(c) a corporate excise deduction or a personal income tax deduction equal to 10% of the cost of renovating an abandoned building within an EOA, as provided under M.G.L. c. 63, § 38O, or M.G.L. c. 62, § 3B(10);

(d) the real property tax benefits available under a tax increment financing plan established pursuant to M.G.L. c. 40, § 59, and the tax exemption for personal property situated at a parcel receiving a tax increment financing exemption, as provided for in M.G.L. c. 59, § 5, clause 51; or, as an alternative, a special real property tax assessment schedule developed pursuant to M.G.L. c. 23A, § 3E(3)(b); or

### **2.03: Definitions**

As used in 402 CMR 2.00, the following words shall, unless the context clearly requires otherwise, have the following meanings:

Blighted Open Area - a predominantly open area which is detrimental to the safety, health, welfare or sound growth of a community and which is predominantly open because it is unduly costly to develop it soundly through the ordinary operations of private enterprise. Factors which might make an area unduly expensive to develop include, but are not limited to, existence of hazardous materials or other contaminants; existence of ledge, rock, unsuitable soil, or other physical conditions; need for unduly expensive excavation, fill or grading; need for unduly expensive foundations or retaining walls; need for unduly expensive waterproofing, drainage or flood prevention measures; need for unduly expensive measures to protect adjacent areas and the water tables therein; need for unduly expensive measures incident to building around or over rights-of-way through the area; existence of obsolete, inappropriate or otherwise faulty platting or subdividing; deterioration of site improvements of facilities; division of the area by rights-of-way; diversity of ownership; inadequate transportation facilities; inadequate utility systems; tax and special assessment delinquencies; a substantial change in business or economic conditions or practices; an abandonment or cessation of work begun on improvements; any combination of the above; or any other condition or conditions which are detrimental to the safety, health, or sound growth of a community.

Business - a private business corporation, partnership, firm, unincorporated association or other entity engaging or proposing to engage in economic activity within the Commonwealth, and any affiliate thereof, the income of which is subject to taxation under M.G.L. c. 62 or M.G.L. c. 63.

Certified Project - an expansion, enhanced expansion or manufacturing retention project that has been approved by the economic assistance coordinating council for participation in the economic development incentive program pursuant to 402 CMR 2.10, 2.11 or 2.12, respectively.

Control - the power to direct the management and policies of a business or a facility thereof, directly or indirectly, through the exercise of voting rights, by contract, or otherwise.

Controlling Business - a business which controls a business or a facility thereof; provided that in the event that the ownership of a business, the operation of real estate, and/or the employment of employees is divided among entities under a common control, then the EACC may treat one or more of such entities as

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the controlling business for purposes of 402 CMR 2.00.

Decadent Area - an area which is detrimental to the safety, health, welfare or sound growth of a community because of the existence of buildings which are out of repair, physically deteriorated, unfit for human habitation, obsolete, or in need of major maintenance or repair, or because much of the real estate in recent years has been sold or taken for non-payment of taxes or upon foreclosure of mortgages; or because buildings have been torn down and not replaced and in which under existing conditions it is improbable that the buildings will be replaced; or because of a substantial change in business or economic conditions; or because of inadequate light, air, or open space; or because of excessive land coverage; or because diversity of ownership, irregular lot sizes, or obsolete street patterns makes it improbable that the area will be redeveloped by the ordinary operations of private enterprise; or by reason of any combination of the foregoing conditions.

Director - the Director of the Department of Business Development.

Distress Factor - a fraction, the numerator of which is the sum of:

(a) the municipality's average unemployment rate for the most recent three year period divided by the Commonwealth's average unemployment rate for the same period; and

(b) the Commonwealth's per capita personal income divided by the municipality's per capita personal income; and the denominator of which is two.

Economic Assistance Coordinating Council or EACC - the Council established pursuant to M.G.L. c. 23A, § 3B.

Economic Development Incentive Program or EDIP - a program of various economic development incentives established pursuant to M.G.L. c. 23A, and related to the tax increment financing provisions of M.G.L. c. 40, § 59, to promote increased business development and expansion in the Commonwealth.

Economic Opportunity Area or EOA - an area of the Commonwealth, located wholly within an Economic Target Area, which is designated as such by the EACC pursuant to 402 CMR 2.08.

Economic Target Area or ETA - an area of the Commonwealth designated as such by the EACC pursuant to 402 CMR 2.06.

Employee - a person who is in an employment relationship with an employer subject to, and within the meaning of, the Massachusetts unemployment insurance statute, M.G.L. c. 151A, § 1 et seq.

Expansion Project EOA – the EOA within which an expansion project is located or will be located.

Expansion Project ETA – the ETA within which an expansion project is located or will be located, determined with reference by the project EOA.

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Facility – the physical location, in real property, which may include multiple buildings, owned or leased by a business of a commercial, manufacturing or industrial activity, division or component controlled by that business, or any real estate project which involves the construction or renovation of real property to serve such purpose, or any combination of the foregoing, at which are employed, or are projected to be employed, permanent full-time employees of the controlling business. \_\_\_\_\_

Full-time Employee - an employee, as defined in 402 CMR 2.03: Employee who has been paid by an employer during its taxable year an amount equal to at least the maximum amount of "wages" with respect to which an employer is required to make contributions under M.G.L. c. 151A, § 14.

Gateway Municipality – a municipality with a population greater than 35,000, a median household income below the Commonwealth's average and educational attainment rates that are below the Commonwealth's average, as measured by the most recent American Community Survey (ACS) of the U.S. Bureau of the Census.

Manufacturing Activity – the process of substantially transforming raw or finished materials by hand or machinery, and through human skill and knowledge, into a product possessing a new name, nature and adapted to a new use. In determining whether a process constitutes manufacturing, the EACC will examine the facts and circumstances of each case. However, the following principles will serve as guidelines:

- (1) It is not required that manufacturing take place in an industrial plant, factory, or mill;
- (2) If the process involves chemical change to property rather than only physical change, it is more likely to be manufacturing;
- (3) If the process involves only physical change to property, the greater the degree of physical change, the more likely the process is manufacturing;
- (4) A process that merely makes an item more attractive for sale without substantially altering the item is not manufacturing;
- (5) Manufacturing ordinarily involves the production of products in standardized sizes and qualities and in multiple quantities. Market research, research and development, and design and creation of a prototype, although prerequisites to manufacturing, are not manufacturing;
- (6) The process of adapting a previously created model to a customer's specification in recurring transactions may constitute manufacturing. However, the mere manipulation of information or performance of a personal service does not constitute manufacturing;

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(7) A process that does not produce a finished product, but constitutes an essential and integral part of a total manufacturing process, may constitute manufacturing. A process that is a practical and necessary step in the production of a finished product for sale is generally an essential and integral part of a total manufacturing process;

(8) A process that produces intangible property, either in whole or in part, to be used in a manufacturing process may constitute manufacturing. However, the process by which the intangible property is created must transcend the mere manipulation of information and must be a substantial and integral step in the manufacturing process. Moreover, the intangible property must have a physical application in the final manufacturing activity;

(9) The transmission of information does not constitute manufacturing;

(10) The operation of a restaurant or other food service establishment is not manufacturing. Thus, any cooking, baking, and other preparation of food for on-site consumption is not manufacturing;

(11) The operation of a bakery is manufacturing. The baking of flour-and yeast-based foods, other than for on-site consumptions, is manufacturing.

Metropolitan Area - a metropolitan statistical area ("MSA") or a primary metropolitan statistical area ("PSMA"), as defined by the U.S. Bureau of the Census.

Municipal Application - an application submitted by a municipality to the EACC requesting the designation of an area as either an ETA or an EOA, or both.

Municipality - a city or town in the Commonwealth or, in a case in which two or more cities or towns are acting jointly hereunder, then all cities and towns participating in such joint effort.

Permanent Full-time Employee - a person who:

(a) Satisfies the definition of "full-time employee" as set forth above; and

(b) at the inception of the employment relationship,

1. does not have a termination date which is either a date certain or determined with reference to the completion of some specified scope of work; and

2. receives employee benefits at least equal to those provided to other similarly situated full-time employees of the business.

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Poverty Rate - the poverty rate, as defined by the Bureau of the Census, using the most recent census data available as of the date of submission of a municipal application.

Project - an expansion project, enhanced expansion project or a manufacturing retention project.

Project Proposal - a proposal submitted by a controlling business to the EACC:

(1) pursuant to M.G.L. c. 23A § 3F and 402 CMR 2.10 for designation as a certified expansion project; or

(2) pursuant to M.G.L. c. 23A § 3F and 402 CMR 2.11 for designation as an enhanced expansion project;  
or

(3) pursuant to M.G.L. c. 23A § 3F and 402 CMR 2.12 for designation as a manufacturing retention project.

Replacement or Relocation of Permanent Full-time Employees - Any transfer and/or substitution of permanent full-time employees by a participating business where there is no net increase in the number of permanent full-time employees of the business in the Commonwealth. Such term shall not include any situation where there is a net gain in the number of permanent full-time employees of a business in the Commonwealth as a result of a certified project, even though certain employees may have moved from one facility of the business to another facility within the Commonwealth.

Substandard Area - an area wherein dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light, or sanitation facilities, or any combination of these factors, are detrimental to safety, health, welfare or sound growth of a community.

Substantial Sales Outside of the Commonwealth – on an annual basis, at least 25%, or an otherwise reasonable percentage as determined by the EACC, of a controlling business’s products or services generated at the facility are sold in the regular course of the controlling business’s trade or business to customers located outside of the Commonwealth; provided that, with respect to a facility that serves principally as a corporate headquarters or as a regional administrative office for the controlling business, the above threshold shall be deemed satisfied if at least 25%, or an otherwise reasonable percentage as determined by the EACC, of the controlling business’s products or services, wherever generated, are sold in the regular course of the controlling business’s trade or business to customers located outside of the Commonwealth.

### **2.04: Procedure for Soliciting Applications for Designation of an ETA or EOA**

(1) The EACC shall develop standard application forms for use by municipalities in applying for designation of an area as either an ETA or an EOA.

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(2) If requested to do so by the Director, the EACC shall solicit municipal applications for designation of ETAs and EOAs on a periodic basis and shall develop application procedures that operate on either a regional basis or a statewide basis.

### **2.05: Application Procedure for Designation of an ETA**

(1) Any municipality may submit an application to the EACC for designation of an area within the municipality's jurisdiction to be an ETA. There are, however, limits on the total number of ETAs that can exist in Massachusetts at any one time, as established by M.G.L. c. 23A, § 3E and by special acts of the Legislature.

(2) Two or more municipalities may jointly file an application with the EACC for designation of an area as an ETA if the area in question falls within the land areas of two or more contiguous municipalities. A single application may request designation of more than one ETA, and a single application may also request simultaneous designation of both an ETA and an EOA.

(3) Each municipal application must include the municipality's certification, accompanied by documentary and statistical information, as appropriate, that the area proposed for designation:

(a) is comprised of three or more contiguous census tracts or one or more contiguous municipalities; and

(b) meets one of the following requirements:

1. the area has an unemployment rate that exceeds the statewide average by at least 25%, provided that such rates shall be based on the unemployment rates for the most recent four quarters for which data is available;

2. the area is located in a metropolitan area and at least 51% of the households in the area proposed for designation have household incomes that are below 80% of the median household income in the metropolitan area in which the area is located;

3. the area is not located in a metropolitan area and at least 51% of the households in the area proposed for designation have household incomes that are below 80% of the median household income in either the Commonwealth or a non-metropolitan area category established by the EACC;

4. based on the most recent statistics of the U.S. Bureau of Census, the area has a poverty rate which is at least 20% higher than the average poverty rate for the Commonwealth;

5. the municipality in which the area is located has experienced a plant closing, permanent layoffs, or a military base closing resulting in the cumulative job loss of 2,000 or more within the four years prior to designation as an ETA;

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6. the area is located in a community or labor market area with a distress factor greater than 1.33;
7. the area is owned by a state agency or authority, exceeds 50 acres and has, within ten years of the date of the ETA application, been used to manufacture or repair maritime vessels and is zoned for development or industrial use and is not being developed or used by such agency or authority;
8. the area has a commercial vacancy rate of 20% or more for the 12 month period preceding the application date.
9. the area has sited within it a generation facility, as defined pursuant to M.G.L. c. 164, § 1, which has a market value at the time of sale that is at least 50% less than its current net book value;
10. the area has sited within it a facility of at least 1,000,000 square feet that would qualify as an abandoned building under M.G.L. c. 63, § 38O; or
11. the area has sited within it a development project of at least 200 acres to be used for the establishment of a regional technology center with the capacity of supporting the build-out of 3,000,000 square feet of commercial or industrial space. The EACC shall interpret 402 CMR 2.05(3)(b)11, in light of 402 CMR 2.05(4).

For the purposes of 402 CMR 2.05, "median household income" shall be determined based on the most recent statistics available from the U.S. Bureau of the Census as of the date of application.

(4) In determining whether an ETA application satisfies the criteria stated in 402 CMR 2.05(3)(b)11., the EACC shall give weight to the following factors:

- (a) Whether the application relates to an ongoing or future "development project" or instead focuses on pre-existing businesses or entities in the area;
- (b) Whether the "development project" or "regional technology center" has a name and whether such name is consistent with the concept of a "regional technology center";
- (c) Whether the "development project" has a physical and/or functional "center";
- (d) Whether the various features or structures of the "center" are physically or functionally connected;
- (e) Whether such "center" is focused on technology-based industries or initiatives;
- (f) Whether an organization or apparatus is in place or being developed to coordinate and support the aims of the "center";

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- (g) The precise layout of the 200 or more acres on which the "center" is located, including whether the 200 or more acres for the "center" are contiguous and situated in a manner that is consistent with the concept of a "regional technology center";
  - (h) In the event that the 200 or more acres for the "center" are not wholly contiguous, whether such acres can still be properly considered part of a "regional technology center";
  - (i) Where multiple municipalities are part of the "center," whether such communities intend to work together to support the aims of the "center";
  - (j) Where the "center" is located in only one community, whether such "center" can truly attain a "regional" focus;
  - (k) Whether the "center" has the capability of supporting the build-out of at least 3,000,000 square feet of commercial or industrial space;
  - (l) Whether the "center" has a marketing plan, and whether such plan is regional in nature and directed at technology-based industries or associations; and
  - (m) Whether there is existing infrastructure in place capable of supporting and sustaining the center.
- (5) In addition to providing information that meets the minimum requirements listed in 402 CMR 2.05(3), the applicant should provide extensive supplemental information in support of its application. Such information should include, but is not limited to, the following:
- (a) financial reports and analyses documenting the likely effect of ETA designation on the area, the municipality and the region;
  - (b) a financial evaluation of the likely effect of ETA designation on the receipt of local and state tax revenue;
  - (c) the anticipated effect of ETA designation on the expansion of permanent employment opportunities in the ETA, the municipality, the region, and the Commonwealth;
  - (d) correspondence from businesses and regional business associations evidencing support for designation;
  - (e) statistical and economic data to support ETA designation;
  - (f) analysis of the existing roads, utilities, and other infrastructure in the area and changes required in the infrastructure, including costs and funding sources available for such changes, should designation be

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approved; and

(g) any other information describing special circumstances that justify or support the application.

### **2.06: Review and Approval of ETA Applications**

(1) The EACC shall review applications for designation of an ETA based on the following process:

(a) the EACC shall review each application to determine whether it meets the minimum criteria set forth in 402 CMR 2.05(3); and

(b) the EACC, after determining that the application has met the minimum criteria, shall further evaluate each application on its own merits or in comparison to other applications that have been submitted to the EACC in order to determine whether granting of the applications will further the goals of the EDIP and promote the economic development of the Commonwealth.

(2) If the EACC approves the designation of an ETA, it shall provide written notice to the municipality and may attach specific conditions to such designation as it determines appropriate.

(3) If the EACC does not approve the ETA application, it shall provide written notice to the municipality and include a statement of the reasons for the EACC's decision not to make such designation.

(4) Any municipality whose application was not designated may resubmit its application at a later date and the EACC may work with each such municipality to improve the merits of its application.

### **2.07: Application Procedure for Designation of an EOA**

(1) A municipality may submit an application to the EACC for designation of an area within an ETA as an EOA. Municipalities may simultaneously submit a single application requesting designation of both an ETA and an EOA. A municipality may apply for designation of more than one EOA within a designated ETA.

(2) Municipal applications for designation of an EOA may be submitted to the EACC at any time unless the EACC determines to solicit and review applications on a competitive basis, in which event the timelines for submission, review, and designation of EOAs shall be as provided in such solicitation.

(3) A municipal application for designation of an EOA must request such designation for a specified period of years, not less than five years and not more than 20 years, and must include the municipality's certification, supported by documentary and statistical evidence, that:

(a) the area proposed for designation is within the municipality and is wholly within an area that has either been designated as an ETA or has an application pending before the EACC for designation as an

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ETA; and

(b) the area proposed for designation either:

1. meets the definition of a "Blighted Open Area", "Decadent Area", or "Substandard Area" as defined in 402 CMR 2.03;

2. is an area within which there has been a plant closing or permanent layoffs which have resulted in a cumulative job loss of 2,000 or more full-time employees within the previous four years; or

3. has sited within it a generation facility, as defined pursuant to M.G.L. c. 164, § 1, which has a market value at the time of sale that is at least 50% less than its current net book value.

(4) The application must provide any additional information and meet such additional requirements as prescribed by the EACC.

(5) The application must also contain the following documentary materials:

(a) a detailed map of the area proposed for designation, which clearly delineates and identifies the area and which depicts, with particularity, existing streets, highways, waterways, natural boundaries, and other physical features;

(b) a statement describing the economic development goals of the municipality for the area proposed for designation during the first five year period that the EOA would be in effect;

(c) a statement which describes the manner and extent to which the municipality intends to provide for an increase in the efficiency of the delivery of local services within the area proposed for designation;

(d) a plan, if any exists, that would link the municipality's choice of banking institutions to the performance of such institutions in complying with the requirements of the Community Reinvestment Act of 1977, 12 U.S.C. § 2901 et seq.; and

(e) the identity of the person who shall be authorized to review and approve project proposals for and on behalf of the municipality and the standards and procedures to be employed by such person.

(6) Whenever a municipal application is submitted by a municipality with a population that exceeds 50,000 people according to the most recent United States Census, the application must also include an economic development plan which contains the following elements:

(a) a proposal for streamlined licensing procedures for certified expansion projects within the area proposed for designation;

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(b) a proposal for the provision of adequate infrastructure support, including transportation access, water and sewer hook-ups, lighting, and other utilities, to and for certified expansion projects within the area proposed for designation;

(c) a description of the municipality's intentions to secure access to publicly or privately sponsored training programs for employees of certified expansion projects, or others who reside in the ETA;

(d) a plan to increase the level of involvement by private persons and community development organizations in the economic revitalization of the area proposed for designation, which may include commitments from private persons to provide jobs and job training to residents and employees who work, or who will work, for certified expansion projects in the area proposed for designation.

(7) Every municipal application must include a binding written offer from the municipality to provide to certified expansion projects within the EOA either tax increment financing or a special tax assessment as follows:

(a) if tax increment financing is proposed, the offer shall contain a tax increment financing plan adopted in accordance with the provisions of M.G.L. c. 40, § 59, and 760 CMR 22.00.

(b) if a special tax assessment is proposed, the offer shall set forth the following assessment schedule for the land and improvements for a certified expansion project:

1. in the first year, an assessment of 0% of the actual assessed valuation of the parcel; provided, that such assessment shall be granted for the year designated in the binding written offer;

2. in the second year, an assessment of up to 25% of the actual assessed valuation of the parcel;

3. in the third year, an assessment of up to 50% of the actual assessed valuation of the parcel;

4. in the fourth year, an assessment of up to 75% of the actual assessed valuation of the parcel; and

5. in subsequent years, assessments of up to 100% of the actual assessed valuation of the parcel.

(8) Each municipality is encouraged to include in its application specific information outlining the efforts that will be undertaken to take advantage of other local, state, or federal programs to contribute to the success of the proposed EOA, including, but not limited to:

(a) the use of other federal, state, and local economic development incentives;

(b) the use of appropriate employment and training programs which will increase the probability that residents of the ETA will be able to benefit from the full measure of employment opportunities to be

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presented by the creation of the proposed EOA;

(c) the manner and extent to which the application is consistent with any federally initiated enterprise zone programs; and

(d) Municipalities should identify the names and nature of businesses that have indicated an intention to locate or expand in a proposed EOA and are encouraged to include with their applications letters of intent from such businesses, outlining the number of jobs that would likely be created if EOA designation occurs and a timetable for the development of a project within the proposed EOA.

### **2.08: Review of EOA Applications and Designation of EOAs**

(1) The EACC shall review each EOA application to determine whether it has met the mandatory criteria set forth in 402 CMR 2.07. The EACC may, at any time, require an applicant to submit additional information relating to the application and may conduct independent reviews as it determines appropriate.

(2) Upon a determination that the application has met the mandatory criteria, the EACC shall further evaluate each application based on the non-mandatory information submitted with the application.

(3) The EACC shall consider the relative merits and overall quality of each application in comparison to:

(a) other pending applications;

(b) prior approved applications; and

(c) competing applications submitted in the context of a group solicitation application.

(4) In evaluating municipal applications, the EACC shall consider more favorably those applications that demonstrate the following:

(a) a thorough planning effort by the municipality indicating the municipality's ability to provide actual economic benefits to the designated EOA;

(b) identification of serious proposals from businesses that have indicated an intention to locate or expand in the EOA within a specific time period;

(c) establishment of a realistic timetable for the flow of economic benefits that are expected to result from EOA designation;

(d) the timely creation of new jobs; and

(e) a heightened need for economic development.

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(5) In order for the EACC to approve the designation of an EOA, it must be satisfied that:

(a) there is a reasonable probability that businesses will be induced to locate or expand in the area proposed for designation; and

(b) designation will increase the prospects of achieving economic stability and reduce chronic unemployment in the area proposed for designation.

(6) If the EACC approves the designation of an EOA, it shall determine the term of the EOA which shall not exceed the term requested by the municipality. The EACC shall provide written notice to the municipality and may attach specific conditions to such designation as it deems appropriate.

(7) If the EACC does not approve the EOA application, it shall provide written notice to the municipality, and shall include a statement of the reasons for the EACC's decision not to make such a designation.

(8) Any municipality whose EOA application was not designated may, at its discretion, resubmit its application at a late date and the EACC may work with each such municipality to improve the merits of its application.

(9) The EACC shall review the designation of each EOA at least once every two years and, in its discretion, may revoke or suspend an EOA in accordance with the provisions of [402 CMR 2.15](#). With respect to those EOAs for which the EACC has received no evidence of a material deviation from the approved obligations and representations of the participating municipality, the receipt and review by the EACC of an EOA's annual report shall be sufficient to satisfy the EACC's obligations under 4.02 CMR 2.08(9).

### **2.09: Certification of Expansion, Enhanced Expansion and Manufacturing Retention Project Proposals; Generally Applicable Provisions**

(1) The EACC may decline to certify a project if the amount of the tax benefit that the business would receive if the project were certified is disproportionately high in relation to:

(a) the number of permanent full-time jobs that are expected to be created by the project, or

(b) other benefits provided by the project to the municipality or to the state.

(2) The EACC shall evaluate, grant, or deny certification of a project proposal within 90 days of its receipt of such proposal; provided, however, that if the EACC determines that a project proposal is incomplete, it may either reject such proposal and return it to the applicant or request additional information to complete the proposal. If the EACC requests additional information, the 90 day review period shall commence upon receipt of the additional information requested.

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- (3) If the EACC fails to act on a project proposal within the 90 day period as described in the foregoing paragraph, the project proposal shall be considered to have been approved for a term of 5 years but such approval shall not constitute an approval by the EACC of any tax incentives provided for under [M.G.L. c. 63, § 38N](#), or [M.G.L. c. 62, § 6\(g\)\(1\)](#).
- (4) The EACC may, in consultation with the department of revenue, limit any incentive or credit available to a project pursuant to M.G.L. c. 62, § 6(g)(1) or M.G.L. c. 63, § 38N to a specific dollar amount or time duration or in any other manner deemed appropriate by the EACC.
- (5) Transfer of Facility Ownership. A facility that has been designated a certified project shall not lose its certified project status upon a transfer of ownership of such facility provided that:
- (a) an instrument of assignment is duly executed between the business that originally owned the facility and the successor business, which instrument of assignment shall contain a written acceptance by the successor business of the duties and obligations of the original business including, without limitation, the duties and obligations as such are represented in the EACC's terms of approval of said facility as a certified project; and
  - (b) the EACC approves by resolution said assignment, such approval to be based on a determination of the EACC that said successor business has the intention and capacity to carry out the duties and obligations of the original business.
- (6) 402 CMR 2.00 does not govern the amount of tax benefits or credits that may be generated by a project or the availability of such credits or benefits to the owners of facilities that have been transferred in accordance with 402 CMR 2.09(11), or the possible recapture of such credits or benefits. For guidance on these issues, see [830 CMR 63.38N.1](#), promulgated by the Department of Revenue.
- (7) Leasing of Property. 402 CMR 2.00 does not govern the amount or availability of tax credits or benefits that may or may not be available to a lessor or lessee when real property associated with a certified project is leased. For guidance on these issues, see [830 CMR 63.38N.1](#), promulgated by the Department of Revenue.
- (8) Relation to Tax Laws. The EACC does not administer or interpret the tax laws of the Commonwealth, and businesses using or considering the use of the EDIP cannot rely on the EACC or its staff for advice or guidance in regard to tax matters. Such businesses are advised to consult their tax advisors and the Massachusetts Department of Revenue on all tax matters relating to the EDIP.

### **2.10: Certification of Expansion Projects**

- (1) Businesses that intend to locate or expand their operations in an EOA may submit a project proposal to the EACC for certification of such project under the EDIP. The EACC shall develop standard forms to

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be used by businesses that request project certification for an expansion project.

(2) Any business which controls a facility that is located or which intends to locate in an EOA may file an expansion project proposal with the EACC.

(3) To be considered for designation as a certified expansion project, the project proposal must:

(a) relate to a facility that is already located or will be located, as of the date of the proposal, within an EOA;

(b) generate substantial sales from outside the Commonwealth as defined in 402 CMR 2.03;

(c) generate a net increase of full-time employees within 2 years after project certification which must be maintained for a period of not less than 5 years; and

(d) meet the following additional mandatory requirements:

1. if the project proposal relates to a facility that is already located, as of the date of the proposal, in a designated EOA, the proposal must provide for a proposed expansion of permanent full-time employees at such facility to occur after the project proposal date, which expansion will:

i. increase the number of permanent full-time employees employed by the controlling business within the Commonwealth; and

ii. not constitute a replacement or relocation of permanent full-time employees of the controlling business who work at other facilities located in the Commonwealth.

2. if the project proposal relates to a facility that is to be located within an EOA after the date of the proposal, the proposal must be either:

i. the controlling business's first facility within the Commonwealth; or

ii. a new facility and not a replacement or relocation of an existing facility already located in the Commonwealth; or

The EACC recognizes the large variety of employment situations that may arise in modern businesses. If a project proponent is uncertain as to whether a particular employment situation meets the definitions contained in 402 CMR 2.00, it is encouraged to include a description of the employment situation and an explanation of why particular employees should be afforded a certain status under 402 CMR 2.00, and the EACC will consider such issue on a case-by-case basis.

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(4) The expansion project proposal shall be signed under the penalties of perjury by a person authorized to bind the controlling business and provide detailed information describing the following:

(a) the location of the project;

(b) the nature and purpose of the project;

(c) specific targets by year for the subsequent 5 calendar year period relative to the projected increase in the number of permanent full-time employees of the controlling business to be employed by and at the project from among residents of the project ETA; provided that:

i. in the case of a project that as of the project proposal date is already located in the project EOA, such projected increase must not be less than 25% over the subsequent 5-year period.

(d) in the case of a new facility under 402 CMR 2.09 (3)(d)(2)(ii), the number of permanent full-time employees employed by the controlling business at other facilities located in the Commonwealth;

(e) the number of permanent full-time jobs that are expected to be created if the project proceeds, including a designation of the number of jobs that will likely be given to residents in the project ETA, accompanied by a description of the affirmative action goals and recruitment techniques that will be utilized to fill the newly created jobs;

(f) a description of the economic benefits to the project and the business that will result if the project is certified; and

(g) any agreements between the controlling business and area banking institutions relating to the intentions of the controlling business to deposit funds in those banks and the banks' intentions to commit a portion of such deposits to fund loans to businesses in the expansion project area, pursuant to the Small Business Capital Access Program established by M.G.L. c. 23A, § 57.

(5) The project proposal received from the controlling business must be accompanied by a written approval of the proposal by the municipality in which the EOA is located. The municipal approval shall confirm that the application submitted by the controlling business meets the requirements of 402 CMR 2.10(3), and shall also state the following:

(a) the project, as proposed, is consistent with and can reasonably be expected to benefit significantly from inclusion in the EOA;

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(b) the project, together with all other projects previously certified and located in the same expansion project EOA or municipality, will not overburden the municipality's infrastructure and utilities servicing the EOA;

(c) the project as described in the proposal will have a reasonable chance of increasing employment opportunities for residents of the expansion project area, ETA.

(6) The project proposal shall also contain a request, accompanied by a written approval from the municipality, that the project be designated as a certified expansion project for a specific number of years, which shall not be less than five years nor more than 20 years, provided that the period of the expansion project certification may, in no event, exceed the duration of the EOA in which the project is located.

(7) The EACC may designate the project as a certified expansion project if it finds the following:

(a) the project proposal meets the mandatory criteria required in 402 CMR 2.10(3) and (4), and contains the municipal approvals required in 402 CMR 2.10(5) and (6); and

(b) the project, if certified, will have a reasonable chance of increasing employment opportunities for residents of the expansion project area, ETA, or municipality as applicable.

### **2.11: Certification of Enhanced Expansion Projects**

(1) Any business which controls a facility that is located or which intends to locate in the Commonwealth may file an enhanced expansion project proposal with the EACC.

(2) To be considered for designation as a certified enhanced expansion project, the project proposal must:

(a) relate to a facility that is already located or will be located, as of the date of the proposal, within the Commonwealth;

(b) generate substantial sales from outside of the Commonwealth as defined in 402 CMR 2.03;

(c) generate a net increase of at least 100 full-time employees within 2 years after project certification; such employees must be maintained for a period of not less than 5 years; and

(d) meet the following additional mandatory requirements:

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1. if the project proposal relates to a facility that is already located, as of the date of the proposal, in the Commonwealth, the proposal must provide for a proposed expansion of permanent full-time employees at such facility, which expansion will:

i. increase the number of permanent full-time employees at the facility; and

ii. not constitute a replacement or relocation of permanent full-time employees of the controlling business who work at other facilities located in the Commonwealth.

2. if the project proposal relates to a facility that is to be located within the Commonwealth after the date of the proposal, the proposal must be either:

i. the controlling business's first facility within the Commonwealth; or

ii. a new facility and not a replacement or relocation of an existing facility already located within the Commonwealth; or

iii. an expansion of an existing facility that results in an increase in the number of permanent full-time employees of the controlling business in the Commonwealth.

(3) The enhanced expansion project proposal shall be signed under the penalties of perjury by a person authorized to bind the controlling business and provide detailed information describing the following:

(a) the location of the project;

(b) the nature and purpose of the project;

(c) specific targets by year for the subsequent 5 calendar year period relative to the projected increase in the number of permanent full-time employees of the controlling business to be employed by and at the project from among residents of the project ETA;

(d) in the case of a new facility under 402 CMR 2.11 (2)(d)(2)(ii), the number of permanent full-time employees employed by the controlling business at other facilities located in the Commonwealth;

(e) the number of permanent full-time jobs that are expected to be created if the project proceeds, the minimum of which must be 100, including a description of the affirmative action goals and recruitment techniques that will be utilized to fill the newly created jobs; and

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(f) a description of the economic benefits to the project and the business that will result if the project is certified.

(3) The EACC may designate the project as certified enhanced expansion project if it finds the following:

(a) the project proposal meets the mandatory criteria required in 402 CMR 2.11 (2) and (3); and

(b) the project, if certified, will have a reasonable chance of increasing employment opportunities for residents of the Commonwealth.

### **2.12: Certification of Manufacturing Retention Projects**

(1) Any business which controls a facility that is located or which intends to locate in a gateway municipality may file a manufacturing retention project proposal with the EACC.

(2) To be considered for designation as a certified manufacturing retention project, the project proposal must:

(a) relate to a facility that is already located or will be located, as of the date of the proposal, within a gateway municipality as defined in 402 CMR 2.03;

(b) generate substantial sales from outside of the Commonwealth as defined in 402 CMR 2.03;

(c) generate a net increase of a minimum of at least 100 permanent full-time positions within 2 years of project certification to be maintained for at least a 5-year period; or retain a minimum of at least 100 permanent full-time positions for at least a 5-year period; and

(d) meet the following additional mandatory requirements:

1. if the project proposal relates to a facility that is already located, as of the date of the proposal, within a gateway municipality, the proposal must provide for a proposed expansion or retention of the number of permanent full-time employees at such facility to occur after the project proposal date, which expansion or retention will:

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i. create or retain at least 100 permanent full-time employees employed by the controlling business within the project; and

ii. not constitute a replacement or relocation of permanent full-time employees of the business who work at any other facility located in the Commonwealth.

2. if the project proposal relates to a facility that is to be located within a gateway municipality after the date of the proposal, the proposal must be either:

i. the controlling business's first facility within the Commonwealth; or

ii. a new facility and not a replacement or relocation of an existing facility already located within the Commonwealth.

(3) The manufacturing retention project proposal shall be signed under the penalties of perjury by a person authorized to bind the controlling business and provide detailed information describing the following:

(a) the location of the project;

(b) the nature and purpose of the project;

(c) specific targets by year for the subsequent 5 calendar year period relative to the projected increase in the number of permanent full-time employees of the controlling business to be employed by and at the project from among residents of the gateway municipality and the Commonwealth;

(d) in the case of a new facility under 402 CMR 2.12 (2)(d)(2)(ii), the number of permanent full-time employees employed by the controlling business at other facilities located in the Commonwealth;

(e) the number of permanent full-time jobs that are expected to be created or retained if the project proceeds, the minimum of which must be 100, including a description of the affirmative action goals and recruitment techniques that will be utilized to fill the newly created jobs; and

(f) a description of the economic benefits to the project and the business that will result if the project is certified.

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(4) The project proposal received from the controlling business must be accompanied by a written approval of the proposal by the municipality in which the project is or will be located. The municipal approval shall confirm that the application submitted by the business meets the requirements of 402 CMR 2.12(3), and shall also state the following:

(a) the project as described in the proposal will have a reasonable chance of increasing or retaining employment opportunities for residents of the municipality.

(5) The EACC may designate the project as certified manufacturing retention project if it finds the following:

(a) the project proposal meets the mandatory criteria required in 402 CMR 2.12 (2) and (3); and

(b) the project, if certified, will have a reasonable chance of increasing or retaining employment opportunities for residents of the gateway municipality and the Commonwealth.

### **2.13: Certification of Tax Increment Financing Plans**

Tax increment financing (TIF) plans shall be certified by the EACC in accordance with the provisions of 760 CMR 22.00.

### **2.14: Reporting Procedures**

(1) The EACC will develop procedures for monitoring its designations of ETAs and EOAs, its certification of projects and its approval of TIF plans to ensure that such designations, certifications and approvals continue to meet the requirements and further the purposes of the EDIP program and the statutes and regulations governing the EDIP program and TIF plans.

(2) Such monitoring procedures will require municipalities and controlling businesses to submit information to the EACC, including information concerning whether employment targets have been met, in response to both routine compliance requests and requests for special information. The procedures may specify the form and substance of the information that may be required by the EACC and may require that such information be submitted under the pains and penalties of perjury.

(3) Satisfactory compliance by municipalities and controlling businesses with the EACC's monitoring procedures is deemed to be a continuing condition to the designation of an ETA and an EOA, the designation of a project as a Certified Project, and the approval of a TIF plan.

### **2.15: Revocation and Suspension of EOA Designation**

(1) The designation of an EOA may be revoked by the EACC under the following circumstances:

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- (a) upon the petition of the municipality, which shall be granted by the EACC as a matter of course, provided that the municipality describe its reasons for seeking to revoke an EOA; or
  - (b) if the EACC determines, based on its own investigation, that plans and commitments originally incorporated with the municipal application are materially at variance with the conduct of the municipality subsequent to the designation and such variance is found to frustrate the public purpose which such designation was intended to advance.
- (2) If a municipality fails to provide the EACC with information requested by it pursuant to [402](#) CMR 2.14 within the time frame identified by the EACC, or otherwise fails to comply with designated reporting procedures, such failure shall be grounds for revoking the designation of such EOA.
- (3) In addition, if a municipality fails to provide the EACC with information requested by it pursuant to [402](#) CMR 2.14 or otherwise fails to comply with designated reporting procedures, the EACC may suspend the designation of an EOA until such failure is rectified. During such suspension, the EACC will not certify any projects within such EOA.
- (4) Any revocation of an EOA shall only apply prospectively to deny certification to any projects that are not certified prior to such revocation and shall not apply to, nor revoke any benefits due to or which may become due to, any certified project already in existence in an EOA.
- (5) Prior to revoking the designation of an EOA, the EACC shall provide the appropriate municipality or municipalities with reasonable notice and an opportunity to be heard on the matter. Any hearing provided pursuant to 402 CMR 2.15(5) shall be conducted in a manner directed by the EACC.

### **2.16: Revocation of the Certification of a Project**

- (1) The certification of a project may be revoked by the EACC upon:
- (a) the petition of the municipality or the Director in the case of an expansion project or manufacturing retention project or the petition of the Director in the case of an enhanced expansion project; and
  - (b) the independent investigation and determination of the EACC that representations made by the business in its project proposal are materially at variance with the conduct of the controlling business subsequent to the certification and such variance frustrates the public purposes which such certification was intended to advance. When the actual number of permanent full-time employees employed by the controlling business at a certified expansion project is less than 50% of the number of such permanent full-time employees who were projected to be employed in the project proposal, it shall be deemed a material variance for the purposes of a revocation determination;
- (2) In determining whether to revoke a project certification, the EACC may consider whether the amount of the tax benefit that the controlling business is receiving pursuant to the certification is disproportionately high in relation to:

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- (a) the number of permanent full-time jobs that have been created by the project, or
  - (b) other benefits provided by the project to the municipality or the state.
- (3) If a business fails to provide the EACC with information requested by it pursuant to [402 CMR 2.14](#) or otherwise fails to comply with designated reporting procedures, such failure shall be grounds for revoking the certification of such project.
- (4) Upon such a revocation, the Commonwealth, and the municipality in the case of a certified expansion project, shall have the ability to recoup the value of any economic benefit received by the controlling business prior or subsequent to such revocation.
- (5) Prior to revoking the certification of a project, the EACC shall provide the project proponent with reasonable notice and an opportunity to be heard on the matter. Any hearing provided pursuant to 402 CMR 2.16(5) shall be conducted in a manner directed by the EACC.

### **2.17: Revocation of a TIF Plan**

- (1) The EACC may revoke the certification of a TIF Plan in accordance with the procedures set forth in 760 CMR 22.08.
- (2) If a party to a TIF Plan and to the TIF agreements incorporated in the TIF Plan fails to provide the EACC with information requested by it pursuant to 402 CMR 2.11 or otherwise fails to comply with designated reporting procedures, such failure shall be grounds for revoking the approval of all or a relevant portion of such TIF Plan.

### **2.18: Changes in Statistical Criteria**

- (1) The statistical criteria employed by the EACC in making any decision related to an application for designation of an ETA or EOA or a proposal for designation of a certified expansion, enhanced expansion or manufacturing retention project shall be the most recent data available as of the date of such application or proposal.
- (2) The EACC shall be under no obligation to revoke or modify any designation or certification because of changes in statistical data which are published subsequent to a designation decision.
- (3) In the event the statistical categories incorporated by reference in M.G.L c. 23A, §§ 3D through 3F, and 402 CMR 2.00 are subsequently materially altered or superseded, the EACC may develop or employ new categories of statistical criteria which most nearly comport with the aforesaid referenced criteria; provided, that said new categories of statistical criteria shall become effective when approved by the Director.

### **2.19: Designation of "Exceptional Opportunity" Areas**

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Pursuant to M.G.L. c. 40, § 59 and 760 CMR 22.04, the Director of the Department of Business Development may designate certain areas of the Commonwealth as "presenting exceptional opportunities for increased economic development," thereby permitting the designation of a TIF Zone within such area. In making such designation, the Director shall consider whether there is a strong likelihood that one more of the following will occur within the area in question within a specific and reasonably proximate period of time:

- (a) a significant influx or growth in business activity,
- (b) the creation of a significant number of new jobs and not merely a replacement or relocation of current jobs within the Commonwealth, and
- (c) a significant increase in the prospects of achieving economic stability. The Director may seek the advice and assistance of the EACC prior to making a designation under 402 CMR 2.19.

### **2.20: Miscellaneous**

- (1) The EACC and the director of the economic development incentive program shall work with interested municipalities and businesses to assist such municipalities and businesses to understand the purpose and requirements of applicable application and proposal processes and to minimize the administrative burden associated with such application process.
- (2) The EACC shall seek to continually revise and amend its procedures and 402 CMR 2.00 to reflect changed circumstances and its experiences in program implementation.
- (3) The provisions of 402 CMR 2.00 are severable, and if any of the provisions herein are held by a court of competent jurisdiction to be contrary to law, such decision shall not impair any of the remaining provisions.

### **2.21: Emergency Waiver of Regulations**

The EACC has full power and authority to waive and decline to follow any portion of 402 CMR 2.00 if it determines that such action is necessary and appropriate to further the goals of the Economic Development Incentive Program or is in the public interest; provided, however, that:

- (1) Such waiver is accomplished by a vote of the EACC;
- (2) The EACC issues a written statement of its reasons for such waiver; and
- (3) The EACC may not waive any requirements or criteria that are mandated by any general or special law.

### **2.22: Related Regulations and Administrative Guidance**

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As of February 5, 2010, 402 CMR 2.00 relates to other aspects of the Economic Development Incentive Program: 760 CMR 22.00 (Tax Increment Financing Regulation); 830 CMR 63.38 N.1 (Department of Revenue Regulations for the Economic Opportunity Area Credit). See also Department of Revenue Informational Guideline Release No. 94-201; TIR 10-1: Economic Development Incentive Program under St. 2009, c. 166 (Department of Revenue Technical Information Release).

### REGULATORY AUTHORITY

402 CMR 2.00: M.G.L. c. 23A.