

# STATEMENTS OF POLICY

## Title 12—COMMERCE, TRADE AND LOCAL GOVERNMENT

### DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

[ 12 PA. CODE CH. 73 ]

#### Pennsylvania Industrial Development Authority

The Department of Community and Economic Development (Department) amends 12 Pa. Code Chapter 73, Subchapter B (relating to statement of policy) to read as set forth in Annex A. The statement of policy is amended under the authority of section 9 of the Pennsylvania Industrial Development Authority Act (73 P. S. §§ 301—314).

#### *Background*

The Pennsylvania Industrial Development Authority (PIDA) is engaged in a program of providing assistance to finance the establishment of industrial development projects throughout this Commonwealth. The PIDA's assistance is provided in the form of low-interest loans to industrial development agencies, which are local non-profit corporations existing throughout this Commonwealth.

This amended statement of policy sets forth the policy adopted by the Board of Directors of the PIDA at its public meeting held September 14, 2005.

#### *Amendments*

Section 73.101 (relating to definitions) is amended to add, subtract and modify definitions.

Section 73.111 (relating to industrial enterprises) is amended to update the minimum project size and job requirements for industrial enterprises and to allow industrial enterprises are either a for-profit or nonprofit entity.

Section 73.112 is deleted and reserved.

Section 73.112a (relating to agricultural enterprises) is added.

Section 73.113 is deleted and reserved.

Section 73.113a (relating to KIZ projects) is added.

Section 73.121 (relating to general) is amended to modify advanced technology company criteria.

Section 73.122 is deleted and reserved. See § 73.121.

Section 73.123 is deleted and reserved. See § 73.121.

Section 73.131 (relating to industrial development projects) is amended to clarify the financial analysis requirements.

Section 73.132 (relating to industrial parks and multiple-tenancy building projects) is amended to clarify the financial analysis requirements in industrial park projects or multiple-tenancy projects where no investor-developer is involved.

Section 73.141 (relating to general) is amended to modify engineering requirements to conform with the adoption of the Statewide Uniform Construction Code

and to provide that PIDA may retain 10% of its loan until a certificate of occupancy is issued by the appropriate building code office.

Section 73.142 is deleted and reserved. See § 73.141

Section 73.143 is deleted and reserved. See § 73.141.

Section 73.144 (relating to costs) is amended to modify the list of items that may be questionable for PIDA financing.

Section 73.145 is deleted and reserved. See § 73.141.

Section 73.146 is deleted and reserved. See § 73.141.

Section 73.147 (relating to checklist of requirements for a complete and comprehensive industrial appraisal) is amended to reflect the requirement of one independent appraisal.

Section 73.151 is deleted and reserved.

Section 73.152 is deleted and reserved.

Section 73.153 is deleted and reserved.

Section 73.162 (relating to criteria) is amended to clarify the criteria that will be evaluated to determine if a valid explanation exists for failure to meet employment requirements.

Section 73.163 (relating to levying of penalties) is amended to add a penalty scale.

Section 73.164 is deleted and reserved.

Section 73.165 is deleted and reserved.

Section 73.192 (relating to financial considerations for stock purchase acquisition of assets) is amended to require the submission of financial statements and appraisals and to clarify the valuation of the remaining assets.

Section 73.201 (relating to environmental site assessment) is amended to reflect changes in terminology, to reflect the liability insurance requirement to protect PIDA from consultant negligence or misfeasance and to show that the Phase 1 Environmental Site Assessment should be done in accordance with the ASTM International E1527-00 Standard Practice for Environmental Site Assessments: Phase 1 Environmental Site Assessment Process.

Section 73.212 is deleted and reserved.

Section 73.213 is deleted and reserved.

Section 73.214 is deleted and reserved.

Section 73.215 is deleted and reserved.

Section 73.302 is deleted and reserved.

Section 73.303 (relating to payment of interest only; commencement of amortization) is amended to clarify that payment of interest only and delay in the commencement of amortization are options open only to construction projects.

Section 73.304 is deleted and reserved.

Section 73.305 is deleted and reserved.

Section 73.307 is deleted and reserved.

Section 73.308 (relating to loan terms: industrial parks and multiple-tenancy building projects) is amended to reflect changes in loan terms for industrial park loans.

Section 73.310 (relating to investor-developers) is amended to require the guaranty of the industrial occupant in single-tenant and multi-occupancy projects where the investor-developer will be the responsible purchaser of the project only on a case-by-case basis if the investor-developer is not sufficiently credit-worthy or other circumstances suggest that such a guaranty is appropriate.

Section 73.311 (relating to subleasing) is amended to reflect changes in subleasing square footage requirements.

Section 73.312 (relating to related parties) is amended to show that PIDA will not generally participate in a project if persons having a significant ownership in the party selling an asset will also have an ownership interest in the party buying the asset.

Section 73.313 (relating to the loss sharing agreement) is amended to reflect that the loss sharing agreement would apply to industrial part or multitenancy projects if an investor-developer is involved in the project.

#### *Fiscal Impact*

The amended statement of policy is expected to have a positive fiscal impact on the Commonwealth because of the removal of the engineering requirements and the elimination of PIDA's consulting engineers. The statement of policy is not expected to have a fiscal impact on the political subdivisions of this Commonwealth or the public.

#### *Paperwork Requirements*

Additional paperwork requirements are not imposed as a result of the amended statement of policy.

#### *Contact Person*

For further information regarding the amended statement of policy, contact Timothy Anstine, Deputy Chief Counsel, Office of Chief Counsel, Department of Community and Economic Development, Commonwealth Keystone Building, 400 North Street, Fourth Floor, Harrisburg, PA 17120-0225, (717) 783-8452.

#### *Findings*

The Department finds that:

(1) Delay in implementing the statement of policy will have a serious adverse impact on the public interest.

#### *Order*

The Department, acting under the authorizing statute, orders that:

(a) The statement of policy of the Department, 12 Pa. Code Chapter 73, is amended by amending §§ 73.101, 73.111, 73.121, 73.131, 73.132, 73.141, 73.144, 73.147, 73.161—73.163, 73.191, 73.192, 73.201, 73.211, 73.301, 73.303, 73.306 and 73.308—73.313; by deleting §§ 73.112, 73.113, 73.122, 73.123, 73.142, 73.143, 73.145, 73.146, 73.151—73.153, 73.164, 73.165, 73.212—73.215, 73.302, 73.304, 73.305 and 73.307; and by adding §§ 73.112a and 73.113a to read as set forth in Annex A.

(b) The Secretary of Community and Economic Development shall submit this order and Annex A to the Office of General Counsel for approval as to form and legality as required by law.

(c) The Secretary of Community and Economic Development shall certify this order and Annex A and deposit the same with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

DENNIS YABLONSKY,  
*Secretary*

**Fiscal Note:** 4-89. No fiscal impact; (8) recommends adoption.

### **Annex A**

## **TITLE 12. COMMERCE, TRADE AND LOCAL GOVERNMENT**

### **PART III. BUSINESS FINANCING**

#### **Subpart C. LOANS**

### **CHAPTER 73. PENNSYLVANIA INDUSTRIAL DEVELOPMENT AUTHORITY**

#### **Subchapter B. STATEMENT OF POLICY**

#### **GENERAL PROVISIONS**

#### **§ 73.101. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Pennsylvania Industrial Development Authority Act (73 P. S. §§ 301—314).

*Beneficial owner*—A person or entity other than an industrial occupant, who has acquired or will acquire title to an industrial development project or multiple-tenancy building project from an industrial development agency, and who has leased or will lease the industrial development project or multiple-tenancy building project to an industrial occupant or occupants.

*Industrial development agency or agency*—A nonprofit corporation to which PIDA is empowered to make loans.

*Industrial occupant*—An enterprise which occupies and operates an industrial development project or multiple-tenancy building project. An industrial occupant may also acquire title to an industrial development project.

*Investor-developer*—A beneficial owner which has no significant ownership interest in the industrial occupant.

*KIZ*—Keystone Innovation Zone.

*PIDA*—The Pennsylvania Industrial Development Authority.

*Project*—

(i) A land, site, structure, facility or undertaking for which PIDA is empowered to make loans.

(ii) The term includes an industrial development project, an industrial park project or a multiple-tenancy building project, as defined in the act.

#### **PROJECT ELIGIBILITY**

#### **§ 73.111. Industrial enterprises.**

The following criteria are used as guidelines by PIDA in determining whether a particular business is eligible to receive funding as an industrial enterprise. PIDA may relax or waive the criteria when justified by the circumstances of a particular project.

(1) The act provides that, to be an eligible industrial enterprise, the enterprise must, by virtue of its size, require substantial capital and create substantial employment opportunities. Except as set forth in this section, PIDA will consider these requirements to be satisfied if the project cost is at least \$200,000 and the industrial

enterprise provides at least 25 full-time jobs (either retained or newly created) within 3 years after the PIDA loan closes.

(2) Each industrial enterprise that will be a tenant of a multiple-tenancy building project will not be required to satisfy the employment requirement and capital requirement that would be required in a single-occupant project, as long as all of the PIDA-eligible enterprises in the building will provide an aggregate of at least 25 full-time jobs and the total project cost of the building is at least \$200,000.

(3) An industrial enterprise may be either a for-profit or nonprofit entity.

(4) Warehouses, terminal facilities, office buildings utilized as National or regional headquarters and computer or clerical operations centers may be considered industrial enterprises regardless of the nature of the underlying enterprise. Warehouse and terminal facilities will be considered only if they are designed to serve retail or wholesale operations or other business operations. National and regional headquarters, computer operations centers and clerical operations centers must generally meet heightened criteria. These criteria are more fully defined as follows:

(i) A National headquarters is a building which houses, among other things, the executive offices of a single company or group of companies, such as a conglomerate, and which meets the following criteria:

(A) The total project cost exceeds \$1.5 million.

(B) At least 125 full-time jobs, both preexisting and newly created, will exist at the project site within 3 years after the PIDA loan closes.

(C) The company has at least two regional offices which report to this facility.

(ii) A regional headquarters is a building which houses, among other things, the branch executive offices of a National company and which meets the following criteria:

(A) The total project cost exceeds \$1.5 million.

(B) At least 125 full-time jobs, both preexisting and newly created, will exist at the project site within 3 years after the PIDA loan closes.

(C) The office serves at least two states.

(D) Two or more offices report to this regional headquarters, which in turn reports directly to the National headquarters.

(iii) A computer operations center is a building which is designed or adapted for, and which houses information technology operations of a company or group of related companies. The computer operations may be either a support service for the company's primary business activities or may be the primary business activity of a company that contracts to provide information technology services to others, and meets the following criteria:

(A) The total project cost exceeds \$1.5 million.

(B) At least 125 full-time jobs, both preexisting and newly created, will exist at the project site within 3 years after the PIDA loan closes.

(iv) A clerical operations center is a building which houses the clerical functions of a company and meets the following criteria:

(A) The total project cost exceeds \$1.5 million.

(B) At least 125 full-time jobs, both preexisting and newly created, in a number determined by PIDA will exist at the project site within 3 years after the PIDA loan closes.

**§ 73.112. (Reserved).**

**§ 73.112a. Agricultural enterprises.**

The act provides that, to be an eligible agricultural enterprise, the enterprise must, by virtue of its size, require substantial capital and create substantial employment opportunities. The following criteria are used as guidelines by PIDA in determining whether a particular business is eligible to receive funding as an agricultural enterprise. PIDA may relax or waive the criteria when justified by the circumstances of a particular project.

(1) For agricultural enterprises which are involved in the management and use of a normal agricultural operation for the production of a farm commodity, such as the production, harvesting or preparation for market of poultry, livestock and their products (including bee products), agricultural crops, timber, horticultural crops (including flowers, fruits, vegetables and shrubs), and aquaculture crops (including fish and plants grown in water), PIDA will consider these requirements to be satisfied if the project cost is at least \$200,000 and the agricultural enterprise has at least \$100,000 in annual gross sales.

(2) For agricultural enterprises which are engaged in either the manufacture, development or preparation for sale of one or more farm commodities which adds value to those commodities, or the conversion of a farm product into a marketable form, including, but not limited to, livestock by slaughtering, fruits and vegetables by canning and freezing and forest products by secondary processing, PIDA will consider these requirements to be satisfied if the project cost is at least \$200,000 and the agricultural enterprise provides at least 25 full-time jobs (either retained or newly created) within 3 years after the PIDA loan closes.

(3) An agricultural enterprise may be either a for-profit or nonprofit entity.

**§ 73.113. (Reserved).**

**§ 73.113a. KIZ projects.**

(a) The KIZ Program was established under 37 Pa.C.S. Chapter 12 (relating to Keystone Innovation Zones) and the PIDA Board was authorized to provide loans for projects in which at least one Keystone Innovation Zone company or "KIZ company" will be located. A "Keystone Innovation Zone Company" is defined in 37 Pa.C.S. § 3702 (relating to definitions) as a for-profit business entity which is all of the following:

(1) Located within a KIZ.

(2) Has been in operation for less than 8 years.

(3) Falls within one of the targeted industry segments adopted by the Keystone Innovation Zone Partnership in its strategic plan.

(b) If the structure is intended to accommodate more than one KIZ company, at least 80% of the space in the structure must be leased to KIZ companies.

(c) The provisions of 37 Pa.C.S. Chapter 12 authorize the PIDA Board to establish the maximum loan participation rate to be applied to KIZ company projects. In the interest of promoting eligible KIZ company projects, the PIDA will consider loans of up to 75% of the cost of eligible KIZ company projects.

(d) Except as provided above with respect to the loan participation rate and the eligibility of KIZ companies (which might not otherwise be eligible for PIDA financing), all other terms of the act and this subchapter apply to KIZ company projects.

#### ADVANCED TECHNOLOGY PROJECTS

##### § 73.121. General.

As set forth in § 73.13 (relating to interest rates), PIDA may provide special interest rates for projects designated as advanced technology. A company will be deemed to qualify as "advanced technology" if it meets one of the following criteria:

(1) The company falls within one of the Standard Industry Codes described as "high tech" as described by the American Electronics Association in its publication "Cybernation," as those codes are further augmented by the Wharton Economic Forecasting Associates Group.

(2) The company is able to respond satisfactorily to the questions contained on PIDA's technology review form, as follows:

**Question # 1:** To your knowledge, do any other companies in this industry, either domestic or foreign, have access to this technology or its equivalent? Yes \_\_\_\_\_ No \_\_\_\_\_

**Question # 2:** Does the technology or industrial process in question represent a significant improvement over the existing technology and/or industrial process currently in general use within the industry? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, please elaborate on what advantages this technology or process will provide.

**Question # 3:** What year was this technology first introduced to your industry? \_\_\_\_\_

**Question # 4:** Does the company hold or maintain:

Patents for the technology or process in question? Yes \_\_\_\_\_ No \_\_\_\_\_

License(s) for the technology or its underlying intellectual property? Yes \_\_\_\_\_ No \_\_\_\_\_

Trade secrets covering the technology in question? Yes \_\_\_\_\_ No \_\_\_\_\_

**Question # 5:** Does the applicant have an internal engineering department? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, what percent of the company's operating budget is dedicated to this department?

**Question # 6:** Does the applicant company have any existing relationship with consultants, external research organizations, universities or other entities to provide or introduce new intellectual property or technology to the company? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, please describe.

**Question # 7:** Has the company invested in technology within the past 12 months, or is the company proposing to invest in technology within the next 12 months that has advanced or will advance the state of the art for the industry? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, please elaborate on how the state of the art for the industry was or will be advanced by the technology and what the potential effects on the company will be.

**Question # 8:** Does the applicant have an R & D department? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, what percent of the company's operating budget is dedicated to this department?

§ 73.122. (Reserved).

§ 73.123. (Reserved).

#### FINANCIAL CONSIDERATIONS

##### § 73.131. Industrial development projects.

(a) The act requires that an industrial development project be sold or leased to a responsible buyer or responsible tenant. The PIDA interprets this statutory requirement to mean not only the financial ability to repay the PIDA's loan, but also the financial ability to repay all working capital and equipment financing necessary for the establishment and operation of a complete project. The analysis described in this section would be the same whether the responsible buyer is a beneficial owner related to the industrial occupant or an unrelated investor-developer.

(b) The application for an industrial development project must include financial statements of the proposed responsible buyer or tenant, parent company and proposed guarantors, if any, for the latest 3 years of operations, prepared by an independent certified public accountant. Complete financial statements include the independent accountants' report and all notes to the financial statements. When required by PIDA, personal financial statements of investor-stockholders may be prepared by a certified public accountant or by the individuals themselves on bank forms acceptable to PIDA and signed and dated. The personal financial statements must state all assets and direct liabilities on the face thereof, and include appropriate footnotes concerning the existence of contingent liabilities, or, in the alternative, specifically indicate that none exists to the best of the preparer's knowledge. PIDA may request additional financial information it deems appropriate in support of financial statements furnished with an application. A conference at the PIDA office in Harrisburg may be requested to develop adequate information for a complete presentation of pertinent aspects of the financial situation of a responsible buyer or tenant to PIDA. Generally, representatives of PIDA and its independent financial consultant will meet with representatives of the industrial development agency and management of the responsible buyer or tenant to discuss the financial statements of the responsible buyer or tenant, management background and experience, industrial products, operations and other project details.

(c) The establishment of a new entity as the responsible buyer or tenant will necessitate the submission of other financial information. In this event, PIDA may require the personal financial statements of the major investors. PIDA will require pro forma balance sheets and projected income statements and cash flows of the new entity for at least the first 3 full years of proposed operations, ideally prepared by an independent certified public accountant, although plain paper statements are also acceptable. These projections must include footnotes which disclose, among other things, the methods of accounting to be used, proposed sources of financing—both debt and equity—interest rate and terms of proposed financing, and all significant assumptions regarding projected income and expenses, including projected quantities, prices, customers and market areas, number of employees, labor rates, pension and fringe benefits and administrative and other operating expenses.

(d) The requirements in subsection (c) for projected financial statements may not be necessary in the case of a new entity being formed by a parent company whose

acceptable, historical financial statements are submitted to PIDA and whose guaranty is to be relied on for repayment of the PIDA loan.

(e) The financial analysis which PIDA causes to be made to assist it in its determination as to whether there is a responsible buyer or tenant is a broad based analysis of the complete operations of the entity, including the proposed financing of the project. Each application is analyzed on a case by case basis. In determining whether there is a responsible buyer or tenant, PIDA will consider the following financial aspects:

- (1) Form and content of financial statements, whether audited, reviewed or compiled.
- (2) Equity of the responsible buyer or tenant and guarantors, if any, in relation to the total project cost.
- (3) Income in relation to the total project cost.
- (4) Extraordinary items of income and expenses reflected in the statements of income.
- (5) Cash flow in relation to project debt service.
- (6) Current working capital ratio.
- (7) Total debt to equity ratio.
- (8) Trends of sales and net income.
- (9) Contingent liabilities.
- (10) Financial ability to adequately finance the working capital and equipment requirements of the industrial development project.
- (11) Industry factors relevant to a particular industrial development project.

(f) PIDA may require additional security for its loan to establish the project as creditworthy. Kinds of additional security that may be requested include a participating first lien mortgage on the proposed project; guaranties of the repayment of a PIDA loan by principal shareholders or other interested parties, the parent, subsidiaries or affiliated corporations of the respective responsible buyers or tenants; subordination of debt of the respective responsible buyers or tenants to the repayment of a PIDA loan; assignments of life insurance on the lives of the principals of the respective responsible buyer or tenant; assignments of agreements of lease, sublease or installment sale; additional collateral liens on other real estate owned by the respective responsible buyers or tenants or guarantors; a letter of credit; limitations on the purchase of Treasury stock, payment of dividends and payment of salaries of officers of the respective responsible buyers or tenants; additional equity participation in the proposed project resulting in a reduced participation by the first mortgage lender or PIDA; additional equity investment in the responsible buyer or tenant by outside investors; in rare cases, a collateral lien on machinery and equipment; and a reduction of the size and scope of the project which will reduce the total amount of the debt incurred by the respective buyer or tenant and also reduce the amount of a PIDA loan requested.

(g) Additional security requested by PIDA will be determined on a case-by-case basis and will depend on the financial strength reflected in the proposed responsible buyer's or tenant's financial statements. The specific additional collateral requested will depend on the availability of the items of security in each specific case.

**§ 73.132. Industrial parks and multiple-tenancy building projects.**

(a) With respect to an industrial park project or a multiple-tenancy project when no investor-developer is

involved, the limited financial requirements of the act reduce the financial analysis involved. By their nature, these projects are more speculative and require the application of different criteria. The financial strength of an industrial development agency may or may not be a primary factor respecting PIDA's proposed participation in either an industrial park or multiple-tenancy building project. Among other things, PIDA considers the industrial development agency's past record in developing other similar projects, the scope and completeness of the proposed project, evidence of satisfactory sources of financing for the entire industrial park or multiple-tenancy building project, proposed equity participation therein, any proposed governmental participation in the project, evidence of the demand for industrial park land or multiple-tenancy building space in the area of this Commonwealth in which the project is to be located, and the satisfactory projection of sufficient revenue generated by the project to repay the loan.

(b) When an investor-developer will be the owner of the proposed industrial park or multiple-tenancy building project, the financial analysis of the investor-developer will be similar to the financial analysis of a responsible buyer as described in § 73.131 (relating to industrial development projects).

**ENGINEERING GUIDELINES**

**§ 73.141. General.**

(a) PIDA will expect and require the industrial development corporation (IDC) or the private borrower, or both, to engage professionals that are needed to assure that the project is completed in accordance with applicable laws and acceptable building standards. PIDA will expect and require that the IDC or the private borrower, or both, to provide to PIDA information that may be needed by PIDA to assure that the project complies with the act and that the PIDA loan is adequately documented and secured.

(b) PIDA may retain 10% of its loan until a certificate of occupancy is issued by the appropriate building code official for the project.

**§ 73.142. (Reserved).**

**§ 73.143. (Reserved).**

**§ 73.144. Costs.**

This section sets forth a comprehensive tabulation of items which may be questionable for PIDA financing, together with conditions for or limitations of eligibility used by PIDA in its project review. For ease of tabulations, items are arranged according to the 16-division grouping of the Construction Specification Institute (CSI) format for building specifications, commonly referred to as the Uniform Construction Index.

(1) *General requirements.* PIDA will examine unit costs and cost per square foot of building for each project. To establish a uniform standard, "unit cost" refers to unit acquisition cost or unit construction cost, and does not include items such as land, site work, interest, and the like. PIDA will require additional justification if the unit cost appears excessive.

(2) *Site work.*

(i) *Site utilities.* Offsite utilities are generally not eligible. Requests for inclusion of offsite utility costs are subject to special review.

(ii) *Railroad work.* Offsite rail sidings are not generally eligible.

(3) *Concrete.* There are no requirements in this category.

(4) *Masonry.* There are no requirements in this category.

(5) *Thermal and moisture protection.* Roofing bond or warranty, or lack thereof, will affect the term of a PIDA mortgage.

(6) *Doors and windows.* There are no requirements in this category.

(7) *Finishes.* There are no requirements in this category.

(8) *Specialties.*

(i) *Identifying devices.* Directories, bulletin boards and directional signs are eligible. Commemorative plaques and identification signs will be questioned.

(ii) *Lockers.* Lockers are not eligible.

(iii) *Scales.* Scales are not eligible.

(iv) *Storage shelving and racks.* Storage shelving is generally not eligible. Incidental shelving in utility rooms, janitor's closets, and the like is eligible. Combination storage rack-structural frame systems, if an integral and nonremovable part of the structure and necessary for a particular building to function may be included.

(9) *Equipment.* As a general rule, "equipment" as it relates to the owner's or tenant's particular operation is an ineligible item, and will be excluded from the project for PIDA loan purposes. Certain types of equipment, however, may be "built in" and be necessary for a particular building to function, and may therefore be included. Portable equipment is ineligible.

(i) *Built-in maintenance equipment.* It would be possible to justify a powered window-washing system in a multistory research and development facility.

(ii) *Food service equipment.* Kitchenette units, residential type kitchen appliances and bar units are ineligible.

(iii) *Pollution control equipment.*

(A) Pollution control equipment related to a manufacturing process, even if required by a Federal, Commonwealth or local regulatory agency is ineligible.

(B) Pollution control equipment related to the operation and maintenance of a building which is required by a Federal, Commonwealth or local regulatory agency will be eligible.

(iv) *Laboratory equipment.* Built-in casework, counters and the like may be eligible in a research facility.

(v) *Parking equipment.* Depending upon the location, parking control equipment may be a desirable, if not required, feature of off-street parking areas, and thus will be eligible.

(vi) *Waste handling equipment.* Built-in rubbish chutes and waste compactors are eligible. Packaged or built-in incinerators are eligible.

(vii) *Loading dock equipment.* Dock levelers or platforms, seals and bumpers are eligible.

(viii) *Material storage silos.* Material storage silos are eligible. Mechanical material conveying systems are ineligible. See paragraphs (11)(v) and (12).

(10) *Furnishings.* Unless otherwise specifically permitted, furnishings, furniture and accessories are ineligible.

(i) *Cabinet and storage.* Incidental built-in storage shelving is eligible.

(ii) *Rugs and mats.* Loose rugs indicate a finished floor underneath, and are therefore ineligible. Recessed entry mats are eligible.

(iii) *Seating.* Bolted-down auditorium type seating is eligible in a research and development facility.

(11) *Special construction.*

(i) *Air-supported structures.* The life of these structures in relation to the term of the PIDA mortgage is questionable, and, although their eligibility will be determined on a case by case basis their use is discouraged.

(ii) *Special purpose rooms.*

(A) Hot and cold rooms are eligible.

(B) Laboratories with pressurization or climate control, or both, are eligible.

(iii) *Incinerators.* Incinerators are eligible.

(iv) *Insulated rooms.* Walk-in coolers and freezers, as well as the necessary chilling equipment, are an acceptable part of a food-processing or storage facility.

(v) *Prefabricated buildings.*

(A) Preengineered metal buildings are eligible. The gauge of roof and sidewall panels, as well as the durability of finish coatings, will affect the term of a PIDA mortgage.

(B) Prefabricated refrigerated buildings are eligible to the extent that they are a necessary part of the owner/tenant's operation.

(C) Prefabricated security control shelters are eligible, inasmuch as they merely replace structures of conventional construction.

(D) Storage silos, insofar as they replace normal building areas that would otherwise be devoted to storage use, are eligible. If they are portable or easily detachable, however, they are ineligible.

(12) *Conveying systems.*

(i) *Dumbwaiters.* Dumbwaiters are generally eligible.

(ii) *Elevators.* Elevators are eligible.

(iii) *Hoists and cranes.* Hoists and cranes are not eligible. The crane-ways are eligible inasmuch as they are part of the structural frame of the building.

(iv) *Lifts.* A man-lift would generally be eligible. Garage, platform and sidewalk-type lifts are not eligible.

(v) *Material handling systems.* Unusual justifications would have to be provided for material handling systems to be eligible. All components, with the exception of floor pits and trenches, are classed as equipment and, therefore, not eligible. Vacuum piping for the handling of bulk materials is not eligible.

(13) *Mechanical.*

(i) *Pumps and compressors.* Air compressors and associated piping are considered equipment and, as such, their cost excluded for PIDA loan purposes.

(ii) *Water supply and treatment.* Costs in connection with a domestic water system are eligible. Costs in connection with a strictly process water system are not eligible. A combination system is fully eligible if 25% or less is used for process purposes. If over 25% is devoted to process, the eligible cost will be determined by prorating the cost of the system in proportion to the domestic/process ratio.

(iii) *Wastewater disposal and treatment.*

(A) Sewage ejectors and lift stations, as they relate to a sanitary sewage disposal system, are eligible.

(B) Industrial waste disposal systems are not eligible. A combination system is fully eligible if 25% or less is used for industrial waste disposal. If over 25%, the eligible cost will be determined by prorating the cost in proportion to the sanitary/industrial waste ratio.

(iv) *Water coolers.* Freestanding or loose water coolers are considered equipment, and their cost will be ineligible. Built-in or permanent water coolers and drinking fountains are eligible.

(v) *Fire protection.* Items of fire protection are eligible, with the exception of portable hand-held fire extinguishers. These are equipment and, although required by the Department of Labor and Industry, are ineligible for PIDA loan purposes.

(vi) *Boilers.* Domestic heat boilers are eligible. Strictly process heat boilers are not eligible. The entire cost will be eligible if 25% or less of a combined system capacity is used for process purposes. If over 25% of the system's capacity is used for process purposes, the eligible cost will be determined by prorating the boiler's cost in proportion to the domestic/process ratio.

(vii) *Refrigeration.* See paragraph (11)(ii) and (iv). Any required piping, as well as compressors, condensers, chillers and evaporators necessary to utilize the required cold storage areas are eligible.

(viii) *Commercial ice making equipment.* Unless commercial ice making equipment is a byproduct of room refrigeration equipment, it will be considered equipment and is, therefore, not eligible.

(ix) *Packaged heating and cooling.*

(A) Room type, window or thru-the-wall air conditioners are eligible in offices, are not an acceptable means of cooling plant areas.

(B) Computer air conditioning package units, separate and apart from central building air conditioning systems, which are directly involved in the cooling of computers and computer components on a year-round basis, are ineligible for PIDA loan purposes.

(x) *Humidity control.* Humidity control is generally an acceptable addition to computer rooms, special purpose rooms and critical assembly areas.

(xi) *Special ductwork systems and equipment.* Sawdust collection systems, including ductwork, blower and collection hopper are considered industrial equipment and are not eligible.

(14) *Electrical.*

(i) *Conductors.* Direct and final electrical hookups to manufacturing machinery or process equipment should be part of the machinery installation, and are ineligible.

(ii) *Computer power distribution modules.* Computer power distribution modules which offer total flexibility in locating and relocating mainframe and peripheral computer components will be excluded for PIDA loan purposes.

(iii) *Electrical service.* Costs attributable to special power requirements for manufacturing or process equipment are ineligible.

(iv) *Uninterruptible power supply.* Uninterruptible power supply systems including diesel or gas driven generators, rectifiers, inverters, banks of storage batteries, and the like, which are utilized for any purpose other

than to power emergency lights, security systems and fire detection and protection systems, are ineligible for PIDA loan purposes.

(v) *Communications.* Communication devices and public address systems are not eligible. Closed-circuit television and other types of security systems are considered equipment and are ineligible.

§ 73.145. (Reserved).

§ 73.146. (Reserved).

§ 73.147. Checklist of requirements for a complete and comprehensive industrial appraisal.

(a) One independent appraisal by a member of the American Institute of Real Estate Appraisers or by a Pennsylvania-certified appraiser of an acquisition project is required. The appraisal should be of the "as is" property, and should not presume improvements thereto.

(b) Each appraisal must contain the customary certification, limiting conditions, appraiser's qualifications and an appraisal brief.

(c) The complexity of the appraisal depends on the size, value and complexity of the property.

§ 73.151. (Reserved).

§ 73.152. (Reserved).

§ 73.153. (Reserved).

## PENALTIES

§ 73.161. General.

The purpose of the interest rate penalty is to insure that PIDA's funds are being properly utilized for employment creation purposes. If a project is not creating jobs, PIDA's funds would be better directed to those businesses which would comply with the objectives of PIDA's program. Actual employment creation is one measure of the program's success. Failure to meet employment projections may be the direct result of factors beyond a business's control. There are varying degrees of success in reaching employment projection goals; some firms have exceeded their projections, others have failed to achieve even 50% of their projections. Therefore, the criteria in § 73.162 (relating to criteria) have been devised to provide a framework which will assist PIDA in evaluating each project on a consistent basis and imposing penalties at its discretion. Consistent application of these evaluation criteria will guide the imposition of penalties.

§ 73.162. Criteria.

The following four criteria will be evaluated to determine if a valid explanation exists for failure to meet employment projections. Individually, each would require a "yes or no" decision by PIDA. If PIDA determines that the company has a valid explanation for any one of the following reasons, no penalty will be imposed. The criteria are:

(1) *Natural disaster.* Although occurring infrequently, this is the most clear-cut of the evaluation criteria. A company will not be held responsible for attaining employment projections if a natural disaster such as a fire, flood or tornado strikes the business.

(2) *Industry trends.* By examining sales and revenue figures for the industry in question, explanations have been given for declining industries which have been unable to produce their employment projections. Several points should be considered:

(i) When examining industry trends, only the years following occupancy of the project will be considered.

(ii) Often, crucial data is unavailable. For example, data may be available for the 2 digit Standard Industry Code (SIC) codes only, rather than for the more specific 4 digit code.

(iii) Many companies produce or manufacture under several SIC codes. One industry classification may be doing well, while three other minor industries in which the company is classified may be in decline. An evaluation of the major SIC and industry trends must be made relevant to other activities undertaken by the company, and a determination reached that the company is primarily in one or more industries which are declining. An industry is considered in decline when that industry—measured by the appropriate three digit SIC code—experiences employment declines of 10% or more over any 12-month period.

(3) *Labor force.* Another explanation for failure to meet job projections has been the lack of an available labor pool. While in some cases justified, this explanation will be further investigated, taking the following into consideration:

(i) Unemployment rate of the county in which the project is located does not in itself signify the absence of available labor, particularly for low skilled jobs; however, if the company requires skilled workers, or those with scarce skills, this could be a sound explanation. The Pennsylvania Occupational Information Coordinating Committee's data base is consulted for labor supply in specific skills on a geographic basis.

(ii) A determination shall be made that the business is not experiencing a labor shortfall because of the wages it offers. In this instance, the burden of proof should be on the company to demonstrate that it pays employees the average wage based on the industry-wide average for a particular region. Staff research utilizing average wage data supplied by the Department of Labor and Industry will be used to determine the validity of this explanation.

(4) *Loss of major supplier/market.* In some instances, the failure of a loan recipient to meet employment projections is the result of a plant closing or major layoff of a major supplier or customer, which directly affects the ability of the industrial occupant to maintain its level of business activity. Therefore, if the loss of a customer or supplier represents 25% or more of the sales of the industrial occupant or 25% or more of its purchases of materials or finished products from a supplier, this criterion will be considered valid. In this case, as in paragraph (3), the burden lies with the industrial development agency or private company to demonstrate validating proof of this criterion.

**§ 73.163. Levying of penalties.**

If PIDA determines that the failure to meet employment projections is warranted by one of the explanatory criteria in § 73.162 (relating to criteria), a penalty will not be levied. If the failure is not warranted, the following penalty scale criteria will be applied to determine the level of penalty to be imposed:

<i>If Job Creation % is:</i>	<i>Penalty Interest Rate Increment</i>
100	0.00%
>95	0.33%
>90	0.67%
>85	1.00%

<i>If Job Creation % is:</i>	<i>Penalty Interest Rate Increment</i>
>80	1.33%
>75	1.67%
>70	2.00%
>65	2.33%
>60	2.67%
>55	3.00%
>50	3.33%
>45	3.67%
>40	4.00%
>35	4.33%
>30	4.67%
<30	5.00%

<i>If Job Retention % is:</i>	<i>Penalty Interest Rate Increment</i>
100	0.00%
>95	1.00%
>90	2.00%
<90	3.00%

(1) In addition to an interest rate penalty which may be imposed, PIDA may refuse to approve new loans for a company which fails to meet its employment projections if the failure is not warranted by one of the criteria listed in this section.

(2) Several options remain available to PIDA. For example, PIDA may choose to delay a penalty, conduct periodic reviews to remove an imposed penalty, or waive a penalty after it is imposed, depending on extenuating circumstances. The levying of interest rate penalties is at the sole discretion of PIDA.

**§ 73.164. (Reserved).**

**§ 73.165. (Reserved).**

**ACQUISITION OF PROJECT PROPERTY THROUGH STOCK PURCHASE**

**§ 73.191. Eligibility; acquisition through stock purchase.**

An application to finance the acquisition of a project property through a stock purchase may be eligible for financing by PIDA.

**§ 73.192. Financial considerations for stock purchase acquisition of assets.**

(a) If an application is submitted to PIDA to finance the acquisition of a project property through a stock purchase, the following procedures will be followed by PIDA:

(1) PIDA will require the submission of:

(i) Financial statements, in form satisfactory to PIDA, prepared by an independent certified public accounting firm for both the acquiring company and the company being purchased.

(ii) Appraisals or other documentation acceptable to PIDA showing the fair market value of the land, buildings, equipment, machinery and similar immovable assets as of the time of the application.

(2) PIDA will review the valuation made by the applicant and its independent certified public accounting firm of the assets and the projected allocation of the total price to be paid, based on the information submitted and the review of the information by PIDA staff persons and PIDA's independent financial consultant. Allocation should be made as follows:



(i) First, to inventories, to be valued at net realizable value.

(ii) Second, to accounts receivable, to be valued at net realizable value.

(iii) Third, to remaining assets. Utilizing fair market value, the balance of the purchase price shall be allocated among the remaining assets on a pro rata basis. PIDA will finance the acquisition of the project property based on the cost as determined by this allocation not to exceed the fair market value, or 80% of the appraised fair market value of the project property, whichever is greater.

(3) PIDA may engage the services of independent appraisers to determine the fair market value of land, buildings, equipment, machinery or other immovable assets.

(b) An application for financing of a stock purchase acquisition of assets should also meet other requirements imposed by PIDA and the act on applications for financing generally.

(c) Prior to closing a PIDA loan to finance the acquisition of a project through a stock purchase, the applicant should submit a certification from an independent certified public accounting firm as to the actual allocation made. A material change in the actual allocation from the projected allocation may result in PIDA withdrawing or reducing its loan offer.

(d) The substantial capital and substantial employment opportunities requirements established for certain projects will be applicable to stock purchase acquisitions of assets.

#### ENVIRONMENTAL SITE ASSESSMENT

##### § 73.201. Environmental site assessment.

(a) Prior to loan closing and unless specifically waived by PIDA, PIDA requires a completed Phase I environmental site assessment report relating to the site of the industrial development project performed by an independent qualified environmental professional.

(b) The contract between the applicant or industrial occupant and the environmental consultant may be reviewed by PIDA to insure that the contract is in form and substance satisfactory to PIDA. The contract should provide expressly that PIDA is an intended third-party beneficiary of the contract and expressly permit PIDA to rely on the report and findings of the environmental audit in determining whether to close its loan. The contract should provide for a limit of liability for the consultant against losses arising from the consultant's negligence or misfeasance of no less than 10% of the total eligible project cost or \$50,000, whichever is greater. The environmental consultant shall provide proof of professional liability insurance in amounts no less than the required limit of liability.

(c) The scope of work of the Phase I environmental assessment must be in accordance with the ASTM International E1527-00 Standard Practice for Environmental Site Assessments: Phase 1 Environmental Site Assessment Process.

(d) The applicant or industrial occupant may be required to demonstrate its use of best efforts to provide the consultant with information and materials needed to complete its work, including, without limitation, negotiation of contractual provisions requiring the seller of the particular project to furnish information to the applicant or industrial occupant and the consultant, to cooperate

with the proposed audit and to permit access to the project site for purposes of inspection.

(e) After reviewing the Phase I report, PIDA may determine that additional environmental testing or remediation of contamination, or both, is required prior to closing the loan.

#### JOB RETENTION PROJECTS

##### § 73.211. General.

Although PIDA has focused on encouraging new job creation, a need exists to provide financing to industrial development projects which retain quality jobs. If Pennsylvania's economy is to rival the economies of the world's industrialized countries, PIDA must react to the need to make existing Pennsylvania jobs more secure. Even when quality businesses are not creating jobs, their efforts to maintain and improve their competitive edge are essential to Pennsylvania's business vitality. In response to this need, PIDA will finance job retention projects.

##### § 73.212. (Reserved).

##### § 73.213. (Reserved).

##### § 73.214. (Reserved).

##### § 73.215. (Reserved).

#### MISCELLANEOUS

##### § 73.301. Removal.

One of the statutory loan application requirements is evidence that the establishment of a project will not cause the removal of a facility from one area of the Commonwealth to another. Because there is no statutory definition of the word "area," PIDA examines the facts attendant to each application to make a reasonable determination respecting a possible removal question. The use of county boundary lines is a convenient beginning point, but is not necessarily determinative in a given situation.

##### § 73.302. (Reserved).

##### § 73.303. Payment of interest only; commencement of amortization.

For construction projects, the PIDA commitment and loan documents generally provide for the payment of "interest only" during construction or through a date reasonably certain as approved by the PIDA, whichever occurs first. The PIDA's cash flow situation and disbursement restrictions will always affect the "interest only" and "commencement of amortization" provisions.

##### § 73.304. (Reserved).

##### § 73.305. (Reserved).

##### § 73.306. Closing requirements.

Documentation and other requirements for the closing of PIDA's loans must be in form and substance satisfactory to counsel for PIDA. PIDA's counsel may require documentation as may be reasonably necessary to insure that PIDA's loan is properly secured.

##### § 73.307. (Reserved).

##### § 73.308. Loan terms: industrial parks and multiple-tenancy building projects.

The terms of industrial park loans and multiple-tenancy building project loans are generally as follows:

(1) Industrial park loan terms are 15 years. No principal will be required to be paid during the first 5 years. Interest on the loan for the first 2 years will be deferred and paid in a lump sum at the end of the first 2 years.

Interest for the 3rd, 4th and 5th years will be paid monthly. Amortization of principal and interest will be paid on a regular monthly basis in the 6th—15th year. In addition, a portion of sales proceeds or rentals derived from a conveyance or lease of any portion of the industrial park shall be paid to PIDA and applied as a prepayment of PIDA's loan.

(2) Multiple-tenancy building project loan terms are 15 years. Interest only will be paid monthly for the first 2 years. Amortization of principal and interest will be paid on a regular monthly basis in the 3rd—15th year.

**§ 73.309. Commencement and refinancing.**

A project may only be financed by PIDA if the project is commenced after PIDA approves either assistance for the project or the commencement of the project. For this purpose, commencement includes taking title to project property, and actual commencement of construction. PIDA will not refinance assets owned by a beneficial owner or industrial occupant or an affiliate of a beneficial owner or industrial occupant before PIDA approves either assistance for the project or commencement of the project. Assets leased by a beneficial owner or industrial occupant or an affiliate of either may be eligible for financing if there is no equity build up in those assets for the benefit of the beneficial owner, industrial occupant or affiliate during the term of the lease. PIDA's loan may be used to replace interim or construction financing that was put in place after PIDA approved assistance for the project or the commencement of the project.

**§ 73.310. Investor-developers.**

PIDA will participate in projects in which the project will be purchased or conveyed by the industrial development corporation to an investor-developer. The guaranty of the industrial occupant will not be an automatic requirement in single-tenant and multi-occupancy projects where an investor-developer will be the responsible purchaser of the project, but would instead only be required on a case-by-case basis if the investor-developer is not sufficiently credit-worthy in its own right, or other circumstances (such as the relationship between the investor-developer and the industrial occupant) suggest that such a guaranty is appropriate.

**§ 73.311. Subleasing.**

(a) *Industrial development projects:*

(1) No portion of the project may be leased to unrelated third parties without the prior written consent of PIDA and the following apply:

(i) When subleasing to an eligible activity, such as manufacturing and industrial, the leased space may not exceed 49% of the total square footage.

(ii) When subleasing to an ineligible activity, such as commercial, the leased space may not exceed 15% of the total square footage.

(2) The total square footage to be subleased may not exceed 49%.

(3) If PIDA consents to the lease, the lessor may be required to pay or cause to be paid to PIDA as a prepayment on the loan a portion of the gross rentals.

(b) *Multiple-tenancy building projects and industrial park projects:*

(1) No portion of the project may be used for an ineligible activity, such as commercial, service or retail, without the prior written consent of PIDA. If the industrial development agency or investor-developer is leasing to a private firm that is providing support services, such as accounting, legal and general office services to most of the eligible tenants or occupants, a lease of up to 20% of the total square footage may be approved by PIDA. If the industrial development agency or investor-developer is leasing to a nonrelated ineligible activity, a lease of no more than 15% of the total square footage may be approved by PIDA.

(2) Leases for eligible activities including, without limitation, manufacturing, industrial, and the like shall continue to be at the discretion of the industrial development agency or investor-developer.

**§ 73.312. Related parties.**

PIDA will not generally participate in a project if persons having a significant ownership interest in the party selling an asset or assets, either individually or in the aggregate, will also have an ownership interest in the party buying the asset or assets. See also § 73.309 (relating to commencement and refinancing).

**§ 73.313. Loss sharing agreement.**

Following certification of an industrial development agency by the PIDA, the PDIA may enter into an agreement with the agency for the sharing of losses between the PDIA and the agency on industrial development projects. A loss sharing agreement entered into would:

(1) Be subject to the approval of the PIDA's counsel.

(2) Not apply to industrial park or multitenancy projects, unless an investor-developer is involved in the project.

(3) Not apply in the event of losses caused by or attributable to the agency.

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