

KANSAS RAILROAD REGULATIONS

As of September 2012

Article 39 – RAIL SERVICE ASSISTANCE PROGRAM

K.A.R. 36-39-1 Priorities for loan guarantee applications.

(a) Compliance with the following criteria shall increase the priority standing of an application for a loan guarantee:

- (1) the rail lines affected have less than 5,000,000 gross tons per mile annually;
- (2) the application demonstrates a higher benefit-to-cost ratio than the minimum ratio required by statute and regulation;
- (3) the application demonstrates that operations will be made more efficient by raising the minimum operating speed to one of the following F.R.A. classes:
 - (A) F.R.A. class one to F.R.A. class two; or
 - (B) F.R.A. class two to F.R.A. class three;
- (4) the application demonstrates a positive statewide or regional economic impact;
- (5) the application demonstrates that the project for which funding is sought will result in road or highway maintenance cost savings for state and local governmental entities;
- (6) the application describes the tangible assets of and the net worth of the applicant; and
- (7) the application demonstrates the commitment of capital, or the guarantee of a set amount of rail traffic by local shippers, governmental entities or other interested parties, to the applicant for the continued operations of rail service for which a loan guarantee is sought.

(Authorized by K.S.A. 1995 Supp. 75-5050 and 75-5046; implementing K.S.A. 75-5040; effective Aug. 30, 1993; amended July 11, 1997.)

K.A.R. 36-39-2 Definitions.

As used in this article, the following terms shall have the meanings specified in this regulation.

- (a) "Applicant" means any qualified entity that submits an application to the secretary for a loan guarantee, a loan, or a grant.
- (b) "Board" means the surface transportation board.
- (c) "Equipment" means any type of new or rebuilt standard gauge locomotive or general service railroad freight car. General service railroad freight cars may include a boxcar, gondola, open-top or covered hopper car, and flatcar.
- (d) "Facilities" means the following:
 - (1) The track, roadbed, and related structures, including rail, ties, ballast, other track materials, grading, tunnels, bridges, trestles, culverts, repair shops, connecting tracks, and public improvements used or usable for rail service operations;
 - (2) signals and interlockers; and

(3) terminal or yard facilities, including trailer-on-flatcar and container-on-flatcar terminals, railroad terminal and switching facilities, and service to express companies and railroads and their shippers.

(e) "F.R.A." means federal railroad administration of the United States department of transportation.

(f) "Governmental unit" means any town, city, district, county, commission, agency, authority, board, or other instrumentality of the state or of any of its political subdivisions, including any combination thereof, or a port authority established in accordance with Kansas law.

(g) "Lender" means the obligee, holder, or creditor under an obligation, except that when a bank or trust company is acting as agent or trustee for such an obligee, holder, or creditor, pursuant to an agreement to which the obligor is a part, the term shall refer to the bank or trust company.

(h) "Loan guarantee" means a guarantee by the state of Kansas to pay off the remaining principal of a specific loan under the terms of K.A.R. 36-39-3.

(i) "Obligation" means a loan, note, conditional sale agreement, security agreement, or other obligation issued or granted to finance or refinance facilities or equipment acquisition, construction, rehabilitation, or improvement.

(j) "Obligor" means the debtor under an obligation, including the original debtor and any successor or assignee of the debtor who is approved by the secretary.

(k) "Qualified entity" means any of the following:

(1) Any Class II railroad or Class III railroad, as defined in 49 C.F.R. 1201.1-1(a), holding a certificate of public convenience from the surface transportation board. 49 C.F.R. 1201.1-1(a), as in effect on August 5, 2010, is hereby adopted by reference;

(2) any Class I railroad, as defined in 49 C.F.R. 1201.1-1(a), which is adopted by reference in paragraph (k)(1), that holds a certificate of public convenience from the surface transportation board and is engaged in the construction and maintenance of railroads, facilities and equipment in Kansas in conjunction with the development of an intermodal facility, as defined in K.S.A. 75-5082 and amendments thereto; or

(3) any governmental unit or Kansas shipper in coordination with a railroad that seeks to facilitate the financing, acquisition, or rehabilitation of railroads, facilities, equipment, and rolling stock in the state of Kansas.

(l) "Secretary" means the secretary of the Kansas department of transportation or the secretary's designee.

(Authorized by K.S.A. 2009 Supp. 75-5046 and K.S.A. 75-5050; implementing K.S.A. 2009 Supp. 75-5046, K.S.A. 75-5047, K.S.A. 2009 Supp. 75-5048, as amended by L. 2010, ch. 156, sec. 30, and K.S.A. 2009 Supp. 75-5049; effective Aug. 30, 1993; amended July 11, 1997; amended, T-36-6-29-10, June 29, 2010; amended Oct. 15, 2010.)

K.A.R. 36-39-3 Requirements and conditions for application for a loan guarantee.

(a) Each qualified entity and its lender shall file with the secretary the original and 10 copies of each application.

(b) The loan guarantee program's aggregate annual obligations shall not exceed \$5,000,000. If, at the time of application, loan guarantees have previously been approved by the legislature or state finance council during the same fiscal year, the amount requested shall not exceed the difference of \$5,000,000 and the amounts previously approved during that fiscal year. The sum of the amounts sought in each fiscal year, including any outstanding loan guarantees previously approved pursuant to K.S.A. 1995 Supp. 75-5046, shall not exceed \$20,000,000.

(c) The applicant and lender shall acknowledge in the application that obligations of the state of Kansas resulting from the approval of an application shall be limited to payment of the remaining principal of the specific loan after lenders have exhausted all other available remedies against the obligor.

(d) Each application shall include the following:

(1) the full and correct name, principal business address, telephone number and facsimile number of the applicant;

(2) the date of the applicant's incorporation, or organization if not a corporation, and the name of the government, state, or territory under the laws of which it was incorporated or organized. If the applicant is a partnership, association or other form of organization other than a corporation, a full description of the organization shall be furnished;

(3) the name, title, and address of the person to whom correspondence regarding the application should be addressed;

(4) a certified copy of proposed or executed loan agreements, including related agreements or other documents, and detailed descriptions of the loan guarantee, including:

(A) the total amount of the loan to be guaranteed;

(B) a description of all facilities included in or directly affected by the proposed project, the physical condition of such facilities and a description of the project;

(C) each part or sub-part into which the project may reasonably be divided and the priority and schedule of expenditures for each part or subpart;

(D) the estimated timing of the expenditure of the proceeds of the loan;

(E) a statement of whether the project involves another railroad or other participant, through joint execution, coordination, or otherwise. The applicant shall include a description of the relative participation of the applicant and the other railroad or participant, including a statement of the financing arrangements of each participant, the portion of the work to be performed by each participant and the contemplated level of usage of the facility by each participant when the work is completed, along with a statement by a responsible officer or official of the other railroad or participant that the information provided reflects their agreement on these matters;

(F) the effective date of the loan;

(G) a schedule of repayment of the principal and interest;

(H) a description of the security to be offered the secretary in connection with any loan guarantee, including a description of the priority of this loan in relation to other liens or security interests on the property that is designated

- as security, the applicant's opinion of the value of this security, and the basis for the opinion; and
- (I) a description of the lender's security and remedies against the obligor or any other parties before the state of Kansas is obligated to pay any defaulted loan; and
 - (J)
 - (i) if the loan for which a guarantee is sought is outstanding, the effective interest rate of the loan for which a loan guarantee is sought; or
 - (ii) if the applicant has discussed with a potential lender the terms of a loan guarantee to be issued, the proposed effective rate of interest.
- (5) a statement, in summary form, showing financial obligations to or claims against the state of Kansas or obligations for which the state of Kansas is guarantor, if any. Such statements shall be made by the applicant, any affiliated corporate entity of the applicant or the applicant's parent, and shall describe the following:
- (A) the status of any and all claims under litigation; and
 - (B) any other debts or guarantees existing between the applicant and the state of Kansas, including the name of the department or agency involved in such loans, claims or other debts;
- (6) an analysis which includes the following:
- (A) a statement that the financing is justified by present and future demand for rail services, that the financing will meet existing needs for such services and that the project will provide shippers with improved service. The applicant shall submit supporting evidence with the statement, including copies of all market analyses and studies which have been performed to determine present and future demand for rail services;
 - (B) a description of the impact of the financing upon the projected traffic to be originated, terminated, or carried by the obligor for at least the five years immediately following completion of the project;
 - (C) a five-year *pro forma* statement of cash flow attributable to the project; and
 - (D) a description of any other benefit which would accrue to the applicant from the proceeds of the obligation;
- (7) a business plan, with supporting evidence, showing:
- (A) that the applicant is financially capable of acquiring, rehabilitating, or improving facilities in an efficient and economical manner;
 - (B) that the ratio of benefits-to-costs for any project funded by such guaranteed loan will be greater than one. The benefit-to-cost methodology to be used for this determination shall be the "Benefit-cost methodology for the Local Rail Freight Assistance Program" approved by the F.R.A. in July, 1990;
 - (C) that the applicant will submit with the application audited financial statements, prepared in accordance with generally accepted accounting principles, for the past two annual accounting periods;
 - (D) any car supply agreements and the estimated rail traffic;

- (E) a balance sheet, income statement, statement of changes in financial position or statement of cash flows, notes to financial statements, operating plans and appraisals of the assets to be acquired;
 - (F) that the applicant has been turned down by a lending institution and that adequate funding for the proposed project is not otherwise available on terms that would make the proposed project financially feasible, in the absence of a state loan guarantee; and
 - (G) a written opinion from bond counsel that the guarantee of such loan by the secretary would not adversely affect the rating of bonds issued pursuant to K.S.A. 1995 Supp. 68-2314 *et seq.*, and amendments thereto;
- (8) a statement, with supporting evidence, that the financing will improve the ability of the applicant to transport freight;
- (9) a statement describing the maintenance program for the applicant's entire rail system and the planned maintenance program for the facilities financed by the proceeds of the obligation;
- (10) from each existing lender or proposed prospective lender a statement which includes the following:
- (A) the lender's full and correct name, principal business address, telephone number and facsimile number;
 - (B) references to applicable provisions of law, the lender's charter and other governing instruments that confer authority on the lender to accept the obligation;
 - (C) a copy of the loan agreement between the lender and the applicant;
 - (D) a brief statement of the circumstances and negotiations leading to the agreement by the lender to accept the proposed obligation;
 - (E) a copy of the lender's determination that the loan would not be economically feasible without the proposed loan guarantee;
 - (F) a statement of the nature and extent of any affiliation or business relationship between the existing or prospective lender and any of its directors, partners or principal executive officers, with the applicant and any of its directors, partners, or principal executive officers or with any person whose name is required to be furnished under this article; and
 - (G) a full and complete statement of all sums to be given to the lender in connection with the proposed obligation, including:
 - (i) the name and address of each person to whom any payment has been made or will be made and nature of any affiliation, association or prior business relationship between any person named in this paragraph and the lender or any of its directors, partners, or officers;
 - (ii) the amount of the cash payment or the nature and value of other consideration; and
 - (iii) any condition upon the obligation of the obligee to make any payment;
- (11) a hazardous waste assessment report on the rail lines for which a loan guarantee is requested;
- (12) a certificate of title to prove the applicant has the legal ability to allow its property to be encumbered;

(13) proof of liability insurance in effect in the amount of \$5,000,000 per occurrence;

(14) an opinion from applicant's counsel that applicant is legally authorized to make this application and has no outstanding litigation or impediment that would impair its ability to perform the obligation;

(15) an acknowledgement by the applicant that the secretary may conduct a pre-audit of applicant's cant's accounting system to determine if the system is adequate to isolate and accumulate project costs; and

(16) any additional information that the applicant deems appropriate to convey a full and complete understanding of the project and its impact or to otherwise assist the secretary in making a determination.

(Authorized by K.S.A. 1995 Supp. 75-5046; implementing K.S.A. 1995 Supp. 75-5046 and 75-5047; effective Aug. 30, 1993; amended July 11, 1997.)

K.A.R. 36-39-4 Forms.

Each applicant for a loan guarantee shall file an application on the forms provided by the Kansas department of transportation labeled and assembled using the following format:

(a) Application summary;

(b) exhibit "A," description of applicant;

(c) exhibit "B," description of project;

(d) exhibit "C," description of the ratio of benefit to cost;

(e) exhibit "D," pro forma cash flow statement;

(f) exhibit "E," rehabilitation, repair, and construction cost estimate;

(g) exhibit "F," historic and current financial statements; and

(h) exhibit "G," identification of officers and directors.

(Authorized by and implementing K.S.A. 2009 Supp. 75-5046; effective Aug. 30, 1993; amended, T-36-6-29-10, June 29, 2010; amended Oct. 15, 2010.)

K.A.R. 36-39-5 Pre-application conference.

A pre-application conference shall be held between the prospective applicant and department of transportation staff before an application for a loan guarantee is filed. The proposed project shall be reviewed and guidance given to the prospective applicant on how to proceed. Applications shall not be filed sooner than 30 days after the pre-application conference.

(Authorized by and implementing K.S.A. 1991 Supp. 75-5046; effective Aug. 30, 1993.)

K.A.R. 36-39-6 Rail service financial assistance; loans and grants.

(a) Compliance with the criteria in K.A.R. 36-39-1(a) shall increase the priority standing of an application for a loan or grant to be used to facilitate the financing, acquisition, or rehabilitation of railroads, facilities, equipment, and rolling stock in the state of Kansas.

(b) Monies to be loaned or granted shall originate from the rail service improvement fund.

(c) All funds loaned shall be repaid to the department of transportation within 10 years or less of the notice of acceptance of the project. The repayment shall include

an interest rate established in the loan agreement between the secretary and applicant.

(d) Each application shall be submitted in the form prescribed by the Kansas department of transportation.

(Authorized by K.S.A. 75-5050; implementing K.S.A. 2009 Supp. 75-5048, as amended by L. 2010, ch. 156, sec. 30, and K.S.A. 2009 Supp. 75-5049; effective Aug. 30, 1993; amended July 11, 1997; amended, T-36-6-29-10, June 29, 2010; amended Oct. 15, 2010.)

Article 42 — KANSAS INTERMODAL TRANSPORTATION REVOLVING FUND

K.A.R. 36-42-1 Definitions.

For the purposes of this article, the following words and phrases shall be defined as follows:

(a) “Act” means K.S.A. 75-5081 et seq., and amendments thereto.

(b) “Applicant” means any governmental unit or private enterprise filing an application with the secretary for financial assistance under the act.

(c) “Approved project” means the scope of work for an intermodal transportation project for which financial assistance is provided.

(d) “Debt service” means the principal, interest, and any premium required to be paid pursuant to a financial assistance agreement.

(e) “Final acceptance” means the point at which the contractor has completed all work on an approved project and the licensed professional engineer responsible for the inspection informs the department in writing that all work specified in all of the approved project contracts has been completed in substantial conformity with the plans, specifications, and any authorized revisions.

(f) “Financial assistance” means any credit enhancement, loan, or refunding or acquisition of bonds previously issued by the applicant, as approved by the secretary pursuant to the act.

(g) “Financial assistance agreement” means a contract between an applicant and the secretary confirming the purpose of the financial assistance, the amount and terms of the financial assistance, the schedule of financial assistance payments and repayments, if any, and any other agreed-upon conditions applicable to that approved project.

(h) “Inspector” means an individual who meets the following requirements:

(1)

(A) Is a licensed professional engineer or is supervised by a licensed professional engineer; and

(B) is provided by the applicant to observe the work performed and test the materials used in an approved project according to its plans and contract documents; and

(2) has successfully completed the department’s certified inspector training appropriate for the work being inspected.

(i) “Intermodal transportation project” means the acquisition, construction, improvement, repair, rehabilitation, maintenance, or extension of any bridge, culvert, highway, road, street, underpass, railroad crossing, or

combination of these, located within an intermodal transportation area for which an application has been filed for financial assistance from the fund.

(j) "K DFA" means the Kansas development finance authority established by K.S.A. 74-8903 and amendments thereto.

(k) "Licensed professional engineer" means a person licensed as a professional engineer by the state board of technical professions pursuant to K.S.A. 74-7001 et seq. and amendments thereto.

(l) "Maintenance" means a type of intermodal transportation project that extends the design life of a bridge, culvert, highway, road, street, underpass, railroad crossing, or any combination of these, but does not, as the major purpose, enhance the structural integrity.

(m) "Opened to unrestricted travel" means that all travel lanes are open to vehicle traffic and no construction speed restrictions remain in place.

(Authorized by and implementing K.S.A. 2009 Supp. 75-5083; effective April 30, 2010.)

K.A.R. 36-42-2 Application and supporting documents.

(a) An application for financial assistance from the fund may be submitted to the secretary at any time.

(b) Each applicant for financial assistance for an intermodal transportation project shall submit, for the secretary's review and consideration for approval, the following application documents:

(1) a completed financial assistance application on a form furnished by the secretary;

(2) a detailed statement that establishes the need for the intermodal transportation project;

(3) a detailed description of the intermodal facility that is used to define the intermodal transportation area where the intermodal transportation project for which the financial assistance is requested would be located;

(4) a detailed description of the cost of the intermodal facility that is used to define the intermodal transportation area where the intermodal transportation project for which the financial assistance is requested would be located;

(5) a detailed description of the intermodal transportation area and documentation that provides sufficient detail to enable the secretary to certify whether the intermodal transportation area is impacted by the intermodal facility used to define the intermodal transportation area;

(6) documentation that provides sufficient detail regarding the intermodal transportation project to enable the secretary to determine its estimated costs, the purpose for the financial assistance, and the time period in which the financial assistance is to be used;

(7) an overall completion schedule for the intermodal transportation project, submitted in a form prescribed by the secretary; and

(8) any information as may be required and deemed relevant by the secretary that establishes to the secretary's satisfaction that the applicant has the financial capability to satisfy its obligations under the financial assistance agreement and addresses at least the following areas:

(A) Projected economic and population growth, including assumptions made to develop the projections within the applicant's jurisdictional boundaries, including a separate projection that indicates the incremental projected economic and population growth as a result of the intermodal transportation project;

(B) existing and forecasted debt obligations and debt service schedules of the governmental unit or private enterprise, or both, submitting the application, during the term of the financial assistance agreement; and

(C) projected total revenues, including identification of revenue sources and all assumptions made to develop the projection of the governmental unit or private enterprise, or both, submitting the application, during the term of the financial assistance agreement, including a separate projection that indicates the incremental projected revenues as a result of the intermodal transportation project.

(Authorized by K.S.A. 2009 Supp. 75-5083; implementing K.S.A. 2009 Supp. 75-5086; effective April 30, 2010.)

K.A.R. 36-42-3 Intermodal transportation project; eligibility.

(a) For an intermodal transportation project to be eligible for financial assistance, the following requirements shall be met:

(1) The qualified borrower shall provide the secretary with the applicant's written assurance of the following:

(A) The qualified borrower shall use a licensed professional engineer to design the intermodal transportation project, if approved, in accordance with the then-existing generally recognized and prevailing engineering standards and with the federal and state laws and regulations applicable at the time of design, which shall include any subsequent design revisions for the approved project.

(B) The intermodal transportation project, if approved, shall be inspected by an inspector, who shall provide reasonable assurance that the approved project is constructed in substantial conformity with its plans, specifications, and any authorized revisions.

(C) The construction of the intermodal transportation project, if approved, shall conform to its plans, specifications, and any authorized revisions.

(D) The plans and specifications for the intermodal transportation project, if approved, shall not be revised or deviated from without the approval of the approved project's designer.

(2) The intermodal transportation project shall be consistent with the existing or planned state highway system, or both, pursuant to K.S.A. 68-406 and amendments thereto.

(b) No portion of an intermodal transportation project's cost shall be eligible for financial assistance under the act if a federal reimbursement has been received for the same portion of the cost.

(Authorized by and implementing K.S.A. 2009 Supp. 75-5083; effective April 30, 2010.)

K.A.R. 36-42-4 Fund use.

The fund shall be used to finance or refinance approved projects, with priority given to the following types of financial assistance:

- (a) Loans for all or part of an approved project;
- (b) guarantees, security, or another type of credit enhancement, or any combination of these, as may be approved by the secretary for bonds to be issued by KDFA or an applicant; and
- (c) the refunding or acquisition of bonds issued by an applicant.

(Authorized by K.S.A. 2009 Supp. 75-5083; implementing K.S.A. 2009 Supp. 75-5084; effective April 30, 2010.)

K.A.R. 36-42-5 Financial assistance agreement; requirements.

Each financial assistance agreement entered into pursuant to the act shall meet the following requirements:

- (a) The financial assistance shall not exceed the total cost of the approved project.
- (b) The term of any financial assistance shall not exceed the shortest of the following periods:
 - (1) The economic life of the approved project;
 - (2) the term of any bonds issued to finance the approved project; and
 - (3) 30 years.
- (c) If any debt service is required, the debt service shall be guaranteed by the applicant in a manner consistent with the applicant's approved application.
- (d) The financial assistance agreement shall contain the following sentences:
 - (1) "All work performed and all materials furnished for the approved project shall be in reasonably close conformity with the plans, specifications, and revisions, which have been approved by the designer of the approved project."
 - (2) "Technical advice or assistance, or both, provided by the secretary to an applicant pursuant to section six of the act, and amendments thereto, shall not be construed as an undertaking by the secretary of the duties of the applicant or the approved project's owner, or both, or the duties of any consultant, licensed professional engineer, or inspector hired by the applicant or the approved project's owner."

(Authorized by K.S.A. 2009 Supp. 75-5083; implementing K.S.A. 2009 Supp. 75-5086; effective April 30, 2010.)

K.A.R. 36-42-6 Interest rate and servicing fees.

Financial assistance that is required to be repaid under the terms of the financial assistance agreement shall bear interest in accordance with the applicable financial assistance agreement, at a rate set by the secretary. The financial assistance agreement may also establish fees for servicing the financial assistance.

(Authorized by K.S.A. 2009 Supp. 75-5083; implementing K.S.A. 2009 Supp. 75-5084 and 75-5086; effective April 30, 2010.)

K.A.R. 36-42-7 Repayment of financial assistance.

(a) All debt service shall be paid in accordance with the terms and conditions of the financial assistance agreement.

(b) If any financial assistance is prepaid in whole or in part, the prepayment shall be made in accordance with the terms and conditions of the financial assistance agreement.

(c) If a recipient of monies from the fund subsequently receives federal reimbursement for the same costs of an approved project for which financial assistance was received, the recipient shall repay to the secretary those fund monies in an amount equal to the federal reimbursement received, within 30 days after receipt of the federal reimbursement.

(Authorized by K.S.A. 2009 Supp. 75-5083; implementing K.S.A. 2009 Supp. 75-5086; effective April 30, 2010.)

K.A.R. 36-42-8 Approved project statements.

(a) Each financial assistance recipient shall provide the secretary, when the approved project is opened to unrestricted travel, with the written statement of the recipient's licensed professional engineer unqualifiedly indicating that, at the time of design, the plans, specifications, and any authorized revisions for the approved project followed the then-existing generally recognized and prevailing engineering standards and were in compliance with the applicable federal and state laws and regulations.

(b) Each financial assistance recipient shall provide the secretary with the statement of the recipient's inspector indicating that the approved project was constructed in reasonable conformity with its plans, specifications, and any authorized revisions, at each of the following times:

(1) At the time when the approved project is opened to unrestricted travel; and

(2) at the time of the final acceptance.

(Authorized by and implementing K.S.A. 2009 Supp. 75-5083; effective April 30, 2010.)

K.A.R. 36-42-9 Approved project costs; accounting requirement.

Each financial assistance recipient shall maintain an accounting system that segregates and accumulates all project costs for the approved project. Any project costs may be reviewed or audited, or both, by the secretary at any time during the construction of the approved project and after completion of the approved project.

(Authorized by K.S.A. 2009 Supp. 75-5083; implementing K.S.A. 2009 Supp. 75-5086; effective April 30, 2010.)