

State of Kansas

Department of Transportation

Permanent Administrative
RegulationsArticle 40.—TRANSPORTATION
REVOLVING FUND

36-40-1. **Definitions.** For the purposes of the regulations in this article, the following words and phrases shall be defined as follows: (a) “Act” means K.S.A. 75-5063 *et seq.*, and amendments thereto.

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

(c) “Approved project” means the scope of work for a 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) “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.

(f) “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.

(g) “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 the construction contract has been completed in substantial conformity with the plans, specifications, and any authorized revisions.

(h) “K DFA” means the Kansas development finance authority, which is a public body, politic and corporate, and an independent instrumentality of the state established at K.S.A. 74-8903 and amendments thereto.

(i) “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.

(j) “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.

(k) “Maintenance” means a type of transportation project that extends the design life of a bridge, culvert, highway, road, or street, or combination of these, but

does not, as the major purpose, enhance the structural integrity.

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

(m) “Transportation project” means the acquisition, construction, improvement, repair, rehabilitation, maintenance, or extension of any bridge, culvert, highway, road, or street, or combination of these, for which an application has been filed for financial assistance from the fund. (Authorized by and implementing K.S.A. 2002 Supp. 75-5065; effective Oct. 31, 2003.)

36-40-2. **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 a 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 transportation project;

(3) documentation that provides sufficient detail regarding the 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;

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

(5) information 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 within the applicant’s jurisdictional boundaries;

(B) existing and forecasted debt obligations of the governmental unit making the application, during the term of the financial assistance agreement; and

(C) anticipated total revenues of the governmental unit making the application, during the term of the financial assistance agreement. (Authorized by K.S.A. 2002 Supp. 75-5065; implementing K.S.A. 2002 Supp. 75-5068; effective Oct. 31, 2003.)

36-40-3. **Transportation project eligibility.** (a) For a transportation project to be eligible for financial assistance, the following requirements shall be met:

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

(A) The applicant will use a licensed professional engineer to design the 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 transportation project, if approved, will be inspected by an inspector, who shall provide reasonable assurance that the approved project is constructed in sub-

stantial conformity with its plans, specifications, and any authorized revisions.

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

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

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

(b) No portion of a 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. 2002 Supp. 75-5065; effective Oct. 31, 2003.)

36-40-4. 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, for bonds to be issued by KDFA or an applicant for financial assistance; and

(c) refunding or acquisition of bonds issued by an applicant. (Authorized by K.S.A. 2002 Supp. 75-5065; implementing K.S.A. 2002 Supp. 75-5066; effective Oct. 31, 2003.)

36-40-5. 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 design life of the approved project or 20 years, whichever is less.

(c) If any debt service is required, it 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 K.S.A. 75-5068(c), 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. 2002 Supp. 75-5065; implementing K.S.A. 2002 Supp. 75-5068; effective Oct. 31, 2003.)

36-40-6. Interest rate and servicing fees. If any of the financial assistance is required to be repaid under the terms of the financial assistance agreement, that portion

of the financial assistance shall bear interest in accordance with the applicable financial assistance agreement, at a rate set by the secretary. This rate shall be consistent with the provisions of K.S.A. 10-1009, and amendments thereto. The financial assistance agreement may also establish fees for servicing the financial assistance. (Authorized by K.S.A. 2002 Supp. 75-5065; implementing K.S.A. 2002 Supp. 75-5068; effective Oct. 31, 2003.)

36-40-7. Repayment of financial assistance. (a) 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. 2002 Supp. 75-5065; implementing K.S.A. 2002 Supp. 75-5068; effective Oct. 31, 2003.)

36-40-8. 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 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. 2002 Supp. 75-5065; effective Oct. 31, 2003.)

36-40-9. Approved project costs; accounting requirement. Each financial assistance recipient shall maintain an accounting system that segregates and accumulates project costs for the approved project. 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. 2002 Supp. 75-5065; implementing K.S.A. 2002 Supp. 75-5065 and 75-5068; effective Oct. 31, 2003.)

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Secretary of Transportation

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