

SUBCHAPTER G. OFF-SYSTEM RAIL GRADE SEPARATION STATE FUND  
PROGRAM

§7.120 Purpose. This subchapter prescribes the policies and procedures for the implementation and administration of the Off-System Rail Grade Separation State Fund Program authorized by Transportation Code, §471.010.

§7.121 Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commission--Texas Transportation Commission.

(2) Department--Texas Department of Transportation.

(3) Director--Director of the department's Railroad Division.

(4) Executive director--The executive director of the department or the executive director's designee.

(5) Participating railroad--The railroad company that owns or otherwise has control of the railroad at the location of the project.

(6) Program--The Off-System Rail Grade Separation State Fund Program.

(7) Project--A project that is eligible for funding under this subchapter.

(8) Project sponsor--An entity described by §7.122(b) of this subchapter (relating to Program Eligibility).

1 §7.122. Program Eligibility.

2 (a) To be eligible for funding under the program, a project  
3 must:

4 (1) be for the construction of a grade separation  
5 structure that will either eliminate one or more adjacent at-  
6 grade rail-highway crossings or provide a grade-separated  
7 pedestrian-rail crossing;

8 (2) be located off the state highway system;

9 (3) increase public safety, enhance economic  
10 development, or reduce traffic; and

11 (4) constitute a logical, self-contained unit of work  
12 that can be constructed as an independent project whether it is  
13 proposed as an independent project or as a part of a larger  
14 transportation project.

15 (b) To be eligible to request funding under the program,  
16 the project sponsor must be the political subdivision of the  
17 state that has jurisdiction over the project's location,  
18 authority to undertake the project, and authority to enter into  
19 the agreement required under §7.132 of this subchapter (relating  
20 to Project Implementation).

21 (c) The crossing may involve either freight or passenger  
22 rail.

23  
24 §7.123. Funding and Eligible Costs.

25 (a) Funding under the program is subject to the Texas Grant  
26 Management Standards developed by the comptroller under  
27 Government Code, Chapter 783.

1       (b) Planning, detailed design activities, environmental,  
2 right of way acquisition, and utility adjustments are eligible  
3 costs.

4       (c) A cost is not eligible for funding under the program if  
5 it:

6               (1) was incurred before the department authorizes work  
7 to proceed under the agreement required under §7.132 of this  
8 subchapter (relating to Project Implementation); or

9               (2) is related to rail capacity improvements or the  
10 addition of mass transit infrastructure.

11       (d) A project may include elements that are not eligible  
12 for funding under the program. Funds used to pay for those  
13 elements do not qualify as matching funds under §7.124 of this  
14 subchapter (relating to Non-State Funding Match).

15  
16 §7.124. Non-State Funding Match.

17       (a) In accordance with Transportation Code, §471.010(b), at  
18 least 10% of the total project costs must be provided by a  
19 source other than the state as matching funds, except that the  
20 commission may adjust the minimum local matching funds  
21 requirement for a project located in an economically  
22 disadvantaged county in accordance with Transportation Code,  
23 §222.053.

24       (b) Except as provided by this section, the funding match  
25 required by this section must be cash provided by or through the  
26 project sponsor. The value of donated services will not be

1 accepted as a funding match but may be used to reduce the  
2 overall cost of the project.

3 (c) The project sponsor must provide the funding match  
4 required by this section before the beginning of project  
5 activities for each phase of work.

6 (d) The department's direct costs for the oversight of  
7 preliminary engineering and construction of the project are  
8 included as a part of the total project costs under subsection  
9 (a) of this section.

10 (e) The participating railroad must share in the project  
11 cost in accordance with 23 C.F.R. §646.210. This cost share may  
12 count as part of the overall non-state funding match  
13 requirement.

14  
15 §7.125. Call for Project Nominations.

16 (a) Projects will be selected for available program funding  
17 through a competitive process.

18 (b) The department will issue a notice of a program call for  
19 project nominations that is published in the Texas Register.

20 (c) The notice will include information regarding the  
21 required content of the nomination package, the procedures  
22 applicable to the program call, and the specific evaluation  
23 criteria to be used during the project selection process.

24  
25 §7.126. Nomination Package.

1       (a) To nominate one or more projects during a program call,  
2 the project sponsor must submit each nomination in the form  
3 prescribed by the department.

4       (b) The nomination package must present persuasive evidence  
5 of support for the proposed project from the affected communities  
6 and, if applicable, include a commitment to provide the non-state  
7 funding match required by §7.124 of this subchapter (relating to  
8 Non-State Funding Match) or an explanation of the project sponsor's  
9 eligibility for a funding match adjustment under Transportation  
10 Code, §222.053.

11       (c) A complete nomination package must be received by the  
12 department not later than the specified deadline published in the  
13 Texas Register. A nomination package that fails to include any of  
14 the items specified in this section or the respective program call  
15 is considered to be incomplete and will not be considered for  
16 funding.

17       (d) The department may request supplemental information as  
18 needed to conduct project screening and evaluation.

19  
20 §7.127. Project Evaluation Committee. The executive director will  
21 appoint a project evaluation committee consisting of department  
22 staff to make recommendations for the selection of projects funded  
23 under the program.

24  
25 §7.128. Nomination Screening.

26       (a) The project evaluation committee will screen each project  
27 nomination to determine whether the project is eligible for funding

1 under the program and applicable federal and state law and whether  
2 it meets technical standards established by applicable law and  
3 accepted professional practice.

4 (b) The department will notify the project sponsor if a  
5 project nomination is determined to be ineligible and the  
6 reasons for the determination.

7 (c) A request for reconsideration of a finding of  
8 ineligibility may be initiated only by email or letter from the  
9 project sponsor to the director setting forth reasons in support  
10 of a finding of eligibility. The email or letter requesting  
11 reconsideration must be received by the director not later than  
12 the 15th day after the day that the project sponsor received the  
13 department's notification, as established by the return receipt.

14 (d) The determination of the director in response to the  
15 request for reconsideration is final.

16  
17 §7.129. Project Evaluation. The project evaluation committee  
18 will evaluate the public safety, economic development  
19 enhancement, traffic reduction, and any other benefit of each  
20 nominated project that is determined to be eligible under  
21 §7.128(a) of this subchapter (relating to Nomination Screening)  
22 based on the specific selection criteria set forth in the  
23 program call. Evaluation criteria will be provided for each  
24 program call.

25  
26 §7.130. Project Selection and Approval.

1       (a) The project evaluation committee will provide project  
2 selection recommendations and supporting documentation to the  
3 director.

4       (b) The project evaluation committee will recommend that at  
5 least 10% of the total amount available in a program call go to  
6 eligible projects that are located in rural areas, unless the  
7 project evaluation committee determines that there are not  
8 sufficient eligible project applications to reach 10% of that  
9 amount.

10       (c) The director will review the recommendations and  
11 supporting documentation submitted by the committee and will  
12 select projects for funding under the program based on  
13 recommendations from the project evaluation committee, consistent  
14 with the statutory requirements and the evaluation criteria.

15       (d) The director will recommend projects selected under  
16 subsection (c) of this section to the commission for approval.

17       (e) The department will notify the project sponsor whether  
18 the project was selected and approved for funding.

19  
20 §7.131. Inclusion of Selected Projects in Planning Documents.  
21 If a project selected is to be implemented in a metropolitan  
22 area, the department will request that the Metropolitan Planning  
23 Organization for that area immediately begin the process  
24 required to include the selected project in its Transportation  
25 Improvement Program.

26  
27 §7.132. Project Implementation.

1       (a) In undertaking a project, the project sponsor and the  
2 participating railroad must comply with all applicable laws and  
3 regulations, including all applicable state procedures and  
4 requirements.

5       (b) All projects shall be developed in compliance with the  
6 department's current standards and specifications.

7       (c) All project sponsors must enter into with the  
8 department an agreement that:

9           (1) includes a commitment from the project sponsor for  
10 the required non-state funding, if applicable;

11           (2) describes the total scope and course of project  
12 activities;

13           (3) states the maximum amount of the funding provided  
14 under this subchapter;

15           (4) designates the department to manage the project on  
16 behalf of the project sponsor in accordance with Transportation  
17 Code, §471.010(d); and

18           (5) outlines the responsibilities and duties of the  
19 parties to the agreement.

20       (d) Before the department will fund any construction  
21 activities, the project sponsor must enter into the agreement  
22 required by subsection (c) of this section and demonstrate that  
23 required opportunities for public involvement have been provided  
24 and that all applicable environmental documentation has been  
25 completed.



1       (e) Any change to the scope of work specified in the selected  
2 nomination package must have the advance written approval of the  
3 executive director.

4       (f) The department is responsible for the inspection, final  
5 acceptance, and certification of a project.

6  
7 §7.133. Elimination of Project from the Program. The executive  
8 director may eliminate all or a part of a project from  
9 participation in the program if:

10       (1) the project sponsor fails to satisfy any  
11 requirement of this subchapter or the agreement required under  
12 §7.132 of this subchapter (relating to Project Implementation);

13       (2) implementation of the project would involve a  
14 significant deviation from the scope of work in the approved  
15 nomination package;

16       (3) the project sponsor withdraws from participation  
17 in the project;

18       (4) construction has not been initiated within three  
19 years after the date that the project was approved by the  
20 commission; or

21       (5) the agreement required under §7.132 of this  
22 subchapter (relating to Project Implementation) is not executed  
23 within one year after the date that the project was approved by  
24 the commission.

1 §7.134. Reporting to the Commission. Annually, the department  
2 will submit a report to the commission on the project nominations  
3 and projects approved for funding.  
4