



**July 27, 2020**

This FAQ is for NEPA/43 TAC Chapter 2 meetings and hearings. Other meetings and hearings like PEL meetings, STIP/TIP meetings, etc. are not subject to this FAQ.

**Public Meetings – Current Status**

- 1) What is the plan for public meetings as of July 13, 2020?

At this time, and until further notice, future public meetings may continue to be scheduled and noticed as virtual online-only public meetings (unless the project is going through an area with limited internet access, in which case the meeting may need to be delayed).

- 2) How to determine if a project is going through an area with limited internet access, in which case a virtual online-only meeting may not be appropriate?

This will be based on the community. Work with TPP’s PI Section and/or ENV’s community impacts SMEs for assistance.

- 3) One of our PI consultant checked census. It only shows ~<70% and greater than ~70% though.

The following U.S. Census Bureau link has “narrative profiles” of counties, cities, and census tracts with percentages of households that have a computer and broadband internet subscription: <https://www.census.gov/acs/www/data/data-tables-and-tools/narrative-profiles/>. This is more precise than <70%/>70%, and may be used a resource to determine if a virtual online-only public meeting is appropriate.

**Public Hearings – Current Status**

- 4) What is the plan for public hearings as of July 13, 2020?

At FHWA’s urging, TxDOT Administration has directed that there must be an in-person option for virtual public hearings on a going-forward basis. Therefore, project sponsors must notice and hold future public hearings as a “virtual public hearing with an in-person option” (more on that below).

Hearings that have already been held as virtual online-only events as of July 13, 2020 do not need to be redone.

For hearings that have been noticed (but not yet held) as virtual online-only events as of July 13, 2020, project sponsors must issue a “supplemental” notice to add the in-person option. Project sponsors will use the new template for noticing a virtual public hearing with an in-person option, but add the word “Supplemental” before “Notice” at the top of the notice. At a minimum, this supplemental notice must be posted on TxDOT’s website as soon as possible. Additionally, if it is practicable to do so given the amount of time remaining before the hearing date, the supplemental notice should also be published in the newspaper, provided to entities that received the original notice, and otherwise made public in the same manner as the initial notice, even if there are less than 15 days until the hearing.

**Virtual Public Hearing with an In-Person Option**

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### 5) What's a virtual public hearing with an in-person option?

We will (1) conduct a virtual public hearing, and (2) provide a physical space at the TxDOT district, area, or maintenance office for attendees to, at their discretion and by appointment, attend in-person and do the following:

- watch the virtual public hearing presentation on a screen (which will be playing on a loop),
- review public hearing materials,
- ask questions of TxDOT staff and/or consultants from a socially-distanced approach, and
- provide written comments on a written comment card which the attendee will drop into a box.

Attendance at the in-person option will be “by appointment” only. As explained in the notice template, individuals must call a phone number to make an appointment. Verbal comments will not be accepted at the in-person option and will instead have to be made by phone as instructed in the presentation and in the notice.

It is suggested that the in-person option last one full day (e.g., 8:00 am to 8:00 pm). It is recommended that project team pick a date PRIOR to the virtual public hearing date for the appointments and advertise that as the in-person hearing date. Multiple dates are not recommended. However, if the district anticipates that there will be many in-person requests or the size of the facility is such that multiple in-person hearing dates would be required for safety reasons, then the in-person hearing may be held on multiple days. Again, it is recommended that these dates precede the virtual public hearing date. Please note that the public should not have the discretion to select dates other than those provided in the hearing notice. The 15-day comment period must be calculated from the date of the virtual public hearing, or the last day of the in-person option (if multiple days are provided), whichever is later.

Even if no appointments are made, TxDOT staff need to be available during the times/days stated on the notice. If anyone arrives without an appointment, they may be asked to wait outside to ensure we maintain appropriate occupancy and meet social distancing guidelines within the hearing room.

Districts are encouraged to have a staffing plan for the hearing appointment, including staff who would be assigned as back-up in case the original staff member cannot attend. This would include staff/consultants who will be in attendance to answer questions, a staff person or non-staff hired (such as a janitor) to clean the area on a regular basis, a person who will be taking the temperature of attendees at the door and assist with leading the attendees to the hearing room. This will dictate the number of attendees that can attend the hearing appointments as well. The district should have a limit to the number of public allowed in at the same time and define a time limit for the hearing appointment (this is at the district's discretion).

Districts should have a plan in place for how hearing materials will be used to try to cut down on the number of touch points, for example: have two bins for pens- one for new pens and the other for used pens, have maps further away, etc.

Room layouts should be created with material station locations. Districts can have display boards (but monitor amount of people at one time to not crowd the station as per social distancing guidelines) or have printed copies of the displays/exhibits. The hearing presentation can be played

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on a laptop screen, projector screen, tv screen, etc. Think about including outside signage to point the public to the correct location for the hearing room and to make sure they know where to get their temperature checked.

**6) Does TxDOT Administration need to approve the in-person option on a case-by-case basis?**

Yes. Districts must obtain Executive Director James Bass's approval before proceeding with the in-person option on a given project. ENV has provided a memo template for the district's use.

**7) So we're not doing the "in-person public hearing with a virtual component" anymore?**

No, not for the time being.

Previous to the July 13, 2020 update of this FAQ, ENV was instructing districts to look for an in-person hearing venue (school, auditorium, etc.). If districts could find a venue, ENV instructed them to hold a traditional public hearing with live verbal testimony supplemented with a virtual component. If districts could not find a venue or determined that an in-person hearing could not be held for some other reason, ENV instructed them to document their reasons using ENV's Form – Documentation That An In-Person Public Hearing Is Not Feasible, and proceed with a virtual, online-only hearing (assuming that the hearing needed to be held to avoid project delays and the project did not go through an area with limited internet access).

However, as indicated above, FHWA and TxDOT Administration have now directed that all NEPA hearings must have an in-person option on a going-forward basis. So, from this point forward, all NEPA hearings must be virtual public hearings with an in-person option at the TxDOT district, area, or maintenance office. There is no longer a need to look for a venue for a traditional in-person public hearing and document the lack of availability using ENV's Form – Documentation That An In-Person Public Hearing Is Not Feasible.

**8) Where should the in-person option be held?**

The in-person option must be held at a TxDOT district, area, or maintenance office.

**9) What safety protocols should be followed in carrying-out the in-person option?**

Districts should follow any safety protocols that the district believes are required, necessary, or prudent, including any applicable parts of the TxDOT Playbook for Safety Returning to In-Office Operations ("TxDOT Playbook"). At a minimum, TxDOT and consultant staff must follow these protocols:

- Attendance is allowed by appointment only.
- Attendees must be informed that face masks are required. Signs must be posted indicating that face masks are required.
- All attendees must wear face masks. The TxDOT district must supply masks for attendees who show up without one.
- Attendees must have their temperatures taken in accordance with the temperature screening procedures in the TxDOT Playbook (i.e., attendees with a temperature of 100.4 F or higher may not be allowed into the facility).
- All attendees must follow social distancing (stay at least six feet apart from any individual).
- It is recommended that stations with materials, schematics, etc. be placed a minimum of 20

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feet apart if practicable. This may not be possible for some rooms, depending on the size of the room. If available, districts may use multiple nearby rooms to spread out the stations.

- Hand sanitizer must be available at the entrance and throughout the room.
- All attendees will be asked to provide their names, addresses, and phone numbers, unless they already provided this information over the phone when they made an appointment. An attendee who refuses to provide this information may still enter the facility. It is recommended that districts use the following method to collect this information:
  - Give attendees one pen per household to keep.
  - This pen will be used to fill-out an attendance card with each attendee's name, address, and phone number.
  - The attendee will drop the attendance card into a box.

However, a district may collect this information by other means if desired (e.g., by verbally asking the attendee for the information and writing it down for them).

- Attendees may fill-out written comment cards which will be dropped into a box (separate from the attendance card if one is used). Give attendees one pen per household to keep, or have separate receptacles for "clean" pens and "used" pens, to avoid multiple people using the same pen.
- Staff handing out pens and comment cards are required to wear gloves.
- Any attendee that handles paper materials made available for review must wear gloves. The TxDOT district must supply gloves.
- Identify all touch points at the location (i.e. door knobs, light switches, tables). These touch points must be regularly monitored and sanitized.
- Areas not in use must be blocked off to avoid attendees wandering.
- Drinking fountains must be covered and not used.
- Steps should be taken to minimize the need to touch surfaces (hang posters, maps; prop open doors).
- At least one staff member should be assigned to sanitize touch surfaces following use (wipe chairs).
- Develop a protocol and cleaning process for public bathroom use.

**10)** Do we have to provide the in-person option if the hearing is being held solely to satisfy (1) Chapter 26 of the Texas Parks and Wildlife Code or (2) the state statutory requirement to hold a hearing on a project that adds bike lanes (Transportation Code 203.023)?

No, because those are both state hearing triggers, if the hearing is being held solely because one or both of those triggers (i.e., none of the other hearing triggers in ENV's Public Involvement Handbook apply), then the in-person option is not necessary, even if the project will be federally funded, and the district may proceed with a virtual, online-only hearing (assuming the project does not go through an area with limited internet access).

**11)** Do we have to provide the in-person option if the hearing is for a state or locally funded project, with

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no FHWA funding (i.e., a hearing that we're holding solely to comply with our state environmental review rules at 43 TAC Chapter 2)?

No, these hearings can proceed as virtual, online-only hearings (assuming the project does not go through an area with limited internet access).

**12) Will ENV provide new notice templates for a virtual public hearing with an in-person option?**

Yes. Our toolkit will have three different kinds of public hearing notice templates:

- Public hearing (traditional)
- Virtual public hearing (online-only)
- Virtual public hearing with an in-person option (this is the new type of hearing we are proceeding with going forward)

We know that the toolkit is a little cluttered with these various notices, but because the playing field keeps changing, we will leave all three of these types of notices on the toolkit for the time being. If you have questions about which notice to use, contact ENV.

**13) How will individuals submit public comments with respect to a virtual public hearing with an in-person option?**

Written comments are accepted at the in-person hearing, by mail, and by email. Verbal testimony will be allowed by phone only. There will be no verbal testimony at the in-person option; however, the public may ask verbal questions so staff and consultants should be prepared to answer in a socially-distanced manner. All written comments and verbal testimony must be received by the end of the 15-day comment period.

**14) What about the virtual public hearing part? Any changes there?**

No, the virtual public hearing part will continue to be conducted in accordance with the instructions ENV has provided for virtual online-only public hearings (see Section 6.8 of the Public Involvement Handbook and the answers to the FAQ below). We're just adding the in-person option with the July 13, 2020 update at FHWA's urging.

**15) Do local government project sponsors have to comply with TxDOT's procedures, including this FAQ?**

Yes. However, a local government project sponsor may choose to host the in-person option at their own facility. If they do, then they will be responsible for applying and enforcing their own safety protocols.

**16) Can we do an in-person-only hearing, without the virtual component?**

No, not at this time.

**17) For the in-person option, do we have to give a live presentation, or will a pre-recorded video suffice?**

We will just show the same pre-recorded video that is posted online for the virtual public hearing part.

**18) What about Section 106 stakeholder meetings?**

They can be done virtually, and do not require the in-person option.

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### Virtual Components of Virtual Hearings with an In-Person Option, and Virtual Online-Only Meetings and Hearings

- 19) Any instructions on creating the setup for logging-in to the virtual component of a virtual hearing with an in-person option, or a virtual only-line meeting or hearing, as said in the notice template?

Right now, the virtual meetings and hearings are being done via pre-recorded presentations that are posted to the [TxDOT YouTube channel](#) via the district PIO/TxDOT Media Relations in coordination with TPP's PI Section; therefore, no log-in is needed. The notice templates talk about editing the first paragraph of the notice "as needed" to explain how to "log onto" the live virtual meeting/hearing. You would only need to do that if you were using a live interaction online platform that required a log-in, but we're not there yet.

- 20) For the virtual component of a virtual hearing with an in-person option, or for a virtual online-only meeting or hearing, does the online presentation go live at the time stated in the notice and stay available for 15 days?

Yes, the online presentation must remain posted online for the entire 15-day comment period.

- 21) For the virtual component of a virtual hearing with an in-person option, or for a virtual online-only hearing, does the phone-in option for providing verbal testimony have to stay open until the end of the 15-day comment period?

Yes.

In coordination with TPP's PI Section, IT has procured Coeo as the vendor to provide a voicemail phone number with the ability to automatically transcribe the messages. To request a Coeo voicemail line, reach out to TPP's PI Section as early as possible for planning assistance. Please note that districts can provide both English and Spanish greeting options as part of the voicemail system; however, the district will need to translate Spanish voicemails. Coeo only provides transcription on the English voicemails. Contact the PI Section for more details.

- 22) Do the phone-in comments for verbal testimony need to be transcribed by a court reporter or can it also be by a staff/consultant member?

It can be staff/consultant member as long as we have record of the testimony. But as explained above, districts should reach out to TPP's PI Section to request a Coeo voicemail line, which does not require a staff/consultant member to manually transcribe comments. Contact the TPP PI Section with any questions or if you need assistance.

- 23) Can the voiceover for the online presentation be recorded by one person or does it have to have the different speakers as we do for in person PH?

No, you can have a single narrator. It does not have to be a TxDOT employee.

- 24) Is there a time of day that is best for a virtual online-only public meeting or hearing, or for the virtual component of a virtual hearing with an in-person option?

Weekday evenings would be best since most people are off work; however, it is at the discretion of the district.

- 25) Considering folks without computer or internet accessibility, what about supplementing all of this with an outdoor project display (summary text, schematics, maps, etc.).

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This may be possible, but would need to be determined on a case-by-case basis.

**26)** Are there any requirements to meet the needs of disabled persons - hearing or visual impairments?

The notice templates include the standard accommodation language. Additionally, TPP's PI Section will post a transcript of any pre-recorded virtual online-only meeting or hearing, or virtual component of a virtual hearing with an in-person option, on the TxDOT website within a few days of the event.

**27)** For projects being developed by local governments (with TxDOT oversight), will TxDOT host the virtual online-only public meeting or hearing, or the virtual component of a virtual hearing with an in-person option, for the local government on its domain? Or will the local government be responsible for hosting the virtual event on its own domain?

Either way works, as long as the requirements in our Public Involvement Handbook are satisfied.

**28)** Can a consultant host the virtual online-only public meeting or hearing, or the virtual component of a virtual hearing with an in-person option, on its own online platform?

Yes, as long as the requirements in our Public Involvement Handbook are satisfied.

**29)** If using YouTube, does this platform offer a specific time the public can watch the video? Will it need to be removed after meeting time?

As long as the virtual online-only public meeting or hearing, or the virtual component of a virtual hearing with an in-person option, is available at the time stated in the notice, then it doesn't matter if it is posted earlier. It must remain online for the entire 15-day comment period. There is no requirement to remove it on a certain date.

**30)** Is FHWA going to require a TxDOT staff conduct the voiceover for a virtual online-only public hearing, or the virtual component of a virtual hearing with an in-person option? As they require a TxDOT staff initiate the hearing portion of the meeting and adjournment for in person public hearings?

No.

**31)** For a virtual online-only public hearing, or for the virtual component of a virtual hearing with an in-person option, will there be a time duration for the individual comments made (i.e., 3 min.) when calling the phone number during the 15-day comment period?

We should instruct callers to limit their oral testimony to no more than three minutes. If possible, the voicemail system should be set-up to cut-off recording at four minutes, so that if the caller goes a little bit over the three minutes, their oral testimony will not be cut-off mid-sentence.

**32)** Do we need to use a 1-800 type number for the call-in voicemail option on a virtual online-only pre-recorded public hearing or the virtual component of a virtual hearing with an in-person option?

That is not a requirement. However, a toll-free number via Coeo is an option and should be used as available so please work with the TPP PI section as needed.

**33)** Can we share this information with consultants now?

Yes, that is fine.

**34)** Do you need to say anything about TWG meetings?

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TWG – Technical Working Group. Will need to be done via WebEx as a practical matter, but the requirements in the PI Handbook and notice templates only apply to public meetings and hearings held as part of the environmental review process.

### **35) How about how all this info goes in ECOS?**

Should be added the same way it was being done before. On the cover sheet of the Documentation of Public Meeting or Documentation of Public Hearing, follow these instructions:

- Under “Meeting Location” or “Hearing Location” indicate that it was a virtual meeting or hearing and provide the web address (and for a virtual hearing with an in-person option, also separately indicate the location of the in-person option).
- Under “Meeting Date and Time” or “Hearing Date and Time,” indicate the date and time of the virtual meeting or hearing, and the dates on which the online presentation continued to be available for viewing online (and for a virtual hearing with an in-person option, also separately indicate the date(s) and times of the in-person option).
- Under “Elected Officials in Attendance,” indicate N/A.
- Under “Total Number of Attendees,” provide the total number of “views” of the online presentation with a notation that the number represents “views” (and for a virtual hearing with an in-person option, also separately indicate the number of physical attendees).
- In the “Contents,” add a notation to “E. Figures” indicating that the online video presentation is separately uploaded to ECOS.

### **36) What if what they say in the voicemail is not audible? On a voicemail, sometimes background noise might keep someone transcribing from understanding what is being said. I am just wondering if we should ask for their phone number just for this purpose and strike it from the formal record once we know it can be transcribed?**

If we use a voicemail system to accept public testimony for a virtual online-only public hearing or the virtual component of a virtual hearing with an in-person option, and if a voicemail is unintelligible, then the transcriber simply notes “response garbled or unintelligible” on the official transcript of the call. There is no need to call the person back.

### **37) Also, should we also indicate as we do in an in-person public hearing that even though they are submitting their verbal comment here, from whatever time to whatever time, written and email comments can and will be accepted through.... Whatever day... which is 15 days past the VPH date. This covers us as well so we are letting them know also by phone that if they can't quite get what they want to say in 3 minutes they can submit additionally in writing. I think this is important.**

Yes, for a virtual online-only public hearing or the virtual component of a virtual hearing with an in-person option, the presentation must explain both the written comment and verbal testimony options, and explain that they may both be used for the entire 15-day comment period.

For the written comment option, the presentation must identify the email and mail addresses that can be used.

For the verbal testimony option, the presentation must identify the phone number to use.

The presentation must also explain that the public may call project staff during regular office hours or email project staff to ask questions about the project at any time in the project development

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process.

- 38)** If we use a voicemail system to accept public testimony for a virtual online-only public hearing or the virtual component of a virtual hearing with an in-person option, what information do we need to collect from the caller?

We should ask them to give their name and who they are representing, if an entity other than themselves.

- 39)** What kind of planning is needed for virtual online-only public meetings and hearings, or virtual components of virtual hearings with an in-person option?

Districts should allow the same amount of time for planning in terms of logistics and outreach for virtual meetings/hearings as in-person meetings/hearings. Reach out to TPP's PI Section as soon as a virtual meeting/hearing need is identified. In addition, districts should avoid pulling ahead and "stacking" their virtual meeting/hearing schedule to avoid in-person meetings and to speed the PI process. Work with the PI Section to determine the appropriate outreach schedule to go beyond the minimal outreach requirements, avoid public fatigue of virtual meetings and to ensure proper resources can manage the schedule effectively. TPP's PI Section also recommends developing a comprehensive outreach plan; outreach ideas can be found on TPP's PI Section Crossroads page. Be on the lookout for virtual meeting/hearing resources that will be posted to TPP's PI Section page. It is very important that districts go above and beyond the minimal NEPA requirements to promote these online opportunities and ensure all LEP and EJ communities are reached.

- 40)** What about the requirement for commenters to "disclose in writing on a witness card whether the person does business with the department; may benefit monetarily from a project; or is an employee of the department?" (Transportation Code 201.811(a)(5))

The written comment card that will be provided at the in-person option part of a virtual public hearing with an in-person option will have this information. Also, if TPP's PI Section provides a pdf comment form on the meetings/hearings web page, then the form will include these statements. However, for members of the public that use the phone line to verbally provide testimony after a virtual online-only public hearing or the virtual component of a virtual hearing with in-person option, there is no written witness card and no need to require callers to verbally make these statements.

- 41)** Is there a requirement that ENV and TPP's PI Section review the materials that will be presented at the virtual component of a virtual hearing with in-person option and virtual public meetings and hearings?

This is recommended, but it is not a formal requirement of ENV's NEPA procedures (i.e., EG Volumes 1 and 2), except that ENV Project Delivery review of meeting or hearing materials for an open-ended (d) list CE is required.