

Memorandum



U.S. Department
of Transportation
**Federal Highway
Administration**

**Subject: Guidance Material on Public Hearings
and Other Public Involvement**

Date: OCT 8 1982

**From: Director, Office of Environmental Policy
Washington, D.C.**

**Reply to
Attn. of: HEV-12**

**To: Regional Federal Highway Administrators,
Regions 1-10, and Direct Federal Division Engineers**

The attached guidance material was developed in response to requests for guidance from field personnel and State highway agencies following the rescission of the Process Guidelines (23 CFR 795). While the amended 23 CFR 771, "Environmental Impact and Related Procedures," preserves the key public involvement/public hearing features of 23 CFR 795, it contains few specifics in this area.

Since the May 11, 1982, rescission of the Process Guidelines, some States have elected to retain their Action Plans and/or the public involvement/public hearing procedures described in them. States which choose to eliminate their Action Plans must develop alternate procedures acceptable to the Federal Highway Administration or follow the procedures in FHPM 7-7-5 (23 CFR 790). This guidance material is designed to assist those who review, as well as those who implement, public involvement efforts.

States which are operating under FHPM 7-7-5 should be encouraged to develop alternate procedures in lieu of the procedures in that regulation. Regional and Division Offices should give special attention and assistance to those States in making this transition. Washington Office staff are available to provide assistance in developing these alternate procedures.

Regional and Division Offices are asked to maintain documentation of their acceptance of alternate procedures, with an informational copy of the procedures provided to the Washington Headquarters.


for Leon N. Larson

Attachment

Guidance Material on Public Hearings and Other Public Involvement

Background

This material is intended to serve as guidance for FHWA field office and State highway agency (SHA) personnel and others on the purpose of and procedures for public hearings and other forms of public involvement. It is compatible with the Council on Environmental Quality (CEQ) regulations for implementing the National Environmental Policy Act (NEPA) (40 CFR Parts 1500-1508) and the FHWA internal operating procedures required by NEPA (23 CFR Part 771, "Environmental Impact and Related Procedures"). This material also provides guidance for meeting the requirements of 23 U.S.C. 109(h) on assuring full consideration of possible adverse economic, social, and environmental effects of proposed Federal-aid projects and of 23 U.S.C. 128 which requires the opportunity for public hearings and certain certification and reporting requirements.

The Process Guidelines, FHWA's initial response to 23 U.S.C. 109(h), which required each SHA to operate under an Action Plan describing the SHA's organization and processes, were rescinded on May 11, 1982. This action was taken after a determination was made that the intent of Section 109(h) is maintained in the NEPA process as implemented by the CEQ regulations and by 23 CFR 771. While 23 CFR 771 has been amended to preserve the key public involvement/public hearing features of Part 795, few specifics are contained in it.

The rescission of the Process Guidelines and the Action Plan requirement should not reduce the quality or quantity of public involvement by SHA's. Rather, flexibility in use of a variety of techniques to inform and involve the public is encouraged. States have developed effective public involvement programs in the past and are expected to continue to do so in the future.

Likewise, the consideration of social, economic, and environmental (SEE) effects is not diminished, but rather has been integrated more fully into the environmental process under NEPA. Compliance with Section 109(h) of Title 23 U.S.C., will be accomplished through the procedures specified in 23 CFR 771. Acceptance of alternate procedures for public involvement/public hearings will assure consistency with both NEPA and 23 U.S.C. 128.

This guidance material provides recommended options for holding public hearings and for implementing other public involvement efforts. Rather than insisting on a single approach, it identifies alternatives to be considered and implemented on a case-by-case basis.

<u>SECTION</u>	<u>SUBJECT</u>	<u>PAGE</u>
1	Purpose of Public Involvement	4
2	Involvement of Local Governments and Agencies	5
3	FHWA Acceptance of Alternate Public Involvement/Public Hearing Procedures	6
4	Public Hearings	8
5	Public Notices	9
6	Public Meetings	11
7	Other Involvement Techniques	13
8	Use of Citizen Input	14
9	Scoping	15
10	Application Under Certification Acceptance	15
11	Coordination/Consultation with Other Federal Agencies	15

1. PURPOSE OF PUBLIC INVOLVEMENT

The NEPA procedures are intended to ensure that environmental information is available to public officials and citizens before decisions are made. It is FHWA's policy, as set forth in 23 CFR 771, that decisions shall be made in the best overall public interest and that other agencies and the public be involved early enough to influence technical studies and final decisions.

An SHA's actions can merit public confidence as well as assist in expediting the highway development process through early identification and resolution of issues. If used effectively, public and agency involvement techniques can increase the efficiency of the project development process by removing potential barriers caused by inadequate or untimely dissemination of information.

In the past, the public hearing alone often constituted public involvement for highway projects. Today, increased flexibility, informality, and the need to utilize other involvement mechanisms have become the basis for operating procedures. Public involvement is an integral part of the environmental impact assessment process by assisting in the compilation of SEE impact assessment data. Data is often available from the public that is not available elsewhere. Solicitation of that data not only increases the agency's credibility, it can facilitate project development.

Public hearings may be only one component of an effective public involvement process. Unless a study or proposal is uniformly acceptable to the general public and other agencies and there are no substantive differing viewpoints, other involvement measures should also be employed. It is rare when a public hearing provides for all necessary public involvement. Normally, the minimum measures to be employed are a general form of public notification and one or more public meetings.

To be effective, public involvement needs to be an integral part of the highway project development process, beginning at the earliest stages and ensuring adequate opportunity for citizen input and an exchange of views throughout project development. The project level can benefit from the results of public involvement conducted as part of the urban planning process.

Other elements necessary for effective involvement are:

- a. Sufficient agency resources to handle the involvement operations, including time, funds, and staff expertise,
- b. Agency commitment to secure public views and to utilize those views in the development of the proposal,
- c. Involvement techniques which are appropriate to the type and size of the community and the type, size, and complexity of the project,
- d. Knowledge on the part of the general community and directly impacted community about project development, potential project impacts, and mitigation measures, and
- e. Agency knowledge of conflicting community values which relate to the need for the project or to the project impacts.

2. INVOLVEMENT OF LOCAL GOVERNMENTS AND AGENCIES

Local governments and their responsible public officials, as well as other agencies and the general public, are included in the public to which this guidance refers. Effective public involvement recognizes the role of local elected officials in the development of federally aided highway projects. Whether on an individual basis or through local legislative bodies or areawide or metropolitan planning organizations, the involvement of responsible public officials should be sought throughout the process.

Federal law (23 U.S.C. 134(a)) requires that responsible local officials be consulted on highway projects in urbanized areas and that consideration be given to their views. In addition, Federal-aid projects should be consistent with the urban planning goals and objectives promulgated by the communities involved (23 U.S.C. 128). The principles and measures in this guidance can serve to ensure that these activities are carried out in a meaningful way with local officials.

Local governments, often active sponsors of proposed highway projects, can assist very effectively in developing and conducting public involvement. It is the intent of this guidance that public involvement efforts are continually coordinated with existing local processes.

3. FHWA ACCEPTANCE OF ALTERNATE PUBLIC INVOLVEMENT/PUBLIC HEARING PROCEDURES

The amended 23 CFR 771.111(h) now provides that, in order to comply with 23 U.S.C. 128, a State may

"adopt public involvement/public hearing and other procedures, subject to FHWA acceptance, which include provisions for one or more public hearings to be held at a convenient time and place, or the opportunity for hearing(s) to be afforded, on any Federal-aid project which requires the acquisition of significant amounts of right-of-way; or substantially changes the layout or functions of connecting roadways or of the facility being improved; or has a significant adverse impact on abutting real property, or otherwise has a significant social, economic, environmental or other effect. The public involvement/public hearing procedures accepted hereunder must assure reasonable notice to the public of the hearing opportunity as well as the availability of explanatory information. These procedures must be fully coordinated with the NEPA process. Approvals made by FHWA prior to May 11, 1982, of procedures for use in lieu of Part 790 remain valid. Changes in such procedures require FHWA acceptance."

The rescission of the Process Guidelines does not require States to take any specific action. Procedures now set out in a State's Action Plan remain acceptable for public involvement and public hearings whether or not the Action Plan itself is continued. As an alternative, procedures set forth in 23 CFR Part 790 (FHPM 7-7-5) are acceptable as public involvement and public hearing procedures. States which elect not to continue to follow the procedures described in their Action Plans or those in 23 CFR Part 790 must develop alternate procedures acceptable to FHWA.

The SHA's are encouraged to maintain internal operating guides which include public involvement/public hearing procedures. These may be State administrative and technical manuals, operational plans, or other documents. Involvement procedures should be identified and contained in a separate section, to facilitate the implementation of routine administrative revisions without altering the involvement procedures.

Alternate public involvement/public hearing procedures should:

- a. Be comprehensive, with coverage throughout project development, and provide a means for ensuring that environmental mitigation is implemented,
- b. Be consistent with the requirements of all applicable FHWA regulations and directives, including pertinent memoranda of understanding or agreement of a policy nature with other Federal agencies,
- c. Specify the criteria for offering an opportunity for a public hearing and the timing of the hearing with the environmental impact assessment process,
- d. Correlate public involvement activities other than hearings with the environmental process (e.g., public meetings at the time environmental studies on alternatives are available for review),
- e. Provide the opportunity for informal interaction with the public. (These methods might include workshops, small group meetings, one-on-one discussions with individual citizens, and telephone contacts.),
- f. Differentiate between hearings, meetings, and workshop sessions, and
- g. Provide adequate information and sufficient time for citizens and other agencies to familiarize themselves with a proposal prior to a meeting or hearing.

States which choose to utilize alternate involvement procedures should utilize this guidance as a basis for preparing their procedures. The FHWA field offices which review such procedures for acceptance should also use this guidance as a basis for such procedures rather than as a definitive formula. The SHA's procedures should be more detailed and descriptive as related to each State's project development process.

The SHA's which desire to revise their public involvement/public hearing procedures should submit their alternate procedures to the FHWA Division Offices. Review and acceptance of alternate procedures is the responsibility of the Regional Federal Highway Administrator, but it may be redelegated to Division Administrators.

Regional and Division Offices should be prepared to consult with, assist, or advise the SHA's on alternate procedures. If expertise is not available in FHWA field offices on a particular aspect of public involvement, it should be sought elsewhere (e.g., from the Washington Headquarters). Regional and Division Offices should maintain documentation of their acceptance of alternate procedures, with an informational copy of the procedures provided to the Washington Headquarters.

4. PUBLIC HEARINGS

- a. The statutory requirements for affording the opportunity for public hearings on Federal-aid projects are contained in 23 U.S.C. 128. In addition to certification and an accompanying report on the consideration given to SEE and other effects and to alternatives, a transcript of such hearings is required.

At the time this requirement was instituted, public hearings were extremely formal. In the interim, increased emphasis on other involvement mechanisms and major attention to SEE effects have changed the public hearing format. In many cases, it is structured very differently than in the past. Experience gained in the last several years indicates that a hearing is more effective if it is less formal.

While perhaps the most displayed aspect of an agency's involvement program for certain projects, hearings are only one means of obtaining data on the public's interests, concerns, priorities, and perceptions. At best, a hearing is not the most productive means of collecting such data, particularly since it comes later in the project development process. It should be considered in partnership with informal involvement methods. Holding informal meetings to clarify issues and concerns and to provide prehearing information should be considered in order to reduce misunderstandings and conflict which might arise at the hearing.

- b. Public hearings should:

- (1) be offered prior to commitment to the location and design of the facility,
- (2) be held at a convenient time, and at a site easily accessible to public transportation.
- (3) include a forum for individual exchanges of information between staff members and the public. This can be accomplished in several ways (e.g.,

prehearing meetings, open houses, recess breaks in hearings), all of which provide for informal contact which allows individual inquiries to be addressed and which usually conserves staff time and reduces the length of the formal hearing,

- (4) as a minimum, present the need for the project, alternative courses of action, and comparable presentations of the SEE effects of alternatives,
 - (5) present information on the land acquisition process and an opportunity for discussion,
 - (6) meet 23 CFR 740.35 by presenting information on relocation services and payments, with opportunity for discussion, and
 - (7) be held jointly when appropriate to meet the needs and mandates of the involved agencies. If the notification periods of the agencies differ, the longer notification period for hearings should be used. If possible, hearings should be conducted consistent with the procedures of both agencies.
- c. The certifications and reports required by 23 U.S.C. 128 for public hearings are normally made at the time the final environmental impact statement (FEIS) or proposed finding of no significant impact (FONSI) is submitted to the FHWA Division Administrator. The report of SEE effects required by 23 U.S.C. 128 will normally be satisfied by the FEIS, FONSI, or identification of the project as a categorical exclusion. Approval of the FEIS or FONSI, as appropriate, constitutes acceptance of the public hearing transcripts, certifications, and reports required by 23 U.S.C. 128.

5. PUBLIC NOTICES

State procedures must provide for public hearings or afford the opportunity for a public hearing pursuant to 23 CFR 771.111(h). A minimum 15-day notification period will adequately serve as the required "reasonable notice" to the public of the hearing opportunity. Procedures for requesting hearings should be included in the public notice, including a deadline for submission of requests.

The CEQ regulations do not specify a notification period for a public hearing, but rather require the availability of the draft environmental impact statement (DEIS) at least 15 days in advance of the hearing (CEQ regulations, 1506.6(c)(2)). This DEIS availability period should not be construed as an endorsement of a 15-day public hearing notification period, as a longer period may be more appropriate. Less than a reasonable period of notification would be contrary to the CEQ-related diligent efforts to involve the public in the implementation of NEPA procedures.

The following are recommended minimum periods for public hearing notices, by project type:

- a. Projects with significant environmental impacts (e.g., those processed with an EIS) or significant public interest/controversy, an initial 30-day notice. A second notice 5-12 days in advance of the hearing should be provided.
- b. Other projects (e.g., noncontroversial projects processed with FONSI's or as categorical exclusions), a 15-day notice.

It is recommended that the DEIS be available to the public 30 days in advance of the hearing, coinciding with the recommended 30-day hearing notice. This provides 15 days for comments after the public hearing, and fulfills the necessary 45-day comment period on the DEIS (CEQ regulations, 1506.10(c)).

Public hearing notices in local newspapers will announce the availability of the Environmental Assessment (EA) and where it may be obtained or reviewed, pursuant to 23 CFR 771.119(e). When a public hearing is not required, a notice shall be placed in a newspaper(s) similar to a public hearing notice and at a similar stage of development. This notice shall advise the public of the availability of the EA and where information concerning the action may be obtained (23 CFR 771.119(f)). Distribution of the EA is encouraged.

The availability of the DEIS shall be included in any public hearing notice. If a public hearing is not required, a notice shall be placed in a newspaper(s) similar to a public hearing notice, advising where the DEIS is available for review, how copies may be obtained, and where the comments should be sent (23 CFR 771.123(h)).

Full and adequate public notice of the relocation assistance program shall be given pursuant to 23 CFR 740.35. Public notices must also refer to significant floodplain encroachments, if appropriate, as required by FHPM 6-7-3-2.

The notice of the public hearing or opportunity for a public hearing should be made through a news article or other formal announcement in a local newspaper(s) of general circulation and by other means which will reach interested or affected individuals and groups (e.g., notice by mail, flyers, and posters). Less than full notification to the general public may invite disproportionate attendance by those interested in the proposal.

Legal notices alone should not be expected to serve as adequate notification to the public. Contrary to common practice, FHWA does not require a legal notice in the classified section. Such notices have not been proven to result in increased public knowledge or participation concerning highway projects.

6. PUBLIC MEETINGS

Public meetings differ from public hearings primarily in terms of the interaction which occurs in a public meeting. Meetings are generally more informal and use a less traditional format than the registration of speakers, use of microphones, formal testimony, and transcripts of proceedings which characterize the traditional public hearing. Public meetings range from the large informational and workshop meetings to the small group and one-on-one meetings with individual citizens. The emphasis even in large public meetings is on greater interaction, exchange of information, and informality.

Public meetings generally take the form of either an informational meeting or a workshop:

a. Informational Meeting

This type of meeting may be of any size, in a formal or informal setting, depending upon its purpose and intended audience. The objective may be to present, receive, or exchange information.

On a medium or small scale, these meetings can be particularly useful for special interest or neighborhood groups and advisory committees. On a large scale, these meetings can be very useful preceding a public hearing on a complex or controversial project.

b. Workshop

This format consists of reorganizing a larger group into small discussion groups (less than 10 people) which address planning or project-related issues, prioritize those issues, and later report the results to the larger group of participants. It maximizes participation by all attendees, while also discouraging dominance by a few individuals. The workshop is particularly useful in the early stages of project development.

For all projects, there should be a sufficient number of meetings planned to meet the informational needs of the affected community. Several meetings may be needed if the area has a combination of urban and rural characteristics, is geographically large, is composed of several distinctive neighborhoods, or if several polarized views exist throughout the community.

A meeting is usually held as a means of providing project information, identifying and clarifying issues and concerns, and resolving the type of conflict which is produced by insufficient information.

Preparation is the key to productive meetings. Meetings should be carefully planned and structured in order to meet the intended purpose. Objectives must be achievable and supported by a well-organized agenda and by a purpose understood by attendees.

There is no single notification period for public meetings which applies to most situations, since the needs and goals of meetings vary considerably. A general rule is that large meetings should receive notification similar to that for a public hearing. A small meeting with a special interest group could either require considerable notice (e.g., several weeks) or a few days notice if the group is cohesive and organized.

In evaluating the effectiveness of meetings, one should examine:

- a. whether the meeting met the established objectives,
- b. whether information was clearly presented,
- c. how participants (both agency and public) felt about the meeting, and
- d. whether attendees represented the intended audience.

Followup to meetings is highly recommended. This can be achieved through a variety of means, such as a newsletter, a meeting report, or other summary information which puts the meeting in context with the other involvement efforts.

7. OTHER INVOLVEMENT TECHNIQUES

In selecting involvement techniques, the public's level of awareness and knowledge, the potential project impacts, any prior commitments which impact the project, and the agency's relationship with the public should be considered.

States are encouraged to utilize a variety of methods for informing and involving the public. These might include direct participatory techniques such as onsite tours, brainstorming sessions, task forces or advisory committees, agency hotlines, surveys, and field offices and project-site information centers. Indirect participatory techniques might include newsletters, pamphlets, brochures, posters, information kits, current mailing lists, and use of the mass media through news releases, articles, advertisements, and formal notices in areawide and community newspapers, and also advertisements, news releases, and feature reports on radio and TV.

It is important that involvement techniques fit the scope of the project and its impacts, not only in terms of providing adequate notification and involvement opportunity, but also to avoid exceeding the amount of public involvement needed. Public involvement for projects without significant effects (e.g., categorical exclusions) might, for example, consist of merely a media release discussing the undertaking of a proposed improvement. Direct contact with property owners might be the principal involvement technique when only minor amounts of right-of-way are needed, if no other issues arise.

States should establish and maintain procedures which ensure that information is made available to other agencies and the public at the beginning of and throughout project development. This information should be clear, understandable, and timely. States' procedures should include techniques for notifying the public as well as methods for presenting and distributing information in lay language. Effective communication and the need to utilize a variety of mechanisms for information exchange cannot be overemphasized.

The following are some examples of appropriate ways of communicating specific types of information to the public:

- a. Continuing information and a consistent method for providing that information (e.g., a monthly newsletter) for lengthy, controversial projects. A summary of the EIS or similar report should also be prepared for such projects.
- b. A current, computerized (for ease of updating and for selecting specific target audiences) mailing list for contacts with the public on all types of projects and at all stages of project development.
- c. A summary of the DEIS or other environmental document and informational meetings with handouts, graphics, and citizen comment forms for a major proposal.
- d. Large maps, models, slide shows, photomontage, and videotape for presenting project details visually.
- e. Right-of-way information (description of the program, acquisition procedures, and relocation assistance information) written in lay language and contained in a handout format (e.g., a pamphlet or booklet usable for all similar projects).

8. USE OF CITIZEN INPUT

The input received from public involvement efforts can assist in clarifying the next action to be taken. This usually is thought of as the need for further involvement mechanisms, such as additional public meetings. Public input will sometimes offer assistance in proceeding without additional efforts (other than notification, which should be ongoing). For example, if comments received after circulation of a DEIS indicate that changes (in response to these comments) in the EIS are minor, the FEIS can be expedited, as provided for in the CEQ regulations (Part 1503.4(c)).

Citizen input may also provide data that is not available to the agency through other means. At one time there was a strong emphasis on the use of surveys to compile this data. However, the complexities of putting together an accurate survey of needs, goals, interests, and concerns, coupled with limited fiscal resources for such purposes, challenge widespread use of such data collection. As an alternative, the workshop approach is much simpler and economical and requires no special area of expertise. This technique recognizes that problem-solving is sometimes more immediate and pragmatic if addressed by those individuals closest to a problem, e.g., the impacted community. It provides sufficient overlap so that the possibility of an alternative being missed is minimized. This approach also returns to citizens an appropriate share of responsibility for the end product and does not remove the final responsibility for determining the most feasible and prudent solution from the decisionmaker.

9. SCOPING

As specified in 40 CFR 1500 et seq., scoping shall be used to provide "an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action."

The State's procedures for scoping should be identified as part of its public involvement/public hearing procedures. Scoping may be accomplished through the above procedures as well as any additional early coordination activities. Early coordination with and solicitation of views from interested agencies and others should be conducted as specified in 23 CFR 771.111.

For additional guidance on scoping, refer to the CEQ regulations, Sections 1500.4(g), 1501.1(d), 1501.4(d), 1501.7, and 1502.9(a), and the CEQ memorandum "Scoping Guidance" of April 30, 1981.

10. APPLICATION UNDER CERTIFICATION ACCEPTANCE

As specified in 23 CFR 771.109(d), States operating under Certification Acceptance (CA) in accordance with 23 CFR 640 may substitute State laws, regulations, directives, and standards in lieu of the requirements of 23 CFR 771.113(a)(2) and 771.113(b).

In determining whether a State's public involvement/public hearing procedures are acceptable under CA, both the CEQ regulations (particularly 1506.6) and FHWA's implementing regulations, 23 CFR 771, need to be examined. In this respect, it is important to note that nothing in 23 U.S.C. 117 shall affect or discharge any responsibility or obligation under any Federal law, including NEPA, other than Title 23.

States which rely on the Action Plan as part of CA certification may continue to do so or may develop alternate procedures for acceptance by FHWA.

11. COORDINATION/CONSULTATION WITH OTHER FEDERAL AGENCIES

- a. An extensive list of Federal agencies with jurisdiction by law or special expertise on environmental quality issues is contained in Appendix II to the CEQ regulations. Federal regulatory approval requirements (including permits and licenses) administered by agencies with jurisdiction by law (authority to approve, deny, or finance all or part of a proposal) are identified. One of the stated purposes of the list is to assist those whose actions require Federal regulatory approvals by identifying agencies with such authority. Appendix II, 22 pages, can be found in the Federal Register, 45 FR 57491-57513.

- b. The SHA's are encouraged to examine their staff resources and identify procedures which can be streamlined. For example, if an SHA has sufficient expertise and proven experience in an area of consultation, it might actively seek to amend the existing consultation process with the other involved agency by establishing acceptance of the SHA specialist's determination as to whether consultation is needed. This would reduce expenditures of resources and expedite the project development process.

- c. The SHA's should be familiar with the public involvement and agency consultation which is required by Federal agencies other than FHWA. These agencies should be consulted as early as possible in order to avoid duplication, minimize conflict, and avoid project delays caused by lack of coordination. For specific information on agency coordination in environmental areas, refer to "Summary of Selected Environmental Legislation." An updated version of the Summary will be issued shortly by memorandum and will be included in the annual revision to the "Environmental Guidebook" in December 1982.