

12 and 13, 2000) regarding the May 2000 Planning NPRM. The FHWA and the FTA also reviewed and considered the comments and questions raised at these hearings.

The House report that accompanied the U.S. DOT Appropriations Act for fiscal year (FY) 2002, and the conference report for the Department of Defense FY 2002 Appropriations Act, which contained several transportation issues, directed the U.S. DOT to promulgate a final rule, no later than February 1, 2002, to ensure transportation officials from rural areas are consulted in long range transportation planning and programming.

Discussion of Comments on the SNPRM Related to Local Official Consultation

We have carefully reviewed all comments received to the docket. We received 172 documents to the docket on the SNPRM, representing 155 discrete comments. They were from: local governments, Metropolitan Planning Organizations (MPO), Councils of Governments (COG) and regional governments, State DOTs, associations representing these organizations, tribal governments, and private citizens. They generally expressed diverse views consistent with those expressed in the docket to the May 2000 NPRM.

The makeup of commenters is in the chart below, followed by a general discussion of their comments:

Type of commenter	# Comments received (% of total comments)
Local government	58 (38)
MPO, COG, Regional Planning.	33 (21)
State DOT	21 (14)
National and Regional Associations/Advocacy Groups.	19 (12)
State and Federal Officials.	3 (2)
Tribal Government	5 (3)
Private Citizens	16 (10)

Local governments, MPOs, COGs, regional governments and the associations representing these organizations generally expressed preference for the consultation option proposed by the May 2000 NPRM. Fifty-two of these comments from local governments, MPOs, COGs and regional governments requested that a definition of non-metropolitan officials be included in the final rule. Thirty expressed the need to include a requirement for an established consultation process. Twenty-eight suggested that there be a requirement in the final rule that the consultation

process be developed jointly between States and local officials and that there be accountability in the consultation process. Forty-nine suggested that the FHWA and the FTA have the ability to consider local official participation when certifying the Statewide Transportation Improvement Program (STIP).

State DOTs generally supported the regulatory language proposed in the June 2002 SNPRM, which proposed to allow State flexibility to determine who local officials are and how to consult with them. State DOTs, however, did express concern with some provisions in the SNPRM. Sixteen focused on the definition of "consultation," with 14 suggestions for clarification and modification. Fifteen comments were on the statewide transportation planning process with a range of suggestions, from retaining the current language to modifying the language to limit consultation to transportation related activities. Sixteen expressed concern about the use of the term "effective" in the public involvement provisions. Thirteen expressed concerns about the phase-in period.

We also received comments from five tribal governments. Commenters expressed concern that the language did not go far enough in addressing tribal participation in the statewide transportation process, and suggested that each State must be compelled to develop a consultation process with tribal governments. The primary focus of this action is on consultation between State DOTs and non-metropolitan local elected officials. Therefore, specific provisions in existing regulatory language related to tribal governments are not being changed by this action, except for the change in the definition of consultation (discussed in the section-by-section analysis below).

Towards the end of the comment period, the National Association of Counties (NACO) representing local governments, the National Association of Development Organizations (NADO) representing local officials, and the American Association of State Highway and Transportation Officials (AASHTO) representing the State DOTs, jointly developed proposed regulatory language and submitted it to the docket. This language addresses many, if not most, of the comments received. The FHWA and the FTA reviewed the suggested language and find that it has merit because it comes from the organizations whose members are most impacted by the final rule. Therefore, we relied heavily on their suggested language to formulate this final rule.

Section-by-Section Analysis

The FHWA and the FTA carefully analyzed all the comments to the docket for both the May 2000 NPRM and the June 2002 SNPRM in formulating this final rule. We believe this rule strikes a balance among the various interests. This section-by-section analysis only addresses those sections of 23 CFR 450 that affect consultation with non-metropolitan local officials (§§ 450.104, 450.206, 450.212, 450.214, 450.216 and 450.224).

Section 450.104 Definitions

Consultation

The June 2002 SNPRM proposed a new definition of "consultation" in response to comments received to the docket that the definition proposed in the May 2000 NPRM was too formalized and burdensome.

Fifty-one discrete comments were received on the definition of "consultation" proposed in the June 2002 SNPRM. Seventeen of those comments came from State DOTs. Three supported the proposed definition.

Twelve States commented on the language "keeps that party informed." Five States were concerned that "keeps that party informed" meant individual updates to each party consulted with and requested clarification. Six States suggested modifying the language to "and informs that party about action(s) taken." The Pennsylvania DOT suggested revising the language to "and periodically informs that party about action(s) taken" to allow for greater State flexibility in meeting the requirement of the definition.

Thirty local governments, associations representing them, and advocacy groups expressed concern that a reference to an "established" consultation process was not included in the proposed definition of "consultation" in the SNPRM.

Caltrans, the California DOT, also commented on the lack of a reference to an "established" process in the definition. Caltrans pointed out that a reference to an "established" process is contained elsewhere in the SNPRM, and suggested that this inconsistency be clarified.

One private citizen supported the definition as proposed in the SNPRM.

The NACO-NADO-AASHTO proposed regulatory language included a reference to an "established" consultation process. It also modified language regarding keeping parties informed. In the NACO-NADO-AASHTO proposed definition, "Consultation means that one party confers with another identified party in accordance with an established process