

requirement that the State's documented process for consulting with non-metropolitan officials be "separate and discrete" from the public involvement process.

The FHWA and the FTA agree that the use of the term "effective" is subjective. We included the language suggested by Pennsylvania to be more consistent with the statutory provisions in TEA-21 in this final rule. We also included language requiring that the State's process for consulting with non-metropolitan officials be separate and discrete because TEA-21 makes a clear distinction between the metropolitan and non-metropolitan officials. The new requirement is included in the final rule as subpart 450.212 (h).

We received 28 comments recommending that the State and local officials jointly develop the consultation process. Most of these comments were from local governments, regional planning organizations, associations representing them, and interest groups.

The NACO-NADO-AASHTO proposed regulatory language suggested a new subpart 450.212(i). This new subpart requires that "The State shall review and solicit comments from non-metropolitan local officials and other interested parties for a period of not less than 60 days regarding the effectiveness of the consultation process and proposed modification within 2 years of process implementation, and thereafter at least once every 5 years. A specific request for comments shall be directed to the State association of counties, State municipal league, regional planning agencies, or directly to non-metropolitan local officials."

In addition, 49 commenters indicated that there should be accountability in the consultation process. Most of these comments came from local governments, regional planning organizations, associations representing them, and interest groups. One measure of accountability suggested by these commenters was that the FHWA and the FTA use their authority to consider local official participation when certifying the STIP.

The NACO-NADO-AASHTO proposed regulatory language includes a requirement regarding accountability. The suggestion is that "The State, in its discretion, shall be responsible for determining whether to adopt proposed modifications. If a proposed modification is not adopted, the State shall make publicly available its reasons for not accepting the proposed modifications, including notification to non-metropolitan local officials of their associations."

The FHWA and the FTA agree that the NACO-NADO-AASHTO proposed regulatory language reflects the concept of effective participation as well as accountability. The TEA-21 and the June 2002 SNPRM both focused on this type of result. Therefore, the agencies include the suggestion of the NACO-NADO-AASHTO proposed regulatory language in the final rule as a new subpart 450.212(i).

Section 450.214 Statewide Transportation Plan

Section 1204 of the TEA-21 specifically states "with respect to each non-metropolitan area, the long-range transportation plan shall be developed in consultation with affected local officials with responsibility for transportation." This language is now codified at 23 U.S.C. 135(e)(2)(B). Therefore, in the June 2002 SNPRM, the FHWA and the FTA proposed adding § 450.214(f). This was intended to reflect the intent of the statute by proposing language that required affected local officials with responsibility for transportation to be involved on a consultation basis in developing the statewide transportation plan as it relates to the non-metropolitan areas of the State.

Ten States commented on this proposal. The majority of the States supported the provision as written. Some States requested clarification that affected local officials are to be consulted only on portions of the plan that affect their areas.

The FHWA and FTA believe that it is evident that local officials are to be consulted only on those portions of the plan that affect their areas. We adopted as final the language proposed in the June 2002 SNPRM that requires the involvement of local officials with responsibility for transportation to be involved in the development of the statewide transportation plan in non-metropolitan areas of the State.

Section 450.216 Statewide Transportation Improvement Program (STIP)

Section 1204 of the TEA-21 specifically states "with respect to each non-metropolitan area in the State, the program shall be developed in consultation with affected local officials with responsibility for transportation." This language is now codified at 23 U.S.C. 135(f)(1)(B)(ii)(I). Therefore, in the June 2002 SNPRM, the FHWA and the FTA proposed adding § 450.216(e) to reflect the intent of the statute by proposing language that requires affected local officials with responsibility for transportation to be

involved on a consultation basis in developing the STIP as it relates to the non-metropolitan areas of the State.

Eleven States commented on this provision in the SNPRM. The majority of the States supported the provision as written. Some States requested clarification that affected local officials are to be consulted only on portions of the program plan that affect their areas.

The FHWA and FTA believe that it is evident that local officials are to be consulted only on those portions of the program that affect their areas. We adopted as final the language proposed in the June 2002 SNPRM that requires the involvement of local officials with responsibility for transportation to be involved in the development of the statewide transportation improvement program in non-metropolitan areas of the State.

Section 450.224 Phase-in of New Requirements

The June 2002 SNPRM proposed a six-month phase-in period. We received 13 comments from State DOTs and 2 comments from regional planning organizations regarding this provision.

Four State DOTs and 2 regional planning organizations supported the phase-in provision as proposed in the June 2002 SNPRM. The other commenters supported a phase-in requirement but with different time frames. Three States commented that six months would not be adequate and four States commented that the phase-in requirement should accommodate the planning cycles of various States.

The NACO-NADO-AASHTO proposed regulatory language recommended a one-year phase-in period.

The FHWA and the FTA recognize the differences among the planning cycles of the States. In the final rule we have extended the phase-in period to one year (to end one year after the effective date of this rule), which will allow States additional time to implement the consultation requirements, and also accommodates the differences in the planning cycles of various States. After this period, the consultation aspects of the statewide transportation planning process will be emphasized as we assess the planning process and make the Federal planning finding required in 23 CFR 450.220(b) and 23 U.S.C. 135(f)(4).

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA and the FTA have determined that this action is a