

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

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OFFICE OF INDIAN SERVICES
TRANSPORTATION DIVISION (WEST)

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TRIBAL CONSULTATION ON DRAFT REGULATIONS OF
THE TRIBAL TRANSPORTATION PROGRAM

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TUESDAY
MAY 21, 2013

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The Consultation was convened in the Jonathan Room of the Crowne Plaza MSP Airport at 3 Appletree Square, Bloomington, Minnesota, at 9:00 a.m., LeRoy Gishi and Bob Sparrow, Co-Moderators, presiding.

FEDERAL STAFF PRESENT

LeROY M. GISHI, Moderator
ROBERT SPARROW, JR., Moderator
ANDY CAULUM, DOI Solicitor's Office, Division
of Indian Affairs
VIVIAN A. PHILBIN, DOT Assistant Chief
Counsel, Federal Lands

ALSO PRESENT

BEN BANFIELD, Little Traverse Bay Bands

LEONARD CROW BELT, Fort Peck Tribes

MONTE DAVIS, Gun Lake Tribe

JIM GARRIGAN, Tribal consultant

ARON HARRIS, Sauk-Suiattle Indian Tribe

JOHN HEALY, Fort Belknap Tribes

DAVE KELLY, Oglala Sioux Tribe

WES MARTEL, Eastern Shoshone

CHRIS MCGESHICK, Sokaogon Chippewa Community

RONDA METCALF, Sauk-Suiattle Indian Tribe

ED "BUSTER" MOORE, Fort Belknap Tribes

BARAK MYERS, Eastern Band of the Cherokee
Nation

JASON PALMER, Colville Confederated Tribes

VICKI RADTKE, Fond du Lac

TRACY ROBINSON, Northern Cheyenne

TIM ROSETTE, Chippewa Cree Tribe

DAWN SHERK, White Earth Nation

JOHN SMITH, Shoshone Arapahoe Tribes

TOM SPRINGER, Ho-Chunk Nation

BURNY TIBBETTS, White Earth Nation

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P-R-O-C-E-E-D-I-N-G-S

9:02 a.m.

MR. CAULUM: If everybody could get seated please we'll get going. It's just a couple of minutes after 9 o'clock.

My name is Andy Caulum. I work with the Solicitor's Office in the Division of Indian Affairs. And welcome to the consultations on the draft of 25 C.F.R. Part 170.

This is the third and last consultation session we're going to be doing on the draft version of the rewrite of the Tribal Transportation Program regulation.

As we do with all consultations we have a court reporter who is here and he's recording the entire meeting. When you make your comments there will be -- we're asking the hotel to bring in a couple of microphone stands and another handheld mic. And so if you do make comments during the meeting please head to one of the microphones that we'll

1 have. We'll have one over there and one over
2 here. Because although typically with most
3 court reporters we have them using the,
4 whatever they call them, it's not a
5 typewriter.

6 But at any rate, although we
7 normally have them using that because of the
8 short turnaround they're recording these. And
9 so that's why we have to have everything
10 spoken into a microphone. So for that, that's
11 the first little bit of housekeeping.

12 As I said this is the last of
13 three consultations that we're doing on the
14 rewrite of the reg. That is quite a few less
15 number of consultations than we've done in the
16 past.

17 And although the Tribal
18 Transportation Program isn't directly affected
19 by the sequester in terms of travel and some
20 of the other, the optics as they say in D.C.
21 rather than going out and doing 10
22 consultations, or as we did last summer we did

1 13 on the proposed roads and access, the
2 Assistant Secretary's Office felt it would be
3 better in this situation to be a little wiser
4 about the number of consultation sessions that
5 we did.

6 So we apologize if some of you had
7 to travel quite a ways. We tried to find
8 places that were direct flights to get to
9 rather than having to go through connections,
10 things of that nature. That's why we did
11 Anchorage and Phoenix and Minneapolis.

12 When the NPRM comes out, the
13 Notice of Proposed Rulemaking comes out we
14 will go back and do further consultations on
15 that. And that will be hopefully with any
16 luck later in the summer.

17 So with respect to this rule right
18 now we're at the point where the -- we came up
19 with an initial draft among the agencies,
20 Federal Highway and Bureau of Indian Affairs.
21 That was presented to the Tribal
22 Transportation Program Coordinating Committee.

1 Some of you in this room typically go to those
2 meetings so you may be familiar with my face
3 and of course LeRoy's and Bob's and Vivian's
4 who have been working on this for quite some
5 time.

6 The Tribal Transportation Program
7 Coordinating Committee gave us a lot of great
8 suggestions and recommendations on that
9 initial draft. Many of those have been
10 incorporated in our draft here.

11 And one thing I need to be very
12 clear about is that this is not by any means
13 a final product. One thing that tribal
14 leaders were very adamant about going back a
15 number of years and really was embodied in the
16 consultation policy that the Department came
17 out with a couple of years ago is that they
18 wanted to be involved from the earliest
19 practical point in any rules that were going
20 to affect tribal programs.

21 We are not doing a negotiated rule
22 here as was done many years ago. We're

1 actually -- which became the product of what
2 is the current rule. And but yet we wanted to
3 get out and get feedback as soon as we could.
4 So with the draft that's where we're at. It's
5 simply a draft.

6 And once we're done with this
7 process the four of us will meet and we will
8 put together -- make changes based on the
9 comments that were presented here. We're
10 probably bring it back to the Tribal
11 Transportation Program Coordinating Committee
12 although that is a little bit in flux because
13 of the travel restrictions and things of that
14 nature with the budget right now. We don't
15 know when the next meeting of the TTPCC is
16 going to be. It hasn't been set yet.

17 The next process, the next step
18 then after that is to put it in what's called
19 Notice of Proposed Rulemaking. The NPRM is,
20 once we get to that point we tend to lose a
21 little control over the process. It becomes
22 pretty formalized at that point. The

1 Department sort of takes over because then
2 there's a formalized process after that.

3 There will be further
4 consultations on the NPRM. We will then take
5 those comments, sit down again with those, go
6 through those comments and come up with the
7 final rule that will then be sent to the
8 Office of Management and Budget and then
9 eventually published in the Federal Register.

10 As many of you know the current
11 transportation authorization is only 2 years.
12 It expires at the end of Fiscal Year '14. And
13 so whether it gets extended, nobody knows. I
14 mean no one I think could have predicted
15 perhaps that -- well, maybe you could have
16 predicted that SAFETEA-LU would have been
17 extended. I'm not sure that the money would
18 have been on nine extensions which is what we
19 eventually went through to get to the point
20 where Congress then came up with just simply
21 a 2-year reauthorization. Which is pretty
22 unusual. Is that about the shortest

1 reauthorization that we ever had? Two years?
2 Yes. So that's the basic process for what
3 we're going to do today.

4 One thing I'd request is that
5 everybody please mute your cell phones. That
6 can be kind of distracting for people when
7 they're talking and when you're trying to
8 listen to comments that are being made.

9 And at this point I'm going to
10 turn it over to Vivian Philbin. She's with
11 Federal Highway's Office of General Counsel
12 and she's going to go through a little bit of
13 the history of 25 C.F.R. 170. And then after
14 that we'll turn it over to Bob and LeRoy for
15 the meat of the presentation. Thanks.

16 MS. PHILBIN: Stenoscript machine.
17 That's because I'm older than him.
18 Regrettably.

19 Good morning, everyone. It's good
20 to see some familiar faces and we hope to have
21 a very productive day. My name is Vivian
22 Philbin. I'm the assistant chief counsel for

1 Federal Lands for Federal Highway
2 Administration.

3 I'm going to go on a brief
4 introduction here of the program. Some of you
5 are old hands and some of you are relatively
6 new. So why are we here today?

7 Well, as LeRoy is putting up here
8 we've got the IRR program established. At
9 that time it was at the Bureau of Public Roads
10 at the Department of Agriculture. So here we
11 have the IRR program started in 1928. And
12 funds were based on a regional priority.

13 Now, from -- up until 1982 which
14 is our the Surface Transportation Assistance
15 Act of 1982, all of the funds that were
16 allocated for the IRR program were on an
17 annual basis to the Department of the
18 Interior.

19 So here we have the first
20 publication of 25 C.F.R. in 1970. And up
21 until 1982 all of the funds were on an annual
22 basis which made it very difficult because we

1 had no long-term reauthorizations for the IRR
2 program to do any long-term planning when the
3 funds were just on an annual basis.

4 In 1982 the FLHP program was
5 established, the Federal Lands Highway Program
6 of which the IRR program was an integral part.
7 And that was very important because for the
8 first time there could be long-range planning
9 in terms of funding. And the STA funded the
10 IRR program at \$100 million a year.

11 In 1987 we had the next
12 reauthorization act, STURAA, which had a
13 decrease in funding. That was during the
14 budget reconciliation years.

15 And in 1991 was some major changes
16 to the IRR program with the passage of ISTEA
17 where it was a heavy emphasis on planning, the
18 TTAP centers were started and a number of
19 other area were impacted.

20 In 1996 we had the passage --
21 excuse me, 1998. By the way, ISTEA saw an
22 increase in funding in the IRR program to \$191

1 million a year.

2 With the passage of TEA-21 and the
3 increase in the IRR program to \$275 million we
4 also had the mandate for negotiated
5 rulemaking. And that was a very lengthy
6 process. We have a number of individuals in
7 this room who were original members of that
8 committee.

9 And so we had a final rule for 25
10 C.F.R. put into place in July of 2004
11 effective FY 2005. But what happened in 2005
12 was SAFETEA-LU was passed. So immediately
13 there needed to be some changes to 25 C.F.R.
14 Part 170. So this has been an ongoing process
15 just to make changes in accordance with the
16 statute.

17 But with MAP-21 which was passed
18 this summer and signed by the President, our
19 latest 2-year bill, it became imperative
20 because there was a statutory change to the
21 formula that we make the necessary changes to
22 25 C.F.R. Part 170.

1 All right, so these meetings are
2 going to discuss the current status of 25
3 C.F.R. Part 170 statutory changes as a result
4 of MAP-21.

5 And this is as Andy has said this
6 is formal consultation. We would like you to
7 please identify yourself and your tribe if you
8 wish or any other entity that you represent.
9 We are taking comments up through June 14,
10 electronic preferably or here today in person.
11 If you mail written comments via regular mail
12 to Washington, D.C. they go through a process
13 and frequently it's difficult to read. So it
14 would be helpful -- we encourage electronic
15 comments.

16 Also, please sign in on the sign-
17 in sheet. Any questions for those of you that
18 are new to the program, any question is not
19 too basic. We have the two gurus of the
20 program, the chief of the BIA DOT Mr. LeRoy
21 Gishi and the TTP director Mr. Bob Sparrow
22 here.

1 By the way, the crucial difference
2 for starters is that we are now the TTP
3 program, the Tribal Transportation Program, no
4 longer the IRR program.

5 So what you have in front of you
6 is the draft 25 C.F.R. Part 170 which is the
7 old 25 C.F.R. Part 170 with all of the
8 rewrite, with input from the IRR PCC. And
9 we're going to take it from here.

10 We hope for a very good day. The
11 last two meetings were similarly well
12 attended. We had a lot of great comments.
13 And some that we hadn't thought of actually.
14 They were very, very good.

15 So in any event have a good day.
16 I know everyone's thinking about Oklahoma, I
17 certainly am. And with that I guess we're all
18 very lucky to be here. Thank you.

19 Excuse me, we are going to have
20 everyone introduce themselves before we begin.
21 Thank you.

22 MR. GISHI: We'll just start from

1 one end here. And if you'd just introduce
2 yourself we'll just slide the mic around as we
3 go on back.

4 MR. CROYMANS: Good morning, my
5 name is Tom Croymans. I'm the acting regional
6 roads engineer for the Great Plains Region.

7 MR. PALMER: Good morning, my name
8 is Jason Palmer. I'm with the Colville
9 Confederated Tribes, Department of
10 Transportation.

11 MR. KLEMENS: Good morning, my
12 name is Ken Klemens. I'm with the Menominee
13 Tribe of Wisconsin, community development.

14 MR. WILBER: Good morning, Wayne
15 Wilber, Menominee Indian Tribe of Wisconsin.

16 MR. MYERS: Good morning, my
17 name's Barak Myers. I'm the manager of the
18 Department of Transportation for the Eastern
19 Band of the Cherokee Nation, Cherokee, North
20 Carolina. Also the primary representative on
21 the Intertribal Transportation Association for
22 the Eastern Region, primary representative for

1 the Eastern Region on the Coordinating
2 Committee as well as the chairman of the
3 United South and Eastern Tribes Transportation
4 Committee.

5 MR. G. BLACKDEER: Good morning,
6 my name is Garrett Blackdeer. I'm with the
7 Ho-Chunk Nation. I'm the tribal roads
8 director.

9 MR. SPRINGER: Hi, Tom Springer,
10 outside counsel for Ho-Chunk Nation.

11 MR. LITTLEJOHN: Good morning,
12 everybody. My name is Greg Littlejohn. I'm
13 a legislator for the Ho-Chunk Nation.

14 MR. FRANK: Hi, Tom Frank. I'm
15 with the Bureau of Indian Affairs here in
16 Bloomington.

17 MS. GORDON: Good morning. My
18 name is Latonya Gordon. I'm the acting
19 regional road engineer for the Eastern Region.

20 MS. RADTKE: Good morning, I'm
21 Vicki Radtke. I'm comptroller for Fond du Lac
22 Reservation in Cloquet, Minnesota.

1 MR. LUSSIER: Good morning, I'm
2 Terry Lussier from Red Lake, Minnesota.

3 MR. BRANCHARD: Dean Branchard
4 from Lake Bend.

5 MR. HAWKINS: Good morning, I'm
6 Zac Hawkins with the Chickasaw Nation,
7 transportation planner.

8 MR. ELLIS: Bo Ellis, director of
9 the Chickasaw Nation Roads Program.

10 MR. LITTLE OWL: Good morning, Tom
11 Little Owl, director of transportation for the
12 Crow Tribe.

13 MR. ROBINSON: Good morning. I'm
14 Tracy Robinson. I represent the Northern
15 Cheyenne Tribal Council.

16 MR. MARTEL: Good morning, Wes
17 Martel, Eastern Shoshone.

18 MR. MOORE: Good morning,
19 everyone. Ed "Buster" Moore, Fort Belknap
20 Tribal Council. I also represent the Montana
21 Wyoming Tribal Leaders, transportation.

22 MR. LEWIS: Good morning, Don

1 Lewis at the Red Lake Finance Department.

2 MR. TIBBETTS: Good morning, Burny
3 Tibbetts, White Earth Nation.

4 MR. HARRIS: Good morning, I'm
5 Aron Harris. I'm the utility roads director
6 for the Sauk-Suiattle Indian Tribe in
7 Washington.

8 MS. METCALF: Good morning, my
9 name is Ronda Metcalf. I'm tribal council at
10 Sauk-Suiattle. For the Minnesota tribal
11 members I want to thank you for allowing us to
12 be in your lands.

13 MR. SINDELAR: Good morning, Ed
14 Sindelar, public works administrator for Red
15 Cliff Band of Lake Superior Chippewa.

16 MR. B. BLACKDEER: Good morning,
17 everybody. I'm Brett Blackdeer. I'm with the
18 Ho-Chunk Nation.

19 MR. SCHRADER: Jon Schrader,
20 transportation planner for the Ho-Chunk
21 Nation.

22 MS. HOFFMAN: Wendy Hoffman, Sioux

1 Tribe.

2 MR. DAVIS: Good morning, Monte
3 Davis with the Match-e-be-nash-she-wish Band
4 of Pottawatomi Indians of Michigan.

5 MR. MOGAN: Good morning, Marc
6 Mogan, tribal engineer, Prairie Island Indian
7 Community.

8 MR. HOLLINDAY: Jason Hollinday,
9 planning director, Fond du Lac Band of Lake
10 Superior Chippewa.

11 MS. BEAR CLAW: Good morning.
12 Angie Bear Claw from Crow Tribe.

13 SENATOR TWO LEGGINS: Good
14 morning, Senator Noel Two Leggins. Crow
15 Tribal Legislature, chairman of the
16 transportation committee.

17 MS. PRETTY PAINT: Jeannie Pretty
18 Paint, the Crow Tribal Legislature.

19 MR. HEALY: Good morning,
20 everybody. My name's John Healy,
21 transportation transit director for Fort
22 Belknap. Also president of ITA.

1 MR. SMITH: John Smith. Shoshone
2 & Arapaho Tribes, director of transportation.

3 MR. GARRIGAN: Jim Garrigan,
4 transportation consultant, Northern
5 Engineering.

6 MR. GOULD: Willard Gould,
7 Northern Arapaho Business Council member,
8 Wyoming.

9 MS. SPEAR: Good morning, I'm
10 Janis Spear with the Northern Cheyenne Tribe,
11 transportation.

12 MR. RUSETTE: Ted Rusette from
13 Chippewa Cree Tribe.

14 MR. ROSETTE: Tim Rosette from the
15 Chippewa Cree Tribe, Rocky Boy.

16 MR. SWADER: Tony Swader, roads
17 and rail key manager for Grand Portage Band,
18 Chippewa.

19 MS. SHERK: Dawn Sherk, White
20 Earth Nation, GIS technician and
21 transportation planner.

22 MR. HARE: Wesley Hare, Yankton

1 Sioux Tribe, transportation planner and
2 transit director.

3 MR. MOILANEN: Good morning, Mike
4 Moilanen, director of planning and project
5 management for the Mille Lacs Band of Ojibwe.

6 MR. SCHEINOST: Good morning,
7 Brian Scheinost, director of public works for
8 the Mille Lacs Band of Ojibwe.

9 MR. BANFIELD: My name's Ben
10 Banfield. I'm the transportation planner for
11 the Little Traverse Bay Bands of Odawa
12 Indians.

13 MS. DOUVILLE: Good morning, my
14 name is Lynda Douville. I'm from the Rosebud
15 Sioux Tribe, transportation planner.

16 MR. SHUMAKER: I'm Reggie
17 Shumaker. I'm an engineer for the Mississippi
18 Band of Choctaw.

19 MR. MILLER: William Miller from
20 Stockbridge-Munsee Roads Department, director.

21 MR. CONNORS: I'm Ben Connors,
22 program manager from Bad River.

1 MS. WOLF: Katie Wolf from Bad
2 River, transportation planner.

3 MR. CROW BELT: Leonard Crow Belt,
4 the Tribal Council, Assiniboine & Sioux Tribes
5 in northeastern Montana.

6 MR. VALENTINO: Richard Valentino,
7 transportation planner for the Omaha Tribe of
8 Nebraska.

9 MR. KELLY: Dave Kelly, Oglala
10 Sioux Tribe.

11 MR. WILLIAMS: Ron Williams, KLJ
12 Engineering, representing the Oglala Sioux
13 Tribe.

14 MR. MCGESHICK: Chris McGeshick.
15 The tribal chairman for the Sokaogon Chippewa
16 Community in Mole Lake, Wisconsin. Also the
17 dog-catcher, the elder director, the youth
18 program director and transportation director.
19 So welcome and to the Minnesota bands for
20 allowing us to be here.

21 MR. RENVILLE: Good morning, I'm
22 Bruce Renville from the state of South Dakota

1 with the Sisseton Wahpeton Oyate.

2 MR. EBERHARDT: Good morning, I'm
3 Cliff Eberhardt, transportation coordinator
4 with the Sisseton Wahpeton Oyate, Sisseton,
5 South Dakota.

6 MR. BILLETTE: Paul Billette,
7 construction superintendent, Fond du Lac Band,
8 Chippewa.

9 MR. FINN: Good morning, Mike
10 Finn, transportation planner, Oneida Tribe of
11 Indians of Wisconsin.

12 MR. MORRIS: Good morning, my name
13 is Rodney Morris. I'm the chairman, Omaha
14 Tribe, Nebraska.

15 MR. BLACKSTAD: Larry Blackstad.
16 I'm a planner with Lockridge, Grindal & Nauen.
17 We're working with the Leech Lake Tribe.

18 MR. SEAL: Don Seal, Saginaw
19 Chippewa Indian Tribe of Michigan.

20 MS. TAYLOR: Good morning, Marge
21 Taylor, St. Croix Tribe, roads planner.

22 MS. STAPLES: Dolores Staples,

1 administration assistant to tribal
2 construction, St. Croix Ojibwe, Wisconsin.

3 MS. KUYKENDALL: Good morning, my
4 name is Marie Kuykendall. I'm the
5 transportation planner for Lac Courte Oreilles
6 Tribe and member of the transit Commission.

7 MS. BRODEEN: Good morning, my
8 name is Barb Brodeen. I am the tribal liaison
9 for MnDOT. I work with all 11 tribes within
10 the state of Minnesota and I'm also an
11 enrolled member with the Bois Forte Band.

12 MR. KENNEDY: Good morning,
13 everybody. Todd Kennedy, Midwest Region BIA.

14 MR. SACCOMAN: Good morning,
15 everybody. Tony Saccoman, Midwest Region. I
16 am not LeRoy Gishi.

17 MR. GISHI: Thank you, I think
18 that's everybody. If we missed anybody please
19 raise your hand. I was just going to say one
20 out of two ain't bad. Better looking or
21 taller as you can see.

22 Welcome to our third, as Andy

1 mentioned our third consultation in this very,
2 very early preliminary process of what we
3 refer to as updating of the regulations.

4 One of the things you'll find out
5 as we begin this process, if a presentation
6 looks familiar it is the final rollout or
7 closeout presentation format that we utilized
8 when we rolled out the current regulations
9 back in 2005. The difference is of course
10 we've gone through and highlighted areas that
11 may be different and edit those areas that
12 definitely have changed.

13 The big changes you will begin to
14 see of course are in those areas of the
15 Subpart C and D, namely from the standpoint
16 that -- from the standpoint of the formula
17 which was a regulatory formula in terms of how
18 it was developed through a negotiated
19 rulemaking to now as a statutory formula
20 developed by Congress and put into the law as
21 the formula itself.

22 I go back, the Tribal

1 Transportation Program as a whole, of course
2 the biggest change is we know that the changes
3 to the program from a Tribal Transportation
4 Program -- from an Indian Reservation Roads
5 program to a Tribal Transportation Program.

6 And you've seen this through the
7 years. Those of you who have been in
8 Transportation for a long time know that 25-30
9 years ago and even longer for some of us who
10 have been around that long we just had state
11 highway departments. That's what they were
12 known as. There was hardly any reference to
13 Transportation. As programs evolved, as we
14 became more and more of a program that dealt
15 with all aspects of transportation and
16 infrastructure a lot of the programs as a
17 whole, the changes in the law, involvement of
18 people who were non-engineers, non-planners,
19 non-construction folks in transportation, it
20 expanded the definition.

21 And you'd begin to see a lot of
22 the DOTs, the departments of transportation in

1 terms of the states. And for -- as Vivian
2 mentioned since 1928 it was always referred to
3 as a roads program although as far back as
4 1991 with ISTEA we begin talking about more
5 and more emphasis on planning and public
6 involvement.

7 In '98 we started introducing
8 topics like changing the eligible activities
9 to include transit facilities which we didn't
10 really know anything about. But we began to
11 see that that's what the intent of Congress
12 was. And eventually of course with MAP-21 we
13 begin to see that it's no longer an Indian
14 Reservation Roads program but it's a Tribal
15 Transportation Program because it starts to
16 encompass anything that is eligible under
17 Chapter 1 of Title 23, highway safety, the
18 programs of emergency relief, and in some
19 cases just eligible activities that deal with
20 working with transit opportunities and give
21 the people that are involved parking
22 structures. Things of this nature became a

1 big part of the program.

2 And as you begin to see it
3 warranted the change in terms of the name.
4 And of course as you begin to look we'll talk
5 more about in the presentation how some of
6 those things came about within the rulemaking
7 process.

8 A little bit of an update of MAP-
9 21 and its impact on the program. As was
10 mentioned we've generally gone with an actual
11 authorization of 5 to 6 years ever since 1982
12 when it first appeared under Title 23.

13 This is a very unique situation
14 because we have a 2-year authorization of the
15 Highway Act for 2013-2014. Now, that's not to
16 say that things won't happen like they did in
17 TEA-21. TEA-21 was supposed to go from '98 to
18 2003 and we ended up having seven or eight
19 extensions going all the way into 2005. So
20 '98-2005, that's -- we're talking about 8
21 years there. And then -- 7 years, 8 years.

22 And then SAFETEA-LU came about in

1 2005 due to expire at the end of 2009. And it
2 went through 2010, '11 and '12. So
3 essentially looking again at the 8 or 9 years
4 as far as the extensions were there concerned.

5 So it's 2 years. We don't know.
6 It depends again on the interest that Congress
7 has. One of the big issues right now of
8 course is money. And I think that had a lot
9 to do with what we're looking at here in terms
10 of how do we fund a program that on an annual
11 basis generally looks at about \$44 billion
12 worth of funding for infrastructure and
13 transportation needs that are out there.

14 A little, very, very broad
15 overview that Bob will be talking about is the
16 other big changes that we're seeing in there
17 is the formula.

18 The formula if you're familiar
19 with TEA-21, in 1998 Congress said Secretary
20 of the Interior you will, based on provisions
21 of the negotiated rulemaking which is in the
22 statute, you will go and begin developing a

1 program rules, regulations, and a funding
2 formula through negotiated rulemaking. And
3 that came out in `98. A committee was
4 organized in the latter part of `98 and went
5 through a number of years in developing this
6 formula between representatives of the federal
7 government and representatives of the tribes
8 within the 12 regions.

9 That established the formula that
10 we operated under as a regulatory formula from
11 2004 all the way through 2012. During this
12 time of course during reauthorization Congress
13 just didn't say develop a formula on how to
14 allocate funds to tribes. It actually came
15 out and said this is how you will allocate
16 funds to tribes.

17 So the difference is a regulatory
18 formula is something that the Secretary has
19 the ability to, based on consultation, input,
20 has the ability to work with, develop policies
21 for, make changes in terms of through and even
22 waive portions of regulations that are

1 necessary.

2 Statutory formula does -- the
3 Secretary has no such authority to be able to
4 do that. That is put in there by Congress and
5 only Congress can change it. So we have now
6 over the next 2 years at least with the
7 passage of MAP-21 a formula which Congress
8 developed and only Congress can change.
9 That's the major difference.

10 The other major difference as
11 you'll begin to see in more detail when Bob
12 talks about it is just how the formula works.

13 One other element in terms of
14 implementation is that there's a transition of
15 4 years for the formula. And of course we
16 know that we only have a bill for 2 years.
17 But it talks about a process of transitioning
18 from an old regulatory formula to the new
19 statutory formula.

20 There are set-asides associated
21 with it. And Bob will talk in more detail
22 about how those kind of fit into and how they

1 compare with what was there before. There is
2 a difference.

3 First, it was in some cases
4 additional money. And in other cases it was
5 money within the program. And Bob will
6 explain a little bit about that, how that
7 works.

8 And then how Congress anticipated
9 being able to sort of balance the process of
10 transitioning tribes from one formula to
11 another formula, lessening the impact or at
12 least deferring the impact over several years
13 in terms of the program itself.

14 Eligible activities. Again, very
15 rarely do we see a lot of discussion about
16 what kind of eligible activities there are.
17 But MAP-21 does detail what kind of activities
18 are to be considered in terms of being
19 eligible.

20 And of course, the whole process
21 of making sure that's in there is so that we
22 know how to utilize these funds in terms of

1 the program itself.

2 The big thing here is that any
3 transportation projects that are eligible for
4 assistance under Title 23, and we talked a
5 little bit about that earlier, are also
6 eligible under this program and they're
7 eligible as tribal transportation facilities.
8 A big definition. The definitions are in the
9 regulations.

10 So when you start to look at this
11 you have the National Tribal Transportation
12 Facility Inventory which is like the old IRR
13 inventory. You have IRR which was Indian
14 Reservation Roads and eligible transportation
15 facilities. Now they all come under one
16 definition of tribal transportation facility
17 which includes roads, bridges. Activities
18 also are included as part of this process.

19 Maintenance was a big change in
20 terms of SAFETEA-LU and prior in that there
21 was -- the change here is it allows for more
22 use -- or excuse me, use of more funds that

1 are associated with the TTP in terms of road
2 maintenance rather than the limitations that
3 were there before.

4 We're going to talk a little bit
5 about set-asides, supplemental funding.

6 Again, Bob will go in more detail on that.

7 Two definitions to be mindful of.

8 These are in Subpart A is tribal
9 transportation facility inventory and the
10 tribal transportation facility as a whole.

11 One of course is the -- this replaces the old
12 definition under IRR. Any -- in the past we
13 used to say an IRR is any public road,
14 highway, bridge that provides access to or is
15 within -- this is the basic definition now
16 that's in, not only in statute but also is
17 what you'll see in the regulations.

18 And of course the requirements of
19 maintaining an inventory are still there
20 assuring that we have an inventory of eligible
21 projects. In order for us to be able to do
22 work they have to be on this list. And this

1 list represents ownership of BIA, tribe,
2 state, municipalities, urban areas, counties,
3 other federal agencies, and so forth. And
4 that's a continuation of what we had before in
5 our inventory. So a lot of that stuff hasn't
6 changed. The definition and how they apply
7 vary somewhat and that of course is in not
8 only the statute but also in the regulation.

9 Other features. Of course we have
10 a safety program. We have bridges. Bob will
11 talk a little bit about how those are
12 incorporated in there.

13 And the big thing is -- and the
14 nice thing you see in what's in the regulation
15 is that when the rulemaking committee was
16 initially working through this in 1998 one of
17 the things they did is they opened up Chapter
18 1 of Title 23 and they just made a list of
19 everything that was eligible in there. And
20 then they took that and they incorporated it
21 into the regulations. So many of those things
22 that are in the current regulations have

1 already been transitioned over. But of course
2 they're there for you to review and repeat.

3 And this confirms that as part of
4 the process that they are in fact not only
5 eligible but all funds that are made available
6 under 104 which basically it says all --
7 identifies all funds that are made available
8 under the federal aid program to this program.

9 Yes, Tim. Can you introduce
10 yourself?

11 MR. ROSETTE: My name is Tim
12 Rosette, Chippewa Cree Tribe, public works
13 director.

14 On the Tribal Transportation
15 Facility Inventory, you know, it's my
16 understanding that it says there that the
17 Secretary of the Interior in cooperation with
18 DOT is required to maintain an inventory of
19 tribal transportation facilities eligible for
20 the TTP. That -- how that's been interpreted
21 is that it only goes to 2011 and no other
22 systems will be added to that or subtracted to

1 that. Is that correct?

2 MR. GISHI: Clarification. This
3 is talking about eligibility. We can continue
4 to update the inventory. And that was a point
5 I was trying to make. Any project that is --
6 in which these funds are to be used on has to
7 be in this inventory.

8 How it works in the funding
9 formula is different. And that's why I
10 mentioned earlier that Subpart C and Subpart
11 D have been -- where you see most of the
12 changes. Because Subpart D still talks about
13 the inventory and talks about the eligibility
14 whereas Subpart C is the formula and that's
15 where it discusses the freezing or the locking
16 of the data that goes into the formula. So a
17 little bit of clarification. But good
18 question, thank you.

19 Again, there are a number of other
20 things in terms of how the program is
21 administered that are part of this process.
22 Obviously the big thing is that's been

1 emphasized from the very beginning is the
2 utilization of tribal self-determination and
3 self-governance in the process. Regardless of
4 the type of agreements that are used they all
5 point to direct the efforts of the Secretaries
6 in the direction of self-determination and
7 self-governance.

8 They're also -- it mentions,
9 continues to emphasize direct funding which
10 came about as a part of SAFETEA-LU. Direct
11 funding and other appropriate agreements with
12 tribes, namely -- we'll talk a little bit
13 about those during the course of the day, the
14 FHWA program agreements and the BIA
15 government-to-government agreements that are
16 out there. And how they fit into the whole
17 process of what we're looking at as choices
18 that the tribes have to be able to administer
19 program functions, services and activities.

20 Point of obligation. It's
21 available to all the federal land management
22 agencies. That's what that means which means

1 Park Service, BLM, Tribal Transportation
2 Program, as well as the Forest Highway
3 Program, the Forest Service.

4 It's one of the things that's been
5 very convenient for us to make sure that
6 primarily it's our ability to be able to make
7 sure we save and secure funding in a program
8 that at the end of each year pretty much wipes
9 that slate clean in terms of available funding
10 based on the nature of the highway funds
11 itself. Bob will talk a little bit about that
12 when we get to the formula portion and how
13 that relates also.

14 Big part of what we're looking at
15 now, everybody, all programs, Congress has
16 really seen a need for us as public agencies,
17 public authorities to begin the process to
18 make sure we implement asset management.
19 Because the funds, as I mentioned we've got a
20 2-year bill. One of the big discussions is
21 how are we going to fund the continuation of
22 the Highway Act and these eligible activities.

1 You recall that a big part of what
2 we used to do in the past was the Highway
3 Trust Fund Account, an interest-bearing
4 account. All the features that you would want
5 in a program that represented an ability for
6 the program to grow.

7 And through the years we've seen
8 that account continue to shrink. There has
9 not been an increase in the gas tax as a
10 whole. So part of all those things are things
11 that they're going to have to talk about.

12 So in doing this they also are
13 saying we need to make sure we put our money
14 in areas where we actually do a considerable
15 amount of data management, infrastructure
16 management, so we can maximize our funds to be
17 able to have a greater impact on public
18 safety. And where that comes along is they
19 want to be able to do that through the process
20 of asset management.

21 This is a big part of the
22 regulations. Federal Highways is going

1 through the whole process right now of what
2 they expect the states to do. And of course
3 Federal Lands is following suit. And we'll
4 have directions from them as we go into that
5 arena.

6 Currently we have available to us
7 these management systems, pavement, bridge,
8 safety, congestion that we are -- that are
9 available to us to be able to do some of these
10 things.

11 Data collection. A big part of
12 the safety concept and the accountability of
13 asset management will be a new provision that
14 says in the past tribal bridges were not
15 required to be inspected, be accounted for.
16 We now have to be able to inspect all tribal
17 public bridges and make sure they are not just
18 bridges that are the responsibility of the BIA
19 but other federal agencies that are on or near
20 Indian lands, but also tribal bridges, bridges
21 that you as a tribe own that are driven by the
22 public which you receive funds for. We need

1 to make sure those are inspected, accounted
2 for, rated and either acted upon by replacing,
3 rehabilitating, or closing is one of the other
4 options also.

5 Another area that's really been
6 emphasized is the ability to develop these
7 reimbursable agreements with other than the
8 federal agencies, BIA and federal highways.
9 But be able to utilize these agreements in
10 working with states and other local
11 governments to again allow the ability for
12 tribes to have and participate in programs
13 that are provided to the states under the
14 federal aid portion of the program as well as
15 other federal agencies.

16 This is the part where we start
17 going into the updates a bit. Our format will
18 be we'll cover each subpart one at a time.
19 And part of the format is also to talk about
20 any timetables, time lines that are expected
21 as part of the regulation, and any reporting
22 requirements that are in that portion of the

1 regulation.

2 Okay, before we get started are
3 there any questions on kind of the overview of
4 what we're going to be doing here? As I
5 mentioned we've got microphones. If you have
6 questions please identify yourself, state your
7 name and speak into the microphones. The
8 system of recording works off of the
9 microphones a lot better than in the past
10 where we had to do a lot of the other
11 different things which is pretty amazing in
12 itself.

13 Subpart A. Subpart A talks about
14 policies, the application of the program as a
15 whole and definitions. So Subpart A as was
16 mentioned before, Subpart A looks at sort of
17 the introduction on what does this rule do.
18 What is its purpose. What is its function.
19 What are the responsibilities and roles of
20 individuals that this rule applies to is what
21 Subpart A provides.

22 First of all, it talks about the

1 authority of the rule, the purpose and scope
2 of the final rule as it exists and as it will
3 exist. The policies with respect to the
4 Tribal Transportation Program and BIA Road
5 Maintenance Program. We've got two programs
6 in there, I just noticed that.

7 And also, what policies, guidance,
8 and directives apply. And then importantly
9 what the definitions are in terms of -- that
10 occur throughout the regulation and are
11 applicable to that.

12 Authority of the rule of course is
13 Public Law 112-141 which is MAP-21, Moving
14 Ahead for Progress in the 21st Century, Title
15 23, United States Code, and Title 25, United
16 States Code. Primarily from the standpoint
17 that one applies to the highway program as a
18 whole which is unique to transportation.
19 There is no highway program in the Department
20 of the Interior. And then of course we are an
21 Interior program within the Bureau of Indian
22 Affairs and provisions that apply to self-

1 determination, self-governance and other areas
2 in terms of appeals and so forth in
3 recognizing tribes as sovereigns. And the
4 whole policy of Title 25 is there also to
5 cover that aspect of it. So those are the
6 authorities of the rule.

7 The purpose of the rule is to
8 provide procedures, rules and a funding
9 formula for a program that is a U.S.
10 Department of the Interior, U.S. Department of
11 Transportation programs. And we say those are
12 there. We have a jointly administered program
13 concept in which we have an agreement with
14 these between the Secretary of the Interior
15 and Transportation on the implementation of
16 the program where funds do come from the
17 Highway Act, including other Title 23
18 programs.

19 And of course the application of
20 these in terms of the Indian Self-
21 Determination and Education Assistance Act,
22 the contracts and agreements that are

1 associated with those particular acts.

2 This includes the Secretary's
3 policy. So this is what Secretary of the
4 Interior and Secretary of Transportation
5 aspire in terms of the Tribal Transportation
6 Program and in terms of the Secretary of the
7 Interior, the BIA Road Maintenance Program
8 provides for uniform and consistent rules.
9 Again, as we go through the process making
10 sure that one applies to the other, making
11 sure that we're covering maintenance
12 adequately as well as construction program,
13 the planning program, programs associated with
14 that.

15 There's portions within this rule,
16 very smart part of what was implemented by the
17 rulemaking committee back in 2004 was there
18 are certain programs that the Secretary of the
19 Interior does not have a role or
20 responsibility in as far as oversight.
21 Implementation, yes, but not oversight.

22 Among those are the Emergency

1 Relief Program associated with emergency
2 disasters. Another program is the Tribal
3 Transportation Assisted Program centers which
4 we refer to as the TTAPs. We have seven or
5 eight of them nationwide. And then we have a
6 new one that changed under this rule and that
7 is we used to have a program called the Indian
8 Reservation Roads High Priority Projects
9 Program, IRRHPP.

10 That changed under the MAP-21 and
11 when it changed Congress specifically
12 established that that program was to be
13 developed with the oversight of the Secretary
14 of Transportation. So in those cases where
15 those programs that are there, the movement of
16 hazardous waste materials, these type of
17 information, the committee at that time felt
18 it's important to put this information in here
19 for purposes of facilitating knowledge of
20 programs and the planning process so that you
21 as planners have one document that you can
22 refer to, at least who to contact, the basic

1 ideas, concepts of the programs. When you're
2 starting to look at these other programs which
3 are not the oversight responsibility of the
4 program but implementation and information is
5 available.

6 So those are clearly noted in the
7 regulations. In the very first either Q&A or
8 as a subparagraph right underneath the
9 introductory is to say this is provided for
10 information purposes only, meaning that in
11 terms of regulatory requirement we don't have
12 the -- if we didn't have it in there we
13 wouldn't be able to put anything in there, but
14 we put them in there because the information
15 is valuable. Very insightful on behalf of the
16 committee in putting that in. And those
17 continue to exist in this draft because they
18 were there before.

19 One of the areas that, again,
20 advancing policy, increasing tribal autonomy
21 and a discretion in program operations in
22 terms of how programs are developed and how it

1 would need to be deferred to the Indian Self-
2 Determination and Education Assistance Act as
3 far as procedures that are there.

4 There are some instances where if
5 it differs from Indian Self-Determination it
6 is specifically identified in the rules. For
7 example, if we have as because we are the
8 Secretary -- we work under the Secretary of
9 the Interior, Indian Affairs, we have as our
10 primary and principal guidance in terms of
11 self-determination and self-governance 25
12 C.F.R. Parts 900 and 1000. That's where you
13 find Title 1 in self-determination contracting
14 and Title 4, self-governance.

15 And in those cases the way the
16 rules were written was not to change those
17 because they're there. They've been
18 negotiated for a different purpose in terms of
19 what's in those regulations. And so those
20 continue to be there. Yes?

21 MR. MCGESHICK: Chris McGeshick
22 with the Sokaogon Chippewa Community. In the

1 policies here that you're talking about and
2 the rules and everything you also talk about
3 the consultation with the tribes. And each
4 individual tribe, I don't know if everybody
5 here is aware of it because we all have our
6 different expertises here.

7 But there's a Presidential
8 Executive order that describes consultation
9 between agencies of even the Department of the
10 Interior and the Secretary with the tribes.
11 And if we disagree with some of these rules or
12 policies that the BIA and this Agency comes up
13 with for our roads programs, our
14 transportation programs, I guess it's my
15 understanding that we can still ask for a
16 waiver on that. Is that correct? If we
17 disagree with a portion of this regulatory
18 scheme.

19 MR. GISHI: There are certain
20 things -- you're right. And maybe I can have
21 a clarification from our Solicitor on that.
22 You're right, there are certain areas that

1 definitely you can ask for a waiver,
2 regulatory things. But there are certain
3 things that are in regulation that are not
4 applicable and I'll have Vivian comment.

5 MS. PHILBIN: Good morning. That
6 is correct. And I don't have that section in
7 front of me. I'm going to look it up as soon
8 as we -- unless you do, on the ability to ask
9 for a waiver. That is in -- first of all,
10 it's in the consultation, the Executive order
11 on consultation, the ability to ask for a
12 waiver. And that's also in the rule itself,
13 I believe, the ability to ask for a waiver.

14 And we have had a very small
15 number of requests. And I cannot say that --
16 I think some may have been with the purchase
17 of equipment. I don't really recall all of
18 them. But there have been a small number of
19 requests. They were carefully considered.
20 Some were allowed and some were not. But that
21 provision is in the consultation Executive
22 order.

1 But that, my understanding, the
2 ability to ask for a waiver is when
3 regulations would be onerous. And this 25
4 C.F.R. is supposed to be all-encompassing. We
5 really wanted to have a uniform application to
6 the IRR program and not have section by
7 section requests of waivers.

8 MR. MCGESHICK: I can understand,
9 I guess, the Agency coming across with that
10 type of a statement. But we are all
11 individuals, individual communities. We all
12 have different sizes. This rule impacts all
13 of us differently. And therefore, like for us
14 we do have to look at the waiver process
15 because we are a small community. I know
16 there's a number of other small communities
17 out here that are going to be impacted as
18 well.

19 And I just think if we had some
20 information here on the waiver process and
21 what waivers have been granted that would
22 benefit some of us other communities.

1 MS. PHILBIN: Okay. First, Vivian
2 Philbin again. First of all, anything that
3 has to do with the formula is not going to be
4 waived because that's statutory.

5 I do believe there were some --
6 there was a request on purchasing of
7 equipment. And we've clarified that section
8 in this rule as well. But there have not been
9 many waiver requests. And there may have been
10 some on operating expenses and salaries.

11 And I do understand, we have 565
12 plus federally recognized tribes, all of whom
13 are different. However, we have attempted to
14 write this regulation so it can be applied
15 nationwide in a uniform manner. All requests
16 for any waiver if it were to be onerous or
17 unreasonable would be considered. And we can
18 talk more at the break about that.

19 MR. GISHI: Thank you, Vivian. A
20 couple of the provisions that are in here that
21 I think have just come about exactly for that
22 reason. Because we have such a large, diverse

1 program here that things have been identified.
2 And we'll actually talk about a few things
3 here today that may have an impact on any
4 changes that come later on. But certainly
5 from the standpoint of what we're looking at
6 here.

7 There are a few instances that I
8 can remember. One of them was early on, the
9 bridge program, the national bridge program
10 which sometimes would provide funds to tribes.
11 But the rules of it were you had to have a
12 local match, 20 percent or similar to that.

13 And it was through -- in those
14 particular instances where those tribes had
15 those requirements that they actually didn't
16 think applied to them those requests were made
17 to Federal Highways and waivers were made in
18 the program in terms of the interpretation and
19 the ability for tribes to utilize their funds
20 to be able to make that local match, utilizing
21 federal funds was approved.

22 So there's certain things that are

1 in there. We'll talk about eligible uses of
2 funds as one of the areas where you can get an
3 exception to that. New uses of -- design
4 exception, new uses of funds are also covered
5 in there. So as we go through there may be
6 some areas that you will be able to address --
7 answer some of the questions that you have.

8 We mentioned that where rules
9 differ, where we start taking a look at
10 exceptions to this, one of the areas that
11 differs in terms of the Indian Self-
12 Determination and Education Assistance Act is
13 that Title 23 has been amended in 1998 and was
14 amended again in 2005, and again in 2012.

15 And the Indian Self-Determination
16 and Education Assistance Act was last amended
17 back in 1996. And there are some provisions
18 in the law that basically apply to all
19 construction programs. And sometimes the
20 interpretation is that, well, if it applies to
21 construction then it applies to
22 transportation.

1 The exception to that is when
2 transportation, and you have to assume that
3 Congress knows what it's doing when it
4 approves new portions of authorizing
5 legislation to say except for in this case
6 we'll treat this different.

7 One of them was in SAFETEA-LU
8 Congress said tribes have the ability to
9 approve their own plans, specifications and
10 engineering estimate. And that's a very big
11 health and safety issue in terms of the Indian
12 Self-Determination and Education Assistance
13 Act.

14 And in there it says that the
15 Secretary will continue to do that and will
16 not allow approval for that function, for that
17 purpose. Yet in Title 23 it says that. So
18 that's one of the areas where if it differs
19 from the act in terms of specifically MAP-21,
20 SAFETEA-LU, TEA-21, Title 23 as a whole, make
21 that change, then that's identified here in
22 the regs.

1 Otherwise, the procedures that are
2 associated with the program about developing
3 applications, about the time lines, all those
4 things that are in the -- in 900 and 1000,
5 Subpart K and Subpart J, those are applicable
6 to the program and are referenced in that
7 manner.

8 MS. PHILBIN: Excuse me. Vivian
9 Philbin again. Sir, the provision in the
10 regulation, I was just double-checking, it was
11 pointed out to me is in 170.625, 626 on
12 waivers. There's been some slight rewording
13 of the language but in essence both sections
14 have remained the same. So there is a
15 provision in the draft rewrite which is
16 substantially similar to the previous final
17 rule on requesting waivers. Thank you.

18 MR. GISHI: Thank you, Vivian. So
19 as we go through this those are some of the
20 areas that you'll be aware of and we'll point
21 out in terms of that.

22 Ideally, though, as we mentioned

1 what we're looking at is to continue to
2 promote the Secretary's policy, the law
3 regarding self-determination and self-
4 governance in not only agreements but also in
5 any of the functions that are associated with
6 implementing the program.

7 Again, to -- just basically what I
8 said, to continue to advance self-
9 determination and self-governance and how we
10 do that. The example I gave earlier is to
11 interpret the rules liberally in favor of the
12 idea that tribes are sovereigns, that we are
13 in a government-to-government relationship,
14 and as a result of that to continue to honor
15 and promote the principles of self-
16 determination and self-governance.

17 And the other big thing we're
18 looking at as part of this process that we're
19 seeing more and more of is facilitating and
20 enabling the transfer of not only funding but
21 also programs, activities that are a part of
22 Title 23 and Title 25 by making sure that if

1 there's any ambiguities in this process like
2 the bridge program and the matching funds
3 situation so that it is favorably ruled in
4 terms of in favor of the tribes. So a big
5 part of kind of how this rule was written in
6 terms of the rulemaking committee as a whole.

7 Not all tribes will participate in
8 all contractable activities with the program.
9 Those are very clearly defined in the rules
10 themselves as which activities are not
11 otherwise contractable in terms of what the
12 federal government does. But everything else
13 of course is included in the program as a
14 contractable activity.

15 Looking at government-to-
16 government agreements again, that whole
17 concept of where we have been when we get to
18 that part of Subpart E, when we start talking
19 about those agreements we'll bring a little
20 more about the whole concept of where we're
21 heading with the regulations prior to this.
22 And what do we want to do in order to continue

1 to build upon that concept.

2 We have new programs. We've got a
3 lot of different ideas that have come about as
4 a result of SAFETEA-LU and certainly MAP-21.
5 What do we now keeping this in mind that as we
6 get to those programs that we're continuing to
7 support that role. And that's where this
8 proposed draft is out there for you to be able
9 to take a look at from that perspective and
10 say we think this needs to be changed, we
11 think this needs to be enhanced, we think this
12 needs to be added in terms of the different
13 program to continue to support what the policy
14 is out there. And obviously of course even
15 commenting on and changing what's in there in
16 terms of the policy itself.

17 Highlights. What we mentioned
18 before, that everything that's considered as
19 far as policy manuals guidance that apply,
20 when those apply for the program. But they
21 only apply if they are consistent with what's
22 in 25 C.F.R. 900 and 1000, self-determination

1 and self-governance regulations for
2 construction.

3 Also, it has all of the terms that
4 are used. If we've missed some. If you go
5 through those, and you'll find sometimes we
6 still refer to things as IRR. In some cases
7 it's applicable because we're referring to the
8 previous program. In other cases it's just a
9 flat-out error. So when you look at those
10 we're finding those and we're developing an
11 errata sheet relative to that.

12 But there's so many of those that
13 we have in there. Because we're really going
14 off of the existing regulations. We want to
15 put those out as the basis for our initial
16 draft.

17 Again talking about the -- what
18 the federal government's role is and how it
19 views tribes in terms of trust
20 responsibilities of the United States. And in
21 no case is there an effort or should there be
22 to impede awards to tribes by state and

1 federal agencies. In fact, doing what we can
2 to enhance that either by developing Section
3 132 agreements with the states between the BIA
4 or Federal Highways and the states so that we
5 can find a way to be able to facilitate the
6 transfer of funds to the tribes either --
7 under any of the agreements that are
8 available. Because sometimes as you realize
9 that's not always possible from the state
10 perspective. And the only mechanism we have
11 is to be able to utilize what we can. And
12 that effort is part of the process and the
13 intent of the program.

14 There are no key dates,
15 timetables. If there were some it would
16 usually refer to a specific day, date, day of
17 the year, or number of days. In this
18 particular case there's nothing in Subpart A
19 that would refer us to that.

20 There's no record-keeping or
21 reporting requirements in this subpart.
22 Primarily again it talks about the policies,

1 the application, the definitions in general.

2 It's 9 o'clock -- 10 o'clock.

3 It's our break time. Let's take about a 15-
4 minute break. We'll go back to Subpart B and
5 start up there again. Thank you.

6 (Whereupon, the foregoing matter
7 went off the record at 10:04 a.m. and went
8 back on the record at 10:25 a.m.)

9 MR. GISHI: I apologize. I got a
10 little carried away here. So let's get going
11 again if we could, please.

12 It's good to have opportunity to
13 touch bases with a lot of folks that
14 manage/operate programs out there on behalf of
15 their tribes and discuss a lot of things that
16 are happening. We've seen a lot of changes
17 over the years.

18 I've got an announcement that this
19 is -- Todd, this is handled through the hotel?
20 The hotel catering office has, there's a
21 buffet, \$11.50 that's available for lunch when
22 we break for lunch. Or if you want to grab a

1 lunch box and come back in here and sit if you
2 need phone calls or you need to get on the
3 computer. The lunch box is available for \$10.
4 And those are available till sold. I don't
5 know what's in there. Might be a hot dog and
6 a bag of chips or it might be a T-bone, I
7 don't know. But that's available from the
8 hotel.

9 And of course most of you who are
10 around here are familiar with eating places up
11 and down, the Mall of America and so forth.
12 So that's available also. And we usually try
13 to get a little more than an hour just because
14 of the flexibility of people having to get
15 places they're not being familiar with.

16 So Subpart B. A little bit more
17 of a continuation of the TTP, Tribal
18 Transportation Program policy. And the big
19 part of this is eligibility. When you see
20 some of these initial subparts they may be
21 five or six pages long, but they only have a
22 few Q&A's that are associated with the

1 program. And the bulk of it you see are large
2 lists, large lists of either information about
3 eligibility, definitions, things that are
4 included as part of the program. And these
5 sections are no different than that. And
6 we'll talk to you a little bit about what
7 those are.

8 General overview of Subpart B.
9 Again, we're still in the policies, the
10 procedural parts of it when we get to C. We
11 start getting into D, E, F, and G, and H, more
12 of the specific program procedures that are --
13 that make up the program. And that's where
14 you'll see a lot of the potential for changes
15 that may occur as you're looking at those.

16 Subpart B talks about the three
17 C's, primarily what we refer to as
18 coordination, collaboration, consultation
19 responsibilities in terms of the roles that
20 the individual agencies have and to an extent
21 they don't have. Because when we start
22 looking at it certainly there is a definite

1 relationship from a government-to-government
2 perspective in terms of the federal government
3 which may vary in terms of state and local
4 governments which everybody's aware is very
5 different in every locale and every state.

6 But what's identified here is the
7 goals of trying to provide that in terms of
8 what's actually written in the law and in
9 terms of what is the policy of the two
10 agencies in terms of those, the three C's
11 themselves.

12 It also lists eligible and non-
13 eligible activities for the TTP program. And
14 it's quite an extensive list. Again it comes
15 from the efforts of the rulemaking committee
16 taking everything that the eligible activities
17 in Chapter 1 which is the federal aid portion
18 of the program and including it into the
19 appendix for Subpart B to basically show these
20 are the kind of activities that are available
21 and that are eligible.

22 And some of these are not

1 specifically stated in the portion of the
2 statute but are referenced by virtue of the
3 fact that it talks about it in the previous
4 Subpart A that these eligible activities are
5 also part of the program.

6 We had a question here. And a
7 mic? Mr. John Smith.

8 MR. SMITH: LeRoy --

9 MR. GISHI: State your name.

10 MR. SMITH: -- I think it would be
11 helpful --

12 MR. GISHI: John, state your name.

13 MR. SMITH: Oh, John Smith,
14 Shoshone Arapahoe Tribes. Cousin to LeRoy
15 Gishi.

16 But it would be helpful to our
17 tribal leaders who don't really know what is
18 new and old. And some of the tribal leaders
19 have just been appointed or been elected
20 sometime. But this is practically done
21 through the negotiated rulemaking committee,
22 correct?

1 MR. GISHI: Correct.

2 MR. SMITH: And so maybe if you
3 could mention that when you have an old Part
4 170 item and then when you go to a new MAP-21
5 item it would be a little advantageous to
6 those that really aren't quite up to speed
7 with the new and old, et cetera.

8 MR. GISHI: Okay. Thank you,
9 that's a good comment. I will continue to try
10 to do that.

11 And as I mentioned, Subpart A and
12 Subpart B are pretty close to what was
13 identified in the original negotiated
14 rulemaking. The adjustments primarily are the
15 name, Tribal Transportation Program, and in
16 some cases where we're talking about eligible
17 activities when we -- as I mentioned, when
18 SAFETEA-LU was passed it provided a number of
19 things that were eligible under the program.
20 And we'll highlight those which are in this
21 list that those, a couple of the key areas
22 that are in there that a lot of you may have

1 had questions.

2 If you came into the program as a
3 transportation planner or director or tribal
4 council member who was over transportation in
5 the last 5 to 6 years and you took a look at
6 the regulations you would have seen a number
7 of activities that said can't do this,
8 shouldn't do this. And then you read the
9 statute and it says whoa, I'm interpreting
10 this to mean that this is eligible. Well,
11 that's part of why we're doing this is there's
12 a lot of things that are in there that need to
13 be updated. And we'll, as John recommended,
14 we'll do that.

15 So part of that is one of the
16 areas that we talked about here, construction
17 eligibility. Of course we know the program is
18 more than just contract but really it's the
19 meat of what we're doing. Because
20 infrastructure on Indian lands, reservations,
21 and so forth is -- you're very much aware that
22 we have a number of \$70 billion worth of what

1 we call cost to construct or cost to improve.
2 It means that's what it would cost for us to
3 get the system to an adequate standard, not to
4 a pie in the sky, four lane divided,
5 everything paved, but whatever meets the needs
6 of the local traffic, ADT population use
7 adequate standard, about \$70 billion.

8 So we're still in that environment
9 of continuing to really emphasize the need to
10 build an infrastructure base to support
11 transportation in the Indian communities and
12 so forth. So from that standpoint a big part
13 of what we're seeing out there in many of the
14 areas is still going to be the emphasis is on
15 construction.

16 But that doesn't mean that we
17 can't do other things that are eligible and
18 particularly if you're in an environment where
19 you have very unique instances dealing with,
20 for instance, recreation travel and tourism.
21 If that's a big part of what you're looking at
22 from a tribal perspective then those kind of

1 activities are certainly eligible and you have
2 the ability to be able to manage those as you
3 need to.

4 So when we start looking at some
5 of these eligible activities one of the new
6 things that's really been emphasized since
7 SAFETEA-LU has been the area of the ferry boat
8 discretionary program, ferry docks, the
9 activities associated with moving of people
10 and goods in areas where we don't have
11 traditional transportation capability. We've
12 seen a lot of that in Alaska, up in the Upper
13 Northwest in terms of some of those
14 activities.

15 Recreation travel and tourism are
16 a big part of helping to develop and continue
17 to support economic development in Indian
18 Country. And tribes working within the system
19 to be able to promote some of those things
20 that are there. Access roads to airports, of
21 course a big part of it.

22 One of the big areas though that

1 we've seen is transit. Transit facilities is
2 a new word that showed up as part of TEA-21 in
3 1998. And although we emphasized it we began
4 to learn more. FTA during the SAFETEA-LU era
5 developed a program for transit programs run
6 and operated by Indian tribes providing
7 separate funding. Now it becomes really clear
8 that what's now the role of tribes. Well,
9 those same activities are eligible here, it's
10 just now the flexibility of being able to have
11 the funds to be able to do those things are a
12 big part of what you're going to be looking
13 at.

14 So, these eligible activities are
15 also very unique to tribal programs. We don't
16 see anywhere else where they talk about
17 cultural access roads, housing access roads.
18 Those are part of what you do on a daily
19 basis. How do those now fit into the
20 eligibility concept of the use of these funds.

21 The other one is seasonal
22 transportation routes, boardwalks and board

1 roads and trails. Utilization of a lot of
2 these that continue to help support movement
3 of people and goods in our communities.

4 This portion also covers a little
5 bit about the highway safety functions of the
6 -- incorporated in the new tribal
7 transportation safety funds that are made
8 available under the set-aside. What kind of
9 activities and functions and equipment may be
10 eligible for funding. Again, if you came from
11 the pre-SAFETEA-LU TEA-21 era there was always
12 that idea that we don't buy equipment with
13 these funds, we construct roads.

14 A lot of the development of
15 procedures were geared toward a federal aid
16 program that was a dominant part of what we
17 did in transportation and that was just one of
18 those things where it was assumed that you
19 don't do those things. And so our policies,
20 everything were heading in that direction.

21 We've learned through the years
22 through some of these exceptions that Vivian

1 talked about about equipment purchase and
2 access that these are things that are now
3 identified in the regulations. So it does say
4 in this Subpart B in the list of eligible
5 activities it talks about equipment purchase,
6 capital equipment and so forth.

7 Take a look at that because
8 remember, we haven't changed anything in a lot
9 of those areas regarding what was approved by
10 the committee and what was approved by the
11 Secretary back in 2004. If it needs to be
12 enhanced, if it needs to be clearer that's
13 what we're looking at here and those
14 particular cases so that we can make sure that
15 what's there is valid for you to be able to go
16 back to your council, be able to go back and
17 when you're doing joint administered projects
18 to be able to clearly state what your role is
19 in any project. So a lot of these eligible
20 activities that are in there may need a little
21 more support, clarification, beefing up. And
22 so those are areas that you may want to take

1 a look at in terms of the definitions
2 themselves.

3 Talks about the Tribal
4 Transportation Assistance Program centers, the
5 TTAPs. These are the technical assistance
6 program centers, seven. I think there's one
7 in central Michigan. Is that right, Burny?
8 Michigan Tech, I'm sorry. Thank you, Michigan
9 Tech. And there's also -- we have one in
10 North Dakota at the United Tribes.

11 Do we have a question over here
12 from somebody? Did you have a question
13 somewhere? Did someone raise their hand? I
14 must be seeing things. Again my good cousin,
15 John Smith. I keep seeing his hand go up.

16 And part of that is what programs
17 are available. And again this one is one of
18 those that's provided for information purposes
19 only because it is handled through cooperative
20 agreements with the Federal Highway
21 Administration. But it's important to know
22 what they do and what their roles and

1 responsibilities are.

2 Consultation, the three C's.
3 Consultation, cooperation -- excuse me,
4 collaboration and coordination. And some have
5 even been recommending that they add another
6 one, either communication as a part of that.
7 But it provides a definition essentially again
8 coming from a lot of what was done in the
9 rulemaking aspects working with tribes. And
10 a lot of that also came from some of the
11 existing regulations that were available to
12 the committee at the time under self-
13 determination and self-governance.

14 It talks about the TTP government-
15 to-government consultation and coordination
16 policies. There are a number of things that
17 are in there in terms of where it's important
18 here is that anything that we identify in the
19 regs we end up sending forward to, eventually
20 under the formal rulemaking process to OMB, to
21 the Department. And they look at it from a
22 different perspective. Our primary partners,

1 our tribes, and in doing so as an Agency as an
2 office we push those things forward based on
3 what we've been able to work with.

4 When we get to the Department
5 their primary customers if you will are pretty
6 much Park Service and a lot of the programs,
7 BLM. They look at it from that perspective.

8 Then when it gets to the Office of
9 Management and Budget they look at it from a
10 different perspective also, much broader
11 again. So what we're looking at here is being
12 able to at least define the process knowing
13 that there's going to be a formal review down
14 the road. But this is our chance at this
15 point to be able to include in here areas that
16 either are -- that take into account what
17 we're trying to do from a policy perspective
18 of Indian Affairs and the Federal Lands
19 Highway Tribal Transportation Program and
20 moving forward.

21 It talks about also what are some
22 of the things that we can do to assure that we

1 are meeting and adhering to provisions to
2 prevent discrimination and adverse impacts.
3 We know that in a lot of cases that's areas
4 that sometimes we've got individual concerns
5 that are out there.

6 This again is looking at it from a
7 national perspective. And again, within the
8 authorities that are available to us. And
9 since this rule has gone through the whole
10 process of the formal rulemaking this is what
11 was approved prior to that.

12 And of course since then what have
13 we had? We had the current administration
14 that has made a tremendous effort in
15 redefining consultation, inviting tribes to
16 Washington, D.C. on an annual basis and
17 sitting down and talking about a lot of these
18 things, and getting the administration's, the
19 Cabinet involved in talking about some of
20 these things, well, I think all of those
21 things represent areas that are not the same
22 environment not only that we had in the BIA

1 but certainly an environment we had in
2 government as a whole. So those are areas
3 that have impacts as we go forward. So when
4 you're looking at these take a look at it from
5 that perspective as you provide comments.

6 The eligible uses. One of the
7 things that we talked about was equipment, was
8 really one of those areas that on a case-by-
9 case basis. Since then I think development of
10 the TIPs, development of the concept that
11 maintenance from the standpoint that initially
12 25 percent or \$500,000 in terms of what was
13 available in terms of 25 percent being
14 available under SAFETEA-LU.

15 Well, now it's changed. It says
16 25 percent or \$500,000, whichever is greater.
17 So as a tribe if you get your annual tribal
18 shares is \$400,000 in the past the maximum you
19 could use is \$100,000. Now, you can use all
20 \$400,000 for road maintenance activities.
21 That's a big difference in the eligible
22 activity areas.

1 And that wasn't -- as Big John
2 said, that wasn't written that way in the
3 current regulation. We've added that to it
4 but take a look at that in terms of what's
5 written there. And so those are areas that
6 we're seeing changes in, obvious changes that
7 we've seen in terms of the law and what is to
8 be updated in the regulations.

9 Also what was mentioned before,
10 there is provisions to provide a request for
11 eligible uses of the highway funds under the
12 TTP program. We'll talk a little bit about
13 that in terms of what it references in there.
14 This actually was in the original -- what's
15 originally in the rule in terms of how to go
16 about doing that. Provides definitions,
17 restrictions, eligibility of cultural access
18 roads. Again, an area that tribes came up
19 with in terms of making sure that those were
20 included and could be addressed in terms of
21 not only protecting cultural areas but also
22 making sure that if there was going to be any

1 participation what are some of the rules that
2 are associated with that in order to be able
3 to make those -- to continue to function in
4 those areas.

5 Because it is part of your
6 transportation system and it is something that
7 you need to be aware of when you manage all of
8 those. Do these adequately address it from
9 that standpoint. And if they don't does there
10 need to be clarification regarding that.

11 Seasonal routes, access roads we
12 talked about, toll, ferry and airport
13 facilities. Big one again I mentioned down
14 here before transit facilities. It's become
15 a big part of the program. They have a
16 separate set-aside under FTA which they now
17 have a portion that is provided based on data
18 as well as a portion that's based on an
19 application process. And all those are in the
20 announcement with FTA which is not part of
21 this rule. I want to make sure it's clear
22 it's not part of this rule.

1 But some of the activities are
2 associated with, and certainly from a matching
3 perspective can be -- these funds can be
4 utilized to support those projects that you
5 may be working with under FTA.

6 Another part of the rule -- this
7 part of the rule is it talks about the TTPCC
8 which is the Tribal Transportation
9 Coordinating Committee, defines its roles,
10 responsibilities, what it does. And also the
11 funding for it.

12 So here's an opportunity if you
13 have and are familiar with the formerly the
14 IRRPCC which is of course now the TTPCC as a
15 result of this change. We've left it in there
16 pretty much as is. Here's an opportunity for
17 you to comment on what you as people who
18 receive services or receive attention or
19 information from these tribal representatives
20 and federal representatives that are part of
21 the committee.

22 And their primary purpose of what

1 they do, it's very clear that they are not --
2 they do not represent tribal consultation.
3 They are a supplement to the process and for
4 that reason that needs to be very clear as it
5 says in there to provide input and
6 recommendations to the Secretary of the
7 Interior and Secretary of Transportation.

8 The TTAC, formerly the -- or they
9 still refer to themselves as the TTAPs. What
10 their role and responsibilities are, what they
11 do, how they are funded, selected and managed
12 is in this subpart.

13 The highlights primarily is we
14 have two lists. We have the allowable uses of
15 funds and then other sources of training and
16 education opportunities that are out there.
17 Again, for information purposes so that you
18 have the availability to access those things
19 particularly if you're a new transplantation
20 planner, what you need to be able to know
21 about the program in terms of eligibility.

22 Is this clear? If you've come on

1 in the last 2 or 3 years, if this is a new
2 program for you, does this regulation answer
3 all your questions? Does this appendix answer
4 the things you need to know? Is there -- do
5 there have to be things that need to be
6 clarified? And if that's the case certainly
7 this is an opportunity to be able to provide
8 those comments.

9 Some key dates in terms of time
10 lines and so forth is that within 30 days of
11 notice of availability of funds particularly
12 from the standpoint of obligating we do a lot
13 of work in terms of direct service with tribes
14 where we do work on the tribe access to as an
15 Agency both either from a Federal Highway
16 perspective or from the BIA that we perform
17 this work.

18 And in doing so we either do it
19 in-house or we go out and hire contractors to
20 do such. And anything that affects the tribe
21 in terms of the program, project or activity,
22 the Secretary is required in some form or

1 fashion either through a TIP, either through
2 a sit-down to be able to notify you of the
3 fact that they're going to obligate funds,
4 that they're going to be working toward a
5 project that impacts you as a tribe. And this
6 identifies the time lines for which those are
7 available.

8 New eligible uses. Again, a
9 timetable. If there is an activity related to
10 a 25 U.S.C. type project, primarily BIA, or a
11 23 U.S.C. if you're looking at other roads,
12 ownership of others, county roads, state
13 roads, roads that are the responsibility of
14 other federal agencies, then in either case
15 whatever the eligible new use requests.

16 Let's say you want to, as an
17 example, you want to replace all of the --
18 it's hard to figure out a new use for
19 something because pretty much everything is
20 eligible. You wanted to change your lighting
21 from red/yellow/green to blue, orange and
22 pink, and you thought that was a good idea.

1 If it was on a BIA route then you would refer
2 that to Secretary of the Interior. If it was
3 on other routes owned by others obviously you
4 would go to the Secretary of Transportation
5 meaning Federal Lands Highway Office, and then
6 that decision would be made, a response would
7 be -- of the requesting tribe would be 45
8 days.

9 We've had a few instances where
10 we've had requests for changing on the signage
11 in the past 5 years, particularly through the
12 ARRA projects which we responded to. But we
13 haven't had too many as I mentioned because a
14 lot of the activities that are there are
15 already eligible or are identified. Well,
16 here's an opportunity.

17 The program is changing
18 significantly, particularly under the road
19 maintenance. If it isn't specifically stated
20 in there, there may be areas that you would
21 want to look at in terms of how to do that,
22 here's the opportunity to be able to make that

1 change and utilizing this process in terms of
2 time line and response.

3 Yes?

4 MR. KELLY: Dave Kelly, Oglala
5 Sioux Tribe.

6 I feel that not everything is
7 covered in here myself. Being from the Great
8 Plains we have what we call the Mni Wiconi,
9 the rural water system which services Rosebud,
10 Lower Brule, Yankton, Rosebud and Pine Ridge
11 itself, that land is being held in trust. And
12 this is going to correlate with the inventory.
13 We've been having a substantial problem trying
14 to get this thing added to the existing
15 inventory.

16 But the inventory being the moving
17 target that it is, you know, we've had legal
18 reviews on it. We went through the whole
19 synopsis. It's pick and choose on this
20 particular line even though the land itself is
21 in trust.

22 MR. GISHI: Okay. And I think the

1 key here is that once it becomes eligible, the
2 term is eligible whether through this process
3 or in the eligibility list then it's eligible
4 for use of funding. How it comes into the
5 inventory is, we talk about that as part of
6 Subpart D when we talk about proposed roads,
7 access roads.

8 And those are generally in those
9 areas that are either within or outside of
10 Indian lands is what we're looking at. And
11 that's something that this is an opportunity
12 to make those recommendations as far as
13 consistency. Yes, Tim?

14 MR. ROSETTE: Tim Rosette,
15 Chippewa Cree Tribe, transportation director.

16 And going with what Dave said, you
17 know, we have the same problem out at Rocky
18 Boy. He's talking about the same thing we
19 did. And that land is held in trust. And
20 this has been a contention for awhile because
21 we have to service those water lines that the
22 right of way that was purchased for those was

1 enough for the road so that they could be
2 serviced, those water lines could be serviced
3 off the reservation.

4 Those have to be added into the
5 inventory. And this has been a contention for
6 Rocky Boy at least and for these guys as well
7 I mean for a long time. And we put it on the
8 inventory years ago and it went in as a
9 Category 3, you know, non-fundable until at
10 which time you looked at the law.

11 When we submitted our law here
12 last year we never did receive a response back
13 on if it was going to be added to the
14 inventory or not. And those are -- got to be
15 eligible activities compared to what else goes
16 on in the country.

17 MR. GISHI: Yes, and that's
18 important to know because what you're looking
19 at here in some cases is a lot of the criteria
20 that established how roads are to be counted
21 in the formula are completely changed.
22 They're different. So when you're looking at

1 it from -- and that was Subpart C.

2 When you're looking at it now from
3 an eligibility standpoint if it is in the
4 inventory even as a construction need of 3
5 it's eligible. It is eligible. It just, the
6 reference was it didn't count in the formula
7 back then. So now it's a matter of the impact
8 is it's like every other road that's out there
9 in the inventory that it's eligible.

10 But I know what you're saying in
11 terms of how those need to be defined. How
12 much of it in terms of the roads that are
13 accessing these trust lands of it actually can
14 go into the inventory. More from an
15 eligibility perspective as opposed to how it
16 impacts the funding.

17 And this is where when we get into
18 Subpart D we reference some of those things
19 about access roads. That's the opportunity to
20 provide some of those comments also. We've
21 got another question.

22 MR. ROSETTE: Actually, it's both,

1 you know, inventory and effect on funding
2 because it doesn't matter. We're still going
3 to have to maintain, somehow maintain that --
4 those facilities that are off the reservation,
5 we have to maintain them. They are the
6 tribe's.

7 MR. GISHI: Yes, and that's the
8 whole point. The point is if they are in the
9 inventory they are eligible for any funding
10 that's available. And not only through the
11 TTP but other funding that may be provided
12 through state programs or discretionary
13 programs or the safety program or the high-
14 priority programs that are out there. So
15 you're right.

16 But by first getting in there as
17 eligible, being eligible, that's what we're
18 talking about here. And if they're in
19 inventory they're eligible.

20 Dave's is a little different
21 because he couldn't get his, portions of his
22 that he wanted to get into the inventory. But

1 now this is how we need to be able to address
2 it from that standpoint.

3 And we're hoping that last
4 summer's consultation we were talking about
5 access roads and proposed roads. Actually a
6 way to define those and measure those which --
7 but it was for funding purposes. So now we're
8 back to square one, do we now incorporate
9 those same provisions into the process of what
10 we're looking at.

11 We reference it just very, very
12 briefly in here but that's what we're going
13 out is we're going to look at that and say is
14 this now sufficient to be able to move that
15 forward so that we clearly define that.

16 If you're -- when Bob's doing his
17 presentation he does a portion talking about
18 how it's important, why it's important to
19 continue to keep the inventory updated.

20 Because it not only is establishing eligible
21 projects but it also -- you guys have seen
22 what we've gone through in the last 10 years

1 as a transportation program. Things have
2 changed three times.

3 So do you want to continue to be
4 able to provide a mechanism to be able to
5 include those in there so that if anything
6 changes from the eligibility standpoint
7 they're still there or they're clearly
8 defined. So that's a very important point
9 you're making, Tim. Thank you.

10 Coordinating Committee, again.
11 They have one requirement that within 90 days
12 they report to the Secretary and to -- in
13 terms of a report, a formal report that they
14 provide not only to tribes but also to the
15 Secretary.

16 And they generally try to do that
17 by meeting with the Assistant Secretary every
18 January. Sometimes they have to move it
19 around depending on whether it's funds
20 availability, whether we're in a CR or
21 otherwise.

22 But they generally meet once a

1 year to provide that update. And it basically
2 says within 90 days of the end of the year so
3 they try to do that within the first quarter
4 of -- first or second quarter of the year. So
5 that's one of the record-keeping requirements
6 that we have there.

7 Got a question over here.

8 MR. MARTEL: Yes, Wes Martel,
9 Eastern Shoshone Business Council.

10 As a tribal leader we really have
11 some questions regarding your consultation
12 policy and what your actual definition of that
13 is.

14 I must give deference to all the
15 transportation directors here because they're
16 the ones that work with a lot of this on a
17 day-to-day basis and understand the ins and
18 outs of the regulations and the proposed
19 changes.

20 And as a tribal leader we depend
21 on them to review these changes, review your
22 handling of the BIA program. And when it

1 comes down to the consultation side it just
2 seems like you completely dishonored the
3 tribal consultation policy.

4 You know, the changes that you
5 proposed went to the TTP committee but never
6 came to the tribes. There was never any type
7 of meaningful way to look at. It would have
8 been nice if we had like a red-lined copy of
9 the regulations and a proposed but that never
10 did happen.

11 And the, you know, on that last
12 slide you had up where the TTP is supposed to
13 keep the Secretary informed I know the TTP did
14 try, did request to meet with the Assistant
15 Secretary and the Associate Administrator for
16 the Federal Highways but that wasn't allowed
17 for some reason.

18 So as a tribal leader I've really
19 got to question your consultation methods.
20 And I know at a previous meeting awhile back
21 in Albuquerque, Montana and Wyoming tribal
22 leaders asked for meetings in either Billings

1 or Rapid City so a lot of the tribes could get
2 there. Because a lot of tribes are under
3 tight budget restrictions right now and we
4 just can't travel. Kind of out of the way for
5 a lot of us to come to Minneapolis. I'm just
6 glad you didn't have it in Siberia somewhere,
7 you know.

8 But it's really make -- just the
9 Montana-Wyoming tribal leaders, you know, we
10 just really question your consultation methods
11 and policies. It just doesn't -- you've just
12 completely dishonored it in our view.

13 MR. GISHI: And I appreciate the
14 comment. It's similar to comments that we
15 received in Alaska as well as in Phoenix. And
16 we want to make mention again.

17 What we proposed and what we
18 rolled out there was the ability to be able to
19 have -- this is in terms of the formal and
20 informal rulemaking this is not formal
21 rulemaking. Because if it was there's a whole
22 set of rules associated with that.

1 What we're trying to do is just
2 establish the ability to get the basic changes
3 of what was in the law and put it out there
4 for people to be able to look at the regs and
5 go from there. In starting somewhere that's
6 where we're at.

7 And so from that standpoint that
8 was the direction we were trying to head. And
9 we realize that even with that there is some
10 concerns relative to the tribes as a whole.
11 And for that reason we want to be able to make
12 sure we also emphasize that this is the
13 opportunity to get the rule based on your
14 input to a point where we can actually get
15 started with formal rulemaking. And we
16 thought that that was the best way.

17 Unfortunately as you mentioned not
18 only you have budget restraints but we've been
19 going through the whole process as a whole.
20 And some of the meetings that we've had
21 scheduled were not able to come about as a
22 result of certainly through direction,

1 leadership much higher than even our Assistant
2 Secretary is concerned. So keep that in mind.

3 I certainly appreciate your
4 comments and it is consistent with some of the
5 things that other tribal leaders have said
6 also. Yes.

7 MR. CROW BELT: Yes, Leonard Crow
8 Belt from the Rocky Mountain Region to Fort
9 Peck. I also agree with the Shoshone, Mr.
10 Martel was saying. We agree with him.

11 But one of the comments I would
12 like to make is just a comment. You know, we
13 talk about all of this funding that's
14 available. But one thing you haven't
15 mentioned, is there any type of funding for
16 disasters? You know, when it comes to the
17 wintertime we burn all our funding up on snow
18 removal. You know, by the time it comes to
19 really maintain the roads we don't have any
20 funding left. So I don't know if there's
21 anything in here for disasters where you can
22 apply for special funding for that.

1 Being on the tribal council, you
2 know, our constituents, they come in all the
3 time and that's one of their major concerns is
4 that you've got potholes and washboard roads
5 and they're just never maintained. The
6 funding is just not there. And that's what we
7 hear at the council level.

8 Like you said we really depend on
9 our planners for attending these meetings and
10 bringing the information back to us. But I
11 just wanted to share a little bit of that with
12 you because the funding for maintenance is
13 just not there. I mean we can take up to 25
14 percent and you're still not going to have
15 enough funding to maintain those roads,
16 especially up in northeastern Montana where
17 we've got all that heavy traffic now. I mean,
18 our roads are just deteriorating fast. And
19 we're just going to have to find some way to
20 get funding to maintain these roads.

21 Like I say, in the wintertime we
22 just burn all our money up for snow removal.

1 But I don't know if there's any disaster funds
2 available for something like that. So I just
3 wanted to share a little bit with you. So
4 thank you.

5 MR. GISHI: Thank you. As a
6 matter of fact this afternoon when we start
7 talking a little bit more about the Emergency
8 Relief Program and most of you know the
9 changes in the Stafford Act regarding the
10 tribes' ability to establish and prioritize,
11 declare disasters. That was one of the
12 biggest, biggest areas that impacted tribes
13 being able to go out and utilize funds to be
14 able to do that. Because it's a reimbursable
15 program whether through FEMA or through the
16 Emergency Relief Program.

17 Those have changed. And so
18 obviously those changes even occurred here in
19 the last 3 to 4 months. So those are things
20 that need to be looked at when we're talking
21 about how that impacts. And so that is not
22 covered in here because simply it wasn't in

1 the rule prior to that.

2 But that's going to be an area
3 that really I think we're going to get a lot
4 of input and feedback on that because just
5 like you're saying there's a different door
6 that's open relative to emergency disaster
7 type projects that can be impacted.

8 As far as road maintenance the
9 biggest change is being able to use up to
10 \$500,000, whichever is greater as I mentioned.
11 Before it was just 25 percent. Now it's
12 whichever is greater. And that really allows
13 you more of the ability to manage at your
14 level how you want to prioritize that.

15 And I think that's what really
16 what tribes are looking at is we want to be
17 able to manage it. Before it was a smaller
18 number but there wasn't much to manage. Now
19 there's the potential for more to be able to
20 manage and be able to make that decision on.

21 But it doesn't -- it also talks
22 about -- it doesn't absolve or in any way

1 limit the Secretary in continuing to request
2 funding for road maintenance on an annual
3 basis. And that's clearly written in the
4 regulations also.

5 Got a question right here.

6 MR. ROBINSON: Yes, Tracy
7 Robinson, Northern Cheyenne Tribal Council,
8 Rocky Mountain Region.

9 I support my colleagues that spoke
10 and commented on -- from the Rocky Mountain
11 Region. But I've got a question. You know,
12 back to the Executive order, the 13175. And
13 you say that this is informal but you're going
14 to come back with a formal. So we're going to
15 go through this whole process again after we
16 finish this up and come back with a formal
17 process?

18 MR. GISHI: Yes, maybe I can get
19 the Solicitor's folks to explain exactly how
20 that works. It's formal and informal in terms
21 of the rulemaking but in terms of consultation
22 it is consultation.

1 MR. CAULUM: Yes, this is
2 considered consultation under the Department's
3 policies and under the President's Executive
4 order. What we're doing here is the first
5 step in the process with tribes.

6 Because as I mentioned I think
7 earlier we go to a Notice of Proposed Rule, we
8 lose a fair amount of control over the process
9 at that point. That's a much more formalized
10 aspect. So I think that might have been where
11 you were perhaps thinking about it as formal
12 versus informal.

13 This is formal consultation in the
14 sense that we have a court reporter here.
15 Everything that is being said is being taken
16 down. We'll be going back through all the
17 comments that were made at the meetings, all
18 the written comments that were submitted
19 between the notice of the -- or between the
20 publication in the Federal Register of the
21 notice for these three consultation sessions.
22 And we'll be taking into account all those

1 written comments as well.

2 And then from there we'll develop
3 a rule that then will become what's known as
4 a proposed rule. That's when you get into the
5 NPRM process.

6 Very likely we'll have the Tribal
7 Transportation Program Coordinating Committee
8 which is the committee appointed by the
9 Secretary of the Interior in consultation with
10 the Secretary of Transportation and consists
11 of one representative from each region and an
12 alternate.

13 As they did with the original
14 draft that we put together they will probably
15 be going through the revisions that we make as
16 a result of the consultation sessions that
17 we've been on in Anchorage and Phoenix and
18 here. And they will offer further
19 recommendations at that point. And then we'll
20 get to the NPRM process. So this is one of
21 the steps along the way.

22 But the key I think to consider

1 here is that this is an opportunity, I think
2 a very important opportunity for tribes to
3 offer feedback before we get to that final
4 point where we say this is the proposed rule
5 that we want to go out and do consultations
6 on.

7 Even then the rule can change
8 after that second round of consultations as
9 well based on comments we might receive during
10 that process as well. And there will be also
11 an opportunity to submit written comments like
12 there is here at that time.

13 So the process will continue on
14 and there will be more -- I mean I would say
15 there will be at least two more formal
16 opportunities both oral and in terms of these
17 meetings and written in terms of comments to
18 send in to the BIA website in the future as we
19 move along.

20 MR. GISHI: I want to mention just
21 a little bit of history of how we came about
22 with this.

1 MR. MOORE: Excuse me.

2 MR. GISHI: Oh, I'm sorry.

3 MR. MOORE: Yes. Ed "Buster"

4 Moore, Fort Belknap Tribal Council. I just
5 wanted to go on record as well as the tribal
6 transportation delegate from Montana-Wyoming
7 Tribal Leaders Council that I agree with my
8 partner here, Wes Martel, that we oppose this
9 consultation process and this rulemaking.
10 Thank you.

11 MR. GISHI: Thank you. Thank you
12 very much. And I apologize for interrupting,
13 I didn't see you.

14 When we went through the
15 negotiated rulemaking process we had gone
16 through with the representatives who were
17 identified and we came up with a rule that was
18 going to go forward in the formal rulemaking
19 process. And it was already in the formal
20 process.

21 And the request was made from a
22 number of tribal leaders to at that time

1 Assistant Secretary Grover and they said
2 before this goes to the formal process, before
3 you send it to everybody that you need to can
4 we take a look at that. And of course that
5 was -- in terms of other rulemaking areas that
6 was something the Department probably would
7 have said no, we've already started it.

8 But the Assistant Secretary said
9 sure, why not. So we sent out the entire
10 package for a period of about a month and a
11 half, 2 months, for people to take a look at,
12 see what was out there before it even got
13 started.

14 We learned from that from the
15 standpoint that it's probably better for us to
16 be able to start off with something from a
17 very preliminary standpoint. And for that
18 reason what we have here is for the most part
19 a lot of it's what was in the rulemaking
20 process. Obviously some things have changed.
21 Those things that have changed, we've tried to
22 highlight them.

1 And we've gotten comments from
2 people saying can we get a red-line copy. We
3 have a couple of folks who are working on that
4 right now in terms of what was to be done and
5 how we could handle that. So from that
6 standpoint we fell short on that, being able
7 to do the side-by-side.

8 In a couple of the sections we
9 have, I think Bob, you have Subpart I that has
10 a side-by-side which is the tribal high-
11 priority project program for that part. But
12 that's a new one, we're able to include that
13 in there. But from that standpoint you are
14 correct. So I appreciate your comments in
15 that area.

16 We had one other comment right
17 over here. Mr. Rosette.

18 MR. ROSETTE: Tim Rosette. I'm
19 also part of the Tribal Transportation
20 Coordinating Committee. You know, when this
21 was brought to us one of the things that I saw
22 right away, that it was not and could not have

1 been any type of consultation with us. It
2 can't be consultation with us because the
3 majority of us are tribal employees. You
4 know, the vast majority of us are tribal
5 employees. You know, we do represent our
6 regions but we do not speak for the tribal
7 governments.

8 And that's one of the motions that
9 I made at the meeting is that it does not --
10 we don't go on there as being consulted on
11 this because in the sessions that we were --
12 we went through an overview, I mean it got so
13 informal that it was when they read through
14 section it was well, in this section, blah
15 blah blah blah. And that's exactly what
16 they did, you know. And that's how it was
17 presented to us, blah blah blah blah.
18 You know, that's exactly the words that they
19 used. You know, between the Federal Highways
20 and the Department or BIA.

21 And it was not in any way, you
22 know, I made a motion that we are not part of

1 that consultation process and not to mark us
2 as part of that consultation process.

3 MR. GISHI: And that's definitely
4 always been the emphasis. Any person who gets
5 on -- appointed to the committee, that this
6 coordinating committee is not a substitute,
7 very clear, not a substitute for consultation.
8 Consultation is government to government in
9 terms of that process and that's -- for that
10 reason we're not here communicating with the
11 coordinating committee. They are -- we do
12 have them here but they're part of the
13 audience in terms of -- in general terms of
14 the tribal leadership and tribal folks. In
15 fact, we've emphasized this to be with tribes.
16 And then when the formal rulemaking starts the
17 public as a whole from that standpoint.

18 So the two big parts of what make
19 up or give us our direction of where we want
20 to head and what the Secretaries believe to be
21 the process and procedures to move forward
22 with this regulation are covered in Subpart A

1 and B including definitions, including
2 eligible uses of activities, areas that really
3 impact how you operate individually your
4 programs at a tribal level are found in those
5 locations.

6 As we go from here we start
7 getting into the real nuts and bolts of the
8 formula, and into the procedures of updating
9 the inventory, what names have changed in
10 terms of what it was called before, what it's
11 now being referred to in terms of the
12 inventory and the eligible activities that are
13 associated with that.

14 So with that we will now proceed
15 to Subpart C with Mr. Bob Sparrow.

16 MR. SPARROW: Well, good morning,
17 everyone. My name is -- I'm the real LeRoy
18 Gishi.

19 (Laughter)

20 MR. SPARROW: Not quite as tall as
21 others. Where's Big John? But equally as
22 important, let's put it that way.

1 My name is Bob Sparrow. I am the
2 director of the Tribal Transportation Program
3 at Federal Highway Administration in
4 Washington, D.C. I want to thank you all for
5 taking the time to come today to hear what's
6 going on, hear the process and also provide us
7 with your comments. That's really the single
8 most important thing that we're getting out of
9 this is giving you the information to be able
10 to give us the comments as you heard from Mr.
11 Caulum and Mr. Gishi before we get into that
12 formal process.

13 What I want to do is spend a
14 little time now talking about Subpart C which
15 really talks about the funding formula and how
16 Congress has changed that formula from what
17 came out of the negotiated rulemaking back in
18 2004.

19 Again, we're going to continue the
20 same process talking about each subpart from
21 a general overview perspective and then
22 getting into the highlights, talking about

1 dates and talking about record-keeping. At
2 the end of this though I've got some slides
3 that talk about actually discussing how the
4 funding formula is going to work. And if
5 you're interested once we go through these
6 first half a dozen slides just telling you
7 what's in the subpart I can go in and actually
8 explain then how it's going to work if you're
9 all interested.

10 Yes, sir.

11 MR. MARTEL: Wes Martel, Eastern
12 Shoshone Business Council. Subpart C was
13 related to question 10, am I right?

14 MR. SPARROW: It's the other way
15 around. Question 10 was part of Subpart C.

16 MR. MARTEL: Right. But anyway,
17 there was a lot of what we see as deficiencies
18 within that process that this was supposed to
19 review. So in your presentation would you be
20 kind enough to relate that to us? Because as
21 Big John said there's a lot of tribal leaders
22 here that aren't quite aware of that whole

1 issue. Because that was one of the main
2 issues we were always battling over. So could
3 you please do that for us?

4 MR. SPARROW: I will be happy to.
5 When we get back into the second part of the
6 presentation we'll talk about the formula,
7 talk about what's important, what goes in,
8 what actually generates funding anymore.

9 And for instance, one of the
10 things of question 10 had to do with
11 functional classification of a road, and how
12 much it contributed to the tribal shares.

13 Question 10 no longer exists.
14 It's no longer relevant in the new funding
15 formula. That's one of the things that
16 Congress has done. And I'll get into that and
17 explain it a little bit more.

18 When you look at Subpart C as we
19 said it covers -- yes.

20 MR. MCGESHICK: Chris McGeshick
21 with Sokaogon Chippewa Community.

22 This whole funding formula, and I

1 tried to get it from my roads director as well
2 today before I came to this meeting. But is
3 it too much to ask that when you look at the
4 individual tribal communities -- I'll take my
5 community. We're a small community, yet we're
6 larger than some cities within our area. But
7 yet we have fewer streets, fewer roads and our
8 population is maybe a percentage of what the
9 per capita is in those cities or townships.

10 Why is it that the tribes aren't
11 being funded like the local towns or cities or
12 municipalities are funded for developing roads
13 and maintaining their roads and their
14 infrastructure? How is the federal
15 government's formula for building our tribal
16 communities to the level that they build
17 counties and states and cities. Why is it
18 different than for us tribes? I'm just trying
19 to figure that out.

20 MR. SPARROW: That's a very, very
21 good question. Basically with this new
22 funding formula and the Tribal Transportation

1 Program funding itself as a whole is dictated
2 to us from Congress. They passed a highway
3 bill that included the Tribal Transportation
4 Program, funded it \$450 million a year.

5 And this past passage of the new
6 bill contained a whole new statutory funding
7 formula which said Federal Highway, BIA, this
8 will be the formula that you use to distribute
9 tribal shares of the Tribal Transportation
10 Program. And clearly dictates what can be
11 used, what inventories to be used, what
12 populations to be used. And the whole process
13 of which we have to now go through in order to
14 determine the tribal shares.

15 It starts at the congressional
16 level. They're the ones that dictate to
17 Department of Transportation and the Bureau of
18 Indian Affairs how this program is to be
19 carried out now.

20 So what you see with Subpart C, if
21 you have an old copy of 25 C.F.R. 170 and you
22 have this new proposed copy you'll see this

1 section changed more than any other section.
2 You almost can take the old Subpart C and
3 just, it would be totally red-lined because of
4 what's been dictated to us through MAP-21.
5 Yes, sir.

6 MR. MOORE: I have a question. Ed
7 Moore again, Fort Belknap Tribal Council.
8 According to the DOI policy on consultation,
9 Section 7, Consultation Guidelines B, there
10 was to be a tribal governance officer
11 appointed. Has that been done?

12 MR. SPARROW: At Department of
13 Transportation?

14 MR. MOORE: Department of the
15 Interior.

16 MR. SPARROW: I'll refer that to
17 Mr. Caulum.

18 MR. CAULUM: You're asking whether
19 there's been a tribal consultation officer
20 appointed for this process?

21 MR. MOORE: Governance officer.

22 MR. CAULUM: For the Department of

1 the Interior I'm not familiar. For this
2 process in particular we don't have a tribal
3 governance officer that has been appointed for
4 this particular process, no.

5 It is being coordinated and
6 handled through the Office of the Assistant
7 Secretary for Indian Affairs. And that has
8 been the case with all the consultation
9 processes that I'm familiar with to date.

10 MR. MOORE: The follow-up question
11 is why not.

12 MR. CAULUM: I think that question
13 I can refer to the Assistant Secretary's
14 Office and we can get you an answer if you'd
15 like that. Okay, very good.

16 MR. SPARROW: Okay. As I said
17 before, Subpart C, if you take a look at what
18 was in Subpart C of the original 25 C.F.R. 170
19 that came out of negotiated rulemaking and you
20 take a look at what's in there now, a lot of
21 changes. And a lot of changes is because of
22 the statutory formula and information and laws

1 basically that Congress passed for this
2 particular program.

3 So from a general overview this
4 section still talks about the methodology of
5 how those funds are going to be distributed.
6 The difference is this is now statutorily
7 mandated by Congress where before the formula
8 itself and what was included and how it was
9 distributed was developed through negotiated
10 rulemaking. Again, that's out. Congress has
11 told us how to do it.

12 It includes information on
13 planning. How to carry out transplantation
14 planning. What funds are going to be made
15 available for transportation planning.

16 It talks about the inventory, the
17 National Tribal Transportation Facility
18 Inventory. If you've been around the program
19 awhile, I mean IRR rolls off the tongue and
20 the IRR inventory rolls off the tongue. And
21 when you have to say NTTFI and the TTP it just
22 doesn't roll the way it used to. And we have

1 to catch ourselves from saying it, which Mr.
2 Gishi said IRR earlier today by the way.

3 So it talks about the National
4 Tribal Transportation Facility Inventory. It
5 talks about data appeals. How do you appeal
6 the data. What is appealable data now.
7 Really from the formula perspective everything
8 is pretty much set in stone. So the data
9 appeals really, it's still there but it's not
10 as extensive as it used to be because this
11 stuff just really is not appealable. It just
12 tells you this is what you've got to include.

13 One of the big parts of this
14 particular section was the IRR High-Priority
15 Program, the HPP program, which was a takedown
16 from the IRR formula before of about -- it
17 always turned out to be around \$20 to \$30
18 million and it was made available to those
19 tribes that didn't have enough money to fund
20 their highest priority project.

21 That part or that takedown no
22 longer exists. Congress has removed that

1 completely. What they have done though is
2 they've established a new program that's
3 pretty much identical to that program. But
4 they have funded it beyond and outside of the
5 Tribal Transportation Program. So it's still
6 in MAP-21, it still is there, but it's not
7 funded through the Tribal Transportation
8 Program. And we'll get into that a little bit
9 later this afternoon. Yes, sir.

10 MR. ROBINSON: Yes, this is Tracy
11 Robinson with the Northern Cheyenne Tribe. My
12 question is why isn't there an appeals
13 process. If tribes feel that they're not
14 getting the answer that they want or deserve
15 why isn't there an appeals process to appeal
16 that, your decision?

17 MR. SPARROW: There is an appeals
18 process, it's just -- and we'll get into that.
19 When I get into the highlights we'll talk more
20 about that specific area. This is just saying
21 what's actually covered in this Subpart C.
22 Yes, sir.

1 MR. MARTEL: What's the difference
2 -- Wes Martel, Eastern Shoshone Business
3 Council. What's the difference between
4 general data and formula data?

5 MR. SPARROW: It's really, when
6 you're looking at general data you're looking
7 at the general data that's in the inventory
8 itself, the National Tribal Transportation
9 Facility Inventory.

10 The formula data appeals would be
11 from the funding formula itself what can be
12 appealed and what can be changed. And again
13 when we get into the formula itself you'll see
14 that there's one area that has different
15 numbers every year that the input is
16 different. It changes every year.

17 There's three factors in the
18 formula. Two of them are pretty much locked
19 in. Year to year to year they won't change.
20 But one will change and that's the area where
21 you could potentially appeal a particular
22 factor within the formula. Yes, sir.

1 MR. MCGESHICK: Chris McGeshick
2 again with the Sokaogon Chippewa Community.
3 With your formula then I guess my question is
4 under Section 171.03(e) it states, "reduce the
5 imposition of unfunded mandates upon tribal
6 governments." Yet in what you're requiring
7 now are bridges to be inspected if we have
8 bridges. To me that's an unfunded mandate and
9 the utilization of our funds that we haven't
10 had.

11 And if it's only \$450 million how
12 come with these new requirements there isn't
13 an addition to that \$450 million. And rather
14 than to reduce the imposition on our tribal
15 governments why not eliminate that and make it
16 a requirement that those things be funded?

17 MR. SPARROW: It's a good comment.
18 I can't answer that. Congress has told us
19 this is what you need to do. And it's
20 statutorily said this needs to be followed.

21 I completely understand your
22 statement but from a DOT perspective this part

1 of the funding formula and the change of the
2 funding formula has been dictated to us.
3 Congress has told us what needs to be done.
4 Congress has said this is how much money you
5 have.

6 MR. MCGESHICK: So I guess we need
7 to know what all these unfunded mandates are
8 that we need to be in compliance with so that
9 we can essentially assess ourselves as a
10 tribal government how we're going to come up
11 with the funds to support our infrastructure.

12 MR. SPARROW: And we will talk
13 more about the bridge program a little bit
14 later. Very good comment. Anything else?
15 Yes, Todd, up here please. No, we've got --
16 because of the recording we have to --

17 MR. MOORE: Ed Moore, Fort
18 Belknap, Montana-Wyoming Tribal Leaders. The
19 funding formula that's now statutory, what
20 specific tribal consultation was utilized in
21 establishing the formula? Who developed or
22 submitted the funding formula to Congress?

1 MR. SPARROW: Congress developed
2 the formula. The Senate EPW Committee as well
3 as the House T&I Committee are the responsible
4 committees within the respective houses to
5 develop the transportation reauthorization
6 bills. It is from those committees that the
7 bills -- when they went into conference it is
8 from those committees that the bill was
9 finalized and then presented to Congress for
10 passage and ultimate signing by the President.

11 Any other questions?

12 MR. HARRIS: Aron Harris, Sauk-
13 Suiattle Indian Tribe. My question is with
14 the committees developing the formula that was
15 submitted to Congress and as such statutorily
16 mandated at that point, was that an attempt to
17 circumvent the collaboration and coordination
18 with the tribes in the development of that
19 formula that historically was taking place at
20 SAFETEA-LU?

21 MR. SPARROW: I can't answer that
22 question. I don't know what actions or intent

1 Congress or the committees had.

2 The way the process works is when
3 a committee comes up with an idea or whatever
4 they will ask Federal Highway to run numbers.
5 And we then -- I work with Bureau of Indian
6 Affairs and we run the numbers and we hand the
7 numbers back to the staff.

8 And that's as much as we can do or
9 say. We are not allowed to comment. We're
10 not allowed to say hey, this is great or this
11 is bad. They ask us to make a run with X, Y,
12 Z and A, B, and C and we make that run and we
13 hand the results back to the committee. And
14 that's all we can do. Yes.

15 MS. PHILBIN: Vivian Philbin,
16 Federal Highways. And bear in mind, ladies
17 and gentlemen, during the last go-round of
18 MAP-21 the administration did not submit a
19 bill. And that makes a difference. So there
20 was a House bill and a Senate bill and they
21 went into conference and we came up with MAP-
22 21. Typically there's also an administration

1 bill as well.

2 But all these comments on unfunded
3 mandates, the amount of funding, congressional
4 intent, we have to work with what is given to
5 us. But your comments are duly noted and I do
6 appreciate them coming in.

7 MR. SPARROW: Anything else? So
8 let's talk about the formula from the
9 highlights. Those first couple of questions
10 that you see in Subpart C.

11 The first thing you'll see is a
12 diagram that tries to describe to you how the
13 funds make their way from the \$450 million to
14 the tribal shares that all 566 federally
15 recognized tribes receive.

16 There's a description of set-
17 asides. It says you're authorized \$450
18 million but from that \$450 million you're to
19 take 2 percent and designate it for
20 transportation planning. That's really no
21 different than under SAFETEA-LU or under what
22 was developed through the negotiated

1 rulemaking the 2 percent planning set-aside.

2 There's 2 percent for bridge. Now
3 this is a change because bridge under SAFETEA-
4 LU was its own standalone program. It was
5 funded at \$14 million over and above IRR. Now
6 they've eliminated that standalone program and
7 said bridges will be funded from a 2 percent
8 takedown or set-aside of the \$450 million.
9 So, \$9 million.

10 Nine million dollars for planning.
11 Two percent or \$9 million for safety. This is
12 new. This was not in SAFETEA-LU or anything
13 earlier. What there is is a designation of \$9
14 million is authorized for safety projects and
15 activities for the tribes. They don't have to
16 compete with counties, they don't have to
17 compete with states, this is monies designated
18 strictly for the tribes to talk about -- or to
19 address safety issues, develop safety plans,
20 road safety audits, carry out projects and
21 activities.

22 Six percent PM&O. This is the

1 money that Federal Highway and BIA use to
2 carry out the stewardship and oversight of the
3 program. It also funds the TTAP centers. It
4 funds a few other items. But it's primarily
5 the funding for the staff of the 12 BIA
6 regions, Federal Highway staff and BIA DOT
7 staff that's used to oversee the program and
8 do the stewardship and oversight.

9 That really hasn't changed. That
10 6 percent is I won't say exactly, but it was
11 like 5.99 to 6.02 under SAFETEA-LU. It was
12 actual dollar amounts before. This now is
13 just a straight percentage that equals about,
14 well, it's \$27 million.

15 And then there's another set-aside
16 that's new this year called supplemental. And
17 I'll get into that when we talk about the
18 formula in detail.

19 There's new -- a brand new formula
20 that we talked about, and that formula has
21 three factors. It has a mileage factor. It
22 has a population factor and it has a

1 historical share percentages factor. And
2 again when we get into the formula I'll
3 explain each one of those.

4 The old formula had cost to
5 construct which Q-10 was critical in
6 determining. It had vehicle miles traveled.
7 How many cars, what was the usage of the road.
8 That was a factor.

9 The third factor was population.
10 Well, the population is still here. But the
11 other two factors have been replaced.

12 There's a description of the
13 supplemental funding and what it's intended
14 for and how that is distributed. The intent
15 of the supplemental funding was to make tribes
16 whole, W-H-O-L-E, to their FY `11 tribal
17 shares. So as to say to minimize the negative
18 impacts of this new formula on tribes Congress
19 has said take a supplemental allocation or
20 set-aside that equals about \$104 million and
21 make that available to tribes so that -- to
22 try to minimize the negative impacts of what

1 this new formula does to them.

2 Then on top of everything else as
3 Mr. Gishi said earlier this morning there's a
4 4-year transition. It's only a 2-year bill,
5 but there's a 4-year transition. Now we've
6 had a whole bunch of extensions. Under
7 SAFETEA-LU I believe we had nine extensions.
8 So be it the history. And we had extensions
9 to TEA-21 before that. History shows us that
10 we probably will have some extensions. Maybe
11 it'll go out for another 2 years. We don't
12 know. But Congress has said we're going to
13 transition this new formula over a period of
14 4 years. So that is the first part of Subpart
15 C, to explain and put in there what is in the
16 law on how this formula is going to be carried
17 out.

18 Then there's a section on
19 planning. How are inventory and planning
20 related. What kind of funds are made
21 available for planning. That 2 percent
22 planning funds, but you also can utilize your

1 tribal share funds for planning. Yes, John.

2 MR. HEALY: Thank you. John
3 Healy, transportation director, Fort Belknap.
4 On your previous slide, Bob, on the 6 percent
5 PM&O that's relative to the Bureau of Indian
6 Affairs, correct?

7 MR. SPARROW: That's Bureau of
8 Indian Affairs and Federal Highway.

9 MR. HEALY: If the BIA is going to
10 continue to follow the sequestration somewhat
11 as far as they call it mission critical
12 travels into the field shouldn't the tribe be
13 eligible to take some of the 6 percent?

14 Because like for example, in our
15 region I know all the transportation programs
16 are supposedly supposed to be exempt from the
17 sequestration. However, in our region they
18 are still trying to follow it somewhat as far
19 as the field operations for some of the
20 engineers.

21 So if they're not going to get out
22 in the field and assist the tribes shouldn't

1 the tribes be eligible for some of the 6
2 percent?

3 MR. SPARROW: It's a good comment.
4 We'll take a look at it.

5 MR. ROSETTE: Tim Rosette,
6 Chippewa Cree Tribe. Same comment as John.
7 Wouldn't that be, you know, next year if it's
8 from that region? And they didn't spend the
9 money, wouldn't that go into construction,
10 back into construction, that PM&O money?

11 MR. SPARROW: You look at what's
12 carried over at the end of the year and then
13 what is made available back to the tribes and
14 carried over and made available the following
15 year. It's carried over and made available to
16 the tribes the following year if it's not
17 spent. Yes.

18 MS. METCALF: Okay, so what I'm
19 going to say does not really pertain to you
20 guys because I know you guys are just doing
21 your job. But I'm a tribal leader. How many
22 tribal leaders are here?

1 (Show of hands)

2 MR. SPARROW: Can you identify
3 yourself, please?

4 MS. METCALF: Ronda Metcalf, Sauk-
5 Suiattle Indian Tribe. So, I'm listening to
6 what you're saying and roads is really not my
7 issue. My issues that I really advocate on
8 are health and social services and those types
9 of things. But roads has a big impact on all
10 of that. I'm really just here because Aron
11 needed a council member to come and advocate
12 with him. And he really knows everything
13 that's going on.

14 But I'm sitting here thinking
15 you're talking about numbers and how you do
16 planning and everything. Well, here's what
17 I'm sitting here thinking about. Every year
18 tribal leaders and a number of other people
19 spend their time going to D.C. I figure on an
20 average at any given meeting in Washington,
21 D.C. that we as tribal leaders attend the
22 tribes probably bring into Washington, D.C.,

1 and I'm not counting airline tickets or when
2 you leave the reservation to the airport, but
3 what I'm counting is actual dollars going into
4 Washington, D.C. I figure we probably
5 average, and this is on the low side,
6 \$3,360,000 to Washington, D.C. if you think
7 about February's trip that everybody makes or
8 March.

9 Maybe we should just stop going to
10 Washington, D.C. and see how that impacts
11 Congress, really. Because at some point in
12 time we really need to start thinking about
13 taking a stand and where we're going to start
14 stopping Congress from making these decisions.

15 For Sauk-Suiattle Indian Tribe is
16 a teeny tribe. We're not a small tribe, we're
17 a very teeny tribe. The impact of the dollars
18 that is being cut from our budget now is going
19 to have a major impact on our ability. And
20 being so rural we have to use every single
21 dollar to take care of our tribal members.

22 And so this is what I'm thinking

1 I'm starting a campaign. Let's stop going to
2 Washington, D.C. because they're not working
3 with the tribes. Consultation is not taking
4 place appropriately as the President put forth
5 in his Executive order. So maybe we need to
6 start taking a stand.

7 This might not be the right place
8 but I'm listening to what you're saying and
9 all the things that went into this, number of
10 people, number of miles coverage. It's a lot
11 of dollars that are being cut from our
12 budgets.

13 And maybe we need to start
14 thinking as tribal leaders in a way to make an
15 impact so that maybe we start changing
16 Congress and they start talking to us before
17 they make these impact decisions that are
18 going to hurt our tribal members. That's all
19 I've got to say. Thank you.

20 (Applause)

21 MR. SPARROW: Thank you very much.
22 Very good comment.

1 The next section that you'll see
2 after planning talks about the National Tribal
3 Transportation Facility Inventory. It used to
4 just be IRR inventory.

5 The statute, again Congress has
6 said these are the facilities that will be
7 eligible to be included in the NTTFI. And
8 then it also states which one of those
9 facilities can contribute to that mileage
10 factor that we saw earlier in the formula.

11 So it's saying you can have --
12 there's 150,000 miles of roads currently plus
13 or minus currently in the National Tribal
14 Transportation Facility Inventory. But only
15 60,000 of those miles can actually be used in
16 the generation of the tribal shares within the
17 formula.

18 NTTFI and then it says 23 U.S.C.
19 202(b)(1)(B), that's where the statute of
20 where it is in MAP-21. And now in 23 U.S.C.
21 is a comprehensive national inventory of
22 tribal transportation facilities eligible for

1 assistance under the Tribal Transportation
2 Program. Facilities include facilities that
3 were included in the Bureau of Indian Affairs
4 system inventory prior to October 1, 2004.
5 Roads that are owned by an Indian tribal
6 government, roads that are owned by the Bureau
7 of Indian Affairs. I'll come back to this
8 first bullet in a minute. So you've got
9 tribal roads, BIA roads. In addition, roads
10 that were constructed or reconstructed with
11 funds from the Highway Trust Fund or Highway
12 Account since 1983. That means roads that are
13 in there that were built after 1983 that are
14 in the inventory. They're eligible to have
15 funds expended on them.

16 Public roads or bridges within the
17 exterior boundary of Indian reservations,
18 Alaska Native villages, or other Indian
19 communities, including communities in the
20 former Indian reservations in the state of
21 Oklahoma in which the majority of the
22 residents are American Indians or Alaska

1 Natives, or are public roads within or
2 providing access to Indian reservations or
3 Indian trust land or restricted Indian land
4 that's not subject to fee title alienation
5 without the approval of the federal
6 government, et cetera, et cetera, or are
7 primary access routes proposed by tribal
8 governments including roads between villages,
9 roads to landfills, roads to drinking water
10 sources, et cetera, et cetera.

11 What this is saying in the
12 definition of what's eligible to go in the
13 inventory really hasn't changed since SAFETEA-
14 LU. These were mentioned in SAFETEA-LU. And
15 these are all the roads that make up the
16 160,000 miles of the inventory.

17 But what Congress has said, and
18 we'll expand this a little bit, is that
19 mileage factor in the inventory for a tribal
20 road or a BIA route has to be whatever road
21 was in the inventory in the FY `12 inventory.
22 Last year's inventory. BIA routes, tribal

1 routes in the inventory as of last year are
2 generated funding in the mileage factor.

3 If it's not a BIA or tribal road
4 it had to be in the road and generating
5 funding in October 1 of 2004. This was before
6 the final reg 25 C.F.R. 170 as you see it,
7 that's before that went into effect. That was
8 before the tribal shares or before the mileage
9 and the inventory was opened up to include a
10 lot of the county, basically a lot of the non-
11 BIA, non-tribal roads.

12 What this does is for the tribes
13 that are in Oklahoma, the two regions in
14 Oklahoma and the Alaska Region it's whatever
15 their inventory was in 2004. The county
16 roads, the state roads, the borough roads,
17 whatever, city roads that were in their
18 inventory and generating funding prior to
19 2004. Anything non-BIA, non-tribal has to be
20 from back then.

21 For BIA and tribal it can be as of
22 last year. But the statute says that when we

1 do the FY `14 fund distribution. We've done
2 the FY `13, the tribal shares are posted now
3 so you can see what they are and the funds
4 should be getting out to the tribes. When we
5 run the formula in FY `14 we have to use the
6 same inventory. This doesn't say tribal or
7 BIA roads as of FY `13, you know, updating it,
8 it says FY `12.

9 In 2016 this will be the mileage
10 that generates funding. It doesn't change.
11 If Congress has multiple extensions and we're
12 looking at 2017 or 2018 these are the miles.
13 It doesn't change.

14 Generates a question, why do I
15 update my inventory. It's not going to get me
16 anymore money. Inventory's frozen as far as
17 generating funds. And we'll talk about that
18 a little bit more when we look at the
19 inventory a little bit more.

20 MR. MCGESHICK: Bob?

21 MR. SPARROW: Yes.

22 MR. MCGESHICK: I have a question.

1 Chris McGeshick again with the Sokaogon
2 Chippewa Community. On your next slide there,
3 the part where you went yada yada yada.

4 MR. SPARROW: Oh, I'm sorry.

5 MR. MCGESHICK: Back one. It was
6 after or Indian, or Alaskan Native villages,
7 groups or communities in which Indians or
8 Alaskan Natives reside. Then you have a
9 comma. I'm kind of curious as to whom the
10 Secretary of the Interior has determined to be
11 eligible for services generally -- I can't see
12 the rest of that.

13 MR. SPARROW: Available to Indians
14 under federal laws specifically applicable to
15 Indians.

16 MR. MCGESHICK: How is that broken
17 out and how do you interpret that?

18 MS. PHILBIN: Vivian Philbin,
19 Federal Highway. Sir, every year the
20 Secretary of the Interior publishes a list of
21 federally recognized tribes that are eligible
22 for services. It was recently published just

1 a few weeks ago. And we can get you that list
2 if you want. That's in the Federal Register.

3 MR. MCGESHICK: I guess it didn't
4 make sense to me if that's the way you're
5 going to read that. But because we're talking
6 specifically our public roads within or
7 providing access to an Indian reservation or
8 Indian trust land or restricted Indian land
9 that is not subject to the fee title
10 alienation without the approval of federal
11 government.

12 That whole paragraph just doesn't
13 make sense to me. If we're talking roads and
14 now you're talking recognized tribes, that
15 last -- after that last comment why don't you
16 just state that rather than make it sound like
17 there's an option for tribes. To me is what
18 it sounds to me like is that if I wanted to
19 get another road within my community approved
20 and I don't have it on the inventory I could
21 actually petition the Secretary and ask that
22 they determine that this road be eligible.

1 That's how I would argue it.

2 MS. PHILBIN: That first paragraph
3 is taken from the statute. That is statutory
4 language.

5 MR. SPARROW: We can provide a
6 clarification to it but it is verbatim out of
7 the statute. Todd, I have a question over
8 here, please.

9 MS. SHERK: Dawn Sherk, White
10 Earth Nation. I have a question on where it
11 states basically non-tribal and non-BIA roads
12 that were currently in the system as of
13 October 1, 2004.

14 White Earth has a large number of
15 county and state highways that were updated
16 1985. Now there has been a current push from
17 the Bureau to update those legacy records
18 which we have done a lot of over the last few
19 years.

20 Now because those have been
21 updated will they still be counted as being
22 originally added before this 2004 cutoff date?

1 MR. GISHI: To answer your
2 question what it basically says is the
3 provisions that are in there, those mileages
4 that are identified as eligible miles, it
5 doesn't look at those miles in terms of
6 saying, you know what, these were functional
7 class 1, 2, or 3. They were proposed roads or
8 they were access roads. They didn't exist.
9 They were four-lane paved. They were two-lane
10 gravel. They were a trail, they were a
11 primitive road. It basically says the roads
12 that were in the inventory as of those dates
13 that are in there are to be counted.

14 And so what you're looking at is
15 you're actually looking at a snapshot of the
16 inventory on October 1, or actually September
17 30, 2004, and that's what comes forward as
18 part of this definition. So when Bob says in
19 2014 that's not going to change, 2015, '16, if
20 it goes to '18 that number is not going to
21 change.

22 The things that you're doing,

1 you're referring to is you're managing your
2 inventory and updating it from legacy records
3 or whatever it is for the purpose of -- and
4 you can understand that in some cases you may
5 have a road that you're updating because you
6 were trying to get updated inventory for the
7 purposes of another program, another federal
8 aid program. You need to be able to do that.
9 And Bob's going to talk a little bit about
10 that.

11 But what we're looking at here is
12 this snapshot in time of the inventory that
13 Congress said it's basically that information.
14 It's eligible miles. It's not describing any
15 other differences in the inventory of what's
16 being defined as part of the inventory.

17 MS. SHERK: Dawn Sherk, White
18 Earth Nation. So just to clarify so I'm sure
19 I'm understanding you correctly, there's
20 actually a snapshot from this date held
21 somewhere. They won't go through the
22 inventory and say query out everything

1 previous to 2004. That's my concern because
2 I know that you would have that option in
3 RFDS.

4 MR. SPARROW: There is a snapshot
5 of September 30.

6 MR. BANFIELD: Ben Banfield,
7 Little Traverse Bay Bands of Odawa Indians.
8 I was just wondering, since this is an update
9 of the regulations why you wouldn't add in, if
10 you go back one slide, on that first one, were
11 included in the Bureau of Indian Affairs
12 system inventory prior to October 2004. Why
13 you wouldn't add in the statement were
14 included for funding purposes or whatever BIA
15 is using to determine that. Just to clarify
16 it. Because that says any routes that were in
17 prior to October 1, 2004. And since we're
18 clarifying what the regulations say it seems
19 to me that would be something to add.

20 MR. SPARROW: Thank you.

21 MS. SHERK: Dawn Sherk, White
22 Earth Nation again. I guess the question that

1 I had just asked previously about that cutoff
2 date is because earlier in speaking with that
3 day you had mentioned that that was primarily
4 for Alaska and Oklahoma, is that correct?

5 MR. SPARROW: Yes.

6 MS. SHERK: And as I stated White
7 Earth had a very comprehensive inventory
8 started in 1985 but yet these roads are not
9 being counted for us as being part of the
10 Bureau of Indian Affairs system prior to this
11 date.

12 MR. SPARROW: Something we'll have
13 to clarify. Thank you.

14 We looked at formula data appeals
15 for this particular section because it talks
16 about the funding look forward and what can be
17 appealed. From the formula perspective you'll
18 see we've got some further descriptions that
19 the mileage is set in inventory of FY `12 or
20 FY 2004.

21 The population factor can get
22 updated every year and that's something that

1 is appealable but it's going to be appealable
2 to HUD because it's the NAHASDA numbers that
3 are used.

4 And then the third factor is based
5 on the prior 7 years of tribal shares and what
6 percentage your tribe got of those prior 7
7 years and how that money is split out. So it
8 describes what formula data can be appealed
9 and who the appeal must be sent to when we're
10 looking at the formula itself.

11 There's information in there that
12 pretty much carries over from the last reg
13 about flexible financing. This part of it did
14 stay in place. And describes how the tribe
15 can use their tribal transportation funds to
16 secure flexible financing and what types of
17 flexible financing, be it bonds, be it advance
18 loans, et cetera, are available to the tribe
19 using state infrastructure banks. It also
20 talks a little bit about how BIA and Federal
21 Highway would assist the tribes in developing
22 or securing some sort of flexible financing.

1 Timetables. HUD updates for the
2 NAHASDA numbers, the population numbers. HUD
3 is going through a negotiated rulemaking for
4 NAHASDA as we speak. We're waiting to see
5 what comes out of that negotiated rulemaking.
6 But Congress has told us what population
7 numbers we need to use. Inventory updates
8 still apply.

9 And this is -- I said I was going
10 to talk about this. If my inventory is frozen
11 why should I spend the money to update my
12 inventory. It's not going to generate any
13 more money for me. If I add routes now
14 they'll be in the inventory but they're not
15 going to generate anything else.

16 But the issue with keeping the
17 inventory updated is this. When Congress asks
18 BIA or Federal Highway what are the needs,
19 what's the inventory showing, right now it's
20 \$60 billion. We have the most accurate
21 information to provide Congress if that is
22 inventory is maintained and updated.

1 To me more importantly though is
2 the fact we don't know what's coming down the
3 road. You could have a totally different --
4 we could have a totally different formula in
5 2016 or 2015 that could take into account
6 functional classification, that could take
7 into account cost to construct, which could
8 take into account surface type, et cetera, et
9 cetera. So keeping the inventory as accurate
10 as possible and updated, and continue to add
11 routes in there if they're eligible, it's not
12 going to hurt you in the long run because we
13 don't know what is going to be thrown at us
14 next time.

15 And this could say or owned by an
16 Indian tribal government and in the inventory
17 as of FY `14. And if you updated some tribal
18 roads and throw roads in there between 2012
19 and 2014 that's to your benefit. You'd hate
20 to be behind the eight ball because you didn't
21 update your inventory and now you're locked in
22 for another 2 or 3 or 4 years. So it's

1 critical to keep it updated as much as
2 possible. Yes, ma'am.

3 MS. METCALF: Ronda Metcalf, Sauk-
4 Suiattle. I'm kind of confused. If you can
5 go back to that other slide on NAHASDA. I'm
6 confused by your statement about Congress has
7 told you what population to use. I mean are
8 we talking like IHS uses user count and user
9 population to determine things? I don't
10 understand what NAHASDA has to do with roads
11 when it comes to identifying people.

12 I'm just confused. I want
13 clarification. Because the reality of it is
14 is we should be identified by the number of
15 enrolled members and stop being cut because of
16 what Congress thinks or because of what the
17 Agency thinks.

18 We also within our tribes have
19 other natives that live within our communities
20 and other populations. So I really find it
21 offensive that Congress will identify the
22 population to be counted.

1 MR. SPARROW: Very good comment.
2 Congress has basically said in the population
3 perspective of the funding formula to use the
4 most current numbers that are made available
5 to us from HUD. And that's the factor, those
6 are the numbers that we have to use in the
7 formula. I'll expand on that slightly when we
8 get to another slide. Yes, sir.

9 MR. MARTEL: Wes Martel, Eastern
10 Shoshone, Wind River. On behalf of Wind River
11 and the Montana-Wyoming Tribal Leaders Council
12 we'd like to object to the rewrite of the
13 Section 170.231 that entirely precludes tribal
14 appeals to the BIA and Federal Highways and
15 that we be allowed to bring administrative
16 challenge and appeals against the BIA
17 concerning disputes over tribal shares. So I
18 wanted to lodge that objection to that section
19 of your regulations.

20 MR. SPARROW: Thank you. From the
21 record-keeping and reporting requirements on
22 flexible financing it says the BIA regions and

1 Federal Highway both will provide necessary
2 documentation to a state infrastructure bank
3 to facilitate a tribe obtaining loans or other
4 forms of credit for a project. What kind of
5 support BIA and Federal Highway will give to
6 the tribes.

7 We talked about sufficiently
8 updating the inventory. That's really an
9 overview of what is in Subpart C. Now I've
10 got a half a dozen slides that talk about the
11 formula itself that I'd like to go into. We
12 can do that now or we can do it after lunch.
13 After lunch?

14 MR. MOORE: Ed Moore again, Fort
15 Belknap Tribal Council, Montana-Wyoming Tribal
16 Leaders.

17 Has this NTTFI been completed? If
18 so can we get a copy of the consultant's
19 report?

20 MR. SPARROW: The National Tribal
21 Transportation Facility Inventory is a living
22 document. It continues to grow as the tribes

1 submit roads that are eligible. So you can
2 get a snapshot of the inventory going online
3 or talking to BIA Division of Transportation.

4 MR. HARRIS: Aron Harris, Sauk-
5 Suiattle Indian Tribe. I was just curious if
6 you had any insight on how the Secretaries
7 were going to prevent the adverse impacts that
8 the statutory funding formula is going to have
9 on tribes if we end up with six or seven or
10 even more continuations on this MAP-21 funding
11 formula in the future.

12 MR. SPARROW: I don't know what
13 they will do. Like we said we went through
14 nine extensions of TEA-21. It was supposed to
15 -- originally expired in 2009 and we carried
16 it through last -- actually until this fiscal
17 year, through all the extensions. Yes, sir.

18 MR. TIBBETTS: Burny Tibbetts,
19 White Earth Nation. With the new submission
20 of inventory data now that we can keep doing,
21 is there going to be new rules with that on
22 what can be submitted? Because the intent was

1 back with TEA-21 that we could submit county
2 roads, state roads for the sake of
3 cooperating, right? And that turned into
4 generating funds for tribes.

5 Are we going to be able to do that
6 now, keep entering state, county, whatever,
7 based on access?

8 MR. SPARROW: If it meets the
9 definitions of what was up there for the NTTFI
10 there's no reason why you can't submit the
11 information and documentation to get
12 additional inventory. So that can continue to
13 go and continue to be updated. The mileage
14 will grow. The needs will grow.

15 It won't generate any more funding
16 for you but it's there when Congress
17 potentially changes things next time around.
18 And that's why it's important to keep it as
19 correct as possible, to get the roads in the
20 inventory that meet that eligibility
21 requirement so that we do have a true
22 identification of the needs. So yes, there's

1 nothing to prevent it.

2 MR. TIBBETTS: Is this going to
3 address access roads, proposed roads? Have
4 you done anything with that later on?

5 MR. SPARROW: In Subpart D we talk
6 about the proposed roads and what is required
7 to get a proposed road into the inventory.

8 MR. TIBBETTS: Okay. Because
9 that's going to be an issue I'm sure later if
10 it does change.

11 MR. SPARROW: Yes.

12 MR. TIBBETTS: Okay, thank you.

13 MR. SPARROW: Question.

14 MR. SPRINGER: Hi, Tom Springer,
15 outside counsel for Ho-Chunk Nation. Just to
16 follow up on Mr. Tibbetts' question with
17 regard to access roads and proposed roads. Is
18 the Bureau retroactively implementing a new
19 policy that will affect the 20 percent, the
20 eventual in 2016 which will be 20 percent of
21 the new formula that's based on the old
22 formula, based on the relative need

1 distribution factor?

2 MR. SPARROW: Are we -- I don't
3 quite understand what you're saying, I'm
4 sorry.

5 MR. SPRINGER: What's been going
6 on -- what the Bureau had been working on is
7 really the new definitions for access roads,
8 what counts and what doesn't. Is that going
9 to be retroactively implemented to affect --

10 MR. SPARROW: To affect the tribal
11 shares of FY `11 that are used to distribute
12 the other remaining portions.

13 MR. SPRINGER: Yes.

14 MR. SPARROW: I'll let him answer.
15 I don't see it at this point in time but that
16 would be a good comment to raise.

17 MR. GISHI: What we've put in --
18 and let's make sure everybody understands.
19 What's in there right now is the basic
20 reference to identify that proposed roads and
21 access roads are still eligible to be put into
22 the inventory. There is nothing in there and

1 there's no intent because primarily what's in
2 the statute doesn't allow us to look at
3 anything other than those numbers.

4 So I always, when we're doing this
5 presentation I said you need to remember one
6 thing, your percentage that you got in 2011.
7 Because unless the law changes you're living
8 with that percentage.

9 Another percentage you need to
10 memorize is the average percentage from 2005
11 to 2011 because that's also written in stone
12 based on what's in the statute. So from that
13 standpoint those would be areas if you were
14 looking at retroactively changing anything
15 that's what it would change. But those can't
16 be changed so we can't look at anything in
17 '14, '15, or '16 and say this would be how we
18 would have impacted it.

19 And it basically, again, it comes
20 down to a number of miles. It isn't looking
21 at whether it was accessed, proposed, four
22 lanes, paved, gravel, primitive trail. And in

1 terms of proposed roads, whether it even
2 existed or not. If it was in the inventory as
3 a mileage associated with a tribe and it fit
4 into those categories of non-BIA, non-tribal
5 prior to October 1, 2004, or up through 2012
6 BIA and tribal, those two ownerships, then
7 that's what's going into the formula in terms
8 of those mileage.

9 When you take a look at and we'll
10 refer you to the website where you can
11 download the current FY 2013 shares, when you
12 look at that, look at those miles. And when
13 you go down to the bottom where it totals
14 everything up for every tribe in the country
15 it's about sixty some thousand miles.

16 Sixty some thousand miles compared
17 to what we have in the inventory as actually
18 what's in NTTFI is 160,000 or so. So you can
19 tell there's about 100,000 that are not
20 included in the formula. So that gives you
21 some indication of whether -- and that will be
22 the same miles we use next year and the

1 following year or until Congress changes that.

2 MR. SPARROW: How about if we take
3 a break till 1:15 -- Big John.

4 MR. SMITH: Mr. Sparrow, when the
5 -- in the process of the Q-10 fix, so to
6 speak, you employed a consultant to look at
7 updating and correcting the present inventory
8 prior to MAP-21. Do you recall that?

9 MR. SPARROW: Yes, sir.

10 MR. SMITH: Do we have the
11 conclusion of the consultant and the
12 corrections offered?

13 MR. SPARROW: Yes, sir. We have
14 the recommendations of changing the functional
15 classifications of the roads. We also have a
16 number of routes or sections that could not be
17 found or were duplicative or had been re-
18 sectioned that had been -- are still in the
19 inventory but have been turned off and don't
20 generate any funding.

21 MR. SMITH: Is that to the current
22 2011 numbers?

1 MR. SPARROW: It was done to the
2 2012 inventory before it was final.

3 MR. SMITH: So those records then
4 still are reflected in the 2011 inventory?

5 MR. SPARROW: They're still --

6 MR. SMITH: Numbers.

7 MR. SPARROW: Well, the 2011
8 inventory was a snapshot. It was corrected in
9 2012 and those do not -- those sections, and
10 many of them weren't generating any mileage to
11 begin with because they had been classified
12 differently. But those sections had been
13 coded so that when the system goes into add up
14 the mileage those particular sections which
15 could not be found or had been re-sectioned
16 don't contribute to the mileage factor.
17 They're still in the inventory but they don't
18 contribute to the mileage factor.

19 MR. SMITH: Okay. Do they
20 contribute to the 80 percent of this year's
21 MAP-21?

22 MR. SPARROW: Because it was in FY

1 `11 and as Mr. Gishi said earlier we can't
2 change FY `11 tribal shares we had to use the
3 FY `11 inventory.

4 MR. SMITH: So the answer is yes.

5 MR. SPARROW: So the answer is
6 yes. Whatever was your tribal share in FY
7 `11, that percentage does not change.

8 MR. SMITH: Okay, thank you.

9 MR. SPARROW: Thank you, sir. Can
10 we be back at quarter after 1? An hour.
11 1:30. How about 1:30, an hour and 15 minutes.

12 (Whereupon, the foregoing matter
13 went off the record at 12:16 p.m. and went
14 back on the record at 1:34 p.m.)

15 MR. SPARROW: All right, if we can
16 take our seats we'll spend a few minutes
17 talking about the funding formula. Everybody
18 have a good lunch?

19 All right, we've got a couple of
20 slides here trying to explain how this whole
21 funding formula works. The first one is the
22 diagram of the funding itself.

1 We start with the amount
2 authorized for MAP-21. It's \$450 million.
3 Then we talk briefly about the five set-
4 asides, PM&O or the administrative expenses.
5 And on this chart or on this diagram it
6 references the statute and Title 23 code where
7 all of these are written. So you can go in
8 and look at those.

9 You've got PM&O, 6 percent, 2
10 percent planning, 2 percent for safety, 2
11 percent for bridge, and this tribal
12 supplemental funding. Works its way down.
13 There's this transition about using FY `11
14 shares which we'll talk about. Determining
15 the tribal shares with the new formula. The
16 supplemental funding. These all go together
17 to determine what your tribal shares are of
18 each individual tribe.

19 And this is the 2 percent planning
20 that's made available to the tribes directly.
21 So safety, bridge, they're kind of their own
22 separate thing that the tribe applies for a

1 bridge project or for a bridge design
2 individually versus a tribal share type
3 approach.

4 This slide is actually at the end
5 of your packets of slides but I moved it up
6 because it really is the first thing that
7 takes place. What the statute says is in FY
8 '13 80 percent -- we've got to determine how
9 much money was distributed in FY '11 for the
10 RNDF which is the formula and the population
11 adjustment factor. Those are two parts of the
12 funding distribution back in FY 2011.

13 We have to determine how much
14 money went out to the tribes with those two
15 factors and then take 80 percent of that money
16 and determine what that amount is. And what
17 we have to do is of the funds that are
18 available once we do all these statutory
19 takedowns we have to break out a dollar amount
20 that's equal to 80 percent of what was given
21 to the tribes in 2011.

22 That 80 percent is about \$277

1 million. So you're working your way down from
2 \$450 and taking \$9 million here and \$9 million
3 here and \$27 here. This particular box here
4 for next year is about \$277 million.

5 The remainder then goes into this
6 new formula that we talked about. So 80
7 percent of the money that was given out in
8 2011, that dollar amount, or basically the
9 starting point for every tribe is 80 percent
10 of what you received in 2011. We used the
11 same tribal share percentages. So if you got
12 \$100 in FY 2011 you're starting this new
13 funding formula this year with \$80.

14 The transition as we talked about
15 earlier is over a 4-year period. Next year
16 we've got to determine a number that's 60
17 percent of what we gave out in 2011 and give
18 that out to the tribes as the starting spot.
19 And then whatever is left will go to the new
20 formula. So you can see each year the new
21 formula becomes more and more of a factor.

22 This first year it's really not

1 much of a factor at all. And we'll talk about
2 this when we get towards the end.

3 What's interesting is from 2016
4 and on it stays at 20 percent. It never --
5 the old formula never goes away. From 2016
6 and on 20 percent of what you received under
7 the 2011 tribal shares will be the starting,
8 one of the pieces that contribute to your
9 tribal share in 2016.

10 So we take out the amount of money
11 for the 2011, we've taken out the set-asides
12 and we have a funding formula. Three factors.

13 The first factor, 27 percent of
14 the money that's made available is given to
15 the mileage factor. Eligible miles computed
16 based on the following facilities in the FY
17 '12 inventory, roads -- and that's got to be
18 corrected -- roads owned by the BIA and roads
19 owned by the Indian tribal governments, the
20 tribal roads. And then other roads that were
21 in the BIA system prior to 2004. That's it,
22 27 percent of the money.

1 Thirty-nine percent is given in
2 population. This is the same factor that was
3 used in the population of the other formula in
4 SAFETEA-LU that was -- or not SAFETEA-LU, that
5 was developed through negotiated rulemaking.
6 It's about the total population of each tribe
7 bears of the total population of all American
8 Indians and Alaskan Natives. And it's
9 determined or computed using the most recent
10 data available under the Native American
11 Housing Assistance and Self-Determination Act.
12 So this is the most recent data.

13 This is FY `12. This is locked.
14 What was in the `12 inventory and the 2004
15 inventory. These numbers typically come out
16 in July if I've been told correctly. So when
17 the ones come out in this July they'll be
18 updated numbers that will be used to generate
19 next year's tribal shares.

20 The last factor is 34 percent.
21 And what we have to do with this factor is we
22 determine how much that 34 percent is and we

1 divide it equally amongst the 12 BIA regions.
2 So for the purposes of ease let's just say 34
3 percent equals \$12 million. What we do is we
4 take the \$12 million and we give each BIA
5 region or designee \$1 million to each of the
6 12 BIA regions.

7 Then we have to look at the tribes
8 within each region and determine the tribal
9 share that each tribe got between 2005 and
10 2011 -- '05, '06, '07, '08, '09, '10, '11.
11 How much money did the tribe receive in each
12 one of those years from the funding formula
13 that was used during that time. And then
14 determine the percentage that that tribe got
15 of all the money for all the tribes within the
16 region.

17 And let's say your tribe when you
18 add up those numbers you got 8.9 percent of
19 the money that was provided to the tribes
20 within that region over that 7-year period.
21 Then you would get 8.7 percent of that million
22 dollars. One second, Dave, and I'll be right

1 with you.

2 If you look at Navajo, they're one
3 tribe. They would get the million dollars.

4 If you look at the tribes in Alaska they have
5 to split the million dollars between 229

6 tribes. But that's the way this factor works.

7 Yes, Dave.

8 MR. KELLY: Dave Kelly, Oglala
9 Sioux. You're not including any other
10 available fundings that have come to the tribe
11 in terms of grants or anything like that.

12 Like the TIGER grants or any additional
13 supplemental money that we applied for.

14 MR. SPARROW: It's strictly the
15 RNDP and the population adjustment factor. It
16 does not include HPP money, does not include
17 TIGER grants, does not include public lands
18 discretionary, an earmark that maybe was in
19 part of SAFETEA-LU, doesn't include any of
20 that. It's just the formula and the
21 population adjustment factor. So that's what
22 goes into the formula this time.

1 Then if you remember we said there
2 was this fifth set-aside. Congress has told
3 us how much money goes into that each year.
4 It equals \$104,375,000.

5 In your mind be thinking we
6 started with \$450, we took \$2 million off for
7 planning, \$2 million off for safety, \$2
8 million off for bridge, \$27 million off for
9 PM&O, \$277 million off for the 80 percent,
10 \$104 million off for supplemental funding.
11 What that tells you is this year when you come
12 back to this formula mileage, population,
13 historic shares, there's less than \$14
14 million, or around \$14 million for the whole
15 country splits up that formula. About \$3.6
16 million for mileage, a little over \$4 million,
17 \$4 and a half million or so for population and
18 around \$4 million for the historic shares.
19 That's all that's run in this new formula this
20 year. That's step one of the transition.
21 Anyway.

22 We have \$104 million. The purpose

1 of the supplemental funding is to try to
2 offset negative impacts that a tribe might
3 experience as a result of the new formula.

4 What we do with the \$104 million
5 is we look at the tribal shares of the formula
6 and we divide it up amongst the 12 BIA regions
7 based on what each tribe is receiving through
8 the formula. So it's not equal, first of all.

9 Once we determine how much goes to
10 each region then we have to look at the tribes
11 that have been negatively impacted by the new
12 formula as compared to what they received in
13 FY `11.

14 So if a tribe when we go through
15 the formula, and we go through the transition,
16 and we go through everything else is receiving
17 less money than they got in 2011 they get
18 first dibs at this money with the intent of at
19 least getting them to what they received in FY
20 `11. So the negatively impacted tribes are
21 the first ones that look at the money within
22 the region. I'll be right with you, Tim.

1 If all those tribes are brought up
2 to their FY `11 level and there's money left
3 then all of the tribes in the region share
4 what's left by their respective regional
5 percentages.

6 If there's not enough money to get
7 the negative tribes back to FY `11 the intent
8 is to uniformly bring those negatively
9 impacted tribes as close to their FY `11
10 levels as possible.

11 As the new formula becomes more
12 and more relevant, in 2014 it's more relevant
13 than now, 2015 more, 2016 it's more, the
14 supplemental funding may not be enough to get
15 the tribes to their FY `11 level.

16 This year there is because you're
17 starting at 80 percent to begin with. So just
18 about everyone is receiving at least as much
19 as they received in 2011. Yes, Tim.

20 MR. ROSETTE: Tim Rosette,
21 Chippewa Cree Tribe, Rocky Boy, Montana. The
22 way I'm understanding you say it then is \$14

1 million is really what the formula affects
2 this year, about \$14.5 it affects this year.

3 The other dollars that you were
4 just discussing, I'm trying to keep this
5 straight in my head because it gets kind of
6 complicated. But the other money then gets
7 distributed, would be distributed based on the
8 11 shares. And -- not the 11 shares but it
9 would be a combination of the -- or an average
10 of the `05 to `11 share. Is that the way I
11 understand it?

12 MR. SPARROW: No, no, no, it's
13 based -- 80 percent of what the tribe receive
14 -- this year, 80 percent of what the tribe
15 received in FY `11 is provided through that
16 transition, 80, 60, 40. That's one factor.

17 MR. ROSETTE: Yes, but if we go
18 back a slide. See, that's what got me.
19 You're too far. You said -- one more. Go one
20 more. Yes, that one. Based on each tribe
21 within the region, within our tribal region
22 percentage of the regional total of relative

1 need and population adjustment factor that it
2 received from 2005 to 2011 to be divided
3 equally. So it would be the average of what
4 we got in the region during that period?

5 MR. SPARROW: Right. This is just
6 -- first of all, this is only the third factor
7 of the formula. That 80 percent is a total
8 separate pot of money.

9 MR. ROSETTE: No, no, no. I'm
10 trying to keep it straight in my head.

11 MR. SPARROW: Right. So that's --
12 80 percent is based on 2011. This is the
13 third factor in the formula. And what we do
14 is we divide the money initially equally 12
15 ways.

16 Then within each region we look at
17 the tribes and we determine what percent of
18 the money that went to the region, for those
19 tribes in the region, for that 7-year period
20 how much did Rocky Boy get. Of the tribes in
21 the Rocky Mountain Region what percentage of
22 that money between '05 and '11 did you get.

1 Whatever percentage that is that's how much of
2 that one-twelfth that gets credited to Rocky
3 Boy. So when we add up all the tribes in the
4 Rocky Mountain Region, remember I said it was
5 \$12 -- we just said it was \$12 million.

6 MR. ROSETTE: Yes. No, no.

7 MR. SPARROW: Okay, we add up all
8 the tribes in the Rocky Mountain Region for
9 this particular factor it'll equal \$1 million.
10 They won't be equal but it'll equal \$1
11 million. But if you add up how much goes to
12 each region it equals \$1 million. They are
13 equal. I'm not smart enough to make this up.

14 MR. ROSETTE: I don't know. You
15 know, this is the concern I had initially with
16 tribal consultation, you know. I mean I'm
17 trying to put my head around how you're
18 arriving at that and where that was written
19 into the law and it just kind of drives me a
20 little crazy trying to figure out how did you
21 get there. How did we get here. You know
22 what I mean?

1 MR. SPARROW: All of this is
2 described in 202(b) is where the funds
3 distribution is described. If you look at
4 MAP-21, if you have a book of MAP-21, I don't
5 know if some of you do or don't. Section 1119
6 talks about federal lands in here. And 202 is
7 part of -- talks about the Tribal
8 Transportation Program within Section 1119 of
9 MAP-21. And it goes on and on and on.
10 Because we have a hard time getting our arms
11 wrapped around it.

12 So you've got the 80 percent this
13 year. You've got 80 percent of the money.
14 You've got money that comes out of the
15 formula. And then if those two, you still are
16 negatively impacted we've got this
17 supplemental funding to at least get you back
18 to FY `11. And then everybody shares what's
19 left. So if everybody gets back to FY `11 and
20 there's money left then all the tribes within
21 that region will be getting at least as much
22 as they got in FY `11. Some will be getting

1 more. Yes, sir. Yes, Burny.

2 MR. TIBBETTS: Burny Tibbetts,
3 White Earth. With this supplemental, how
4 close are you supposed to get? From 2011,
5 we're half a million less than what we were in
6 2011 for `13.

7 MR. SPARROW: You get to -- we'd
8 have to take a look at your individual
9 numbers. I don't know. You've got to look at
10 your FY 2011 and the supplemental. You should
11 be getting -- I mean you start at 80 percent.
12 So I don't know what your dollars look like.
13 We can talk about it at the break and take a
14 look at it. That's the way it's worked. I
15 don't know, we'd have to look at it.

16 MR. TIBBETTS: Okay.

17 MR. SPARROW: All right. But the
18 intent of that supplemental is to try to get
19 everybody to FY `11.

20 Now, here's one thing. And before
21 -- well, he's going back. If you have a
22 substantial negative impact due to the new

1 formula then the more and more the new formula
2 gets more and more important every year your
3 negative impacts are going to be more and
4 more. Because that formula that's negatively
5 impacting you is -- more and more money is
6 being generated to it and less and less money
7 is being generated to the old ways. No,
8 you're going the other way.

9 This year your FY `11 tribal share
10 numbers are as close as they're ever going to
11 get. Because you're starting with 80 percent
12 and then you're sharing that supplemental.
13 That's why we've got -- Burny, we've got to
14 take a look at the numbers that you have. But
15 that's how the funding formula operates. Set-
16 asides, supplemental, primary formula, 80
17 percent of the old formula, and Tim's nodding
18 his head. And if Tim understands it then we
19 all understand it.

20 The tribal share -- I'll be right
21 with you sir. You've got to shake like this,
22 not like this. The tribal shares are posted

1 on both the Federal Lands TTP website as well
2 as the BIA website. So the tribal shares of
3 the tribes and the mileage and the population
4 and whatever are all provided for you on the
5 website.

6 Yes, sir. I didn't mean to hold
7 you up.

8 MR. CROW BELT: Yes, direct
9 service tribes. Now, all their funding. Now,
10 none of their funding goes to the BIA -- BIA
11 to any of those regions now, does it? Doesn't
12 their funding come automatically from Federal
13 Highway to the tribes? So how would that
14 affect these regions here, the money that's
15 going over there? Does that come on back to
16 the tribes some way?

17 MR. SPARROW: Initially the tribal
18 shares for all of the federally recognized
19 tribes are determined regardless -- I want to
20 say irregardless but they tell me it's not a
21 word. It doesn't matter what your contracting
22 mechanism is. If you're working with Federal

1 Highway, if you're direct service, if you're
2 Office of Self-Governance, whatever, we still
3 have to determine what those tribal shares
4 are.

5 Then if you're a tribe working
6 with Federal Highway we've got the money at
7 Federal Highway. We determine what tribal
8 shares go to those tribes working with us. We
9 pull out that money and we send the rest over
10 to BIA DOT to get out to the regions, to get
11 out to the tribes. Okay?

12 And then direct service, if it
13 stays within the region or it goes through
14 self-determination doesn't matter. Okay?
15 That's all the funding formula work. That's
16 it. There will be a quiz in 20 minutes.

17 MR. GISHI: This is LeRoy Gishi.
18 One of the things that Burny had brought up,
19 that there was the reduction in some areas.

20 When we first ran the numbers, or
21 at least were looking at running the numbers
22 based on what Congress had given us it was

1 based on, first of all, there was a
2 significant increase in the amount of funds
3 that were available because two programs were
4 eliminated, population adjustment factor no
5 longer existed and the IRR HPP program which
6 was the high-priority which is \$30 million.
7 So a total of about \$45 to \$50 million now
8 became available to run through the formula.

9 Well, if you increase it from that
10 much funds being made available under this new
11 formula everybody pretty much stays up in that
12 area of a positive number. Except two things
13 that Congress did this year, and this happens
14 on an annual basis, was first of all, they did
15 a 0.2 percent rescission. Every program
16 that's out there got reduced by that much.

17 Then we have another provision
18 that Bob will talk a little bit about called
19 obligation limitation which is sort of
20 Congress's self-imposed sequestration that the
21 program has had to live with since 1998. And
22 for that reason -- and it varies on an annual

1 basis. Sometimes it's as high as 13 percent.
2 This last year it was at 5.4. And this year
3 it's 4.1.

4 Now, when you impose those
5 reductions then we thought this year everybody
6 was going to get an increase. Turns out that
7 there are some that are going to be either
8 close to it or a reduction that would reflect
9 a slight increase. And so the difference is -
10 - and that's why when Bob brought up that one
11 slide there was a little asterisk up there
12 that said the amounts available will depend
13 upon obligation limitation, 1102(f) in the
14 law, and any rescissions that are imposed by
15 Congress on an annual basis. And this year we
16 happen to have both of those and so the result
17 is there's less funds available overall to the
18 program.

19 MR. ROSETTE: Tim Rosette with the
20 Chippewa Cree Tribe in Rocky Boy. LeRoy,
21 didn't they take out Lake Tahoe as well?
22 Didn't that add to our pot?

1 MR. SPARROW: Lake Tahoe is gone.

2 MR. ROSETTE: So didn't that add
3 to the total?

4 MR. SPARROW: That was about --

5 MR. ROSETTE: Because that was an
6 automatic takedown in the past, correct?

7 MR. SPARROW: It was about a half
8 a percent. Pretty much offset the rescission.
9 I want to call it recession.

10 Subpart D. This is the part that
11 talks about transportation planning, talks
12 about the inventory, talks about design and
13 construction of projects and those activities
14 on the facilities. So C was the funding
15 formula, now D tells us about planning, design
16 and construction.

17 It talks about transportation
18 planning. The first couple of questions that
19 you see on there outline the responsibilities
20 and the requirements of the BIA and the tribes
21 and Federal Highway in carrying out
22 transportation planning. This really hasn't

1 changed from the reg that was published in
2 2004.

3 What are the requirements for
4 developing a transportation improvement
5 program, or a TIP? What are the requirements
6 of developing a long-range transportation
7 plan? It references 23 U.S.C. 134 and 135
8 which are the planning regs and the planning
9 statutes that are mandated to Federal Highway
10 Administration and the Department of
11 Transportation.

12 It talks about the requirements
13 about public hearings and public input. What
14 kind of input do you need when you develop a
15 TIP? If you're developing a long-range
16 transplantation plan do you have to have
17 public input? Do you have to have public
18 hearing? That's their questions and answers
19 that are in the beginning of Subpart D.

20 Then there's a section that talks
21 about the National Tribal Transportation
22 Facility Inventory. What are the components?

1 It's restated again pretty much right out of
2 the statute. What part of those components
3 generate the mileage in the funding formula?
4 It's just a repeat of what was done in Subpart
5 C.

6 How is the NTTFI used? How do you
7 update the NTTFI? What are the minimum
8 attachments required to get a FY into the
9 NTTFI that's not in there currently? That
10 information is in there.

11 The minimum attachments is new.
12 It wasn't in 25 C.F.R. 170 that was published
13 in 2004. For those of you that were involved
14 with the coordinating committee you will
15 remember that was one of the first things that
16 was -- I don't want to say attacked but taken
17 on by the coordinating committee to develop
18 and clarify exactly what are those minimum
19 attachments.

20 So the intent was to grab what was
21 approved and signed and put that into the
22 regulation. It's the same minimum attachments

1 that we've been operating under since about
2 2005-2006.

3 There's a section in here on
4 environmental and archaeological requirements.
5 What NEPA requirements, what historical
6 requirements have to be met when you're
7 designing a project?

8 Design construction and
9 construction monitoring. What design
10 standards have to be met. What design
11 standards are approved. If you want to do a
12 design exception what's the process for asking
13 for a design exception.

14 Construction monitoring. What
15 kind of construction management, construction
16 monitoring has to be done during the project
17 itself?

18 PS&E approvals. Right after the
19 regulation came out SAFETEA-LU was passed and
20 SAFETEA-LU changed what was in the reg about
21 PS&E approvals.

22 The law in 2005 said tribes can

1 approve their own PS&E if they provide
2 certification that -- or they have a
3 certification from a registered engineer that
4 the plans meet or exceed health and safety
5 standards. And a copy of that certification
6 in the PS&E is basically provided to either
7 the Federal Highway Administration or BIA
8 depending on who the tribe is working with.

9 That's not what came out of
10 negotiated rulemaking. There was still a lot
11 of involvement by Federal Highway and BIA in
12 the old rule. This now says the tribe
13 approves their own PS&E if they do this and
14 this. So that's been updated to reflect
15 what's in the law.

16 A section on monitoring and
17 closeout procedures. For TTP construction
18 projects when you're on a project how do you
19 monitor the project? What kind of samples do
20 you take? Who's responsible for carrying out
21 or doing the daily logs or the daily diary?
22 Keeping track of the inspections.

1 The project closeout occurs.
2 Who's responsible for carrying out the final
3 inspection? Who gets invited to the final
4 inspection? Who writes the final report?
5 Those are the things that you find in that
6 particular section.

7 There's some questions and answers
8 on management system. Pavement management,
9 bridge management, safety management,
10 congestion management. What kind of
11 management system are out there or are
12 supposed to be developed?

13 And then there's a section on
14 bridge inspections. What are the requirements
15 of the bridge inspections now? That part has
16 changed with MAP-21. So from a general
17 overview that's what you see.

18 So let's go back. We talked about
19 most of these when we went through the
20 general. Highlights, transportation planning.
21 What's the definition and purpose of
22 transportation planning? What are the roles

1 and responsibilities of what BIA carries out,
2 what the tribes carry out, what Federal
3 Highway carries out with respect to planning?
4 And what sort of funding is available to carry
5 out planning?

6 We saw there's that 2 percent set-
7 aside that's provided to the tribes. But you
8 can also use your tribal transportation tribal
9 share formula funds. That's an eligible
10 activity.

11 Long-range planning. What's the
12 purpose of -- you're developing the tribe's
13 long-range transportation plan. What should
14 be in the plan? What kind of public
15 involvement should we have in the plan? Yes,
16 sir.

17 MR. HEALY: Yes, John Healy,
18 transportation director, Fort Belknap. On
19 your previous slide, Bob, are the cost to
20 construct tables, are they still going to be
21 updated annually? Or what's the?

22 MR. SPARROW: I'll get to that.

1 MR. HEALY: Okay.

2 MR. SPARROW: Thank you. From the
3 planning perspective what's your public
4 involvement? What do you need to do to get
5 your long-range plan completed?

6 What procedures do you need to
7 follow in developing your TIP? Remember,
8 every project and activity that's funded with
9 TTP funds has to be identified on a Federal
10 Highway-approved TIP. That's the law.

11 So what do you have to do to get
12 to that point? Questions and answers in there
13 working you through developing a tribal
14 priority list or a tribal TIP, working with
15 BIA and Federal Highway to get that Tribal
16 Transportation Program TIP for your tribe that
17 identifies your projects, that identifies your
18 activities out for the next 4 years.

19 And then what do we, Federal
20 Highway, do in working with the states to get
21 those regionally significant projects into the
22 state's TIP? So that process is identified in

1 those Q&A's.

2 What sort of public participation
3 do you have to do in developing a TIP? Just
4 like with the long-range transportation plan.
5 There's a whole section of Q&A's talking about
6 public hearings. Yes, Tim.

7 MR. ROSETTE: Tim Rosette. You
8 know, go back to the last slide on that public
9 -- or in collaboration I guess with the STIP.
10 What has the Department of Transportation done
11 to improve participation in the state's
12 transportation improvement plan?

13 I know like in Montana they call
14 me for a survey once a year and that's my
15 participation. And then they also send me out
16 another survey. There's one on the computer
17 and then they call me up.

18 And they're pretty diligent about
19 keeping me on there until I answered all their
20 questions. But that's about as far as I know
21 of any participation that our tribe has had in
22 a state transportation improvement plan.

1 And if it is truly, if that's
2 something we're going to do are we going to be
3 able to fully participate, you know, actually
4 put our dollars into it, actually put our
5 people into it, our construction equipment and
6 do whatever to help enhance these projects
7 that are on the reservation or near the
8 reservation, or on state highway projects that
9 go through the reservation?

10 MR. SPARROW: Very good question.
11 With this reg its focus is on the Tribal
12 Transportation Program and getting those
13 dollars represented on the STIP.

14 When it comes to the state funds
15 or the federal aid funds that a state DOT has
16 that you may want to work together with that's
17 really run out of the federal aid office in
18 each state. And we will be providing these
19 comments to those offices because honestly
20 this isn't the first time we've heard of this
21 concern. So we will make sure we do, we have
22 it captured.

1 And it's something that we've got
2 to forward to Montana, or Wyoming, or North or
3 South Dakota, or Minnesota Federal Highway
4 Office to say the state needs to be working
5 closer with these tribes with regards to those
6 state funds, what's going on, et cetera, et
7 cetera, in order for us to answer those
8 questions.

9 When you're looking though at this
10 regulation all it really talks about here is
11 getting these projects into that state's TIP.
12 So if you've got a project that's a major
13 construction project that you're funding with
14 Tribal Transportation Program funds, the
15 state's not involved, and it's the process
16 that Federal Highway has to do to make sure
17 that that project is in the state's TIP. But
18 I hear your comment and we'll make sure we get
19 it addressed.

20 Public hearings. There's a whole
21 section about when are public hearings
22 required. How do you carry it out? What do

1 you determine the need? Who pays for it or
2 how do you pay for it? How do you inform the
3 public? How do you conduct the meeting? How
4 do you report what happens at that meeting?
5 Or if a decision is made, how could you appeal
6 that decision? That's covered in this area
7 about public hearings.

8 Another section on the inventory.
9 We talked about it being in Subpart C. This
10 defines the same thing, describes what's
11 involved, how it's updated, how you get a
12 project into the inventory, the minimum
13 attachments that we talked about earlier. If
14 you've got a proposed facility, not a facility
15 that you're proposing. So it's more like an
16 adjective and not a verb. You've got a
17 facility that's not built yet. What are the
18 requirements for adding a proposed
19 transportation facility into the inventory?
20 That's described in this section.

21 We talked about environmental and
22 archaeological requirements. What are those

1 requirements? What are the NEPA requirements
2 on a project?

3 Design standards. Requesting a
4 design exception. How to appeal if the design
5 exception isn't allowed. What's the appeal
6 process for that operation?

7 Contents of a project PS&E. A
8 project package is the plans, specs,
9 estimates. What else is included in a
10 package? What's the Secretary's role? Even
11 though we're not approving the PS&E what's the
12 Secretaries, DOT or DOI, if we see a design
13 flaw or a deficiency? What are our
14 responsibilities? How do we get back in touch
15 with the tribe, work with your consultant or
16 your professional engineer on staff to say
17 hey, we think this is a problem, it needs to
18 be addressed?

19 The biggest change though -- this
20 really hasn't changed, this really hasn't
21 changed. The big change in this section is
22 approving your own PS&E's.

1 We talked about construction and
2 construction monitoring, who does what
3 records, who does the closeout, who does the
4 reporting. There's a table in there that
5 identifies what needs to be done, what needs
6 to be included in the report.

7 Management systems. We said
8 planning -- or not planning, pavement, bridge,
9 safety, congestion management. The
10 development of these management systems
11 overall for the program. The one thing -- and
12 possibly taking management systems down even
13 to the tribal level.

14 The one thing that we've noticed
15 with this MAP-21 is, one, we're looking at
16 this MAP-21 as being a transition highway
17 bill. It's transitional. It's only, quote
18 unquote, "2 years."

19 But it's really performance-based.
20 It's pushing performance-based management
21 systems out there to the point where the
22 states and other partners are being asked if

1 we give you this much money what are you going
2 to do with it. And if you get this amount of
3 money what can you do with it. And if you get
4 this amount of money what can you do with it.
5 And then actually seeing the results.

6 A lot of it's going to be
7 performance-based. And I think that's the
8 wave of the future. I wouldn't be surprised
9 to see the next highway bill even be more
10 performance-based. So just keep in the back
11 of your mind when you do your annual reports
12 or your accomplishment reports hey, this is
13 what we accomplished with the funds that we
14 received. And this is what we could have
15 accomplished with more funds or whatever.

16 Bridge inspection, another new
17 section based on the requirements now that
18 Congress said all public road bridges
19 including tribal bridges need to be inspected
20 every 2 years.

21 There's a part of MAP-21 that's
22 not part of the Tribal Transportation Program

1 that references the minimum qualifications to
2 be a certified bridge inspector. How do you
3 notify folks that the inspections are coming.
4 What are the statutory requirements? How are
5 the reports going to be distributed?

6 And the question came up earlier
7 about funding. There's no additional funding
8 made available for this. But in MAP-21 it
9 says to use tribal shares. So we're still
10 waiting.

11 And you'll see when you go to this
12 section in Subpart D it really references that
13 other part of MAP-21, the other Office of
14 Federal Highway. Because whatever standards
15 they come up with for the bridges nationwide
16 are going to be the standards that we have to
17 follow. So there's some stuff going on over
18 there. It's not quite done yet. We're
19 waiting to see what happens, but we're
20 referencing that aspect since Congress told us
21 that's what we have to do. Yes, ma'am.

22 MS. METCALF: I thought I'd talk

1 loud in my Army voice. Ronda Metcalf, Sauk-
2 Suiattle Indian Tribe. So basically what I'm
3 hearing you say, and I really need
4 clarification, that now we are dependent --
5 because I along with everybody else that has
6 said disagree with almost everything that's
7 being said. And I really for one don't
8 believe that this is gov-gov consultation.
9 But since I'm here I'm listening.

10 So what you're saying is now on
11 another aspect we're depending on what another
12 agency who has no obligations to the tribe is
13 going to set down rules for us. Is that what
14 -- did I get that right?

15 MR. SPARROW: What Congress has
16 directed Federal Highway to do is develop the
17 overall standards by which bridges need to be
18 inspected and how they are to be rated, i.e.,
19 ranked with regards to sufficiency or
20 deficiencies. They're still working those
21 final regulations of how that's going to be
22 carried out.

1 What has happened this time which
2 had never happened before was Congress
3 included tribal bridges and said tribal
4 bridges have to be inspected every 2 years and
5 the reports provided to Federal Highway.

6 All Federal Highway is doing is
7 saying to be a certified bridge inspector you
8 need A, B and C, and here's the report, and
9 here's the format that has to be followed on
10 the report.

11 MS. METCALF: And so another part
12 of my question is you said funding to come out
13 of tribal shares. So if we have a bridge at
14 Suak-Suiattle and they come and inspect it
15 then they're going to expect us to pay for
16 that?

17 MR. SPARROW: No, they're not
18 going to come in and inspect it. You're going
19 to be required to inspect it.

20 MS. METCALF: But they're going to
21 determine who can inspect it.

22 MR. SPARROW: Well, they're just

1 saying in order -- it's like being a
2 professional engineer. In order to be a
3 professional engineer you have to have 4 years
4 of education and experience and pass a test
5 and whatever. That's all they're getting here
6 is the minimum qualifications to be a bridge
7 inspector. You just can't have somebody go
8 out there that doesn't know anything about
9 bridges and say yes, it's fine.

10 MS. METCALF: I don't know, how
11 many people have bridge inspectors?

12 (Show of hands)

13 MS. METCALF: Okay, we'll be
14 calling you.

15 MR. SPARROW: And this is
16 something that we're still trying to work out
17 exactly how and when over this next 2-year
18 period these bridges are to be inspected.
19 There's about 400 tribal bridges across the
20 country. There's about 900 BIA bridges. These
21 are bridges on BIA routes. Those previously
22 have been required to be inspected every 2

1 years. Not until this year were the tribal
2 bridges ever included. Yes, Vivian. Hold on
3 one second, Tim.

4 MS. PHILBIN: Vivian Philbin,
5 Federal Highways. Ma'am, I just wanted to --
6 perhaps this is coming across as the tribe has
7 to do this, the tribe has to do that, the
8 tribe has to do this, the tribe has to do
9 that.

10 Bridge inspection is so important
11 as everyone in this room knows because if
12 there's a bridge failure it's typically
13 catastrophic. So the fact that tribal bridges
14 are required to be inspected is a very good
15 thing.

16 The resources are another issue.
17 But these are bridges that are open to the
18 public and it's very important that if
19 anything in Indian Country we can bring the
20 infrastructure up to the standards that it
21 needs to be that is a very good thing. The
22 resources I understand are another issue but

1 having bridges inspected is terribly
2 important.

3 MR. ROSETTE: You know, her
4 original question was I believe you've got
5 another federal agency expecting -- putting
6 further regulations and requirements on the
7 tribe and having the tribe to pay. And I
8 believe you probably were looking for a yes or
9 no answer and the way it sounded was yes. And
10 there is no consultation because they're doing
11 that off on their own.

12 MR. SPARROW: Point taken. There
13 are three appendices to Subpart D. Appendix
14 A is the same as what it was before. It talks
15 about the cultural resources and the
16 environmental requirements for the program.
17 What are the NEPA requirements on a project.
18 What are the historical requirements on a
19 project, et cetera, et cetera.

20 Appendix B outlines the various
21 design standards. Federal standards, state
22 standards, bridge standards, and outlines

1 those standards that have been approved for
2 the design of TTP projects.

3 Appendix C to Subpart D used to be
4 over with the funding formula because it talks
5 about cost to construct, it talks about
6 functional classification, it talks about
7 other inventory data that is used to keep the
8 inventory current or updated. So the cost to
9 construct issues are in there.

10 We have to go back and take a look
11 and re-check before we come out with something
12 to make sure that this is reflective of what's
13 going on now. But it's in there.

14 Basically it was cut out of the
15 funding formula Subpart C. And because these
16 don't generate funding anymore, they're just
17 adjectives or identifications of the roads, we
18 put it into this section which talks more and
19 more about the inventory itself. So out of
20 cost and into descriptions.

21 Does it make sense to make sure
22 that this is the most current and the cost

1 tables are updated and we're reflecting the
2 best cost that's out there? Yes, it is. As
3 I said before we've got to provide Congress
4 with the best data that we can have as well as
5 making sure that your inventory is as accurate
6 as possible, not knowing what's around the
7 next bend in the road.

8 Yes, sir.

9 MR. TIBBETTS: Burny Tibbetts,
10 White Earth. To the functional
11 classification, we're in the process of
12 working on a project right now with the state
13 on a centerline project because all states got
14 to report now through GIS.

15 But I'm wondering what happened to
16 that project that I think you had a consultant
17 do functional classifications to tie them into
18 the federal. Do you know whatever happened
19 with that?

20 MR. SPARROW: We basically are
21 ready to issue a report when MAP-21 hit where
22 functional classification is no longer

1 critical. And we're trying to get -- it fell
2 down the list of things that we're trying to
3 get done. It will be forthcoming.

4 MR. TIBBETTS: So there is
5 something going to be coming out that matches
6 the federal?

7 MR. SPARROW: Looking at what we
8 proposed that you're aligning them with
9 Federal Highway.

10 MR. TIBBETTS: Right.

11 MR. SPARROW: And that crosswalk
12 is actually -- the crosswalk is in Appendix C
13 that Sheldon developed to show the functional
14 classifications from old going into new.
15 That's included in there.

16 MR. TIBBETTS: That would be very
17 helpful to us right now.

18 And then I have one other
19 question. Is this the only program, and I
20 don't know if it's a program, that has been
21 directed by Congress through statutory
22 regulations? Is the BIA or the -- not IRR.

1 What are we calling it? Tribal Transportation
2 Program. Is this the only one that's ever
3 been done as a statutory regulation set by
4 Congress?

5 MR. SPARROW: No, there's
6 regulations with many of the Federal Highway
7 programs that are out there.

8 MR. TIBBETTS: But as it pertains
9 to formula for the funding.

10 MR. SPARROW: It's -- the federal
11 aid formula is statutory as well.

12 MS. PHILBIN: Now I understand
13 your question. But because it's a general
14 question for the benefit of everyone in the
15 room, as all of you know Congress passes the
16 law, that's the statute.

17 And then the regulations which are
18 typically implemented by government agencies,
19 not through negotiated rulemaking unless they
20 involve Indian programs are typically not
21 through negotiated rulemaking, they implement
22 the statute.

1 But when you ask does Congress
2 ever have any other statutory formulas they
3 certainly do in the Federal Aid Highway
4 Program which is an apportioned formula
5 program. And I'm sure there's others. And
6 that's for the federal aid on the state side
7 of -- out of the Highway Trust Fund. I'm
8 trying to think, you just caught me off guard,
9 on other formula programs in Title 23.

10 But that's a good question because
11 -- and I think there was obviously, and
12 everyone in this room, I don't want to --
13 there's a lot of folks in this room that are
14 very knowledgeable on the IRR/TTP funding
15 formula. There was a lot of disagreement in
16 Indian Country. And who knows, I mean I
17 wasn't a part of the discussion but I'm -- the
18 statutory formula may have been -- it
19 certainly put an end to the discussion at
20 least for FY '13 and '14. So you're correct
21 sir.

22 MR. HARRIS: Mr. Sparrow, going

1 back to the crosswalk that's in the
2 regulation. Wouldn't it make sense to
3 streamline it even further and just kind of
4 make the ones in this regulation and the one
5 that Federal Land and Highway used the same so
6 everybody's talking about the same thing and
7 you don't have to try and guess what this
8 means and what that means? And why do we even
9 need the crosswalk? Why can't we just get
10 everybody on the same page?

11 MR. SPARROW: That's a good
12 comment, something we'll look at when we put
13 the whole thing together.

14 We talked about timetables and
15 then key reporting. There's time frames
16 within the regulation with regards to the
17 long-range transportation plan. How far in
18 advance you need to advertise for your public
19 meetings. What kind of comment period is
20 required.

21 On the TIP, same sort of thing,
22 working through the TIP process. How much

1 time the BIA region or Federal Highway has to
2 review the information that's submitted in
3 order to get it approved.

4 Again, remembering funds cannot be
5 expended on any activity that's not on an
6 approved TIP. So our responsibilities of
7 turning around and getting those TIPs approved
8 in a timely manner.

9 We talked about the section on
10 public hearings. It gives you some timetables
11 on prior to the hearing how do you do a -- how
12 do you publish, or what sort of advanced
13 notice of publishing. And what kind of
14 comment period do you have. And then how soon
15 after the hearing do you have to issue a
16 report and things like that.

17 If we have a design exception
18 that's requested to BIA or Federal Highway by
19 your professional engineer what kind of time
20 frame do we have at BIA or Federal Highway to
21 get a response back to your professional
22 engineer of record.

1 This talks about approving your
2 PS&E. We talked about that earlier, providing
3 copies.

4 Project closeout. Once you've had
5 the final inspection, the closeout reports in
6 the reg. It said 120 days. It still says 120
7 days. That's something that came out of
8 negotiated rulemaking. Bridge inspections
9 every 2 years.

10 When it comes to a long-range
11 transportation plan what are the requirements
12 for the meetings and keeping records. What
13 kind of reports need to be generated, et
14 cetera, et cetera.

15 Same thing with the TIP. Amending
16 a TIP, what's the process. Your public
17 hearings, what sort of record-keeping has to
18 be carried out. Your construction monitoring,
19 your daily diaries, et cetera, et cetera,
20 doing the final report. What kind of
21 information is presented in that report.

22 So this section really goes from

1 planning to design to construction to
2 acceptance. It goes from start to finish on
3 the projects and activities.

4 MR. GARRIGAN: Jim Garrigan,
5 tribal consultant. LeRoy Gishi's other
6 cousin. Thought I'd sit here all day without
7 getting up and saying something, didn't you?

8 But anyhow, I just want to go back
9 to Subpart C. You said that the question 10
10 went away. I guess a lot of the tribal people
11 are having a little problem with that because
12 80 percent of the formula now is still part of
13 the old formula which was generated by the
14 cost to construct vehicle miles traveled,
15 right?

16 MR. SPARROW: Yes.

17 MR. GARRIGAN: Okay. Then it
18 seems to me that question 10 still applies.
19 How can it go away if cost to construct and
20 vehicle miles traveled then is going to be
21 there forever, even when it drops down to 20
22 percent? That part of the formula was

1 generated by CTC and BMT.

2 Now there was a lot of questions
3 prior to MAP-21 coming out. The tribes had --
4 a lot of tribes had a lot of questions on
5 this. And just a comment that I think those
6 tribes deserve an answer on question 10 yet.
7 Thank you.

8 MR. SPARROW: Thank you, Jim.

9 MR. GISHI: I want to thank my
10 cousin, that was a good comment. No Jim, no,
11 he's right. That's one of the things that --
12 if there's any of those things that we're
13 looking at in terms of clarification or
14 information that's what we want to be able to
15 provide.

16 Okay. Subpart E and F are -- the
17 biggest changes again that we're talking about
18 are in C and D and how they relate because
19 that's where Congress took the bulk of the
20 changes for Section 1119 in MAP-21 and
21 incorporated it into the formula.

22 Subpart E in the past in the

1 current regulation talks about service
2 delivery for Tribal Transportation Program,
3 the TTP program as a whole. It talks about
4 the ability for tribes to take on program
5 services, functions and activities. Again
6 related to this concept of the Subpart A and
7 B and that is tribes have the ability to take
8 on programs through self-determination and
9 self-governance or programs which are
10 available through whatever Congress has
11 specified.

12 And Congress in MAP-21 and
13 certainly SAFETEA-LU and definitely what's in
14 the statute right now in Title 23 says that
15 programs are to be offered up to tribes under
16 the Indian Self-Determination and Education
17 Assistance Act which is self-determination,
18 self-governance, but also through provisions
19 that are identified as direct contracting with
20 the Federal Highway Administration, U.S. DOT,
21 or other appropriate agreements based on
22 whatever the circumstances arise. But all of

1 them are obviously options that the tribe
2 makes a decision on as to how they want to
3 implement the program and what they want to be
4 able to do.

5 And even within those different
6 type of agreements there are aspects, various
7 parts of what's in the law that allow tribes
8 to be able to do certain things. Tribes can
9 do a portion of their program under one
10 agreement and portions of their program under
11 another agreement. They can have a portion of
12 their program that they do strictly through a
13 self-determination agreement, for instance,
14 and then have the rest of the program done
15 under a direct service type of activity with
16 the Bureau of Indian Affairs or even Federal
17 Highways if they need to.

18 This subpart takes a look at that
19 and talks a little bit about what those are in
20 terms of the typical type of activities that
21 are associated with that and how they play
22 into this program. Again, it's important.

1 And I don't know of too many
2 programs that are out there that are in Indian
3 programs with the exception of HUD, Housing
4 and Urban Development, and of course IHS. And
5 even IHS is subject to the Indian Self-
6 Determination and Education Assistance Act
7 where those apply across the board.

8 But a single program where
9 Congress has basically said yes, we do have
10 these things out there but we also expect that
11 in the operation of these programs that we do
12 these things. And although we understand, I
13 certainly do, from the standpoint of
14 frustration of some of the things that are in
15 the law a lot of the things that are in the
16 law are a result of tribes commenting on and
17 making sure that things are happening.

18 I mentioned that the Indian Self-
19 Determination Act last was amended back in
20 1996. Since then we've had three amendments
21 to the Highway Act and each time what it was
22 doing was based on the tribes. Tribes really

1 taking control of the process basically said
2 we want to be able to do these things in our
3 agreements and that involves, for instance,
4 the process as I mentioned earlier and Bob did
5 about approval of PS&E's.

6 If you work through other programs
7 that's sometimes like pulling teeth to try and
8 get us as a federal agency to be able to
9 concur with some of those things. But in
10 Title 23 it specifically states what tribes
11 can do and are able to do. For that reason
12 those types of provisions are here in the law
13 and are specifically stated as well as how do
14 we treat, for instance, a common type of
15 provisions that occur in these other
16 contracts, like contract support costs and
17 startup costs, forced account methods, how do
18 we treat those in this program even though we
19 know that there are provisions for these
20 things under the Indian Self-Determination and
21 Education Assistance Act.

22 And also what functions are out

1 there that are not otherwise contractable,
2 inherent federal functions that we have to
3 perform from the standpoint of Federal
4 Highways and BIA.

5 This subpart tells us a lot about
6 how the Indian Self-Determination and
7 Education Assistance Act as amended, the
8 Federal Highway and other appropriate
9 agreements that can be used as contracts and
10 agreements.

11 We have examples where as we
12 mentioned where Congress sometimes earmarks
13 dollars and says through the state programs,
14 through the federal aid programs and says we
15 set aside these funds for the purpose of
16 performing this program at this location in
17 connection with this tribe.

18 They send the money to the state
19 and the state says we really don't have a was
20 of being able to do this because we have our
21 state constitution bylaws or whatever, laws,
22 that say we can't enter into agreements with

1 tribes. So, in those instances there are
2 provisions within Title 23 that says listen.
3 In those instances there are other mechanisms
4 that are available out there again with the
5 idea for the benefit of the tribe that we
6 should be able to work with the federal
7 agencies to transfer those funds back through
8 Federal Highways, from the state, back through
9 to BIA, the Secretary of the Interior.

10 And the Secretary of the Interior
11 then has the ability to sit down with the
12 tribe and say what agreement mechanism would
13 you like to use to be able to implement this
14 program if you'd like to do it at all. And
15 that process then is what we're talking about
16 here.

17 This has been something that's
18 progressively improving, changing over the
19 last two changes in the Highway Act. And so
20 what we're seeing now is the ability to be
21 able to address four specific methodologies
22 that tribes can enter into agreements via the

1 FHW program agreements, other appropriate
2 agreements, BIA G-to-G's, and of course the
3 self-governance annual funding agreements as
4 well as the Self-Determination Subpart J
5 construction. Yes.

6 MS. RADTKE: Vicki Radtke,
7 comptroller for Fond du Lac. When these
8 agreements come down they include a provision
9 in there about for advanced funding and how
10 the money can be invested. Is that in this
11 rule?

12 MR. GISHI: Yes.

13 MS. RADTKE: And how does that fit
14 with self-determination if you tell us how to
15 invest the money?

16 MR. GISHI: How to --

17 MS. RADTKE: -- what government
18 agencies aren't generating income right now.

19 MR. GISHI: In terms of the
20 advanced payment process?

21 MS. RADTKE: Yes. They don't earn
22 anything in what you say it can be invested

1 in.

2 MR. GISHI: In terms of like
3 Treasury-insured bonds?

4 MS. RADTKE: Yes.

5 MR. GISHI: Okay. Vivian, do you
6 want to answer that?

7 MS. PHILBIN: Vivian Philbin,
8 Federal Highways. I'm not sure this answers
9 the question on the lack of earnings. I'm
10 sure that's of great concern. In prior years
11 there was considerable interest paid and it
12 was a good source of extra revenue.

13 This rule does not tell you how to
14 invest the money. There is a list of eligible
15 items in Appendix A of where the funds -- what
16 the funds can be spent on, on eligible
17 activities. But how you should -- and of
18 course the transportation funds have to be
19 separate and apart from other general tribal
20 funds.

21 But in terms of savings or
22 interest or exactly how it can be spent, not

1 at all. The rule contains all the eligible
2 uses of the funds. And of course the money
3 has to be in a secure place which is set
4 forth.

5 But in terms of more direction
6 than that on the government telling the tribe
7 you have to invest it in X and spend it on Y,
8 that is not in this rule at all.

9 It's in the agreement that the
10 funds have to be in a secure, what's -- I
11 don't have the agreement in front of me but
12 there is a list of -- yes, it can't be in a
13 non-secure -- it has to be in an insured
14 account so to speak and it can't be commingled
15 with other funds.

16 But the eligible uses of the funds
17 are set forth. There's no specific direction
18 Tribe X has to spend the funds on Y activity.
19 It's within the parameters. I mean we were
20 very careful both on advance payments and on
21 the securing of funds to be within the
22 parameters of the ISDEAA. But the

1 transportation funds, for example, could not
2 be spent on an ineligible non-transportation
3 activity. Okay.

4 MS. RADTKE: But how the money is
5 invested, it's in the agreements that it can
6 only be -- if you were to invest the money it
7 has to be in government-backed securities or
8 you know, it is telling tribes what they can
9 invest those funds in.

10 MS. PHILBIN: I don't have the
11 agreement in front of me but that sounds
12 correct. And when you think about it, because
13 it's for the benefit of the tribe, all of the
14 tribe, not just the individual making the
15 decision on the investment, that makes good
16 sense. It's a protection of what are
17 ultimately the tribal funds for
18 transportation. So yes, you are correct.

19 MR. CAULUM: Andy Caulum with the
20 Solicitor's Office. My understanding is that
21 provision is consistent with most ISDEAA
22 contracts is that when you're involving

1 restricted funds the investment of those funds
2 typically has to be in government-backed
3 securities if you're going to invest them,
4 like a CD or something like that, as long as
5 it's insured is my understanding.

6 MR. GISHI: Now, in terms of the
7 real, one of the things that when we were
8 going through this process with the rulemaking
9 with tribes was first and foremost, believe it
10 or not, it seems like so long ago and so
11 trivial but that was one of the things that we
12 had early on in this process was everything at
13 that time under Subpart J was basically
14 progress payments.

15 And many of you have seen this
16 before. It was the whole concept that we're
17 into a contract with you. And a contract,
18 there are two parties perform this way.

19 And it took us -- when I say "us"
20 I'm talking the whole BIA a long time to begin
21 to understand this concept of what self-
22 determination and self-governance was doing.

1 That was a government-to-government
2 relationship and being able to do that.

3 So right after these -- as part of
4 these regulations it really took a look at
5 with the exception of Subpart J where it talks
6 about semiannual or progress payments as
7 negotiated, self-governance agreements are all
8 advanced. And of course the Federal Highway
9 agreements all advanced. The G-to-G's are all
10 advanced 100 percent based on the availability
11 of tribal shares.

12 Then of course at that point there
13 are options that certainly are required that
14 are similar to what's in 638 as to where you
15 can put those dollars. And a lot of them are
16 actually put into CDs or savings accounts or
17 whatever to draw interest.

18 And the whole idea was for tribes
19 being able to do that as they plan and go
20 through that process. And that's part of it.

21 We also talk a little bit about
22 savings and how 638 treats savings and what we

1 put in here relative to savings. But you have
2 to understand the relationship that the
3 funding has with tribes, that these are tribal
4 shares. If there's a savings it's a tribal
5 savings. It's not in the context of programs
6 where tribes go out and apply for those, and
7 if there's a savings there under the normal
8 638 process it comes back into the program and
9 it's redistributed elsewhere. This is tribal
10 shares. For that reason it's different.

11 Subpart -- talks about Indian
12 preference versus local preference and
13 contracting. A big part of what we've seen
14 not only in Title 23 but also in Title 25.
15 Contract enforcement. What is it that we're
16 looking at doing in terms of those provisions.
17 Again, those are specific to the different
18 types of agreements that are out there.

19 The application of the Buy Indian
20 Act as well as the Buy America Act under the
21 program. There's a little table there that
22 shows basically what it is that we can and we

1 cannot do relative to that.

2 How is the federal acquisition
3 regulations related to the program and the use
4 of Davis-Bacon wages. Again, another table
5 that talks a little bit about that depending
6 on how the agreements are developed and how
7 they are fashioned.

8 Have we got a question back here?

9 MR. ROSETTE: Can you go through a
10 little bit on how applicable Davis-Bacon is to
11 say a self-governance tribe?

12 MR. GISHI: If you look at the
13 table it says that if the tribe is
14 administering the program then it has the
15 option, it's not required to do this, but to
16 use its own forces. Of course if it's
17 contracting out then of course those
18 contracting provisions apply. Basically
19 that's what the table says.

20 MR. ROSETTE: You know, every year
21 it seems like there's a fight. Well, this is
22 kind of an internal thing I guess but it's a

1 fight with the auditors to explain that to
2 them. And I keep pulling the law. You know,
3 I put it on my -- right on my what you call it
4 so I can pull it down every year for the
5 auditors. And that they don't understand it.
6 You know, because we do all of our work
7 ourselves, you know what I mean? And we're
8 not subject to Davis-Bacon under those
9 provisions.

10 MR. GISHI: Right, right. And
11 that's again -- that's the reason why they put
12 it into a table to show the relationship
13 between the different type of agreements and
14 who's performing the work associated with the
15 program.

16 Now, if we do that, the work, if
17 it's based on BIA or Federal Highways then of
18 course we're subject to Davis-Bacon.

19 Force account work. Everybody
20 understands that when a tribe is doing the
21 work that's considered force account. Whether
22 you're contracting it out to somebody or

1 whether you're doing it in-house it's force
2 account. You're using your own forces to
3 perform everything.

4 As far as BIA and Federal Highways
5 that's when we are doing the work and in some
6 regions we still have designers, we still have
7 inspectors, we still have folks that are
8 performing that work. When it's approved,
9 when it's based on the approval of the tribe
10 then we go out and we do those things. And it
11 talks about that it is an eligible activity
12 under this program. So being able to catch
13 that less than 33 percent of the tribes that
14 are out there that are still requesting that
15 the BIA perform that work on their behalf.

16 How waivers of regulations are
17 performed. And it really references the Title
18 23 provisions on how that applies. So again,
19 we're utilizing things that are already in
20 place as to some of these areas that are
21 contained in the self-determination
22 regulations as well as other regulations.

1 Federal Tort Claims Act, how that
2 applies. And we've actually implemented those
3 very similarly for purposes of coverage for
4 tribes under these other agreements because we
5 see the necessity for that to be able to be
6 out there. And since the wording is very
7 clear it's helpful to be able to include that
8 in for the purpose obviously of the protection
9 of the tribes when they're performing this
10 work.

11 Technical assistance. Big thing
12 that these -- the law, the changes in the law
13 and these regulations are trying to emphasize
14 is that in our relationship with tribes that
15 we should be looking toward a technical
16 assistance relationship in terms of these
17 agreements.

18 Because in fact all the
19 authorities are fairly well established.
20 Tribes are developing the agreements to
21 reflect those things that are in law. Then
22 our job from a federal agency is to provide

1 the technical assistance to make sure that
2 those things continue to be successful as we
3 go along.

4 As opposed to in the past again
5 when we -- in the early provisions and to a
6 certain extent still under Subpart J the
7 project by project type of agreements that are
8 out there, the concept or the idea was
9 government was there to be able to say before
10 I make a payment or before we continue on with
11 this project I need to see your 7-day, 14-day,
12 28-day concrete cylinder breaks to make sure
13 that you're complying with your specifications
14 because they're written in there and we've got
15 to make sure that happens.

16 That was the oversight and
17 monitoring aspect of those agreements. And
18 what these agreements under self-governance,
19 the Federal Highway programmatic governments,
20 the government-to-government G-to-G's, the
21 other appropriate agreements is looking at is
22 basically saying that's your responsibility

1 because that's the way the agreements are
2 written. You have a process of how you manage
3 that. That process describes exactly what
4 you're going to do, who's in place to be able
5 to do it.

6 And we provide technical
7 assistance as we go along to be able to
8 continue to support that process. So through
9 the years this whole concept of working
10 through these -- the program delivery of these
11 agreements has changed and it continually
12 evolves into this process that we hope to be
13 able to continue to operate in that capacity.

14 Because obviously we're talking
15 more and more of not just this program but
16 programs throughout the government that are
17 looking in that direction of having
18 communities, local governments perform a lot
19 of these functions that are associated with
20 what the government normally provides or is
21 responsible to provide.

22 The funding process. Talks a

1 little bit about notice of availability of
2 funds. We talk about how even that has
3 advanced to the point where at the time that
4 these regs were written it was pretty much we
5 didn't have access to the internet. And so
6 for that reason there had to be other ways to
7 think of, to get information to tribes as to
8 how much funding is available.

9 We now know that now we have a
10 funding formula that is pretty much repetitive
11 with the exception of the population
12 adjustment factors there's no reason why we
13 shouldn't have the capability of producing
14 something within fairly close to the first
15 quarter.

16 The only limitation is of course
17 if we don't know the obligation limitation or
18 any rescissions or if we don't have a final
19 appropriation for the year. If we're
20 operating under continued resolutions it's
21 still very difficult because we can only give
22 out the amount of money that's identified

1 that's available. But for the most part even
2 that is changing in terms of while we're
3 looking at under this new formula as Bob
4 described.

5 How the projects are approved or
6 activities are approved through FHWA-approved
7 TIP. And what to do if you get into a
8 situation where you have unforeseen costs
9 which is related to what is identified in the
10 self-determination laws and regulations.

11 Pretty much under the
12 miscellaneous we talked a little bit about
13 force account. And contract support costs.
14 That's a function that's a part of self-
15 determination.

16 In terms again what is contract
17 support cost, what are those funds utilized
18 for in the programs that are offered by the
19 BIA. They're designed to be able to support
20 the tribe's effort in contracting and
21 performing the work administratively
22 associated with various activities that are

1 part of a contract.

2 These funds that we're looking at
3 in terms of -- but when we're looking at the
4 program funds that we're dealing with here
5 everything is associated with a tribal share.
6 From the very onset in Subpart C and in MAP-21
7 and Title 23 it tells us here's where you
8 start. Step one. Here's the first thing you
9 do. You set these funds aside and so forth.
10 So those are tribal shares.

11 There are no other funds. One
12 hundred percent of the funding is qualified in
13 statute as to what it is. So certain
14 activities that are identified in -- that are
15 available to tribes including contract support
16 costs, the regs basically say this comes out
17 of the funds that are made available and you
18 have the discretion, you have the capability
19 to manage them from that perspective. Yes,
20 Tim.

21 MR. ROSETTE: Tim Rosette with the
22 Chippewa Cree Tribe, Rocky Boy, Montana. What

1 does the recent cases with the Ramah Navajo
2 and the other ones under contract support have
3 to do? I mean have they had any impact or
4 significant impact with the transportation
5 that the Secretary is supposed to provide
6 that?

7 Like for IHS and all of that it
8 was over and above. It had to do, you got
9 your contract amount. We got our contract
10 amount, our tribal share amount. They got
11 their tribal share amount. Now contract
12 support should be available over and above
13 those costs. It was for LeRoy though.

14 (Laughter)

15 MR. CAULUM: Andy Caulum, the
16 Solicitor's Office. One thing with this
17 program is that your contract support costs
18 effectively are coming out of the -- of your
19 tribal share is my understanding.

20 We have not addressed that in the
21 Tribal Transportation Program. I don't
22 believe the Ramah case necessarily has an

1 effect in TTP because we have the limited --
2 the PM&O. I suppose there could be an
3 argument that the tribes could be somehow
4 entitled to some part of the PM&O funding but
5 that has not been something that we have
6 addressed or looked at so far in this process.
7 And it's not part of the regulatory process
8 that we're looking at here. Because I think
9 that might go beyond the changes in MAP-21,
10 for example, that we're trying to implement
11 here.

12 MR. ROSETTE: You know, going back
13 to that, every tribe needs to collect their
14 contract support cost to make their end of the
15 year balance too because they have a certain
16 amount invested in operations of those
17 programs as well.

18 You know, I just don't see how
19 it's not relevant with what's going on
20 nationwide with the contract support.

21 MR. CAULUM: I didn't mean -- I
22 suppose I didn't mean to say that it was not

1 necessarily relevant here. It's just that in
2 the Tribal Transportation Program to this
3 point we have not -- in terms of the
4 regulations we have not looked at it in this
5 aspect.

6 MR. ROSETTE: As a formal comment
7 then I would like to say that we need to look
8 at that in that context. I believe we really
9 have to take a look at that because anything
10 that weakens the program and the day-to-day
11 operations of actually building facilities out
12 there is a hindrance to Indian Country.

13 MR. GISHI: Thank you. And so
14 when we get to that part of some of these
15 provisions, and that's the point I was making.
16 We're trying to maintain as much of those
17 activities that are associated with self-
18 determination contracting and basically say in
19 this regulation how do they apply to TTP
20 funds.

21 Anything that's contractable
22 that's identified in the regulations which

1 generally comes from the statute. You've seen
2 that long list at the very beginning that
3 talked about what was in MAP-21 that talks
4 about eligible uses. That's expanded upon in
5 this portion of the regulations that talk
6 about what those are. And of course anything
7 that is contractable is an eligible activity
8 that the tribe can perform based on its
9 request to do such.

10 Any special provisions that are in
11 any self-determination contracts and
12 agreements that's currently out there under
13 self-governance or under self-determination.
14 If those activities are identified there then
15 basically what this reg does is it yields to
16 those provisions.

17 And except for as I mentioned in
18 those cases where it's specifically stated and
19 established by Congress that it is different
20 it's pretty much, you know. And so when you
21 see a lot of the provisions that are in this
22 regulations it will refer to 900 dot something

1 something something, or 1000 dot something
2 something something because the committee in
3 its original process wanted to make sure that
4 there was no confusion in tribes being able to
5 have a contract specialist and a self-
6 governance specialist or coordinator be able
7 to sit down and take any agreement within
8 social services and any other activities that
9 are out there and have the basic knowledge to
10 be able to not only monitor but implement
11 those agreements. And it should be no
12 different in this program. So for those
13 reasons a lot of those are in and referenced
14 in this regulation to continue that process to
15 make sure that's intact.

16 Again, going back to the concept
17 of technical assistance, that's what we're
18 striving toward in terms of being able to
19 provide the assistance for oversight and
20 monitoring on behalf of the tribe. Those are
21 activities which are contractable and as such
22 the tribe can perform those.

1 The Appendix A to Subpart E is a
2 list of activities which are not otherwise
3 contractable. And it seems like there's a lot
4 but a lot of them are basically sometimes just
5 one-time functions. Distributing the money.
6 It's an activity that the federal government
7 has to perform. There's provisions that we
8 have to rely upon within government to be able
9 to do that when we receive the funds from
10 Federal Highways.

11 These are basically in those areas
12 that are the requirements of the government to
13 assure that those things are -- including
14 oversight of the program, including program
15 reviews. Those things that help assist us in
16 being able to provide technical assistance to
17 the tribe are those things that are not
18 otherwise contractable.

19 As far as timetables, time lines,
20 we couldn't list them all but you will see in
21 there 900 and 1000, they all have time lines
22 associated with it. They may not even be

1 written in here but they're referenced in
2 here. So when you go to 900 or 1000 there may
3 be regulations that say the Secretary has X
4 number of days to respond to a proposal, to
5 changes, to an appeal, to a modification.
6 Those continue to be a part and intact on what
7 we're doing and those would be the time lines
8 that are in this part of the regulation that
9 are applicable.

10 The portion here talking about
11 contract agreements under self-determination.
12 When do BIA and FHWA determine the amount of
13 funds needed for non-contractable project-
14 related function.

15 This is again what we'll call the
16 program. If you looked at that one first
17 graph under the funding that talks about
18 program management and oversight those are the
19 non-contractable, non-project related
20 functions.

21 Now, we say that and I can tell
22 you already this needs to be edited because

1 under the SAFETEA-LU even the project-related
2 non-contractable activities are subject to the
3 what we call program management and oversight.
4 And so from that standpoint the Secretary
5 develops a budget on an annual basis which
6 includes Federal Highways. So we have to sit
7 down and develop a budget, negotiate with
8 Federal Highways again depending on which
9 tribes are doing what relative to that.

10 Have we got a comment back in the
11 back? Thank you.

12 MR. KELLY: Dave Kelly, Oglala
13 Sioux Tribe. You know, you bring up non-
14 contractable activities. What I'd like to
15 talk about just briefly is the recent
16 sequester and the recent buyout of a lot of
17 the old birds that were within the BIA system.

18 I really foresee a problem that
19 we're going to have when trying to acquire the
20 right of ways to do programs. It's a real
21 hindrance as of today but I think foreseeing
22 we're going to have a major problem.

1 Because a lot of the people that
2 actually deal with the acquisition of right of
3 ways are now gone. And for many of us tribes
4 we have to take on that burden to do this.
5 And part of the problem is obtaining the
6 actual right of way document.

7 So with that I know there's going
8 to be a substantial problem that I don't think
9 we've really, really addressed at this point.
10 And we can't contract that department.

11 MR. GISHI: Very good point. Very
12 good point. In just the recent month, month
13 and a half most of you know that there has
14 been the whole concept of reestablishing a
15 budget based on provisions, not just extend
16 the BIA but across all of the nation, across
17 all programs. And the result of that is the
18 impacts in terms of streamlining efforts,
19 right-sizing organizations. And some of those
20 activities are, as Dave said are specifically
21 related to activities that are -- in which the
22 Secretary, the government performs that are

1 inherently federal. And believe me, that's
2 one of the big issues of discussion almost on
3 a weekly basis in terms of the -- from a
4 national perspective between the regional
5 directors and leadership in Washington on
6 that.

7 And of course from that standpoint
8 there's efforts all the time afoot about how
9 do we address that. How do we get exemptions
10 to be able to make sure we're following up and
11 filling those, making sure we fulfill those
12 responsibilities.

13 But you are correct in that time
14 line. And we all know it takes government
15 awhile to respond sometimes so we're in the
16 process of trying to do that. But your point
17 is very well taken. Thank you.

18 Okay. Any questions? Subpart E,
19 basically delivery of services under the
20 program.

21 The next part of the -- yes, we've
22 got a question there?

1 MR. MARTEL: Wes Martel, Wind
2 River. You just made a point up there about
3 saying you, the tribes, you the tribes, this
4 is how you wanted it, the way you could get
5 things done. And you're right, you know.

6 We try to work with Congress and
7 try to work with our congressional delegations
8 and others to try to get language and
9 statutory authority to do things the way we
10 want to do it. But what it looks like to us
11 is that you as the BIA and other federal
12 agencies through your regulations are trying
13 to take that back away from us.

14 And these regulations that you
15 have, you know, the draft, the revisions that
16 restrict tribal flexibility, repeat tribal
17 access to the BIA's PM&O and PRA&E funds.
18 They do not permit the direct transfer to
19 tribes of federal aid and state-administered
20 highway safety funds. They do not
21 consistently reflect the expanded role played
22 by Federal Highway in the Tribal

1 Transportation Program. And deny a tribe's
2 right to challenge important agency
3 determinations concerning funding allocations
4 or the addition of facilities to the
5 inventory. So there's just, there's no
6 support for tribes or what we're trying to do
7 with our programs.

8 There's just no type of innovation
9 or creativity to this. And like I mentioned
10 earlier, there's been no meaningful tribal
11 consultation. These regulations do not
12 reflect a careful and thoughtful examination
13 by BIA and Federal Highway concerning how best
14 to efficiently streamline the TTP to improve
15 transportation infrastructure and
16 transportation systems.

17 And then they do not interpret
18 federal rules and regulations to facilitate
19 the transfer of programs to tribes under
20 appropriate award instruments as required
21 under current regulation.

22 And you know, as a tribal leader

1 that's been around these statutes and things
2 are supposed to be liberally construed to the
3 benefit of tribes. These regulations just
4 seem to do the opposite of that.

5 About the only thing I can give
6 you guys credit for is how you can present
7 this kind of stuff to us without any
8 embarrassment or shame. We've taken some
9 steps backwards here. And then you have
10 enough nerve to come over here and present it
11 to us. I've pretty much had enough of this
12 stuff. It's like you're working against us.

13 MR. GISHI: And that's the whole
14 point of being able to talk about this.
15 Because what we're looking at is what are some
16 of those elements, again, considering where
17 we're coming from. We're basically
18 identifying that -- and this is where it's
19 important for you to take a look at these
20 regulations. Because what we have here we've
21 identified as those things which were a part
22 of the negotiated rulemaking and those aspects

1 that are specifically changing as a result of
2 the law. But from that perspective what are
3 some of the things that we need to be able to
4 do to initiate and enhance that kind of, that
5 process that you're referring to.

6 And certainly there are certain
7 things we've talked about that I think Federal
8 Highways made very clear that we are not privy
9 to be able to change, namely the funding
10 formula. But your point is very well taken
11 and that's the reason why we are trying to go
12 through an additional, this session, an
13 additional NPRM process and of course the
14 final review, being able to again continue to
15 look at and get comments on that process. So
16 I certainly appreciate your comments from that
17 standpoint. Yes.

18 MR. TIBBETTS: I just wanted --
19 Burny Tibbetts, White Earth -- just to add to
20 that. We can't really point fingers on the
21 problems we have now with this MAP-21. The
22 tribes couldn't come together to agree with

1 anything and I think Congress stepped in and
2 this is what we get. So I don't think we can
3 totally blame the BIA or Federal Highways.
4 We've got to take some blame too. Because
5 we've never come together.

6 The coordinating committee, well,
7 that was what it was. We as tribes never came
8 together to look at the issues that were
9 important to us and that should have been
10 done.

11 You know, pick and choose. We
12 should have had a menu of issues. And we
13 talked about this. What can we work on, what
14 can we agree on, what can't we. That never
15 happened. Congress saw that. I think the BIA
16 saw that, Federal Highways. We saw it. And
17 here we are today with this. So, I think we
18 all have to take blame in this.

19 And let's figure out how do we
20 move forward. And we have to come together.
21 I just want to add that. It has to be done or
22 we're never -- we're going to keep going

1 backwards.

2 And we've lost ground here with
3 MAP-21. And if we don't come together and
4 agree to disagree or look at issues it's only
5 going to get worse.

6 MR. GISHI: Another comment?

7 Thank you.

8 MR. HARRIS: Aron Harris, Suak-
9 Suiattle Indian Tribe. Even if we come
10 together it doesn't fix the fact that this
11 feels more like an information session than it
12 does a consultation or collaboration. Because
13 there's -- it doesn't seem like our input's
14 being solicited. It seems more like we're
15 being told this is what's coming out in the
16 new regulations. Yes, we're going to review
17 the comments but there's no guarantee that any
18 of these comments will make any significant
19 changes to what we've been shown here today.

20 MR. GISHI: Thank you. Any other
21 comments before we go to Subpart F? One in
22 the back.

1 MR. KELLY: Dave Kelly again,
2 Oglala Sioux Tribe. We know there's a
3 programmatically category called exclusions now in
4 place. But the folks that will be signing off
5 on these documents, are they also in place?
6 So that we have the assurances things could
7 keep moving in an expedient manner as in the
8 past. You know, sometimes there was a major
9 hangup.

10 MR. GISHI: The comment was
11 another area that relates to the program is
12 processing projects particularly in those
13 areas where we have to comply with NEPA. And
14 there's a new process identified in MAP-21
15 that just doesn't apply to the Federal Lands
16 Highway programs, meaning the Tribal
17 Transportation Program, but across all
18 programs making a threshold if you will on
19 project costs in which -- that can be eligible
20 for categorical exclusions.

21 And those of you who are familiar
22 with it, it's -- categorical exclusions have

1 a specific process that really limit the
2 amount of review of projects before they can
3 become cleared if you will, receive compliance
4 in terms of those requirements.

5 And that's something that the
6 Federal Highway Administration right now is
7 currently trying to develop regulations.
8 They're trying to look at ways to be able to
9 proceed with that. But a big part of that
10 will be how does that apply in terms of the
11 whole process.

12 The whole idea is accelerating
13 projects that have certain criteria. And
14 particularly there's a section in MAP-21 that
15 talks about what do we need to be able to do
16 to accelerate projects in terms of highway
17 projects, transportation projects. That's an
18 effort to kind of speed that process up and
19 streamline that process also. So that's out
20 there. That's one of the things that we're
21 hoping will be helpful.

22 And the review process is still in

1 terms of the BIA will still go through the
2 same procedures. Because those roles and
3 responsibilities are identified by management
4 at that very high level.

5 Now, we're seeing more and more of
6 those functions still being handled by the
7 region which is where they should be, but in
8 terms of within the program that's how they
9 continue to be handled.

10 But hopefully we're going to see
11 some positive results. I'd like to see some
12 things relative to that with these provisions
13 that are out there about accelerating project
14 performance which is a big part of some of the
15 things that the folks in the inventory in
16 terms of projects themselves want to see it
17 move along a lot faster. Because it's just
18 not a problem in Federal Lands but across the
19 board in the Federal Aid Program also.

20 Let's take a break. Ten, twelve
21 minutes. Thank you.

22 (Whereupon, the foregoing matter

1 went off the record at 3:16 p.m. and went back
2 on the record at 3:31 p.m.)

3 MR. GISHI: Can we get started
4 again? Subpart F. Subpart F again talks
5 about program oversight and accountability.
6 And it's important to note that as we go
7 through this a lot of these things have
8 changed as a result of not since -- very
9 little has changed from this last regulation
10 to now but in terms of the program function as
11 a result of the roles and responsibilities
12 that the Tribal Transportation Program and
13 prior to this the Indian Reservation Roads
14 program has undergone in terms of operating
15 the largest program within the Bureau of
16 Indian Affairs.

17 It used to be second until they
18 established the Bureau of Indian Education as
19 a separate bureau. Within the Bureau of
20 Indian Affairs the largest single program of
21 course is the Tribal Transportation Program.

22 And so for that reason through the

1 years it has been a tremendous source of
2 funding outside of the Interior appropriations
3 process to support not only program functions
4 and activities but also employment and
5 supporting the development of infrastructure.

6 Subpart F talks about those
7 oversight roles under the program. One of the
8 areas is through development of a stewardship
9 plan which is primarily what stewardship does
10 Federal Highway have relative to the program
11 and BIA and in terms of that process who
12 performs what in terms of those roles and
13 responsibilities.

14 It talks about the use of
15 memorandum of understanding to develop
16 agreements with tribes who have requested that
17 the work for their program be performed by the
18 BIA which I said was less than one-third of
19 the tribes that are out there. But what this
20 looks at is the ability for those tribes to
21 enter into memorandums of understanding so
22 that roles and responsibilities again are

1 established as to what the process is and what
2 the expectations are from both parties in just
3 agreeing to how the program is to be
4 implemented.

5 We're talking about monitoring.
6 Again, going back to the agreements itself.
7 Monitoring by the Secretary of all the Tribal
8 Transportation Program activities and what
9 that's geared to do in relative relation to
10 the requirements of all federal programs.

11 And the use of the formal program
12 review process in reviewing not only the
13 Bureau of Indian Affairs regions but also
14 tribes that implement the programs under the
15 TTP.

16 Stewardship plans as I said define
17 roles and responsibilities of the BIA and FHWA
18 and identifies those procedures that are out
19 there. We currently have a stewardship plan
20 that is in place that talks about specifically
21 how -- what roles Federal Highway plays in
22 terms of those projects and what roles the BIA

1 plays relative to those things.

2 And of course as we look at that
3 more and more that is from a technical
4 assistance perspective rather than an actual
5 hands-on type of monitoring simply because
6 those things are no longer -- those functions
7 are contractable activities. And as a result
8 of that tribes would be performing those.

9 The MOU that we talk about is
10 between a direct service tribe and the BIA
11 region. Again used to help define roles and
12 responsibilities. Describes the consultation
13 process and how to establish a TIP, how to
14 look at project priorities. How to plan for
15 the future in terms of what projects are
16 coming down so that there's an ongoing process
17 there available to tribes who say that we know
18 what's going on. We may not be performing the
19 work but we know what's going on and we have -
20 - we definitely have a process that we can go
21 through to identify and prioritize projects.

22 As part of this oversight and

1 accountability process again it's a very short
2 section as we start to see more and more of
3 the programs being transferred. We have a
4 timetable primarily is when we do have the
5 review, if there is a review of the region
6 office or the tribe under the formal
7 monitoring or review process that's built into
8 all the agreements then the -- if there are
9 areas that need to be improved then a
10 corrective action plan will be developed
11 within 60 days and submitted.

12 I was just talking to one of the
13 tribes here that has gone through that
14 process. And it was real good to see that
15 because what the tribe was really doing was
16 saying you've come forward and you've done a
17 review on our program. And here's where we
18 agree with you and here's where we disagree
19 with you. And part of that process was being
20 able to establish that relationship.

21 And that goes a long ways in
22 providing the ability for the federal agency

1 to provide the technical assistance to help to
2 improve that process or to acknowledge what
3 the tribe is doing. And so from that process
4 of what we're looking at the direction is try
5 to become more of a partner in the technical
6 assistance aspects rather than an oversight
7 agency that says, as I mentioned, I need to
8 see your cylinder breaks. And you know, it
9 looks like you're a little shy here. You need
10 to take care of that.

11 It's more of managing the program
12 and the process for developing the program
13 level changes or initiatives in areas of
14 improvement are coordinated for that purpose
15 also.

16 What happens with the review
17 process, another record-keeping or reporting
18 requirement as part of this accountability
19 section is when the review process identifies
20 an area for improvement, same thing as the
21 review tribe or BIA region.

22 And again, this is not just the

1 tribe, it's also for BIA when they're
2 performing certain responsibilities or for the
3 program at a region level. And it is -- the
4 reviews are performed by the headquarters, the
5 BIA transportation and Federal Highway
6 Administration, Federal Lands. And that each
7 year as a part of that process is to update on
8 the progress for those corrective action
9 plans.

10 And that was part of our
11 discussion we've had with one of the tribes
12 here was that they did submit something and it
13 was good to see what it was. And in most of
14 those cases there was a plan of action that
15 was in place. And really that's what we're
16 looking in order for continuous improvement.
17 Not necessarily -- the objectives are
18 different. Support the program to succeed
19 rather than find out what's wrong with the
20 program to hinder it.

21 Any questions on program
22 oversight? Like I said some of these sections

1 as you start getting into the areas of the
2 general program procedures become very short.
3 The only thing that really makes them long
4 like the next section is when we start getting
5 lists. And that makes the reg somewhat
6 longer. Okay.

7 MR. MOORE: Hi, Ed "Buster" Moore,
8 Fort Belknap Tribal Council. With this review
9 process and sequestration and mandates of no
10 travel for BIA employees how are they going to
11 do that if they can't come onsite and do the
12 review? Or is all these reviews mission
13 critical so that they can travel?

14 At the same time is once a
15 corrective action is in place is the technical
16 assistance that most tribes will probably
17 request after review if there is corrective
18 actions in place that -- will the BIA or
19 Federal Highways be able to provide that also?

20 MR. GISHI: The question, first
21 part of that is how is this impacted by the
22 sequestration. In terms of the travel

1 restrictions and part of the travel policy
2 right now is if it's mission critical those
3 are elements that are available. And for the
4 most part these are mission critical
5 activities associated specifically with a
6 regulation and a statute in terms of that.

7 And then of course a lot of the
8 decision-making relative to that is really
9 handled at the region level within the region
10 director's purview. So for that reason within
11 region, it's within region which is one of the
12 elements that are reflected in the travel
13 policy right now and if it's mission critical.

14 So those are areas that certainly
15 fit into that category. So we would expect
16 that from that standpoint that you would
17 continue to get the follow-up reviews that you
18 needed to on any corrective action plan that
19 you have.

20 The second part was yes, in terms
21 of the Federal Highways or BIA being able to
22 follow up with support of that on how to

1 correct or how to help to support through
2 technical assistance accomplishing those
3 things.

4 And one of the things that's been
5 very clear as part of where particularly in
6 terms of the policies that are out there is to
7 be able to support tribes to become successful
8 in that manner. And obviously there's a
9 process for everything that we look at,
10 everything from if you're complying with the
11 regulations then part of that process is to
12 make sure that we continue to support that
13 process. But if there's things that might be
14 problematic then of course part of that is the
15 corrective action and what do we need to do to
16 improve that. But that's all built into the
17 process of being able to do that.

18 The idea again is to keep moving
19 projects in that direction. Because the
20 bottom line is the success of the program is
21 not just the tribes, it's us being able to
22 also help the tribes be able to get to that

1 point. So that's why it's important. And it
2 takes on that new direction we're talking
3 about in being able to say how do we work with
4 tribes from a government-to-government in
5 terms of the program as opposed to a
6 contractor-government type of concept which is
7 the old process or things that certainly we've
8 learned from that we need to be able to go
9 toward a government-to-government type of
10 relationship. Any other questions on Subpart
11 F?

12 The next subpart, Subpart G. In
13 the regulations that were implemented as part
14 of 25 C.F.R. 170 this was titled "BIA Road
15 Maintenance Program." And that was in 2004.

16 In 2004 we still had the old
17 program which basically said if you look at --
18 first of all, Title 23 established the program
19 under the IRR as a construction program. And
20 if you recall those of you who are from -- my
21 good brother Jim knows, back in the early days
22 of self-determination when you went to

1 describe the definition under self-
2 determination for construction road
3 maintenance was not considered a construction
4 activity. So for that reason it was not part
5 of the program, it was not part of the
6 eligibility process. This was again 2004 and
7 prior.

8 Since then with the passage of
9 SAFETEA-LU came the first provision that said
10 up to 25 percent of the funds can be made
11 available for maintaining Indian reservation
12 roads. Not just BIA but tribal, any other
13 roads that qualify or that are eligible under
14 the program were eligible for that. So
15 immediately with SAFETEA-LU coming about in
16 2005 this section had to be changed to reflect
17 that.

18 Initially it was provided again as
19 the tribes had indicated in the rulemaking
20 process they wanted to be able to define road
21 maintenance activities, the relationship with
22 the Highway Trust Fund program at that time.

1 And so it was put in there as BIA Road
2 Maintenance Program.

3 The title for this part in order
4 to reflect changes in SAFETEA-LU and MAP-21
5 has changed to "Maintenance Programs." So
6 from that standpoint as you begin to look at
7 that -- this particular subpart goes and tries
8 to distinguish between the DOI annual
9 appropriated road maintenance program and the
10 program that is eligible under the tribal
11 transportation road maintenance provisions
12 within SAFETEA-LU, MAP-21 and really Title 23
13 at this point.

14 One of the first things it starts
15 off is it talks about who has the authority
16 and responsibility to perform road
17 maintenance. And Title 23 describes in
18 definition that public authorities, and
19 there's a definition in there, have the
20 responsibility for not only maintaining,
21 improving and being able to finance roads,
22 toll and non-toll roads and other

1 transportation facilities. That's a public
2 authority.

3 And then it goes through and it
4 lists public authorities. And public
5 authorities are the federal government, tribal
6 governments, state and local governments. So
7 in that list of the definition of a public
8 authority is tribal governments.

9 So the result of that is public
10 authorities are -- have the responsibility and
11 the authority to be able to maintain roads
12 which are under their responsibility. So
13 right out of this process we begin to identify
14 who does this apply to. This applies to
15 public authorities and this applies
16 specifically to in terms of what we're looking
17 at is the tribes implementing a program and
18 the BIA's responsibility under the DOI-funded
19 programs and their responsibility under the
20 TTP program for road maintenance activities.

21 Talks about the BIA Transportation
22 Facility Maintenance Program which is again

1 the DOI-funded program that's available on an
2 annual basis, what's eligible under that and
3 what facilities are eligible for those
4 improvements.

5 It makes a distinction between TTP
6 funding and DOI appropriations as I indicated
7 earlier. Talks about the eligible uses of
8 funding for tribes through contracts and
9 agreements. And the bulk of this section
10 actually is the list in the back that says
11 what's eligible for road maintenance
12 activities. And from that standpoint it's
13 talking about road maintenance in general
14 because whatever is eligible under the TTP
15 program in terms of activities should also be
16 eligible under the DOI-funded road maintenance
17 program simply because you're performing the
18 same things and the same kind of requirements
19 are associated with that.

20 How maintenance standards,
21 management system requirements and the
22 responsibility that we have to the traveling

1 public in maintaining roads. And really it
2 refers to provisions that are within, or at
3 least that are referenced in Title 23. It
4 says that any public authority who has
5 responsibility for roads that uses funds to
6 construct roads is responsible to make sure
7 that the public investment is protected by
8 doing something to maintain those roads. And
9 we all know that particularly in Indian
10 Affairs that difference is quite significant
11 in terms of what's available under the DOI
12 program and what's available under the TTP for
13 construction.

14 Well, supplementing that now is
15 funds made available under the TTP program to
16 maintain roads also that may be BIA facilities
17 or tribal transportation facilities.

18 It talks a little bit about
19 emergency maintenance and also of course along
20 with that we talked earlier about -- in
21 Subpart H we'll talk a little bit about the
22 Emergency Relief Program and how that enters

1 into -- I think that'll answer some of the
2 questions that were brought up earlier about
3 emergency disasters.

4 The BIA Road Maintenance Program
5 which is again appropriated on an annual basis
6 under the OIP program and what its uses are
7 and eligible activities. Yes.

8 MR. ROSETTE: Under emergency
9 relief are we still bound by the -- you know,
10 some of us, a lot of tribes are small, you
11 know. And those thresholds that ERFO has on
12 that \$750,000 per major incident and all of
13 that. Are we still bound by that? Or was
14 there any rule changes in how the tribes are
15 going to be able to be more eligible for ERFO-
16 related type of projects without having that
17 threshold, those high of thresholds, you know.
18 And we're limited to such small areas and a
19 lot of times sometimes we can meet the
20 threshold. You know, I know it's a regional
21 thing sometimes. But then that gets
22 convoluted a little bit. But I just wanted to

1 know if any of that was addressed.

2 MR. GISHI: The procedures that we
3 have identified in the regulations as for
4 information purposes only really are a
5 reflection of currently what's in the ERFO
6 manuals and the ERFO program as established in
7 Section 125 of Title 23. So, having said that
8 it doesn't change any of those things that are
9 in there. Those changes would have to occur
10 as part of that program through that process,
11 either through the emergency relief or what we
12 refer to as ERFO, the Emergency Relief for
13 Federally Owned Roads which includes the
14 tribal program. So at this point those
15 haven't changed. And I just wanted to check
16 with Bob. He shook his head no so those are
17 still in place.

18 Now, there are some flexibilities
19 obviously that we were seeing in terms of one
20 of the other problems besides the threshold
21 was the ability for a tribe to declare and to
22 wait on somebody else. Well, you know that

1 part of those procedures, that has changed as
2 a result of that. So there's some things that
3 have an impact on it that obviously need to be
4 addressed also.

5 The BIA Road Maintenance Program.
6 Again, talked about eligible activities, the
7 roles of local governments in maintaining
8 roads. And of course there's always instances
9 out there where people can cooperate in being
10 able to maintain roads for others through
11 agreements. Those are all eligible
12 activities.

13 You develop your own solutions.
14 Sometimes it requires a little bit of
15 innovative financing to do that but those are
16 all eligible activities in terms of this
17 program.

18 We have a facility maintenance
19 management system which is related to if you
20 will the road inventory update process in
21 terms of data that's out there. We utilize
22 that system to help support us in being able

1 to do -- but the requirements for that of what
2 we need to expect and what are to be performed
3 are listed in there, what we should be doing
4 in terms of this maintenance management
5 system.

6 And if you look through that
7 section it describes what those are, that
8 standards need to reflect some standard. They
9 can always have tribal standards as long as
10 it's documented that either meet or exceed the
11 standards that are out there.

12 And we have the National
13 Association of County Engineers, county
14 governments has standards that are out there
15 as well as AASHTO has a number of standards
16 and procedures that are out there also. All
17 of those are eligible ways of being able to
18 say I've got a system in place on how I'm
19 going to maintain my roads, how I'm going to
20 develop a plan to do these things within the
21 funds that are available. And certainly
22 within the programs that are eligible unto me

1 including the TTP program.

2 The big part of this whole
3 regulation subpart is of course that list, the
4 list of eligible activities for funding under
5 the BIA facility maintenance program and -- we
6 made sure that we put in there -- under the
7 Tribal Transportation Facility Maintenance
8 Program.

9 Because they're so closely related
10 and they're both utilizing you can actually
11 use funds from one program to support other
12 activities in the other program. That's why
13 it's there, because you want to make sure that
14 those eligible activities are a reflection of
15 that.

16 One of the qualifiers as part of
17 the process that's been in the Road
18 Maintenance Program from the onset was the
19 ability for tribes, for that road sealing.
20 You know, chip-seal type projects are not to
21 be subject to the limitations of 25 percent or
22 the \$500,000. Those actually can be handled

1 as part of the regular construction program
2 activities. And of course they're handled
3 differently. And the result of that is it's
4 a preventive maintenance activity but it also
5 can count in terms of a construction activity
6 and not against the road maintenance activity.
7 And that's been written into the law since
8 1991, maybe '98. I would go as far as back to
9 say '91.

10 There are no timetables associated
11 with this subpart. In terms of record-keeping
12 and reporting the one area we have is that the
13 BIA in terms of -- again, this is applicable
14 to the inadequate maintenance of roads that
15 are out there.

16 If the BIA through the Secretary
17 of the Interior finds out that roads are not
18 being maintained under this program, again
19 under the TTP program, under these standards
20 due to insufficient funding the Secretary will
21 notify the facility owner.

22 And this is -- when we're talking

1 about facility owner here it is entities which
2 are counties, states, other local governments
3 that the facility is not being maintained or
4 there's not an annual funding request for --
5 to maintain that facility. Then the Secretary
6 will report these findings to the Secretary of
7 Transportation under 201(a) and the Secretary
8 will provide a draft of this report.

9 And basically notifying folks
10 again that if -- our program, if we are
11 subject to having to make sure that we protect
12 the public investment then if those other
13 roads of other owners are out there and
14 they're not being maintained, they're
15 utilizing these same funds which most
16 everybody does then it's the responsibility to
17 be able to notify them and let them know that
18 they need to maintain those roads.

19 This is something that we've
20 talked about as in terms of it's in statute as
21 referred to. And 201. It's in there. It has
22 been in there since probably '91 or prior to

1 that, '86. But it continues to be there for
2 that reason, to make sure that there's -- that
3 the Secretary has a mechanism to be able to
4 reach out to people and let them know
5 particularly it was designed for -- under the
6 use of federal aid program funds for the
7 program in which roads are not being
8 maintained.

9 And of course the sensitivity we
10 have is under the TTP program we know of a lot
11 of occasions where roads are neglected simply
12 because they're associated with tribal lands,
13 Indian lands, Indian communities and the
14 result of that is we need to make sure we
15 notify those folks of that. So that's under
16 record-keeping.

17 That's Subpart G. Again, the big
18 part of Subpart G is the list. So take a look
19 at that list. If there's things that you feel
20 need to be added to it or things that are not
21 clear certainly provide those comments in
22 terms of road maintenance.

1 We've talked in the past about
2 airport access roads but limited to that. I
3 don't know that that's going to change in
4 terms of the maintaining actual runways from
5 the standpoint of -- certainly from the
6 liability standpoint it has not only for the
7 Secretary but also for the tribe in terms of
8 doing that. But those are all identified in
9 here as to what we can and what we can't do,
10 what we shouldn't do. But certainly the
11 emphasis is what we can do and that is to
12 maintain our roads now that we have a little
13 more of the eligible funds available to us to
14 do that.

15 Questions on road maintenance or
16 maintenance of roads? Maintenance program as
17 a whole. Bob, H and I.

18 MR. SPARROW: All right, so I'll
19 spend a couple of quick minutes here going
20 over H and I.

21 H is really just miscellaneous.
22 Most of H in the old reg was put in there for

1 reference purposes only because it wasn't part
2 of the IRR program. We've kept pretty much
3 all of that intact in this particular
4 subsection. It provides information on the
5 transport of hazardous and nuclear waste
6 through the reservation or on tribal lands.
7 Utilization of Indian preference in tribal
8 employment rights. Applicability of tribal
9 taxes and fees for the Tribal Transportation
10 Program projects. A few Q&A's on the
11 Emergency Relief Program. How do you
12 establish and operate a tribal transportation
13 department itself. And what eligible
14 activities or functions that the organizations
15 of the department can contract.

16 There's also some Q&A's with
17 regard to tribal regulations or the
18 establishment of tribal regulations of
19 oversize and overweight vehicles. Reporting
20 requirements, employment rights, alternative
21 dispute resolution processes to resolve the
22 Tribal Transportation Program issues. And

1 then other research activities that are
2 available.

3 So again, most of these don't
4 necessarily tie directly into TTP but they're
5 put in here for reference purposes only to
6 assist the tribe if they're working with
7 hazardous material or wanting to do research
8 just to provide some information and direction
9 on where to go for additional information.

10 So hazardous and nuclear waste
11 transportation. Again, discusses the
12 transport of hazardous and nuclear waste.
13 What are the roles of the state, the state
14 DOT, the tribal, local government with regards
15 to the transfer of this waste. Accident
16 response. Training. And if you have an
17 accident response team where can you go to get
18 training, what type of training, dollars,
19 cleanup, et cetera with regards to
20 transferring the waste through the tribal
21 land.

22 Reporting requirements. Again,

1 informational purposes only. What information
2 does the -- on the Tribal Transportation
3 Program does BIA and Federal Highway have to
4 make available upon request of a tribe. How
5 would you go about requesting that
6 information.

7 Additional Q&A's on Indian
8 employment and training and contract
9 preferences on carrying out the projects. And
10 then TERO, tribal employment taxes and fees on
11 projects. Again, just some basic Q&A's to
12 provide information and direction for the
13 tribes.

14 Emergency relief. Several
15 questions on ER. Now, this was done before
16 that Stafford Act went into effect so this is
17 something we've got to go back and take a look
18 at anything we need to change in reference to
19 that before it goes out for the NPRM.

20 But it provides some information
21 to you on how the Emergency Relief Program
22 works, what the thresholds are. It references

1 23 C.F.R. 668 which is where the regulations
2 for the Emergency Relief Program are.

3 It talks about ERFO as LeRoy said
4 earlier. That's Emergency Relief for
5 Federally Owned Property. That's part of the
6 ER program but those funds are run through the
7 Office of Federal Lands which is my office.
8 They're not run through the Emergency Relief
9 Office of Federal Highway.

10 You want to establish a tribal
11 transportation department. Some Q&A's on
12 establishing that, what the requirements are,
13 what you should be able to carry out, what you
14 can regulate, what you can't, et cetera, et
15 cetera, just to give you some insight if
16 you're interested in establishing a tribal
17 transportation department itself.

18 Alternative dispute resolution.
19 Resolving disputes between the government and
20 the tribes on tribal transportation program
21 issues is discussed in this section as well.

22 And then as I said eligibility for

1 transportation research and funding
2 opportunities are some references of grants
3 and other things, other funding sources that
4 the tribe can look into if it's interested in
5 doing research or funding that particular
6 research.

7 There's no key dates in this
8 section. This is pretty much just referencing
9 other programs. But with record-keeping as it
10 said earlier, you know, what type of
11 information the tribes can ask the BIA and how
12 we've got to keep records of what information
13 is provided to the tribes themselves. So how
14 you request it and what information can be
15 made available to the tribes.

16 So again this is just kind of the
17 catch-all at the very, very end of things that
18 were critical and important to the tribes
19 during negotiated rulemaking and were kept in
20 the reg even though they didn't pertain
21 directly in some cases to the IRR program
22 itself. Or the TTP program now. Yes, Tim.

1 MR. ROSETTE: Tom Rosette with the
2 Chippewa Cree Tribe in Rocky Boy. I guess a
3 question, you know, that's always been on my
4 mind and I get a little -- I never ask it
5 because it seems so simple but I never know
6 what the answer is is who's the boss, Federal
7 Highways or the BIA? You've got two
8 Secretaries. Where does the buck stop here?
9 I mean who's -- which one of you guys is the
10 boss?

11 MR. SPARROW: We're partners.
12 It's co-administered between the Secretaries.
13 I don't think there is one Secretary over the
14 other.

15 MR. ROSETTE: Do the Secretaries
16 fight over us?

17 MR. SPARROW: Yes, and LaHood was
18 a really good arm wrestler too I'll tell you.

19 (Laughter)

20 MR. SPARROW: It's discussion and
21 carried out in cooperation between the two
22 agencies.

1 MR. ROSETTE: When I looked at the
2 regulations that are being set forth I'd like
3 to comment that I think it's more weighted
4 toward Federal Highways and Federal Highways
5 taking more jurisdiction over tribal programs.
6 And I don't think that's the intent of
7 Congress. I hope it wasn't the intent of
8 Congress. And you know, dealing with one
9 federal agency is basically hard enough.

10 MR. SPARROW: You've got a unique
11 case, Tim. I mean I agree. You've got a
12 unique case where in TEA-21 in 1998 although -
13 - this is Title 23 money. This comes from the
14 highway bill. It's overseen by Department of
15 Transportation. But in 1998 when TEA-21 was
16 passed, the highway bill back then, it
17 directed the Secretary of the Interior to
18 develop regulation. It said Secretary of the
19 Interior in cooperation I think with the
20 Secretary of the Department of Transportation.
21 But it directed Interior to develop Title 25
22 regs even though it's Title 23 money.

1 And there's discussion between the
2 two agencies like that. So. It's not a
3 simple -- I mean it's co-administered is the
4 answer.

5 MR. ROSETTE: No, I don't see it
6 as simple. That's why I keep forgetting to
7 ask it. I really don't honestly know if
8 there's an answer to it. But it just seems
9 that over the years Federal Highway has taken
10 more of a leadership role in what should have
11 been a DOI program. I mean after the money is
12 transferred it becomes DOI money. You guys
13 should deal directly with DOI on any concerns
14 that you have just like we have to deal with
15 the Bureau on any concerns that they have.
16 It's just regular tier management.

17 MR. SPARROW: Well, you've got
18 that and you also have the fact that when
19 SAFETEA-LU started and was passed it provided
20 tribes an option to work directly with Federal
21 Highway. All I'm saying is it was -- so our
22 involvement, the IRR team at Federal Highway

1 used to be three people. I mean they worked
2 looking at the TIPS and getting the money out
3 and a bridge program. And that was it.

4 MR. ROSETTE: And now it's what?

5 MR. SPARROW: A number. Higher
6 than --

7 MR. ROSETTE: And now it is what?

8 MR. SPARROW: Eighteen, nineteen.

9 MR. ROSETTE: That's what I'm
10 talking about.

11 MR. SPARROW: Right.

12 MR. ROSETTE: I mean I guess I'm
13 getting down to that point.

14 MR. SPARROW: Right.

15 MR. ROSETTE: Dealing with one
16 agency is difficult enough. To have another
17 agency put rules and regulations together
18 without knowing how to approach tribes and
19 going through the process.

20 I mean you guys have been around
21 long enough, I know you have, Bob, been around
22 long enough that you can go through, you

1 should understand how to consult with tribes.
2 I mean hands down you should be able to do it.

3 And then dealing with these
4 issues. We have this co-leadership roles here
5 where it gets confusing from a tribal
6 standpoint as who's the dog and who's the tail
7 I guess.

8 MR. CAULUM: Andy Caulum for the
9 Solicitor's Office Division of Indian Affairs.
10 Your point is very well taken definitely. I
11 mean even within the government, for example,
12 there was a GAO report that came down awhile
13 back and with all due respect to my colleagues
14 at GAO the initial view was well, this
15 particular thing, the Secretary would never do
16 it. This is not a contract the Secretary
17 would enter into.

18 Then as we were working with GAO
19 and answering their questions we had to
20 explain to them well, actually, this is
21 authorized because the law of the
22 transportation money which is the first thing

1 we look to says that this is an activity that
2 can be done, for example.

3 Additionally, you know, there are
4 pluses and minuses I would agree so the co-
5 administration of the program. But the
6 reality is is that it's what Congress has said
7 you're going to do. And until they change it
8 in the law there's really not a lot we can do
9 about it on our end from the regulatory
10 standpoint. But I agree sometimes it does
11 create confusion.

12 Fortunately Mr. Gishi and Mr.
13 Sparrow for the most part as the program leads
14 get along fairly well. And at the legal end
15 we also do. And so I think that we do pretty
16 well in terms of the coordination. But there
17 is no question that at times it can lead to
18 confusion I think for tribes.

19 MR. ROSETTE: It goes back to one
20 more deal that, you know, the whole Rocky
21 Mountain Region got up and said about
22 consultation. That in order to have true

1 consultation we can't be read at and talked to
2 like and then put into this short of a time
3 frame. I think I made that clear at our last
4 meeting that this was too big of an issue to
5 be put out at one consultation.

6 I know there's other consultations
7 that will go on, but still when you roll it
8 out it should be a full rollout. People
9 should be able to digest the whole thing and
10 get a true understanding of what's going to
11 happen now and in months to come with this
12 process. And how they could actively be a
13 part of it to make it a better program.

14 MR. SPARROW: Thank you, Tim.
15 Subpart I is the last subpart. It's brand new
16 to this particular regulation. And it
17 reflects the changes that Congress made to the
18 IRRHPP program. There's no real oversight in
19 different sections because all it is, it's
20 totally dedicated to that one particular
21 program. So that is a standalone program
22 separate from TTP.

1 But what Congress did was it in
2 essence pulled out the Q&A's that were in 25
3 C.F.R. 170 and put them into statute,
4 including the ranking criteria. If any of you
5 have applied for an HPP project in the past
6 you'll see in the very back there's a scoring
7 matrix. The very last page.

8 And that scoring matrix is
9 verbatim out of the old reg. It's the very
10 last page of the reg on the very back maybe.
11 So that's the scoring matrix that if you have
12 a copy of the old regulation was in the old
13 regulation.

14 And what we did was took the
15 language out of the statute and plugged it
16 into Q&A's to reflect pretty much exactly what
17 was taken out of 25 C.F.R. 170.

18 There are two changes though. One
19 change is the fact that it is now funded at
20 \$30 million a year but it's out of the general
21 fund. Which means even though we've got a
22 highway bill Congress has to pass a totally

1 separate piece of legislation in order to have
2 this program funded. So for this year the
3 program is not funded. We have a highway bill
4 but Congress did not pass or provide funding
5 for the Tribal High-Priority Program.

6 Because of that if any of you have
7 applied in the past you always had to have
8 applications in by December 31. And then BIA
9 or Federal Highway would respond back to you
10 by January 31. The projects would be
11 evaluated by February 31. And funds would be
12 made available by April 15 or whatever.

13 Because there's no time frame and
14 we don't know whether the program is going to
15 get funded what there will be if it gets
16 funded is no sooner than 60 days after it gets
17 funded we will have a call for projects and
18 it'll work that way.

19 It could be August. It could be
20 October. It could be January. We don't know.
21 It's whenever Congress passes general funding.
22 And it could come at any time. So if that

1 program does get funded we'll work with BIA,
2 the TTAP centers, Federal Highway, the
3 coordinating committee, et cetera, to get the
4 word out and get notifications out to the
5 tribal leaders saying, okay, this program is
6 provided funding and there's a call for
7 projects that's due X date. And that's the
8 way it'll work.

9 And then the evaluations will
10 occur, will happen and be carried out exactly
11 like they've been carried out since 2005. But
12 for this year no money, at least no money yet
13 so there's no call for projects. And there's
14 no sense of doing work not knowing what's
15 going to happen. Yes, Tim.

16 MR. ROSETTE: Just one question on
17 -- is it still limited to \$1 million and under
18 before you can apply?

19 MR. SPARROW: It's limited to \$1
20 million per project.

21 MR. ROSETTE: I mean you know,
22 before it was if you got under \$1 million you

1 were the only ones that could apply.

2 MR. SPARROW: Right.

3 MR. ROSETTE: So now it's limited
4 to you can only apply for \$1 million.

5 MR. SPARROW: It's apply up to \$1
6 million but it has to be the highest -- you
7 have to prove that you don't have enough money
8 to fund your highest priority project. It
9 can't be that you do a bunch of other projects
10 and then you've got \$300,000 left over so you
11 ask for \$700,000 to do a project. This has to
12 be the only project that you would do, the
13 highest priority project of the tribe.

14 So we'll wait and see what happens
15 with that. But because it affects the tribes
16 themselves we've included it in this reg,
17 quote unquote, "for reference purposes only"
18 as opposed to developing a whole new
19 regulation just for this particular set of
20 Q&A's.

21 MR. ROSETTE: And you could only
22 apply it for 1 year or what?

1 MR. SPARROW: You can only have
2 one project in at a time.

3 MR. ROSETTE: And if you phase the
4 project, you couldn't do something like that?

5 MR. SPARROW: We'd have to take a
6 look at it on a case-by-case basis of what the
7 phases are. You'd have to have that phase
8 completed before you applied for the next
9 part.

10 You've got to take a look at what
11 Congress now has for this program in law. It
12 doesn't say like \$9 million will be provided
13 for safety funding. It goes into a full --
14 there's a complete section in MAP-21 that is
15 found, Section 1123 of MAP-21. And it goes on
16 for several pages and actually references the
17 ranking criteria table that was in 25 C.F.R.
18 Part 170 will be used to rank the projects.
19 So.

20 And that was added on. If you
21 remember correctly when the bill came out of
22 the EPW Committee and when they went into

1 conference there was no HPP program at all.
2 It wasn't separate, it wasn't included, it was
3 gone. But this is what came out of
4 conference. Any other questions? Yes, sir.

5 MR. KELLY: Dave Kelly, Oglala
6 Sioux Tribe. Bob, this question really don't
7 tie to the HPP portion of it, it's just a
8 generalized question. In the past several
9 years I'm going to say we've been lucky enough
10 to go through a couple of audits. The first
11 time with OIG and 2 years later again with
12 OIG. The third time was just recently here in
13 January I believe, January or December, that
14 area.

15 And this audit was more entailed.
16 It was real entailed where I think, I'm pretty
17 sure it was OIG again along with some Federal
18 Highway. Yes, that came and selected the
19 Oglala Sioux Tribe for the third time. Or we
20 volunteered.

21 But it was a report that was
22 supposed to be done on the Federal Highways.

1 And to this date we haven't had any
2 correspondence or response from them
3 individuals that came and took the detailed
4 look at all of our documents and gave us some
5 sort of information or reprise back to what's
6 going on within Federal Highways. Any chance
7 of getting an update?

8 MR. SPARROW: Yes. The draft
9 report is due to Federal Highway sometime in
10 June. I talked to the IG actually yesterday
11 to see how they were doing with their schedule
12 and they said that we would see a draft
13 sometime in early to mid June, that there was
14 something being circulated through their
15 department now with the hopes of having a
16 final report out by sometime in July.

17 There were 10 tribes that were
18 visited by the IG. Thank you for
19 volunteering. Oh yes, call Dave, he'll go
20 along with it, no problem.

21 This particular review is an OIG
22 review of Federal Highway. And how we're

1 working with the tribes and working with the
2 Bureau of Indian Affairs in delivering of the
3 TTP program. That's what Dave is referencing.
4 It wasn't an audit of Oglala Sioux, it was
5 more an audit of Oglala Sioux and how they're
6 working with Federal Highway. Even though at
7 times I'm sure it felt like it was an audit of
8 the Oglala Sioux Tribe. But that was the
9 intent.

10 And that report will be made
11 available as soon as it's final. It'll be
12 made available to the public. We'll probably
13 post it on our website. LeRoy will do the
14 same. Yes, sir.

15 MR. DAVIS: Monte Davis with the
16 Match-e-be-nash-she-wish Band of Pottawatomis.
17 I've been sitting here all afternoon
18 listening. Kind of a unique situation for
19 a.k.a. Gun Lake Tribe. We were re-recognized
20 in 1999. They started a roads program to 2006
21 right there should tell you where I'm at. I'm
22 concerned we'll be paying you back money by

1 the time Fiscal Year 2016 comes around. I'm
2 a little nervous what's going to happen in our
3 situation.

4 MR. SPARROW: You can make the
5 check payable to -- no. Unfortunately in your
6 case, and there's a number of tribes. Do you
7 want to talk about this? There are a number
8 of tribes that really are just onboard in the
9 last couple of years. Because the inventory
10 is frozen to be FY `12 or prior to 2004 if
11 it's not BIA or tribal you don't have a real
12 long history of FY `05 to FY `11 tribal
13 shares. You're hindered by those aspects of
14 the funding formula. But Congress has told us
15 this is what we have to use. And LeRoy can go
16 into more. Population is the same issue.

17 MR. GISHI: If you look at the --
18 if you pull down the download from either the
19 FHW website or bia.gov the tribal shares for
20 FY 2013 it's written up in a format. It's
21 like 8.5 by 14 size pages with the columns
22 that have headers and which I'd include in

1 there all of the different factors that Bob
2 described today on the different subparts, the
3 supplemental of course, the amount for 2
4 percent planning, how the supplemental is
5 identified, the 80 percent of the RNDP, all
6 the way down to the end. And the last column
7 is actually what was provided to each tribe in
8 FY 2011.

9 But when you look in there one of
10 the columns is population. And if you just
11 happen to look at that and just go down the
12 list, look for zeroes. There's actually
13 tribes that exist but in the population
14 database in NAHASDA it's zero. I think we had
15 26, 25 tribes that fit in that category.

16 Some of these tribes do not have a
17 program which they basically do not apply for
18 or do not interact with HUD in terms of
19 housing activities and pretty much sponsor
20 support their activities in the program
21 primarily through the tribe. So the result of
22 that is there's a zero.

1 Others, they haven't been
2 recognized long enough to be able to get a
3 database, a number in there, and it's zero.

4 Likewise when you see new tribes
5 coming into the mix. We had Tejon Tribe in
6 California that just got recognized in the
7 last 2 years. When you look at those three
8 elements in terms of what they were receiving
9 in FY 2011 80 percent of nothing is really
10 nothing. When you look at miles of road they
11 don't have in inventory and enough time to
12 establish it in 2012 they have zero.
13 Population is zero. They have no historical
14 percentages to reflect from 2005 to 2011.
15 That's zero. So when you look at that one
16 tribe the number is zero.

17 And this is obviously from our
18 standpoint a concern. And we've communicated
19 this internally to our folks also is that
20 there are some things out there.

21 Of course, the idea is we want to
22 be able to communicate that to you if you

1 haven't seen it. If you were any of those
2 zeroes you would know that you obviously would
3 probably have comments relative to that.
4 Obviously that comment process as Vivian has
5 indicated is through a different avenue. Here
6 it's talking about writing up the regulations
7 that reflect what's in the law. So from that
8 standpoint anything that you have is built
9 into it.

10 So I would encourage you to
11 download those numbers from those locations.
12 If you can't find it or you need some -- if
13 you need I can send it to you via email also.
14 I do have it on my laptop. Once I get back to
15 the hotel I can email that to you.

16 So from that standpoint you
17 wouldn't be paying anything back, you just
18 would be -- it would be a smaller percentage
19 overall.

20 Any other questions on that aspect
21 of things? If not I want to thank everybody
22 for their time today, being able to come here

1 and at least to begin the process of dialogue
2 of and discussion of as we indicated an
3 advanced look at what's in the regulations in
4 terms of what's out there.

5 MR. ROBINSON: Tracy Robinson with
6 the Northern Cheyenne Tribe. You know,
7 sitting here today and going to Albuquerque
8 this winter our tribal council along with the
9 Rocky Mountain Region passed resolutions that
10 direct these as not being -- we don't consider
11 these as true consultations with tribes.

12 And with that and sequestration if
13 -- when you do come out for the true
14 consultation with tribes to come to the Rocky
15 Mountain Regions where tribes that are dealing
16 with funding can attend.

17 And one of the other things that
18 I'd like to see with this is when you come out
19 with your red-line version of these changes if
20 you could put on there where the changes are
21 coming from. Because we sat here and listened
22 to you and Bob today talk about that these are

1 your guys' changes. When you start getting
2 comments from tribes and tribal leaders to put
3 it in there that who's making them comments,
4 showing that they're truly coming from tribes,
5 not the Federal Highways or not BIA. Thank
6 you.

7 MR. GISHI: Thank you.

8 (Applause)

9 MR. MOORE: Ed "Buster" Moore,
10 Fort Belknap Tribal Council as well as a
11 tribal transportation delegate for Montana-
12 Wyoming Tribal Leaders.

13 At this time I have a resolution
14 from the Montana-Wyoming Tribal Leaders that
15 alludes to what Terry was sharing with you.
16 I'd like to read this into the record if I
17 may, please. Most of the tribes, all of the
18 tribes within our region, Rocky Mountain
19 Region, are generating or have already
20 generated supporting resolutions to this
21 resolution.

22 So a resolution calling for the

1 BIA and FHWA to convene meaningful
2 consultation with Indian tribes regarding Part
3 170 regulations and to honor the government-
4 to-government relationship and to promote the
5 rights of tribal governments to receive direct
6 transportation services from the federal
7 government.

8 Whereas the Montana-Wyoming Tribal
9 Leaders Council has been created for the
10 express purpose of providing Indian tribes of
11 Montana and Wyoming with a unified voice and
12 a collective organization to address issues of
13 concern to the tribes and Indian people.

14 And whereas the tribal governments
15 of Montana and Wyoming and Idaho recognize the
16 importance of actively engaging in policy
17 formation on any matters that may affect the
18 tribes and reservations.

19 And whereas the board of directors
20 of the Montana-Wyoming Tribal Leaders Council
21 consists of duly elected tribal chairs,
22 presidents and council members who are fully

1 authorized to represent their respective
2 tribes.

3 And whereas the Montana-Wyoming
4 Tribal Leaders Council recognizes the
5 importance of planning, design, construction
6 and maintenance of transportation facilities
7 throughout the Rocky Mountain Region to
8 improve public safety and promote jobs and
9 economic development on our reservations.

10 And whereas the regulations for
11 the Indian Reservation Roads (IRR) program 25
12 C.F.R. Part 170 were published by the Bureau
13 of Indian Affairs (BIA) and became effective
14 in Fiscal Year 2005 which converted the IRR
15 program from a regional roads program into a
16 formula-based, inventory-driven tribal shares
17 program highly dependent upon an accurate
18 transportation inventory.

19 And whereas SAFETEA-LU was enacted
20 in August 2005 increased funding for the
21 Indian Reservation Roads program from \$275
22 million annually to \$450 million annually,

1 streamlined the IRR program and directed the
2 Secretary of Transportation and Secretary of
3 the Interior to complete a comprehensive
4 national inventory of transportation
5 facilities eligible for assistance under the
6 IRR program.

7 And whereas with implementation of
8 the Part 170 regulations and increased funding
9 Indian tribes soon realized that the BIA and
10 Federal Highway Administration which jointly
11 administers the IRR program were not ensuring
12 that BIA regions uniformly and consistently
13 updated tribal IRR programs.

14 Inventories for inclusion in the
15 National Tribal Transportation Facility
16 Inventory resulting in additions to the
17 inventory (NTTFI) of tens of thousands of
18 miles of IRR program routes which greatly
19 altered the distribution of tribal shares of
20 IRR program funds among BIA region and tribes.

21 Whereas despite increased funding
22 under SAFETEA-LU Indian tribes in the Rocky

1 Mountain Region witnessed a significant
2 decrease in our IRR program tribal shares.

3 And whereas despite a 6-year
4 effort by Indian tribes in the IRR program
5 coordinating committee to convince the BIA and
6 Federal Highways to establish uniform federal
7 policy and procedures for the inclusion of the
8 inventory (NTTFI) of eligible transportation
9 facilities including clear criteria for adding
10 proposed roads, primarily access routes and
11 other eligible roads the Agency did not amend
12 the Part 170 regulations or establish interim
13 guidelines or policies for use by all BIA
14 regional offices and Indian tribes.

15 And whereas at the request of
16 Indian tribes Congress amended the IRR program
17 with the enactment of MAP-21 in July 2012
18 which replaced the regulatory funding formula
19 with the statutory-based formula to distribute
20 TTP funds to Indian tribes, renaming the IRR
21 program the Tribal Transportation Program and
22 made other changes to the IRR program.

1 And whereas the BIA and Federal
2 Highways developed draft changes to the Part
3 170 regulations to implement the statutory
4 changes required by MAP-21, making other
5 changes to the Part 170 regulations sought by
6 the agencies.

7 And whereas the BIA has scheduled
8 three consultation meetings with Indian tribes
9 over a 1-week period in May including meetings
10 in Phoenix, Arizona May 16, Minneapolis,
11 Minnesota May 21, and Alaska on May 14 to
12 discuss the draft changes with Indian tribes.

13 Whereas the Montana-Wyoming Tribal
14 Leaders is concerned that the draft changes
15 proposed by BIA and Federal Highways have not
16 had the benefit of meaningful consultation
17 with Indian tribes concerning how to best
18 improve the delivery of transportation
19 programs, projects and services to Indian
20 tribes, to promote the right of tribal
21 government to govern their own affairs and to
22 ensure that consultation of the trust

1 responsibilities of the United States to
2 tribes and to individual Indians to encourage
3 flexibility and innovation and to reduce,
4 streamline and eliminate unnecessary and
5 restrictive federal policies and procedures.

6 And whereas a review of the draft
7 changes of the Part 170 regulations suggest
8 that BIA and Federal Highways would limit
9 tribal flexibility and innovation, curtail
10 tribal appeal rights, unreasonably restrict
11 tribal access to TIP -- TTP, sorry, federal
12 aid and state-administered highway safety
13 funds at a time of funding shortages in Indian
14 Country and not fully implement MAP-21
15 streamlining provision.

16 And whereas the Montana-Wyoming
17 Tribal Leaders Council calls upon its member
18 tribes to demand that BIA and Federal Highways
19 meaningfully consult with Indian tribes before
20 new regulations are issued for the TTP.

21 Now, therefore be it resolved that
22 the Montana-Wyoming Tribal Leaders Council

1 calls upon the BIA and FHWA to convene
2 meaningful consultation with Indian tribes
3 beyond the three limited consultation sessions
4 announced in the April 12, 2003 Federal
5 Register concerning the overhaul of Part 170
6 regulations and before the agencies issue a
7 Notice of Proposed Rulemaking for public
8 comment as required in Executive Order 1375
9 and the Department's respective tribal
10 consultation policy.

11 And be it further resolved that
12 the Montana-Wyoming Tribal Leaders Council
13 asks its member tribes to authorize their
14 elected tribal officials and tribal personnel
15 to travel to the upcoming tribal consultation
16 meetings to share directly with BIA and
17 Federal Highway officials their concerns with
18 the draft changes to the Part 170 regulations
19 which do not appear to reduce, streamline or
20 eliminate unnecessarily restrictive federal
21 transportation policies or procedures, honor
22 the government-to-government relationship or

1 promote the rights of tribal governments to
2 receive direct transportation services from
3 the federal government.

4 Certified and signed Ivan Posey,
5 Chairman, Montana-Wyoming Tribal Leaders
6 Council. Robert Welch, Secretary, Montana-
7 Wyoming Tribal Leaders Council. Thank you.

8 MR. GISHI: Thank you. Can we get
9 a copy?

10 MR. PALMER: Jason Palmer,
11 Colville Confederated Tribes. And similar to
12 the Wyoming Montana Tribal Leaders, what they
13 just read into the record, and echoing some of
14 the concerns by other tribes in the Rocky
15 Mountains and others here regarding
16 consultation.

17 First, you know, we welcome and
18 appreciate the dialogue that we've had here
19 today. I mean, I took a lot of notes.
20 There's a lot of good information here.

21 But there's a number of real
22 substantive issues here regarding these

1 proposed revisions that you guys put out under
2 this notice. And the process of consultation,
3 it's -- the process is just as important as
4 the substance of the consultation. And I
5 think that's, you know, it's really important
6 to get that out there.

7 You know, these existing
8 regulations, they were developed through a
9 very extensive rulemaking process. And I
10 appreciate you guys' comments earlier to help
11 clarify what the proposed rulemaking process
12 is because when I read the notice the process
13 described in that notice, it wasn't very clear
14 to me.

15 Because the way I understood it
16 was the tribes had an opportunity to review
17 the revised versions of the regulations. You
18 could attend one of the three consultations
19 and submit comments. That process, it's
20 markedly different than the negotiated
21 rulemaking process that the previous
22 regulations went through. And it definitely

1 falls well short of the 13 consultations that
2 were held that addressed just one aspect of
3 the Part 170 regulations.

4 There's nothing provided in here
5 that indicates that the BIA or the Federal
6 Highway explored or even considered the use of
7 negotiated rulemaking, and nothing in here
8 articulated the basis for declining the use of
9 such a process.

10 And anyway, so last week the
11 Affiliated Tribes of Northwest Indians held
12 their midyear convention. And there was two
13 resolutions that were passed out of the
14 transportation committee. One very similar to
15 the one that was just read in.

16 And I'll actually cut through and
17 get down to the meat of what it is. And it
18 just said therefore, be it resolved that the
19 Affiliated Tribes of Northwest Indians does
20 hereby request that the Bureau of Indian
21 Affairs and the Federal Highway Administration
22 reconsider and revise the regulatory process

1 set forth in the April 12, 2013 notice to
2 either provide a negotiated rulemaking process
3 or some other collaborative consultation
4 process that offers tribes the opportunity to
5 develop a consensus rule or an interim rule.

6 And be it further resolved if the
7 departments are not willing to use a
8 negotiated rulemaking process at the bare
9 minimum the tribal consultation process should
10 not only offer tribes the opportunity to
11 provide comments to draft revisions, it should
12 ensure that the BIA and the Federal Highway
13 Administration will make all tribal comments
14 available to the tribes and provide a written
15 response to those comments before publishing
16 a Notice of Proposed Rulemaking.

17 And that's all the comments I had
18 today.

19 MR. GISHI: Thank you.

20 MR. CROW BELT: Thank you.

21 Leonard Crow Belt, Fort Peck Assiniboine &
22 Sioux Tribes, northeastern Montana.

1 I would like to read into the
2 record, and I'll make it brief, just the
3 resolution number and that we support the
4 Montana-Wyoming Tribal Leaders' resolution.

5 And Fort Peck Resolution No. 26-
6 2368-2013-05. And I'll read it. Therefore,
7 be it resolved the Fort Peck Tribal Executive
8 Board hereby approves its support of the
9 Montana-Wyoming Tribal Leaders resolution
10 pertaining to the 25 C.F.R. Part 170 tribal
11 consultation process.

12 I'd like to read that into the
13 record and I'll give a copy for the minutes.
14 Thank you.

15 MR. GISHI: Thank you.

16 MR. RUSSETTE: Ted Rusette from the
17 Chippewa Cree Tribe, Rocky Boy Reservation in
18 Montana.

19 I'd like to submit a resolution
20 into the record supporting the Rocky Mountain
21 Region tribes, Resolution No. 7113. A
22 resolution calling for the BIA and FHWA to

1 convene meaningful consultation of Indian
2 tribes regarding Part 170 regulations and to
3 honor the government-to-government
4 relationship and promote the rights of tribal
5 governments to receive direct transportation
6 services from the federal government. Thank
7 you.

8 MR. GISHI: Thank you.

9 MR. HEALY: Good afternoon. John
10 Healy, transportation director, Fort Belknap.

11 We support the comments made by
12 the Councilman Moore, Mr. Palmer, Mr. Crow
13 Belt and the gentleman from Chippewa Cree
14 Tribe.

15 The Fort Belknap Indian Community
16 Council has also passed a resolution in
17 support of the Montana-Wyoming Tribal Leaders
18 resolution. However, it hasn't been signed
19 yet. As soon as it gets signed I'll email
20 LeRoy a signed copy. Thank you.

21 MR. GISHI: Thank you.

22 MR. ROBINSON: Trace Robinson,

1 Northern Cheyenne Tribe. I also have a tribal
2 resolution, DOI-103-2013. And it also echoes
3 the resolution read by Montana-Wyoming Tribal
4 Leaders. And I'll submit it for the minutes.

5 MR. GISHI: Thank you. Okay. Any
6 other resolutions you want to hand in or
7 submit for the comment?

8 MR. ROSETTE: Just one last
9 comment. You know, on your April 12
10 correspondence, LeRoy, Bob, on the one, two,
11 three, fourth paragraph down although MAP-21
12 replaces the relative need distribution fund
13 that's discussed above BIA needs to codify the
14 requirements that proposed roads or access
15 roads must meet in order to be added to or
16 remain in the NTTFI.

17 What exactly did the BIA and
18 Federal Highways do to codify and how was that
19 presented today?

20 MR. SPARROW: The writeup on --
21 this is Bob Sparrow. The writeup on proposed
22 roads and access roads I believe is in Subpart

1 D. It talks about the attachments and the
2 information that's required to be submitted
3 for proposed and access roads. So it's in
4 that subpart. Yes.

5 MR. MYERS: This is Barak Myers
6 with the Eastern Band of Cherokee. We also
7 have a resolution that was passed last week at
8 the United South and Eastern Tribes regarding
9 the same issue that Jason had brought up from
10 AT&I and some of the folks from the Montana-
11 Wyoming Tribal Leaders Council.

12 Once I get a signed copy of that
13 resolution I'll forward that over to LeRoy and
14 Bob so that they'll have that as well.

15 MR. SPARROW: Anything else? Yes,
16 sir.

17 MR. SMITH: John Smith, Shoshone
18 Arapahoe Tribes, transportation director.

19 Our joint business council has
20 also a resolution under consideration and has
21 to await its authorization due to the fact
22 that the council has not met since the second

1 week of May. And the time line on this
2 particular issue seemed to be a rather short,
3 quick action although we did work with Ivan
4 Posey as a council member with the Montana-
5 Wyoming Tribal Leaders. But we will also
6 submit a resolution supporting that along with
7 the Northern Cheyenne, and Fort Belknap, and
8 Rocky Boy, and Jason, and Barak.

9 We agree with the comments that
10 were generally stated today. And we'll be
11 forwarding a final edition of our corrective
12 measures for the record by the due date.
13 Thank you very much.

14 MR. SPARROW: Thank you, sir. Mr.
15 Caulum?

16 MR. CAULUM: Seeing no more
17 comments on the consultation part of our
18 meeting we'll go ahead and close the
19 consultations formally and close the record
20 for today's meeting.

21 (Whereupon, the foregoing matter
22 went off the record at 4:47 p.m.)

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