

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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THURSDAY  
MAY 16, 2013

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The meeting was held in the  
Phoenix Airport Marriott, 1101 North 44th  
Street, Phoenix, Arizona, at 9:00 a.m., LeRoy  
Gishi and Bob Sparrow, Co-Moderators,  
presiding.

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  
DAVID SMITH, Regional Roads Engineer

AGENDA

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Break

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Adjourn

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

(9:04 a.m.)

MR. SMITH: Good morning, everyone.

I think we're about ready to get started. If you didn't sign in, there is a sign in sheet out front, and I'd appreciate it if, when you take a break, if you could sign in, that would be great. There's also handouts out there, if you came in before the handouts were out there, we can get those to you as well. My name's Dave; I'm the Regional Roads Engineer here at the Western Region, and I just wanted to welcome all of you today to Phoenix, and I'm going to just turn this over now to Andy. Are you going to be up? Andy Caulum, for the presentation today. So please ask questions. That's what everyone's here for today. I'll be about too, if you have questions for me as well. So with that, Andy.

MR. CAULUM: Good morning. My name is Andy Caulum. I'm an attorney with the Solicitor's Office in the Division of Indian

1       Affairs in Washington, DC. Some of you may  
2       have seen me at some of these meetings. I  
3       apologize for my voice, I've been a little  
4       under the weather. Coming from DC, the dry  
5       does not agree with me at times. Mr. Gishi,  
6       however, being from not far from here, loves  
7       coming here, so it's always amusing to see who  
8       gets more miserable faster. When he goes back  
9       to DC, or when I come here, and am exposed to  
10      the wonderful dry weather out in the  
11      Southwest.

12                    This is a consultation, and this  
13      is a process that has now, the Department has  
14      been doing with respect to putting together a  
15      draft regulation. It's important for us to get  
16      out and hear what tribal leadership and people  
17      interested in these issues have to say at this  
18      stage before it goes to what's known as a  
19      Notice of Proposed Rulemaking. When we go to  
20      NPRM, we lose control, to a certain extent, of  
21      the process, because at that point, the rule  
22      has been - OMB has been notified, Office of

1 Management and Budget had been notified, and  
2 there's a specific process that we have to go  
3 through at the point.

4 In accordance with the President's  
5 directives, and the Secretary of the  
6 Interior's directives, with respect to  
7 consultation what we've done in this process  
8 so far is a draft rule was developed in the  
9 months right after the President signed MAP-21  
10 and it went into effect on October 21st, we  
11 took that initial draft rule to a meeting of  
12 the Tribal Transportation Program Coordinating  
13 Committee, formerly known as the Indian  
14 Reservation Roads Program Coordinating  
15 Committee, at a meeting in Albuquerque at the  
16 end of - January, was it, LeRoy? And the  
17 committee broke into some subgroups, and they  
18 reviewed the rule in great detail. They made  
19 a lot of excellent recommendations, and we  
20 looked at all of those. Many of those were  
21 incorporated into our draft rule here, and now  
22 we went forward with permission, the Assistant

1 Secretary for Indian Affairs, we've also been  
2 consulting with Federal Highways leadership.  
3 We went ahead and published the Federal  
4 Register notice about just over a month ago.  
5 And you'll notice in the Federal Register  
6 notice that there were only three  
7 consultations, and I say only because in my  
8 now six years with the department, I've been  
9 on consultation rounds, shall we say,  
10 including last year we did consultations at 13  
11 different sites on the proposed roads and  
12 access issue.

13 A couple years before that, we did  
14 consultations at 10 different sites. Well, as  
15 many of you know with the sequester, there's  
16 a very different view on travel and things of  
17 that nature, even though it's a small group  
18 that goes. So although the transportation  
19 program isn't necessarily affected by the  
20 sequester because it comes out of a different  
21 pot of money, there is, there was a view that  
22 doing three, or maybe four, and it was decided

1 to do three, at easy-to-get-to locations was  
2 something that should be done, rather than  
3 doing it at many different locations. However,  
4 in the Federal Register notice, you may have  
5 also seen that there was a brief discussion  
6 that once we go with the NPRM and Notice of  
7 Proposed Rule, we will then go out to a number  
8 of locations. The exact number we don't know  
9 yet. We probably will do Alaska again, just  
10 because there's 200-some-odd tribes up there  
11 alone, and then we'll go out, likely to  
12 similar locations where we may add a couple as  
13 well. It just depends on, again, what the  
14 leadership of the department determines is  
15 what they're comfortable with. So with respect  
16 to this session, one thing to keep in mind is  
17 that nothing has been set in stone. This is a  
18 process. And we want to hear your comments  
19 here, with the two microphones set up, you're  
20 welcome to come up. One very important thing  
21 is, when you make your comment, please make  
22 sure you identify yourself. We've got a court

1 reporter over here, and she's taking down  
2 everything that's being said, so that we can  
3 go back and look at it, reference it, and make  
4 edits or make changes to the draft that  
5 reflect what people have had to say at these  
6 meetings that we can make. And one of the  
7 things with respect to comments as well, is  
8 that you're welcome to submit written comments  
9 if you wish. The deadline for that - excuse me  
10 - is June 14th, 2013. And you'll see in the  
11 Federal Register notice, there's a couple  
12 email addresses where you can send those in.  
13 You can also send them in in written form.  
14 Just as a practical matter, I'd recommend you  
15 send them in as email attachments, just  
16 because if they come to us in written form,  
17 they have to go through what we call the  
18 cooker, which is a place where they safety-  
19 inspect mail, and they come to us and they're  
20 this really great - if it's white paper, they  
21 come to us in this really great sort of  
22 crinkly brown shade, when they finally get

1 there. And it's amazing. You just touch the  
2 paper, and it just cracks. I'm not sure what  
3 they do there. So if you can, please submit  
4 them electronically. You'll find also they get  
5 to us much faster as well.

6           With respect to the process today,  
7 Ms. Philbin, Vivian Philbin, from Federal  
8 Highways General Council Office, she'll go  
9 through a brief history of where, how we got  
10 here with respect to the law and with respect  
11 to the regulation. And then Bob Sparrow and  
12 LeRoy Gishi will take over from there, and  
13 they'll do the process, they'll go ahead and  
14 do the, follow our agenda. And one thing about  
15 the agenda that's pretty important: we need to  
16 get through the whole thing today. One thing,  
17 as we do these consultations, we tend to learn  
18 things as we go along. We respectfully request  
19 that your comments be focused on the draft  
20 rule that we have here. One of the things that  
21 is - and you'll hear about it during the  
22 presentation on Sub-part C especially, one of

1 the things that has changed with MAP-21 here  
2 that is a little frustrating for people and  
3 has been the source of some consternation, is  
4 that Congress changed the formula. And there's  
5 nothing we can do about that. We have to - the  
6 rule cannot go beyond what the statute  
7 provides. So, generally speaking, you have the  
8 Constitution, then you have the statute, and  
9 then you have the rule. The rule cannot be in  
10 conflict with the statute. It won't get  
11 approved by me, and it won't get approved  
12 further up the chain. So we want to encourage  
13 you to make your comments, but please keep in  
14 mind that there are certain aspect of this,  
15 and Mr. Sparrow and Mr. Gishi will definitely  
16 be letting you know what those parts are, that  
17 just simply are statutory, that we don't have  
18 any control over because they're dictated by  
19 Congress and the President, really.

20 So with that, one other  
21 housekeeping measure. I heard somebody's cell  
22 phone. Please, put your cell phones on vibrate

1 or on silent. It's hard for the court reporter  
2 to hear sometimes over that. And with that,  
3 I'll turn it over to Vivian Philbin.

4 MS. PHILBIN: Good morning,  
5 everyone. My name is Vivian Philbin. I'm the  
6 Assistant Chief Council for Federal Lands with  
7 the Federal Highway Administration. Okay,  
8 thank you. And thank you, Mr. Andy Caulum, Mr.  
9 LeRoy Gishi, the chief of BIA DOT, all of you  
10 know LeRoy, and Mr. Bob Sparrow, the director  
11 of the TTP program is also here. They are both  
12 here as well. There's some familiar faces;  
13 good to see some familiar faces. Some of you -  
14 and I won't call you out - have been with us  
15 since the beginning of this rule, which is  
16 1999, that's a long time. But let me give you  
17 just a brief history of the program and why  
18 are we here today. I guess - I don't know if  
19 anyone's been working around since 1982 in  
20 this area. Some of you, I think, have. But  
21 that was the passage of the STAA, the long-  
22 term surface transportation reauthorization,

1 that put the IRR program, and it's part of the  
2 Federal Lands Highway program. It started the  
3 FLHP program which was a total revamping of  
4 Federal Lands.

5 Well, we're going back before  
6 that. But prior to that, prior to the Federal  
7 Highway Administration, long before, when it  
8 was the Bureau of Public Roads in the  
9 Department of Agriculture, the IRR roads have  
10 been around and in existence for a great deal  
11 longer than 1982. But prior to 1982, what's  
12 important about that is that there was no  
13 long-term reauthorization for the IRR program.  
14 Prior to 1982, they were funded - the IRR,  
15 Indian Reservation Roads, which are now Tribal  
16 Transportation Program facilities, were funded  
17 through annual appropriations through the  
18 Department of the Interior. And because of  
19 that, it was very difficult to do any type of  
20 long-range planning, because one never knew,  
21 just as with the Department of the Interior  
22 Road Maintenance program, how much money was

1 going to be available at any given time.

2 This is quite a bit before then.

3 So in 1982, the IRR program became part of the  
4 Federal Lands Highway Program, and we had a  
5 long-term reauthorization for some planning,  
6 but not a lot of money. From 1982, the IRR  
7 program was funded at \$100 million a year.  
8 That's not a lot for all of Indian country.  
9 1987, during the budget reconciliation  
10 process, and I was actually in Washington at  
11 the time, through the passage of the Surface  
12 Transportation Bill, acronym of STURAA, the  
13 funding went to \$80 million a year. The big  
14 change came in 1991, with the passage of ICE-  
15 T, with a total emphasis on planning in the  
16 states including the tribes in the planning  
17 process. And the IRR program, and the starting  
18 of the TTAPS, and all of this was through  
19 ISTEA which was in effect in 1991 and the IRR  
20 program was funded at \$191 million a year.  
21 With the passage of TEA-21 in 1998, the IR  
22 program - a couple of things happened. First

1 the funding greatly increased to \$275 million,  
2 but also was a mandate of the negotiated rule-  
3 making to affect the policies and procedures  
4 of the Indian Reservation Roads Program, which  
5 is 25 CFR part 170. As a result of TEA-21, the  
6 negotiated rule-making came into effect, and,  
7 as I said, there's individuals in this room  
8 that were with us since the start of that.

9 That negotiated rulemaking took a  
10 long time, and as all of you that have worked  
11 in this area know, prior to the negotiated  
12 rulemaking we had, and prior to tribal shares,  
13 there was a tribal priority program, where  
14 funds were allocated to each region, and the  
15 regional road engineer, in consultation with  
16 the tribes, had its own priority program or  
17 projects. After the rule we went into a tribal  
18 shares basis, and the biggest contention in  
19 the rule, of course, was a formula. So finally  
20 a final rule was published in 25 CFR in July  
21 2004, so as you can see, because it operated  
22 on consensus, it took a great deal of time and

1 it was effective for FY 2005.

2 All right, so immediately, as with  
3 most things in government, we had a new  
4 reauthorization, SAFETEA-LU. So immediately,  
5 some of the provisions in the regulatory  
6 aspect of the IRR program were already  
7 outdated. So as soon as a SAFETEA-LU became  
8 the law in 2005, we started looking at changes  
9 that had to come about because of changes in  
10 the statute. And we had them sitting off on  
11 the back burner because the formula was always  
12 out there as a major issue.

13 As most of you know, SAFETEA-LU  
14 went through nine extensions, starting with  
15 funding at \$300 million for the IRR program,  
16 and ending at 450. And we had MAP-21 signed by  
17 the President this summer, with the IRR, now  
18 TTP, program, funded at \$450 million for FY13  
19 and FY14. So now the change in 25-CFR became  
20 imperative, because there was a statutory  
21 change to the formula. So it became very  
22 necessary to update this rule.

1           This is consultation with tribes  
2           in advance of the NPRM, as Mr. Caulum  
3           mentioned. So it is very important that we get  
4           your comments, because when the NPRM goes out,  
5           these comments will be considered. In the  
6           tribal leader letters signed by BIA Director  
7           Mike Black, he indicated to get the comments  
8           in by June 14th, and although I don't work in  
9           Washington anymore, I know this is true, that  
10          electronic comments are going to be better  
11          received in terms of the physical handling of  
12          the piece of paper than if you send it.

13                 All right. All right. But the main  
14          thing - this is, as Mr. Caulum said, and Mr.  
15          Gishi and Mr. Sparrow will all say, this, what  
16          we're going to discuss today, is not a done  
17          deal. It is not set in stone. We need to - we  
18          have to start somewhere. And so obviously, any  
19          statutory changes were made changes to the  
20          rule. The IRR coordinating committee had an  
21          opportunity, and commented extensively, on the  
22          changes that were sent to them. It's now the

1 TTP coordinating committee. And then there's  
2 going to be three presentations in Indian  
3 country. The one today, there was one in  
4 Anchorage, and there'll be one in Minneapolis.

5 So any comments, we're taking them  
6 down as you give your comment. We're getting  
7 a court reporter, and we want the electronic  
8 or written comments that you send in. There is  
9 a sign-in sheet outside. I ask that you please  
10 sign in. It helps the court reporter later on.  
11 And when you speak, please identify yourself  
12 and your tribe, if you wish to do so.

13 We really want your comments, and  
14 no question - if you're new to the program,  
15 please ask it, because we want to address all  
16 comments and concerns today. We were able to  
17 get through - the entire agenda went through  
18 pretty much the end of the day on Tuesday, and  
19 we're hoping to follow that schedule with  
20 breaks and a lunch period as well today.

21 As you know, because of MAP-21,  
22 I'll end it on there. We have statutory

1 changes to Chapter 2 of Title 23, which is our  
2 authorizing legislation. So really, this rule  
3 is timely. Changes to 25 CFR Part 170, and  
4 absolutely necessary.

5 So with that I'm going to turn it  
6 over to Mr. Gishi. Thank you all for being  
7 here. Please sign in the sign-in sheet. We  
8 want you use a microphone and identify  
9 yourself and your tribe if you wish to do so.  
10 Thank you very much.

11 MR. GISHI: Thank you, Vivian. I  
12 want to go back a couple slides here and let  
13 you get a view of the agenda. We had documents  
14 that we'd sent here, and unfortunately they  
15 didn't come. One of the things we had was a  
16 copy of the Federal Register notice with the  
17 agenda on it, the Dear Tribal Leader letter,  
18 and, of course, a copy of the regulations for  
19 your use. They can all be found at our [bia.gov](http://bia.gov)  
20 website, under Indian Services and  
21 Transportation as well as Federal Lands -  
22 Highway, the Tribal Transportation Program

1 location. But we wanted to make sure everybody  
2 had a hard copy, and unfortunately when we  
3 went out there, you didn't find those out  
4 there. We're still trying to locate those as  
5 we go. But as we start the day, the agenda is  
6 pretty straightforward and consistent as we  
7 put it in the Federal Register notice, and  
8 we'll follow this as close as we can in terms  
9 of covering the material.

10 One of the things I wanted to  
11 point out as part of this process is, in terms  
12 of breaks we're very flexible with that, from  
13 that standpoint, and certainly from a  
14 lunchtime perspective. I want to thank you for  
15 taking the time to come in. As Vivian  
16 indicated, this is an advanced opportunity to  
17 discuss what is in the regulations. A lot of  
18 it - in fact, as you being looking it, as we  
19 begin talking about it, you'll see a lot of  
20 the material is there from what is currently  
21 in existing regulation. What we're looking at  
22 here is an opportunity for an advance review

1 and discussion and the formal rulemaking  
2 process will then proceed from here in terms  
3 of the comments that we receive and certainly  
4 information that is gathered not only verbally  
5 here but also in writing and the emails that  
6 are, addresses that are published as part of  
7 the Federal Register notice. And we'll flash  
8 those up here in a little while again also.  
9 Vivian talked a little bit about the history  
10 of updating the regulations.

11 I'm going to talk a little bit  
12 about the impacts of MAP-21 very briefly, this  
13 is just to kind of give you an overview,  
14 because as you, as we go through the remainder  
15 of the agenda, we'll go through each of the  
16 subparts and we'll talk about how those  
17 various parts are impacted or affected by the  
18 MAP-21 process. The Tribal Transportation  
19 Program, of course, is one of the big changes,  
20 is the name change itself. A little bit of  
21 history behind that, as most of you know,  
22 those of you who've been working in

1 transportation for a long time, 25, 30 years  
2 ago a lot of the state programs were state  
3 highway departments.

4 It has evolved into  
5 transportation, not just highways, but you're  
6 talking transit, you're talking a lot of other  
7 elements that deal with transportation as a  
8 whole, the whole process of planning, public  
9 outreach, and those aspects of things have  
10 evolved and likewise a big part of the name  
11 change was to reflect, first of all, that it  
12 is a tribal program and it involves  
13 transportation. Because a lot of the funds  
14 that are available under the TTP program are  
15 available to be used for other Title 23  
16 programs that are available under Chapter 1.

17 So it was consistent with that  
18 process of moving ahead, if you will, and  
19 making the program much more flexible and all  
20 these key words that we've seen in the  
21 legislation in the last 10 years is what we're  
22 talking about.

1           A little bit of an overview: the  
2 authorized amounts, of course, for the 2-year  
3 MAP-21 bill is \$450 million for the Tribal  
4 Transportation Program, and we'll talk about  
5 how that's kind of broken up. Bob will go  
6 through a little more detail on what that  
7 entails in terms of how the formula was run,  
8 how subpart C actually talks about the formula  
9 itself.

10           A little bit of overview, the  
11 funds will be allocated among tribes using  
12 this new statutory formula. Vivian pointed out  
13 it's a statutory formula. The difference in  
14 that is the formula currently was in title -  
15 excuse me, in 25 CFR 170 was a formula that  
16 was developed through negotiated rulemaking,  
17 which was basically representatives from  
18 tribes sitting down with representatives of  
19 the federal government, and negotiating a  
20 formula. That's what TEA-21 specified. Come  
21 MAP-21 time, Congress identified and said this  
22 is the formula that will be used. An

1 administrative formula, regulatory formula,  
2 prior to this, versus a statutory formula, or  
3 a formula that's specifically written in the  
4 law.

5           What was written in the law prior  
6 to that was, a formula will be developed  
7 through negotiated rulemaking, and that will  
8 be used to allocate funds based on, to the  
9 various tribes and reservations, is how it was  
10 stated back in that portion of Title 23. Of  
11 course there's a transition process that is  
12 entailed, so as you begin looking at these  
13 things, you realize that we have a 2-year  
14 funding that we know of, we have a 2-year  
15 highway act that expires September 30th 2014,  
16 but the law says we will go into 15 and 16.  
17 We can kind of build in whatever we want to  
18 into that, either we're going to definitely  
19 have the same thing or we're going to have  
20 extensions, or there's some foresight as to  
21 what's going to happen overall that we're not  
22 aware of.

1                   But meanwhile, that's what we  
2                   have. There's some set-asides associated with  
3                   the program, specifically program  
4                   administration, transportation planning, the  
5                   eligible deficient bridges program, and then  
6                   the SAFETEA projects that are part of MAP-21.  
7                   These are all amounts that are within the  
8                   available \$450 million that's authorized.

9                   And then another set-aside is the  
10                  supplemental funding, and how that enters to,  
11                  and what the purpose of that was, is also  
12                  explained, and we'll talk a little about that.  
13                  Some of the eligible activities that are  
14                  associated with - again, this comes out of the  
15                  statute as to what it is - some areas that  
16                  have improved or changed or differed is,  
17                  particularly in the area of maintenance, it's  
18                  a little different from what was in SAFETEA-LU  
19                  and we'll talk a little bit about that. There  
20                  are - I know a number of tribes who have been  
21                  participating in that program under SAFETEA-  
22                  LU. Operation and maintenance of transit

1 programs and facilities - if it wasn't clear,  
2 or if it was a process of trying to develop  
3 that, it's clear now that that's identified  
4 specifically in this law.

5 And of course, what we've tried to  
6 emphasize in the rule-making process. It's  
7 interesting that a lot of what has been  
8 developed in MAP-21 are a lot of the areas  
9 that are in regulation right now but were  
10 developed as part of the tribal  
11 representatives that were in the rule-making  
12 at the time that 25 CFR was published back in  
13 2004. And one of them was that the tribes  
14 wanted to makes sure that any activity that  
15 was eligible in Chapter 1, the federal aid  
16 program, the big program that the states run,  
17 that those activities would be eligible also  
18 under this program as far as tribes being able  
19 to carry those out. Again, if it wasn't clear,  
20 certainly they took on that and they said it's  
21 another thing to note that all transportation  
22 - any transportation project that's eligible

1 under Title 23 is eligible under the Tribal  
2 Transportation Program. Of course the matching  
3 funds is a big part of that indication also.

4 The maintenance, of course,  
5 there's a change there. The big change, of  
6 course, is 25%, which was there before, or  
7 \$500,000, whichever is greater. The big  
8 change, in terms of how tribes can begin to  
9 manage and operate their programs. And then,  
10 of course, there's a lot of references that  
11 the Secretary of the Interior is still  
12 responsible for making sure that there is a  
13 budget established for purposes of Department  
14 of Interior Appropriations under TPA for the  
15 operation of Indian programs road maintenance.  
16 A little more about the set-aside again. Prior  
17 to getting funds out, these all have to come  
18 as a take-down from the amount that's  
19 available. It talks about how that  
20 supplemental is actually determined.

21 Some new definitions that are in  
22 there. You will recall that one of the big

1 definitions that was established back in 2000  
2 - excuse me, 1982, as Vivian mentioned, was  
3 the Indian Reservation Roads. We now have a  
4 Tribal Transportation Facility, and we also  
5 talk about Tribal Transportation Facility  
6 Inventory, and it has been expanded  
7 specifically where it relates to the funding  
8 formula also developed as the National Tribal  
9 Transportation Facility Inventory. The other  
10 program features that are in there - we  
11 mentioned the set-asides up above, but also in  
12 terms of being eligible for federal aid funds  
13 that are apportioned to the states. This is a  
14 big process that we've seen in recent years,  
15 particularly under SAFETEA-LU, when they had  
16 the demonstration project, they had a number  
17 of programs that are established as SAFETEA  
18 programs in which the states were - either  
19 wanted to or had worked with the tribes in  
20 being able to provide those funds, but there  
21 wasn't a mechanism to be able to do that. I  
22 think we've worked with a number of tribes,

1 both the Federal Lands folks, and BIA, and the  
2 tribes themselves, and really, the regions, to  
3 begin a process of making sure that we're  
4 including those as part of the agreements, and  
5 of course the whole concept is they then begin  
6 to look like, undertake the process of  
7 whatever the agreement mechanism, if it's  
8 self-determination, if it's self-governance,  
9 if it's Federal Highway agreement, or  
10 otherwise.

11 Program. As far as the  
12 administration of the program, one of the big  
13 things that was in SAFETEA-LU was that tribes  
14 have the ability to approve their own plan  
15 specification, an engineer's estimate, as long  
16 as they provide a statement of health and  
17 safety. There are also direct funding  
18 agreements and other agreements which are  
19 available to the tribes. The idea is that it  
20 gives the tribes much more flexibility in how  
21 they want to be able to implement a program in  
22 terms of performing those program functions,

1 services, and activities. Point of obligation  
2 is in there. It's a major factor in helping us  
3 to be able to get funds committed. In  
4 SAFETEA-LU you recall that funds became tribal  
5 shares. As tribal shares, the secretary of  
6 Transportation and Interior interpreted those  
7 to mean that they are associated with the  
8 tribe. Prior to that, as Vivian indicated, the  
9 funds may have been generated by share  
10 associated by tribes within the region, but it  
11 was based on need.

12 The change under SAFETEA-LU,  
13 certainly under TEA-21, the regulations looked  
14 at funds as being tribal shares and the result  
15 of managing them in that manner. When you do  
16 that, sometimes we don't have the opportunity  
17 to complete our negotiations within the fiscal  
18 year, so point of obligation is a mechanism  
19 for all Federal Land Management agencies.  
20 That's what that FLMA is, to be able to commit  
21 the funds in the system so they are not lost  
22 in that year and they're basically available

1 to be entered into an agreement mechanism with  
2 the tribe.

3 Planning asset management, a big  
4 part of what we're seeing in MAP-21 is the  
5 effort on the part of a lot of agencies and  
6 federal lands even within the Department of  
7 the Interior to begin the process of  
8 developing and working with asset management.  
9 And with the funds being really scrutinized,  
10 as you're aware, a lot of what Congress is  
11 looking at right now is where is the money  
12 going to come for the reauthorization? Where  
13 is the money going to come for what we  
14 currently have? So as a result of that,  
15 there's a big effort to say if we're going to  
16 put money out there, we need to have a plan,  
17 a process that we can identify as individual  
18 public authorities as how we move forward. And  
19 this is where we utilize the safety management  
20 systems, the pavement management systems,  
21 bridge management, and those systems are  
22 available for us to be able to plan and work

1 through that process.

2 Data collection - one of the other  
3 changes in MAP-21 is prior to this, when we  
4 were inspecting bridges for the purposes of  
5 replacing them, or rehabilitating them, or  
6 actually the responsibility that all public  
7 road bridge owners have to respond to, and  
8 that is making sure that they're inspected,  
9 making sure that they're safe, or the public  
10 is notified through signing or closure or  
11 those elements that whoever the public  
12 authority is, is in fact managing their  
13 bridges in that way. And under MAP-21, it  
14 specifically states, of course, that tribal  
15 public bridges have to be inspected, and they  
16 have to be included in the National Bridge  
17 Inventory, which is an inventory of all public  
18 bridges that are out there in the country.

19 Another area that we talked about  
20 is developing reimbursable agreements, part of  
21 the process of eligibility of funds.  
22 Reimbursable agreements in terms of being able

1 to work with the state DOTs, the counties,  
2 other agencies, from the standpoint of Federal  
3 Highways and BIA with the tribes, to make sure  
4 that they have the ability to include those in  
5 there, so that we're not in any way limiting  
6 the tribes in the mechanisms that they have  
7 available to them to enter into the  
8 agreements. And we've had a number of those  
9 that we've worked through with a number of  
10 tribes in different regions in the last four  
11 or five years. And of course, now you're  
12 beginning to see that in the statute and  
13 regulations.

14 At this point we will go over and  
15 start talking about the subparts, but before  
16 we do that, if there are any questions, as we  
17 start going through the process, feel free to  
18 - we have two microphones here in the aisle to  
19 come forward, and we'll acknowledge you, and  
20 you can ask your questions as we go along.

21 Subpart A is, we went through the  
22 regulations the way they are structured

1 currently is Subpart A through Subpart H. We  
2 have - the changes, of course, that we've  
3 seen, the major changes is in Subpart C, D,  
4 and a new I. And a little bit of an overview.  
5 Previous to this, it was called the Tribal  
6 Transportation Allocation Methodology. Now, of  
7 course, it's the new MAP-21 formula. Those  
8 aspects, which included a section in talking  
9 about planning, inventory, and the data that  
10 was necessary to run the formula, those are  
11 now - because of the way the formula has been  
12 put into statute, those portions that don't  
13 apply specifically to the formula are moved  
14 over to subpart D, which talks about planning,  
15 the inventory process, and how to get roads  
16 into the inventory, which is still a major  
17 emphasis that we have, but that's how it's  
18 been rearranged.

19 Subpart I, the last part the  
20 regulations has as a draft is - talks about  
21 the high-priority project program, which  
22 previously was in Subpart C, but we made a new

1 separate subpart for that, because it was  
2 deleted in Subpart C, Congress has seen fit to  
3 re-establish it under another program, through  
4 the General Funded program, completely  
5 separate from the Tribal Transportation  
6 program, and that'll be discussed there.

7           The way that our presentation is  
8 laid out, is we've got an overview and then  
9 we've got highlights. And the highlights  
10 portion, we actually are going to be talking  
11 a little more in depth about what's in there,  
12 and as we're going through this, keep in mind  
13 that we're talking about issues as they  
14 currently are in the draft, and for the most  
15 part, provisions and issues as they were in  
16 the existing 25 CFR 170. So as you begin  
17 looking at those, we're hoping that this  
18 process of an advance review and discussion  
19 will help to generate for you some ideas of  
20 things that you might think are necessary to  
21 either clarify, improve, change, recommend  
22 additions to these sections as part of it. And

1 of course the whole process of the layout is  
2 also up for discussion.

3 As Vivian and Andy mentioned this  
4 is very, very preliminary. The idea is to get  
5 an idea, to give you an idea of what's in  
6 there, and begin the process of making  
7 comments and providing input into that  
8 process.

9 Subpart A provides authority for  
10 the rule, gives the purpose and the scope,  
11 there's discussions about policies with  
12 respect to the program, not only the program  
13 but the BIA Road Maintenance Program as a  
14 whole. When do these policies and manuals and  
15 directives apply, and, of course, definitions  
16 are all a part of Subpart A. A big part of the  
17 definitions, you'll notice, is things that  
18 have come over from the previous, where things  
19 have changed. We noted the two big ones in the  
20 earlier one - presentation was the Tribal  
21 Transportation Facilities, and the National  
22 Tribal Transportation Facility Inventory. Our

1 authorities are, of course, MAP-21 itself, for  
2 two years at least, and 23 USC and 25 USC, and  
3 if you haven't had an opportunity, Federal  
4 Highways has posted on their website, 23  
5 United States Code as of October 19th which  
6 includes, pretty much, MAP-21. If you haven't  
7 had a chance to note that, it's an excellent  
8 reference. It's in a PDF file format. It's  
9 searchable, so you can look for keywords in  
10 there, and of course it's the whole Title 23,  
11 it reflects what would be in the public law  
12 that was published also and that's also on  
13 their website. I would encourage you, if you  
14 haven't, to download that, and as we get  
15 better coordination of our website, which is  
16 just up and running now, from the BIA  
17 perspective, for transportation, it'll be  
18 there also so you can download it from any  
19 location that you need to.

20 Subpart A provides rules and  
21 funding formula. The purpose of the rule, of  
22 course, is identified there. It's primarily an

1 emphasis of what came out of TEA-21. Congress  
2 said develop a rule through negotiated  
3 rulemaking. Develop a formula through  
4 negotiated rulemaking. And so the regulations  
5 are written from that perspective. And what  
6 we're looking now is - we still have a rule,  
7 we still have a formula. Those are the two  
8 basic parts of what is in there. The rule is  
9 also to develop in terms of information that  
10 would be associated with existing laws and  
11 regulation also. A big part of that is, is the  
12 Indian Self-Determination and Education  
13 Assistance Act. When the rulemaking committee,  
14 the tribal and federal representatives, went  
15 through the initial rule that's out there  
16 right now, one of the things that they were  
17 working on is those areas where they had  
18 authority. And obviously the attempt was not  
19 to change those provisions that were in 25 CFR  
20 900 and 1000, which is the regulations for  
21 Title 1: Self Determination Contracts -  
22 Construction, and Title 4: Self-Governance

1 Agreements, Annual Funding Agreements, and the  
2 construction there. So when you look through  
3 the remainder of the regulations, you'll see  
4 those being referenced in there, so that  
5 because those are still in place, they still  
6 apply. Where they do not apply - I'll give an  
7 example of this - where they do not apply is  
8 in areas where specifically the 23 USC has  
9 specifically changed that. As an example, we  
10 talked a little bit earlier about Title 23  
11 identifying that tribes have the ability to  
12 approve their own plan specification and  
13 engineers' estimate. If you look through 25  
14 USC and through the regulations associated  
15 with construction, you'll find that there's  
16 statements in there that basically says, no,  
17 that needs to go to the Secretary. The  
18 Secretary needs to be able to approve those.  
19 That was a lot of foresight, and by the  
20 negotiated rulemaking committee, because they  
21 began developing procedures to try and  
22 accommodate, for transportation purposes, the

1 ability for a tribe to do that. And there was  
2 currently, if you look at the regulations, it  
3 talks about second-level review, it talks  
4 about on the BIA side, on the tribal side, all  
5 of that is no longer applicable because what  
6 came about as part of SAFETEA-LU and of course  
7 what's in MAP-21. That is, tribes provide a  
8 statement of ability, indicating that they  
9 will comply with all health and safety.  
10 Basically, that approval process works there.  
11 And what the reg is trying to do here is, the  
12 portion that's there is, basically clarity  
13 that so that it's out there for everybody. If  
14 a tribe chooses to do that, as long as you  
15 provide that - that's not something that's in  
16 25 USC or 25 CFR in terms of 900 or 1000. So  
17 I wanted to make sure that for the most part,  
18 you understand that where it changes,  
19 specifically by Title 23, that it's in there.  
20 Where there's no mention of it, and it's a  
21 contractual procedure associated with Indian  
22 self-determination, we're going with 900 and

1 1000, to be consistent with that process,  
2 because a lot of the awards that are applied  
3 to 900 and 1000 are done by the  
4 self-governance director and the awarding  
5 officials at the regional level. This includes  
6 the policies regarding the Tribal  
7 Transportation Program, and again, as I  
8 mentioned the BIA Road Maintenance Program.

9 Idea again, that's emphasized in  
10 there, was to provide uniform and consistent  
11 rules, facilitating the knowledge of programs  
12 and one of the things that's in there in terms  
13 of the knowledge of programs is, you'll see in  
14 certain subparts, at the very beginning, a  
15 reference that this portion of the regulation  
16 is provided for information purposes only.

17 Where that occurs is because that particular  
18 program element is really the responsibility  
19 or authority of another agency, whether it's  
20 Federal Highways, whether it's EPA, and from  
21 that standpoint, we provided it here, really  
22 at the direction of the rulemaking committee

1 early on, was for that purpose of being able  
2 to have a resource that people could come and  
3 find out about hazardous waste and what you  
4 might be able to do in working with those as  
5 it applies to transportation.

6 Finding out how the Tribal  
7 Transportation Technical Assistance Program  
8 Centers work, even though that's handled  
9 through Federal Highways, through their  
10 contract section, as a cooperative agreements.  
11 But the information is there, which also leads  
12 us to - any of this stuff we can, we want and  
13 put out there for you to comment on,  
14 particularly if it's areas that you have a  
15 concern with.

16 Implementing policies, procedures,  
17 and practices. Obviously, in consultation with  
18 tribes about how we do that. That's a real big  
19 area of - that, as a program, certainly we've  
20 grown. Not saying that we're experts and we've  
21 accomplished all this, but here's a  
22 opportunity to continue to work through this

1 process, at this point where it is out here  
2 for discussion. Because as you know, as Andy  
3 indicated, as we get to the formal process,  
4 then it involves a lot more people that are  
5 looking at it from the standpoint of the  
6 different provisions that are out there, OMB  
7 and the department itself.

8 Advancing policies of tribal  
9 autonomy, that's emphasized in there.  
10 Recognizing contracting programs, PFSAs, in  
11 terms of it's associated with  
12 self-determination and self-governance. At the  
13 time that the regs were written, these were  
14 pretty much the agreement mechanisms that were  
15 out there. The agreement mechanisms that have  
16 come since then with SAFETEA-LU, of course, is  
17 a direct funding agreement with Federal  
18 Highways is established, and based on other  
19 authorities within 23 USC, the BIA has  
20 developed other agreements similar to the  
21 Federal Highway agreements, but both of them  
22 use as the basis sort of the backbone of what

1 they're looking at, even though they are  
2 identified as separate agreements, Indian  
3 Self-Determination and Self-Governance.

4           And those provisions are  
5 associated with that process of advance  
6 payments, of providing the flexibility of  
7 tribes to develop programs and similar types  
8 of activities are identified in there, so the  
9 basis for which we were doing those certainly  
10 now includes those new provisions that we use  
11 as part of the agreement procedures that  
12 tribes have the option to be able to work  
13 with. And of course a big part of this is  
14 tribes accepting the responsibility and  
15 accountability to people who they administer  
16 programs for, that's obviously part of most of  
17 everything we have and all the regulations  
18 that are associated with programs.

19           Advance self-determination and  
20 self-governance by, of course, always looking  
21 at it from the standpoint of, favorably for  
22 the tribes and the implementation, if there's

1 a question, look at it from that perspective.  
2 That's what the rule, and what was negotiated,  
3 and again, this is a continuation of that  
4 process. And facilitating the transfer of  
5 programs authorized under the highway statutes  
6 and Title 25, under the statutes associated  
7 with Indians, making sure that any ambiguities  
8 are ruled in favor of the tribe. And then one  
9 of them, of course, is that we've had some  
10 challenges with, is that when we come to  
11 specific issues that Title 23 has established  
12 regarding the transportation, the former IRR  
13 program, and I think we've been able to work  
14 through a number of these through the  
15 development of template agreements for  
16 self-governance, template agreements for under  
17 the direct-funded programs, under the Federal  
18 Highways, and template agreements under BIA in  
19 terms of providing that ability. If you look  
20 at some of these agreements of  
21 self-governance, for instance, the template  
22 there is approximately 10 pages long. And some

1 of you who were familiar with the contracts  
2 that are associated with back in the day,  
3 prior to the program being established, you  
4 had huge contracts that are really looking at  
5 performance-based contract requirements, and  
6 the new agreements are looking at basically  
7 this process of being able to say the  
8 facilitating and enabling the transfer of the  
9 programs - in other words, tribes, you know  
10 what the law is, you know what the  
11 requirements are, agreements state that this  
12 is how you're going to handle this according  
13 to this statute, this regulation, and then you  
14 perform it.

15 And the remainder of the  
16 agreements generally talk about how the fund  
17 are to be transferred. They generally talk  
18 about it in the area of accountability and  
19 review. There's still that process inherent to  
20 the government that we have to do, but those  
21 are things that we're looking at that are out  
22 there. How can that be improved? What are some

1 of the things that we need to be able to look  
2 at that is important as part of this  
3 regulation? All tribes participate in all  
4 contractual activities. A big part also is the  
5 changes that were made under SAFETEA-LU, and  
6 that continued under the new provisions under  
7 MAP-21, which is, how much is available for  
8 these activities, which are inherently  
9 federal, and what is really inherently federal  
10 in terms of these functions? You recall in the  
11 past, the BIA used to, in working with tribes,  
12 if there was any activity that was associated  
13 with a project, even if it was monitoring,  
14 inspection, doing the review, all of that, was  
15 referenced to the tribal shares portion of the  
16 program, and the BIA would hold that amount  
17 and go out and perform that work.

18 Well, SAFETEA-LU changed that, a  
19 big part of it. MAP-21 continues to sustain  
20 that process, and that is, if it is inherently  
21 federal function associated with not only the  
22 program but the project, it comes, those

1 activities are funded under the admin account  
2 that's associated with Title 23. So a big  
3 change there, and obviously, when you look at  
4 the regs as they are written there, there was  
5 some discussion as how to separate those out,  
6 and didn't really qualify or discuss  
7 project-related administrative expenses. It  
8 does now, from that standpoint, so keep that  
9 in mind that's one of the areas that's also in  
10 there as part of the change.

11 Looking at the agreements, not  
12 just the self-determination and the  
13 self-governance agreements, but all the  
14 agreements from the standpoint of a  
15 government-to-government meeting, being able  
16 to work with tribes from the perspective of  
17 not necessarily looking at it and saying I  
18 need you guys to give me your cylinder brakes  
19 for 7, 14, 28 days, send it to me by next week  
20 and we'll look at them. But now, the process  
21 is, you know what you need to do. There's a  
22 system at your level, within your operations

1 of what you need to do, what you need to  
2 comply with as part of AASHTO, ASTM, and  
3 Anthony, you're going to do your 7, 14, 28 day  
4 brakes and you're going to comply with the  
5 process. All we're looking now is - is the  
6 project moving, and what systems do you have  
7 in place to make sure those are happening? And  
8 that process is a big part of  
9 government-to-government as opposed to where  
10 we were at before.

11 The Subpart A also defines what the  
12 tribal transportation policy and guidance, the  
13 manuals and directives apply, how they apply  
14 to the TTP, pretty much consistent with what's  
15 in the self-determination act as a whole, and,  
16 of course, obviously, if they're consistent  
17 with those two regulations, in terms of  
18 program implementation, again, heavily  
19 referring back to self-determination and self-  
20 governance and connecting them with that  
21 emphasis that the tribes already have  
22 established procedures for. And also the

1 definitions that are used throughout the  
2 regulations are included in there.

3           Explains the rule. Talks about what  
4 does not affect existing tribal rights and  
5 does not affect tribal sovereignty and  
6 determine and reduce trust responsibilities.  
7 Again, areas that this - Subpart A was a big  
8 part of the policy process that was under the  
9 negotiated rulemaking back then and continues  
10 to be as we work through procedures with  
11 tribes and the coordinating committee, of  
12 making sure we continue with those concepts  
13 and ideas of being able to not limit or take  
14 away from those rights and authorities that  
15 tribes have under the law in their  
16 relationship as a government with the United  
17 States government, but in doing so, to help  
18 strengthen that, particularly in the  
19 Transportation area to provide that  
20 flexibility in performing the work associated  
21 with transportation.

22           As part of our presentation, as we

1 get going, we'll have timetables or key dates,  
2 much like we had in our earlier presentations.  
3 If there is a timetable, if there's a key  
4 date, we note that in there so you have an  
5 opportunity to see that, okay, this is  
6 something that would apply to BIA, to federal  
7 highways, to the tribe, to everybody. And  
8 these are timelines that need to be - that  
9 were established in the regs. And keep in mind  
10 that, with the exception of a few locations or  
11 areas that are in statute, for the most part,  
12 a lot of these dates are basically established  
13 by regulation, and if there are any changes to  
14 that, this is the avenue to be able to do  
15 that, as part of the update and amendment of  
16 the regulations.

17 The next part of it is, the way our  
18 presentations are laid out, is record-keeping  
19 or reporting requirements. And as you can see,  
20 in Subpart A, there's no key dates associated  
21 with it, and there's no record-keeping and  
22 reporting requirements for this subpart, but

1 if there are, if someone has to do something,  
2 provide a report associated either with a  
3 timeline or just a report, then it would be  
4 found in here and we'd highlight those as we  
5 go alone.

6 Okay, Subpart A, again, is pretty  
7 straightforward. It deals, as I mentioned,  
8 with the policies, the application of the  
9 program, its applicability, the definitions,  
10 and what the goals are of tribes and the  
11 federal government, the laws associated with  
12 that. As we get to Subpart B we'll talk a  
13 little bit more about the process of other  
14 stakeholders that we work with in terms of  
15 local and state governments and how they  
16 interact with the tribes in some of the areas  
17 that have been implemented there.

18 We'd like to take a 10-12 minute  
19 break at this point, while we load up the rest  
20 of the information, and then get started  
21 again. Thank you.

22 (Whereupon, the above-entitled

1 matter went off the record at 9:58 a.m. and  
2 resumed at 10:16 a.m.)

3 MR. GISHI: We're going to make an  
4 attempt to get some copies of what we can, at  
5 least for people that are here, of these other  
6 materials that we talked about this morning.

7 So hopefully before the day we'll  
8 have that for you, at least for reference  
9 material. Subpart B. Again, the development of  
10 the regulations, as I mentioned before, the  
11 format, the majority, I'd say, 90% of the  
12 material, 90% plus the material you're seeing  
13 in the draft regs is a material that was  
14 developed as part of the negotiated rule-  
15 making. The changes, of course, as I  
16 mentioned, the formula, the adjustments on the  
17 inventory planning section of Subpart D. But  
18 also the name, everywhere we go. But I  
19 apologize, if you look at your presentations,  
20 you may find areas - in fact, when we sent the  
21 draft regulations out for everybody, and the  
22 most obvious place that you never look is the

1 header of one of the parts to the rule, and it  
2 still had the term Indian Reservation Roads.  
3 So if you see that, Bob says that anybody who  
4 catches that and brings it to his attention  
5 will get at least a million dollars this year.

6 (Laughter)

7 MR. GISHI: Talk to Bob! We lost  
8 Bob. OK. Subpart B. Again, Subpart B talks  
9 about the tribal transportation program policy  
10 and eligibility. Primarily what we're looking  
11 at here in this part is - describes the three  
12 "C"s - coordination, collaboration, and  
13 consultation. Again, this is what's currently  
14 in the regulations. Very little of this, if  
15 any, has changed. Various - where we've tried  
16 to, where we have made some changes is to  
17 bring federal highways more into the loop in  
18 terms of those areas where it's applicable to  
19 them. Not all areas apply to them as an  
20 agency, but as we included those in there, we  
21 had some comments that we received to date  
22 that talk about coordination, collaboration,

1 and consultation, and wanted to insert  
2 communication in there. So those are some of  
3 the things that are out there. So this is as  
4 it's written with the three "C"s and how  
5 consultation responsibilities can affect the -  
6

7 Thank you. How this can affect and  
8 help the assisted tribes, tribal governments,  
9 in meeting their transportation needs. And  
10 then a big part of this, both the Subpart B  
11 and later on when we get to E and F, and  
12 certainly C and D, a big part of the  
13 regulation is the appendices to those  
14 subparts. In this particular case, the bulk of  
15 what Subpart B is, is the list of eligible  
16 activities in the program. And that's  
17 described here as both the eligible and the  
18 non-eligible activities. Keep in mind there,  
19 when the rule-making committee first got  
20 started with this, one of the things that they  
21 mentioned was they just took Chapter 1 of  
22 Title 23. And anything that was eligible in

1       there, they found a way to reference in this  
2       process so that it is an eligible activity.  
3       Primarily from a standpoint to not only help  
4       people who are looking at those, but also to  
5       make sure that as the federal government, in  
6       terms of working officials and other folks  
7       that were involved, that is was very clear  
8       that those activities are also eligible under  
9       the program in terms of these funds being able  
10      to be utilized for them. It was not written as  
11      an indication that these funds can, that these  
12      functions can only be performed with these  
13      funds, meaning that these are eligible  
14      activities and obviously these programs have  
15      funds associated with it, either through the  
16      federal aid program or other programs that are  
17      made available. And it tries to cover it from  
18      that perspective. But keep it in mind as you  
19      look at their maps, there's things that you  
20      have been working on that weren't clear in  
21      your agreement that are out there, that you  
22      feel needs to be included in that, this is the

1 avenue to make that recommendation and include  
2 that in there. And of course, one of the  
3 things I said early on was in these  
4 regulations as they exist, remember, you're  
5 dealing with regulations that were published  
6 prior to SAFETEA-LU. We got this published in  
7 November, became final in November of 2004,  
8 the first quarter of fiscal year 2005, and by  
9 the fourth quarter of fiscal year 2005 in  
10 August, SAFETEA-LU was passed, and a lot of  
11 those provisions that were in SAFETEA-LU  
12 changed what was in the regulation. And of  
13 course MAP-21 likewise made some of those  
14 changes. So when you're looking at some of  
15 these, keep that in mind that - and reference  
16 what might be in there. And we tried to couch  
17 most of those in terms of those provisions,  
18 but for the most part, as you go through this,  
19 take a look at those and be aware of those. It  
20 says in here "Road Maintenance is not an  
21 eligible activity." Well, prior to August  
22 2005, road maintenance was not an eligible

1 activity under this program with the exception  
2 of road sealing, which was something that was  
3 established prior to that, that was one of the  
4 activities that could be performed under that.  
5 Well, not only is it not eligible, but there  
6 is a set number, a set amount, and all of  
7 that's in part of the regulations. So those  
8 are areas, when we start looking at eligible,  
9 non-eligible activities, you want to zero in  
10 on, in terms of those.

11 Construction eligibility of all TTF  
12 - Tribal Transportation Facilities and other  
13 eligible activities, including some things  
14 that are very unique, and specific to the  
15 program are, that don't generally occur in  
16 other, at least in terms of other regulations  
17 or policies or manuals that are out there, and  
18 that is cultural access roads, housing access  
19 roads, these are very unique to tribal  
20 communities. A big area that we've seen a lot  
21 of changes in, is airport access roads, toll  
22 and ferry. Not so much toll, we've had people

1 dabble in that, but it's an eligible activity.  
2 And the ferry process, when you're looking at  
3 being able to develop, build facilities  
4 associated with the ferry docks or actually  
5 getting into the process of mass transit, the  
6 transit program out there includes ferries. So  
7 we've seen a number of tribes that have  
8 entered into this area, or to develop in  
9 conjunction with other programs, the Federal  
10 Aid program, or the Ferryboat Discretionary  
11 program deals with, and utilize these funds,  
12 again, with the whole idea that more is better  
13 in being able to do that.

14 Recreation and tribal tourism, a  
15 lot of tribes becoming very active in that  
16 process in terms of programs where they work  
17 closely with their state tourism groups, being  
18 recognized on an international level, and  
19 making sure that tribes are a part of that  
20 process in terms of telling their own story.  
21 How do you do that? Well, there's certain  
22 things you can do. There's organizations out

1       there that take on, facilitate that role, but  
2       certainly when you're looking at those areas  
3       that's an avenue that, again, are eligible -  
4       and the determination of whether you want to  
5       do it is certainly up to the program  
6       administrator, in this case, the tribe.

7                 Trails. Access roads, again, to  
8       airports. Transit facilities, as I mentioned.  
9       A number of programs - and we have a lot of  
10      programs where tribes are participating either  
11      as part of a regional transit program, or a  
12      state transit program, or their own program,  
13      where they've established ability to move  
14      people to and from schools, hospitals, work,  
15      and those functions.

16                Seasonal transportation routes, an  
17      area that is very unique to the regulations  
18      itself. We try to put in what we could that we  
19      knew of. Again, a lot of these areas are very  
20      unique in terms of how to implement these  
21      procedures, but we wanted to include them in  
22      there so that people who are marking trails,

1 who have the ability to - who do use those  
2 things, whether you're using snowmobiles or  
3 otherwise, those things are available also. It  
4 also covers the highway safety functions, and  
5 under the TTP Safety Program, or the TTP  
6 safety funds - we're still getting - having  
7 some difficulty saying TTP. Every once in a  
8 while we revert back to IRR. And the overall  
9 program as a whole, a big part of it - the  
10 emphasis has always been on safety, and I know  
11 the concern from the tribal perspective is  
12 everything under the TTP program is about  
13 safety, because the roads are very much in  
14 terms of improvements, we still carry with us  
15 that seventy-billion-dollar cost to construct,  
16 or cost to bring a road up to an adequate  
17 standard, which means there's a lot of roads  
18 out there that need improvement, and generally  
19 the improvement's associated with safety, pure  
20 and simple.

21 Discuss what activities, functions,  
22 and equipment may be eligible for funding.

1 Again, when we came from the old regulations,  
2 the old process, it was something that was not  
3 necessarily embraced. We have seen some real  
4 major changes in the programs in recent years.  
5 We do have procedures. We're hoping to  
6 continue to build on those about how we can  
7 continue to support tribal transportation, in  
8 terms of being able to utilize these funds for  
9 equipment, necessary equipment associated with  
10 that. The coordinating committee, it used to  
11 be the IRR-PCC, now it's the TTPCC, Tribal  
12 Transportation Coordinating Committee. Its  
13 purpose, its responsibilities, are there. As  
14 you recall, it was developed, again, through  
15 negotiated rule-making. A number of people  
16 have had specific concerns through the last 7,  
17 8 years relative to the committee itself.  
18 Again, this committee is not written in  
19 statute. It is in regulation. It is there so  
20 there's opportunities to make comments on  
21 that, as to what's working, what's not  
22 working, and the procedures that are

1 associated with that. And it also talks about  
2 the TTAC, the Tribal Transportation Assistance  
3 Centers, formerly known, and we still know  
4 them as, the Tribal Technical Assistance  
5 Program Centers, the TTAPS. Just in the law  
6 now it calls the TTAC. I think we'll still  
7 continue to call them TTAPS. So, familiarity,  
8 but it talks about how they are developed  
9 process and procedures as, for information  
10 purposes, as to how Federal Highway works with  
11 them in selecting and establishing those  
12 centers. As far as highlights, the three Cs,  
13 this portion provides not only definition, but  
14 also discusses how the government to  
15 government consultation and coordination  
16 policy, an area that certainly can always be  
17 built upon, and one of the areas that was of  
18 concern that we dealt with in the past and we  
19 continue to deal with across the board in all  
20 regions, and certainly in various locations  
21 with tribes, is that coordination,  
22 collaboration with the program, and how it

1 deals with within the government structure,  
2 within Interior, within Transportation. But in  
3 that next bullet, how that works in terms of  
4 that whole process of coordination and  
5 collaboration with state governments. We know  
6 that it varies. It's very diverse. What the  
7 department tried to put in there is to the  
8 extent that we could, to reinforce the process  
9 that really came forward from the tribes back  
10 at that time. And this is an area that  
11 certainly will be reviewed again, not only by  
12 the Department, but OMB, in terms of that  
13 process. We've seen a number of changes that  
14 have come about, including this  
15 administration's policy on consultation and  
16 some of the efforts that they have put  
17 forward. Those areas are places where we can  
18 continue to re-emphasize, re-word, support the  
19 process of consultation, particularly when it  
20 comes to working with state and local  
21 governments, and the tribes being able to get  
22 to that point of either being recognized as

1 part of the state, as a participant in project  
2 selection, project determination, and you all  
3 know that's very tough. That's a process that  
4 certainly involves a lot more effort on an  
5 individual basis, and even some arm-twisting  
6 at times. And, of course, how to prevent  
7 discrimination, what are the laws that are  
8 there, and the adverse impacts of that. And we  
9 all see that, that we've worked through at  
10 different aspects of the program or the  
11 previous years. The idea is to, again, how do  
12 we improve upon that? How do we change things,  
13 how do we re-adjust to that process as we go  
14 along?

15 Eligible uses of the funds as a  
16 whole. A big part of - again, that's a big  
17 part of this Subpart B is that list at the  
18 back. It talks about it. If there's areas that  
19 you've encountered - for instance, one of the  
20 issues that we encountered a while back was  
21 use of the funds in terms of operations and  
22 maintenance of transit facilities. It's very

1 general in there, but if there's things that  
2 you want to be able to recommend, and issues  
3 that you've encountered, this is your  
4 opportunity to put that in there, and get that  
5 recommendation in terms of what you want to be  
6 able to see. And, of course, from that  
7 process, we in turn would research it in terms  
8 of what's in the law, and be able to go "We  
9 have our ideas of what some of those things  
10 are, but we didn't want to just start writing  
11 willy nilly in this process of saying `This is  
12 how it needs to be'." We want to be able to  
13 get your input so as you look through this  
14 whole process, it's a lot of effort,  
15 particularly for 30 days, but we'd rather have  
16 it initially up-front for 30 days and then go  
17 through the formal process which will be a  
18 much longer period of comment, where we have  
19 the opportunity to re-look at what's out there  
20 and what's been recommended. Tribes, sometimes  
21 you have a unique use for the funds you want  
22 to be able to do, or see more and more of some

1 of the recovery projects that went out there  
2 that were non-transportation-related, that  
3 really started to try and utilize and stretch  
4 available funds that are out there, so we had  
5 a number of tribes that came in with proposals  
6 on what they could do relative to those  
7 projects that they were doing, but in support  
8 of that, utilizing funds from the  
9 transportation program, whether it's fiber-  
10 optic cables, other telecommunication devices  
11 that support tribal operations, those things  
12 that, if they need to be clear, they need to  
13 be defined, this is an opportunity to be able  
14 to include those in. And then the process for  
15 new uses is pretty much the same, and that is  
16 if you have a new use there's a process that  
17 you go through that you can recommend, whether  
18 it is a new use under the program associated  
19 with a Title 25 project or a Title 23-type  
20 project.

21 The definitions - there's  
22 definitions, restrictions, in terms of the

1 Tribal Transportation Facilities and Cultural  
2 Access Roads. Again, a lot of this was  
3 developed through the rule-making process for  
4 the purpose of tribes being able to establish  
5 routes that were cultural access routes and  
6 what were the criteria associated with that,  
7 and how should they be treated in terms of  
8 eligibility under this program. And we talked  
9 a little bit about all the other areas  
10 earlier, about what they entail in terms of  
11 those definitions also.

12 Coordinating committee, again, what  
13 are some of the things we want to be able to  
14 see in relationship to them? Right now we have  
15 the process pretty much defines what the role,  
16 the responsibilities are, what kind of a  
17 budget they have, what authority they have in  
18 establishing meetings, and the process of  
19 providing input and recommendation, what  
20 reports they have to provide, including  
21 updating both the Secretary of Interior and  
22 Secretary of Transportation on your

1 activities.

2 The TTAP centers - and again, this  
3 portion is for information purposes only, but  
4 as you read through it, you kind of get an  
5 idea at least of what Federal Highway goes  
6 though in terms of establishing these centers,  
7 what their role and their purpose is, what  
8 services they provide. Many of you may be even  
9 serving on some of the Board of Directors with  
10 the Regional Centers. They generally go out  
11 and request proposals every so often when  
12 those current agreements expire. This is a  
13 process they use. Comments on those are even  
14 welcome, in terms of what Federal Highways  
15 would be looking at. Because they have  
16 procedures that are established, and obviously  
17 they have to work through their folks in  
18 Contracts to do that.

19 Two big subparts, again, the  
20 appendices in this subpart are all the  
21 allowable uses of TTP funds. Appendix B to  
22 Subpart B talks about what kinds of

1       Transportation training and education  
2       opportunities that are out there, again,  
3       utilizing whatever resources there are for  
4       tribes to be able to provide that for  
5       themselves in terms of training and education  
6       opportunities.

7                   Timetables. Key dates. 17104 talks  
8       about what must the secretary do in terms of  
9       consulting with tribal governments before  
10      obligating funds, and this is from the  
11      perspective of the tribe - excuse me, the BIA  
12      being the primary direct service provider for  
13      tribes, and also from the standpoint of being  
14      able to provide notification of availability  
15      of funds, which at the time the regulations  
16      were written, the process was generally, we  
17      did have a lot more of the technology that's  
18      available now, and really, how the formula was  
19      written in terms of how we generate data to  
20      support the formula. When Bob talks about the  
21      formula, you'll begin to realize that from the  
22      perspective of what Congress put into law, was

1 what data is updatable, changeable, has an  
2 impact, is dynamic, has the ability to change,  
3 and what data is static is set in stone. And  
4 you'll be able to see where that is in terms  
5 of that. And as that process evolves, as we go  
6 through that, at least for these first two  
7 years, you'll begin to see that the formula  
8 now really is almost a process that follows a  
9 very simplified timeline and availability,  
10 particularly when we get to the formula and  
11 how it's generated. So from that standpoint,  
12 this - does this still apply, is there a  
13 mechanism that we can make available in terms  
14 of how we get information to the tribes as a  
15 whole. And by the way, if you haven't noticed,  
16 our BIA website, and Federal Highways website  
17 has the 2013 tribal shares posted. Bob will  
18 talk a little bit about that, when we get to  
19 the formula portion, at least referencing  
20 that, and then we'll bring up an image from  
21 the website as to what that is and how it  
22 flows in terms of how it applies to the MAP-21

1 formula.

2 Eligible uses, as far as, from the  
3 standpoint of utilizing TTP funds, it  
4 basically involves eligibility questions if  
5 they refer to Title 25, primarily a BIA road  
6 facility, or, let's say, a transit center  
7 operation that's included within Indian lands,  
8 on trust lands, associated with Title 25. Then  
9 the BIA will address those, those that are in  
10 general, that deal with other eligible tribal  
11 transportation facilities that are associated  
12 with a tribe, maybe on a state highway, maybe  
13 off reservation, providing access to or  
14 otherwise, then those would be handled through  
15 the Federal Highway Administration, and those  
16 proposed uses will allow, basically, approval  
17 on the use of those funds. In some cases it  
18 may be a broad approval, in other cases it may  
19 specific to that one location, but either way  
20 you'll find out about that in terms of a  
21 timeline within 45 days, as far as how the reg  
22 is currently stated.

1           The coordinating committee, record-  
2           keeping, and reporting. The coordinating  
3           committee will inform the secretary, the  
4           secretary and the tribes through an annual  
5           accomplishment report provided within 90 days.  
6           And currently how that's being addressed, of  
7           course, is the committee meets with the  
8           Secretary, his representative, the Assistant  
9           Secretary and the Federal Lands, Associate  
10          Administrator for Federal Lands, on an annual  
11          basis, and will provide not only  
12          accomplishment of what they've done, but also  
13          the concerns of the committee at the current  
14          time, issues that they're working on, and they  
15          generally try to meet once a year in  
16          Washington DC or if they have a meeting  
17          scheduled somewhere else, they will do that.  
18          But this describes how that process goes, and  
19          that it's within - they generally do it in the  
20          month of January, and this year they didn't  
21          get to do it, obviously, because we're in the  
22          very midst of the whole sequestration

1 discussion, and very visible in terms of what  
2 the political leadership wanted to see us  
3 doing, so we had to hold off on having that  
4 meeting until such time as we could get  
5 approval, and that's what we're going forward  
6 with folks with the committee to make that  
7 report available.

8 Questions? Questions before we go?  
9 This is again, primarily the portion that  
10 talks about a lot of the policies, procedures,  
11 the requirements, the laws, the areas that  
12 deal with administrative functions. As we get  
13 into the next section, we'll talk more about  
14 the funding formula, so if we don't have any  
15 questions on these two sections, I'm sure  
16 we'll have them on there - we've got a  
17 question here.

18 MR. LUJAN: Good morning. Ben Lujan,  
19 Ohkay Owingeh. One question in regards to the  
20 cultural roads. On there it's stated that  
21 they're public roads, but there's a lot of  
22 culturally sensitive places that we have

1 within the tribal boundaries, and we don't  
2 like the idea of it being a public road  
3 because anyone can access those areas at any  
4 time, and it's kind of disturbing to tribal  
5 council and traditional leaders that we're not  
6 able to maintain these roads, and if we do,  
7 they become public access. Is there any other  
8 way we can have this removed from the cultural  
9 areas, or cultural access area?

10 MR. GISHI: Good question. The  
11 question is, is how are cultural access roads  
12 to be treated, and the way that the  
13 regulations are written up is identifying them  
14 from the perspective that - first of all,  
15 identifying them. If they're going to be  
16 public roads, and referred to as cultural  
17 access roads, then associated with that is, of  
18 course, a public road has to follow certain  
19 criteria, because what you're looking at is,  
20 it's using public funds to be able to either  
21 improve them or maintain them. And this is  
22 basically what was stated in here, that if

1 that's the case then they can be cultural  
2 access roads, but they need to understand that  
3 they'll be identified as public roads, which  
4 means you treat everybody the same. Now there  
5 are some instances where certain roads are  
6 closed at certain times of the year, but  
7 they're closed to everybody, from that  
8 perspective. Now, if you're looking at  
9 limiting the road as a whole, then you can  
10 take them out of that designation, take them  
11 off the inventory form that perceptive, and  
12 we've had a number of tribes that have had  
13 roads removed. We've had timber-hauling roads  
14 up in the northwest that were removed from the  
15 inventory as public roads, and of course the  
16 whole process of maintaining them then falls  
17 on the entity that's doing it. And when they  
18 do that, they took that into account. Keeping  
19 that in mind, these are areas that - how do we  
20 treat them? Because prior to this, there was  
21 no specific way to deal with them. Working  
22 with your region office, and being able to not

1       only identify them, see what kind of  
2       documentation's associated with it, is  
3       probably the first step you need to take, but  
4       in that particular case, if it's public, then  
5       of course the rules of the law and regulations  
6       apply to it in terms of accessibility by the  
7       public. And you're right - if you don't want  
8       that, in some cases, we're able to, under the  
9       inventory procedure, is make them as  
10      maintenance-only, and from that standpoint,  
11      you weren't looking to really do anything  
12      other than keep them open when you needed to  
13      utilize them, but they were just that, they  
14      stay in the condition that they're in, and  
15      someone can't come and tell you "Oh, this  
16      needs to be improved" and you basically say  
17      "We're just maintaining this for this purpose,  
18      and you're at risk if you travel on these  
19      roads. We maintain them, but we're not doing  
20      anything more with that." There's different  
21      stages or elements that you can look at, but  
22      again, if you think there's something more

1 that can be done, if you want to reference any  
2 instances where that would change, this is the  
3 opportunity to do it.

4 MR. LUJAN: So with that, are there  
5 eligible funds for maintaining these roads,  
6 but not having public access to them?

7 MR. GISHI: If they are public  
8 roads, if they are in the inventory - and  
9 you'll notice, if you look in the inventory,  
10 there isn't a designation of "this is a  
11 cultural access road." It basically falls into  
12 categories of construction need, ownership,  
13 classification - but if it's in that  
14 inventory, it's a public road. It would be -  
15 but the priorities for establishing how you  
16 work with them is certainly up to you as a  
17 tribe. So that's how they occur in there.  
18 Otherwise, you can take them out.

19 MR. LUJAN: Thank you.

20 MR. GISHI: Any other questions  
21 regarding B? If not, I'll get the system set  
22 up for Mr. Sparrow, and he can take over. The

1 man of the hour.

2 (Pause)

3 MR. SPARROW: Before we go any  
4 further, I gotta pull this down a little more.  
5 One thing we failed to do this morning, and I  
6 apologize for it, is introductions. Either  
7 LeRoy and I are getting old, because we keep  
8 telling ourselves we've got to do  
9 introductions, then we get up here and we just  
10 start talking again. But I would like to -  
11 LeRoy, if you could grab the mic over there as  
12 well - I'd like to take just a couple minutes,  
13 go around the room, and do introductions, and  
14 then we'll get started with Subpart C. Thank  
15 you.

16 MR. FISHER: Good morning, everyone.  
17 I'm Gregory Fisher, from the Colorado River  
18 Indian Tribes.

19 MR. JACKSON: I'm David Jackson,  
20 Yavapai-Apache.

21 MS. WATHOGOMA: Debbie Wathogoma,  
22 Yavapai-Apache Nation.

1 MR. SASS: Mahoss Sass.

2 MR. LARGO: I'm Anthony Largo, I'm  
3 with the Reservation Transportation Authority  
4 in Southern California.

5 MR. WISLEY: Philip Wisley, with the  
6 Hualapai tribe.

7 MR. TRACEY: Good morning everyone.  
8 Willie Tracey, Jr., with Navajo Transit  
9 System.

10 MR. MAXWELL: Bob Maxwell, I'm with  
11 the BIA division of Transportation here in  
12 Phoenix.

13 MR. HOWELL: Gordon Howell,  
14 chairman, Northern Ute tribe.

15 MR. CHIMBURUS: Phil Chimburus, I'm  
16 with the Ute Indian tribe, council member.

17 MS. SISCO: Good morning, I'm Karla  
18 Sisco with the Southern Plains Tribal  
19 Technical Assistance Program at Oklahoma State  
20 University.

21 MR. MACKEY: Jim Mackey, Tribal  
22 Administrator of Susanville Indian Rancheria

1 in Northern California.

2 MS. BUTCHER: Rhonda Butcher,  
3 citizen, Potawatomi Nation in Oklahoma, self-  
4 governed structure.

5 MR. MULLER: Art Muller, citizen,  
6 Potawatomi Nation, Roads Director.

7 MR. SCHRADER: Jon Schrader,  
8 transportation planner with the Ho-Chunk  
9 Nation of Wisconsin.

10 MR. BLACKDEER: Brett Blackdeer, Ho-  
11 Chunk Nation.

12 MR. WILEY: I'm Syl Wiley, with the  
13 Yavapai-Prescott Indian tribe, as purchasing  
14 manager.

15 MS. PHILLIPS: Katheryn Phillips,  
16 accountant with the Yavapai-Prescott Indian  
17 tribe.

18 MR. BOURGOIS: Good morning. Peter  
19 Bourgois, tribal planner with the  
20 Yavapai-Prescott Indian tribe.

21 MR. BEGAY: Jonah Begay with Navajo  
22 Nation.

1 MS. HARDY: Good morning. LeNora  
2 Hardy, with the Navajo Nation.

3 MR. YOYETEWA: Merv Yoyetewa of Hopi  
4 Tribal Council.

5 MR. LOMAYAKTEWA: Good morning,  
6 Michael Lomayaktewa, Hopi tribe,  
7 Transportation.

8 MR. FRATT: Good morning, my name's  
9 Davis Fratt, I'm a Hopi Tribal Council member.  
10 Chairman of the Tribal Transportation  
11 Committee.

12 MR. LASARGE: Good morning, Charley  
13 LaSarge of the Muscogee Creek Nation, Tribal  
14 Roads Manager.

15 MS. BALLAY: Good morning, Shawna  
16 Ballay, public service department for the  
17 Isleta Pueblo, I'm the Executive Director.

18 MS. TRUJILLO: Good morning, I'm  
19 Kathy Trujillo, transportation division  
20 manager for the Pueblo of Isleta.

21 MR. JOHNSON: Steve Johnson, Gila  
22 River Indian Community.

1 MR. OLIVER: Good morning, Aaron  
2 Oliver, road director for the Cahto tribe.

3 MR. STROBEL: Andrew Strobel,  
4 Puyallup tribe of Indians.

5 MS. NESSE: Good morning, Annette  
6 Nesse, Jamestown S'Kallam tribe, Washington  
7 State.

8 MR. LANDSBERRY: Steven Landsberry,  
9 I'm with the Alabama-Quassarte Tribal Town in  
10 Wetumka, Oklahoma.

11 MR. MARTINEZ: Good morning. Alyn  
12 Martinez, with the Pueblo of Pojoaque, Public  
13 Works Director.

14 MR. GOHACHA: Good morning, Royce  
15 Gohacha with the Zuni tribe.

16 MR. ROBIDEAU: Good morning, Chris  
17 Robideau, Senior Vice President, Red Plain  
18 Professional.

19 MR. PETE: Good morning. Leonard  
20 Pete, Navajo Nation Tribal Council.

21 MR. CHACO: Morning. Paulson Chaco,  
22 Navajo Nation Division of Transportation.

1 MS. HAWK: Morning. Anjanette Hawk  
2 with Navajo Nation.

3 MR. ENDICOTT: Rob Endicott with  
4 Cherokee Nation.

5 MR. LYNN: Good morning, Michael  
6 Lynn. Cherokee National Transportation  
7 Director.

8 MR. SIMPSON: Tom Simpson, the roads  
9 engineer with Southern Plains Region.

10 MS. WEISS: Megan Weiss, from  
11 Seminole Nation of Oklahoma:

12 MR. CUTLER: Chris Cutler,  
13 Transportation Department Director, Seminole  
14 Nation of Oklahoma.

15 MR. BRONCHO: Morning everyone,  
16 Anthony Broncho, Shoshone-Bannock Tribes  
17 Transportation Director.

18 MR. BROWN: I'm Mike Brown, the  
19 Roads Program director for the Confederated  
20 Salish and Kootenai Tribes. We're on the  
21 Flathead Reservation in Northwestern Montana.

22 MR. RINGEL: Cordell Ringel.

1           Transportation consultant to the Assiniboine  
2           and Sioux tribes on the Fort Peck reservation  
3           in Montana.

4                       MR. RIKE: Good morning, I'm Stan  
5           Rike and I'm with WH Pacific, and I'm just  
6           senior.

7                       MS. ALVAREZ: Good morning, Sheilla  
8           Alvarez, Government Affairs for the Barona  
9           Band of Mission Indians.

10                      MS. RAZI: Good morning, Nahid Razi  
11           with the Barona Band of Mission Indians.

12                      MR. RUSSELL: Good morning, I'm  
13           Charles Russell with the San Carlos Apache  
14           Tribe.

15                      MR. ARISTA: Good morning, Ruben  
16           Arista with the Maidu Nation up north, Road  
17           Transportation.

18                      MS. SALIEGO: I'm Sasha Saliego with  
19           the Gila River Department of Transportation.

20                      MR. CONCHO: Good morning. My name  
21           is Raymond Concho, Jr., and I'm with the  
22           Pueblo of Acoma located in New Mexico.

1 MR. TIPTON: Good morning, I'm Steve  
2 Tipton, I'm with the Tohono O'odham Nation.

3 MR. ZEROKFAYON: Skook Sarek  
4 Zerokfayon.

5 MS. CASCADDAN: Good morning, I'm  
6 Beth Cascaddan, I'm an independent consultant  
7 for grants compliance management.

8 MR. LUJAN: Good morning everyone.  
9 Ben Lujan, Ohkay Owingeh in New Mexico, Public  
10 Works Division Director.

11 MR. ROYBAL: Good morning, Edward  
12 Roybal, Ak-Chin Indian Community.

13 MR. SMITH: Bart Smith, Ak-Chin  
14 Indian Community.

15 MR. HALL: Richard Hall, the  
16 Department of Transportation Director for the  
17 Mandan, Hidatsa & Arikara Nation in North  
18 Dakota.

19 MS. WALKER: Liz Walker, consultant  
20 with Transportation with the Affiliated  
21 Tribes.

22 MS. JACK: Jennifer Jack, with the

1 Salt River Pima-Maricopa Indian Community.

2 MR. MATTHEWS: Phil Matthews with  
3 the Salt River Indian Community.

4 MR. GOLDING: Good morning,  
5 everyone. My name is Brian Golding, Sr. I'm  
6 the Economic Development Director for the  
7 Quechan Indian tribe down by Yuma, Arizona.

8 MR. BROWN: Good morning, Michael E.  
9 Brown, Quechan Indian tribe.

10 MS. THOMAS: Audra Koester Thomas,  
11 Partners for Strategic Action.

12 MS. NUTUMYA: Good morning, my  
13 name's Meranda Nutumya, from the Hopi tribe.

14 MS. NADA TALAYUMPTEWA: Good  
15 morning, Nada Talayumptewa, Hopi tribe.

16 MS. FARREN TALAYUMPTEWA: Good  
17 morning, Farren Talayumptewa, Hopi Tribal  
18 Council.

19 MS. HONANI: Good morning, Rosa  
20 Honani, Hopi Tribal Council.

21 MR. SUMATZKUKU: Good morning. My  
22 name is Leroy Sumatzkuku, I'm a Hopi Tribal

1 Council Representative, member of the Hopi  
2 Transportation Tasking.

3 MR. SHUPLA: Fred Shupla, community  
4 planning office, Hopi tribe.

5 MR. GONZALES: Good morning, Ed  
6 Gonzales, Santa Clara Pueblo, New Mexico,  
7 Engineer.

8 MR. BENDS: Good morning to  
9 everyone. My name is Michael Bends. I'm the  
10 planning director for the San Xavier District  
11 of the Tohono O'Odham Nation in Tucson,  
12 Arizona.

13 MR. NELSON: My name is Wayne  
14 Nelson, I'm a tribal planner with the Fort  
15 Mojave Indian Tribe.

16 MR. JENSEN: I'm Eric Jensen with  
17 the Havasupai Indian tribe.

18 MR. WATAHMIGIE: Good morning, Don  
19 Watahmigie, Havasupai tribe. I think I'm at  
20 the wrong meeting, we don't have roads down in  
21 our canyon!

22 (Laughter)

1 MR. WARD: Hi, I'm Paul Ward, with  
2 Ward Consulting, currently working with Ft.  
3 McDowell Yavapai Nation.

4 MR. PAIVA: Good morning. My name is  
5 Andres Paiva. I work for McDowell Yavapai  
6 Nation.

7 MS. MCCALVIN: Erika McCalvin,  
8 tribal planner for Ft. McDowell Yavapai  
9 Nation.

10 MR. VEROV: Morning. I'm Vernon  
11 Verov, from Chuli River Tribe planning  
12 department in California.

13 MR. DALTON: Michael Dalton, Ili  
14 Shoshone tribe.

15 MS. STEWART: Kristen Stewart, from  
16 the Skull Valley band of Goshute Indians in  
17 Skull Valley, Utah.

18 MS. LORI BEAR: Good morning, Lori  
19 Bear, Skull Valley band of Goshute Indians in  
20 Utah.

21 MS. ANNETTE BEAR: Good morning, my  
22 name is Annette Bear from Skull Valley also.

1 MR. BONAR: Good morning. Paul  
2 Bonar, engineer with the BIA Western Division  
3 of Transportation.

4 MR. SPARROW: All right. Thank you,  
5 everyone. My name is Bob Sparrow. I'm the  
6 Tribal Transportation Program Director for the  
7 Federal Highway Administration in Washington,  
8 DC. I really appreciate you all taking time to  
9 come to this consultation session and listen  
10 about the updates to 25-CFR 170. Again, this  
11 is kind of in advance of the NPRM process. So  
12 we're looking for comments both here that can  
13 be recorded and sent into the docket before we  
14 go into that formal NPRM process. The idea  
15 here, though, is to still have this regulation  
16 updated by the end of the calendar year,  
17 because MAP-21, as Mr. Gishi said, is a 2-year  
18 bill. We're trying to get this updated to at  
19 least where we are today, and then we'll have  
20 to wait to see what the next "Son of MAP-21"  
21 or "MAP-21 A" or whatever Congress is going to  
22 call it, with the next highway bill. I also,

1 before I get started, I want to compliment Mr.  
2 Ed Gonzales, because he and I walked down here  
3 about 7:30 this morning, and, Ed, wave your  
4 hand back there. He's got the prime seat. He's  
5 down here pretty much before anybody, but it's  
6 good to see you.

7 OK, Subpart C. This talks about the  
8 Tribal Transportation Program Funding, and if  
9 you look at the existing 25-CFR 170 and this  
10 proposed rewrite, this is the section that's  
11 changed more than anything else. And it's  
12 changed because Congress gave us a statutory  
13 funding formula, and the formula that was  
14 developed through negotiated rule-making, and  
15 all the cost tables, the cost to construct,  
16 the VMT, those factors no longer are a factor.  
17 Nor is the inventory as a whole. So what I'm  
18 going to do is - we've got this same format to  
19 talk about, from a general overview, what's  
20 being changed, get into the highlights of  
21 what's in this section, and then if you want,  
22 we've got some additional slides at the end

1 that actually talk about the funding formula  
2 itself. And if you'd like, we can go into that  
3 when we're done with these basic slides.

4           So what is in this section? And  
5 again, I don't know if Mr. Gishi said, we've  
6 got additional copies of the proposed language  
7 changes and update to the reg being published  
8 or being printed now. We apologize, we had  
9 things sent out here, no one seems to be able  
10 to find them, so Dave's staff is back in the  
11 office making copies, and we'll have them for  
12 you by the time we get back from lunch. But  
13 Subpart C covers what we're now saying is a  
14 statutorily mandated methodology that's used  
15 to distribute the Tribal Transportation  
16 Program Funds. It also includes information on  
17 planning and inventory, and how those two work  
18 together. It provides an update of what the  
19 new BIA, or what the new, quote, inventory,  
20 IRR inventory as we used to call it, is now  
21 called the National Tribal Transportation  
22 Facility Inventory. Very clear, in statute

1 now, what is in that inventory. Also talks  
2 about general data appeals, which really comes  
3 down to data appeals on the formula, not  
4 really general any more. Flexible financing is  
5 also part of this subsection. What you'll  
6 notice is not part of this subpart that was  
7 previously is the IRR High-Priority Program,  
8 IRR-HPP. Congress has said that that subpart  
9 no longer is in effect, or that particular  
10 program is no longer in effect. But what they  
11 have done is they have established a brand new  
12 program beyond the tribal transportation  
13 program, that is pretty much the same  
14 identical thing. And we'll talk about that.  
15 All that information has been put into Subpart  
16 I. The thing right now to remember about that  
17 program, though, is the fact that HPP is not  
18 funded from the Highway Trust Fund. It's not  
19 funded out of the TTP Program. It is funded at  
20 30 million dollars, but it is funded out of  
21 the General Fund, the Congressional General  
22 Fund, and because it's been set up that way,

1 it requires an additional specific action by  
2 Congress to receive funding. When Congress  
3 passed the appropriations bill for the rest of  
4 this fiscal year, it did not include funding  
5 for that program. So as of right now, the high  
6 priority program is not funded. Maybe next  
7 year it will be, but for this year it is not.

8 Highlights. We said the biggest  
9 change is the funding formula. You'll see a  
10 diagram of the funding process. There was a  
11 diagram in the old rule, there's a brand new  
12 diagram in this new updated version that shows  
13 what Congress is telling us what to do.  
14 There's a description of each set-aside. There  
15 are five set-asides. Planning. It's still 2%.  
16 So it's a 2% set-aside out of the \$450 million  
17 dollars that's designated and provided to the  
18 tribes for transportation planning. No changes  
19 from what it was before.

20 2% bridge. For those of you who  
21 have been around the program for a while,  
22 you'll remember under T21 there was a bridge

1 program, and it was funded as a take-down out  
2 of the IRR. And then when SAFETEA-LU was  
3 passed in 2005, the Bridge program became a  
4 stand-alone program. It broke out from IRR,  
5 and it was funded separately at \$14 million  
6 dollars a year. What has happened now is kind  
7 of a little step backwards. The bridge program  
8 is now funded out of the main \$450 million  
9 dollars like it was from 1998 to 2005. Not  
10 only that, unfortunately, because it's 2%, the  
11 program itself has been reduced. Under T21, it  
12 was \$13 million dollars. Under SAFETEA-LU, it  
13 was \$14 million dollars, and now, 2% Bridge  
14 equals \$9 million dollars.

15 There's a new program which we've  
16 talked about, or maybe you've heard us talk  
17 about, or you've been on some webinars, called  
18 Safety. There's \$9 million dollars, or 2% of  
19 the program, set aside specifically for tribal  
20 safety projects and activities. There's a  
21 notice of funding, a NOFA, that's out there  
22 now, soliciting comments. Those comments are

1 due by May 30th. We can talk about this a  
2 little bit later this afternoon, but it talks  
3 about the proposal on how those projects, or  
4 how that program will be funded for what  
5 activities the funding will be made available,  
6 and then also a time frame for a call for  
7 projects themselves.

8 Program Management and Oversight is  
9 the PM&O Funds that BIA, BIA-DOT and Federal  
10 Highways used to administer the program. It  
11 pays for the tribal, the TTAP centers, it pays  
12 for the coordinating committee, it pays for  
13 technology improvements, but it pays Federal  
14 Highway and BIA primarily to do the  
15 stewardship and oversight for the program.  
16 It's historically been 6%. It continues at 6%.  
17 Then there's a fifth supplement called  
18 Supplemental. Or fifth set-aside called  
19 Supplemental. When you look at the funding  
20 formula itself, this is about \$104 million  
21 dollars, and then Congress tells us what to do  
22 with that \$104 million dollars. But all of

1 these come out before you ever get to the  
2 formula itself. When you get to the formula  
3 it's three factors. It was three factors, at  
4 least it remained three factors. But you've  
5 got a mileage factor. And the mileage factor  
6 is only good for certain parts of the mileage  
7 that's in the inventory. It's the BIA roads  
8 that are in the inventory as of FY12, it's the  
9 tribal-owned roads that are in the inventory  
10 as of FY12, and it's non-BIA, non-tribal roads  
11 that were in the inventory on October 1, 2004.  
12 Of all the roads that are in the inventory,  
13 that 150,000 miles of road, plus or minus,  
14 that's in the inventory today, about 65,000,  
15 plus or minus, miles of those roads are all  
16 that generate funding.

17 The other thing it says about the  
18 formula with the mileage factor is we have to  
19 use the FY12 inventory. So as you add  
20 additional tribal or BIA or non-BIA non-tribal  
21 roads to the inventory, for all - what's the  
22 words I'm looking for? - thank you! Purposes!

1 It's been a long week. For all intents and  
2 purposes, this particular factor is frozen. It  
3 won't change. Until Congress changes. It tells  
4 us to use FY12 BIA, FY12 tribal, and FY04 non-  
5 BIA non-tribal. That's it.

6 Population. Population is another  
7 factor, similar to the factor that was used in  
8 the previous funding formula. It's at a higher  
9 percentage, but it's the most recent NAHASDA  
10 numbers that are provided to BIA and Federal  
11 Highway from HUD. Whatever the most recent  
12 numbers from HUD are, are the numbers, by law,  
13 that we have to use. I know right now  
14 NAHASDA's going through a negotiated  
15 rulemaking process and that there's some  
16 proposed legislation that I understand might  
17 be announced some time in the next month or  
18 two, is what I read this morning. So keep an  
19 eye on what comes out of the negotiated rule-  
20 making at NAHASDA, and how it may or may not  
21 affect you. The issue to remember here,  
22 though, is if you come up to LeRoy, or you

1       come up to me, and you say "Our NAHASDA  
2       numbers are wrong," we can't change it.  
3       Congress has told us that whatever the most  
4       recent numbers are that you receive from HUD  
5       are the numbers you have to use in this  
6       formula.

7                        Last factors. Historic share  
8       percentage. And what they're doing there is  
9       they're looking at the history of the tribal  
10      shares that the tribes have received, from  
11      2005 through 2011, pretty much during the time  
12      frame that SAFETEA-LU was in order and  
13      operating. And a certain amount of money is  
14      given to each region, and then it's divided  
15      within the region based on your tribe's  
16      percentage of how much money within the region  
17      you received over that 7-year period.

18                      Also in there, there's a question  
19      and answer about the tribal supplemental  
20      allocation Funding, and how that's  
21      distributed. I told you, it's \$104,375,000, or  
22      something like that. Congress clearly tells us

1 "Here's the formula to determine the  
2 supplemental Funding, and here's how you will  
3 distribute it amongst the tribes. The last  
4 thing that's in there is the four-year  
5 transition, and describes how that four-year  
6 transition works, which I think is kind of  
7 interesting, since it's a two-year bill but  
8 they gave us a four-year transition. The first  
9 year, this particular year, once you go down  
10 through all the set-asides, we have to take  
11 and look at an amount in FY11, and grab 80% of  
12 that money, the dollar amount that was  
13 distributed in FY11, and make that available  
14 to the tribes in the exact same tribal share  
15 amounts as FY11. So the supplemental comes in,  
16 and try to help make the tribes whole, if  
17 they're negatively impacted by the whole new  
18 process versus the old process. We've got some  
19 slides at the end of this, which we can go  
20 into more detail if you're interested, but for  
21 the most part, under the Formula section of  
22 Subpart C, what we have tried to do is

1       literally cut and paste what's in MAP-21 and  
2       put it in the Q&A type format of the  
3       regulation.

4                   The next section in Subpart C talks  
5       about planning. How are inventory and planning  
6       related? How do you develop your long-range  
7       transportation plan? And how, from that long-  
8       range transportation plan, can you get roads  
9       in the inventory? Again, it's 2%. And what  
10      money can you use? Again it references that 2%  
11      planning funds, just like we had from the  
12      start of the old rule that came out of  
13      negotiated rule-making. There really isn't any  
14      changes. Would have been nice if there were a  
15      little more percentage of set-aside, but  
16      that's the way it turned out.

17                   The next section in Subpart C talks  
18      about the National Tribal Transportation  
19      Facility Inventory. I'm having a hard enough  
20      time going to TTP from IRR; like LeRoy was  
21      saying, they were giving us a hard time in  
22      Alaska, saying every time I say IRR it was

1       supposed to be another million dollars. So  
2       that was kind of a joke going on up there. But  
3       it used to be easy to say "The IRR Inventory".  
4       Now we have to say "The NTTFI, or the National  
5       Tribal Transportation Facility Inventory" and  
6       it just doesn't roll off the tongue the way it  
7       used to. But anyways, the statute identifies  
8       what is included in this inventory. Again, cut  
9       and paste right out of MAP-21 and put it in  
10      here. And then, not only is it - identifies  
11      what's included, but it identifies which one  
12      of those facilities actually will contribute  
13      to the mileage factor of the formula.

14                       So it says NTTFI and 23-USC 202 B1B  
15      - and that's what referenced in MAP-21, and  
16      ultimately coded, now, in US Code - again,  
17      this is pretty much cut and paste "is a  
18      comprehensive national inventory of tribal  
19      transportation facilities that are eligible  
20      for assistance under the TTP. Includes  
21      facilities that were included in the BIA  
22      system of inventory prior to October 1 2004.

1 Were owned by an Indian tribal government, or  
2 owned by the BIA. Were constructed or  
3 reconstructed with funds from the highway  
4 account of the Transportation Trust Funds  
5 under the IRR program since 1983. Public roads  
6 or bridges with any exterior boundary of  
7 Indian reservations, Alaskan Native villages,  
8 and other recognized Indian communities,  
9 including communities in the former Indian  
10 reservations in the state of Oklahoma in which  
11 the majority of the residents are American  
12 Indians or Alaskan Natives. Or are public  
13 roads within or providing access to an Indian  
14 reservation or Indian Trust land, etc. etc.  
15 etc. Or are primary access routes proposed by  
16 tribal governments, including roads between  
17 villages, etc." So you can read that.  
18 Honestly, what can go in the inventory isn't  
19 changed from what was in SAFETEA-LU. In  
20 SAFETEA-LU it said "Here's the facilities that  
21 can be part of the inventory." The only  
22 difference is - have we still got our pointer?

1 Or are we leaving out a plane? I can't use it,  
2 that's too light. The only difference is an  
3 identification of these roads, and then saying  
4 "In the law, it says when they go to do the  
5 mileage and calculate the mileage, only these  
6 three items in red can count towards that  
7 mileage calculation." So these are, again,  
8 2012, at the end of FY2012 inventory, whatever  
9 was in the BIA roads, those go in. Whatever  
10 was in the 2012 that were tribal roads, those  
11 go in. The other roads, that were non BIA,  
12 non-tribal, go back to 2004.

13 The inventory - the regulation will  
14 say that the inventory still requires the BIA  
15 regional offices to maintain and certify and  
16 enter the data in for the regions. So that  
17 process really hasn't changed. You're the ones  
18 that have to look at it and approve it before  
19 it gets to BIA-DOT.

20 Data appeals. When Congress says  
21 "Use the FY12 inventory, and the inventory is  
22 closed" that mileage factor is closed. The

1 third factor that says "Historic tribal  
2 shares", that's pretty much a straight factor,  
3 and that's closed. Again, the only one that  
4 you can really appeal from the formula  
5 perspective would be your NAHASDA numbers. But  
6 you can't appeal them to us. You have to  
7 appeal them to HUD. Because again, Congress  
8 has said "Federal Highway, BIA, whatever  
9 numbers you get from HUD are the numbers you  
10 have to use." So again, the only really  
11 appealable numbers for the formula are the  
12 NAHASDA numbers that have to be appealed  
13 through HUD.

14           There's a section in Subpart C that  
15 talks about flexible financing and how you can  
16 use your TTP funds to generate additional  
17 funds and work with a bank or work with some  
18 other debt lending facility, let's say, to  
19 get, maybe, projects done in advance. This  
20 part really did not change at all from what  
21 was written in the previous regulation. What  
22 you'll notice, if you remember, in Subpart C,

1 there was a lot of appendices in Subpart C  
2 that talked about cost to construct, it talked  
3 about the formula, because, remember, VMT,  
4 cost to construct, and population, were the  
5 three factors of the old formula. So there  
6 were pages, and pages, and appendices, on how  
7 do you determine cost to construct. How do you  
8 do functional classifications? How do you do  
9 this? That chart that talks about what roads  
10 future ADT, etc, etc. Those are no longer in  
11 Subpart C, because it doesn't matter what the  
12 functional classification is. It doesn't  
13 matter what the cost to construct is. The only  
14 factor that's generating anything from the  
15 roads themselves is that first mileage factor,  
16 and it's just strictly mileage. What we have  
17 done, though, is taken a majority of those  
18 appendices, and we've put it in Subpart D,  
19 which talks about design, which talks a little  
20 bit more about the inventory, because although  
21 anything that you add to the inventory now  
22 will not generate money for your tribe under

1 this current law, there's nothing out there  
2 that says the law isn't going to change.  
3 Federal Highway looks at MAP-21 as really  
4 being a transition type highway bill.  
5 Historically, the previous bills have all been  
6 five, six years. This is two years. We had  
7 nine extensions to SAFETEA-LU. That's not to  
8 say we - and hopefully we don't have another  
9 nine extensions to MAP-21. But when it comes  
10 to inventory, I encourage you to continue to  
11 use your 2% planning and whatever funds that  
12 you need to continue to update the inventory.  
13 Get the eligible facilities into the  
14 inventory. Get the cost to construct updated  
15 that's in the inventory. Thank you.

16           Because the fact is, this is a two-  
17 year bill. We don't know what's coming down  
18 the road. We don't know if we're going to go  
19 back to a cost to construct factor. We just  
20 don't know. And it's better to stay current  
21 with your inventory, because who's to say that  
22 Congress doesn't come back and adds another

1 factor, and says "Use the FY15 inventory." And  
2 if you haven't got your stuff upgraded,  
3 updated, and it's now FY15 and you've lost  
4 that process, you're down a year. And it might  
5 say "Use the FY15 inventory, and it's locked  
6 at that." Well, then you're locked in that  
7 you've lost that money for ever how long the  
8 next bill goes. So because of that, please  
9 continue to keep your inventory updated. I  
10 think it will benefit you all in the end, and  
11 you don't want to be caught behind.

12 Timetables. NAHASDA numbers. You've  
13 got info from HUD that says about us getting  
14 the most current numbers, and you working  
15 through HUD. The inventory updates, like I  
16 say, we're still looking to update the  
17 inventory every year, looking through that  
18 March date and trying to get an FY13, an FY14,  
19 an FY15 inventory finalized, even though it's  
20 only the FY12 inventory that's going to  
21 generate money.

22 Record-keeping and reporting. The

1 BIA regions or Federal Highway actually  
2 provide necessary documentation to a state  
3 infrastructure bank to help with this whole  
4 flexible financing. BIA regions and the tribes  
5 should continue to ensure - I already covered  
6 that, I'm sorry. And that's pretty much all,  
7 now, that's in Subpart C. It focuses strictly  
8 on the formula, for the most part. I've got  
9 some additional slides, if you would like to  
10 see how the formula works. But that's your-  
11 all's call. Yea or nay?

12 (Off-mic comment)

13 MR. SPARROW: Please. Up the  
14 microphone, identify yourself, if you would  
15 please. Yes, turn it on.

16 MR. OLIVER: Aaron Oliver, Cahto  
17 tribe of Laytonville, California. Who  
18 determines the regional share percentage? How  
19 are tribes consulted with that, and the cost  
20 to construct applied to that regional share  
21 percentage. Who determined that?

22 MR. SPARROW: The third factor of

1 the formula? I can go into that here in a  
2 minute. This describes how that whole process  
3 works. And it's - quite honestly, the simple  
4 answer to your question is "Congress tells us  
5 how it goes out."

6 MR. OLIVER: The regional share?

7 MR. SPARROW: The regional share.

8 MR. OLIVER: Who determines the  
9 percentage in the region, though?

10 MR. SPARROW: It's all done by the  
11 formula. Again, I can explain that in a little  
12 bit more detail.

13 MR. OLIVER: Because in our region,  
14 tribes in our region, California/Pacific, we  
15 have 108 tribes. Some of our tribes, in, let's  
16 say, one county there are seven tribes. And  
17 yet the regional share differs dramatically.  
18 So how does that happen?

19 MR. SPARROW: I can explain how the  
20 formula would work, and maybe that would  
21 answer your question. Okay?

22 MR. OLIVER: Okay.

1 MR. CUTLER: Chris Cutler, Seminole  
2 Nation of Oklahoma. In one of your slides, you  
3 were pointing to those three items that were  
4 highlighted in red, saying those were the only  
5 mileage things that contribute to the road  
6 mileage. But I guess maybe I missed the fourth  
7 one that was there? Roads that were  
8 constructed with IRR funds since 83?

9 MR. SPARROW: Those - those are  
10 roads that can be in the inventory, but when  
11 we come to generating the mileage factor, are  
12 not included in the mileage. It's only the  
13 first three that were identified. They can be  
14 in the inventory, just like other non-BIA,  
15 non-tribal roads, but although they're in the  
16 inventory, they won't generate part of that  
17 mileage factor or be included in the  
18 generation of that mileage factor.

19 MR. ENDICOTT: Rob Endicott,  
20 Cherokee Nation. One of the slides said that  
21 the - it will still be the Bureau or the  
22 government's job to review and certify and

1 enter the data in the inventory. Should that  
2 be revised now to say that the government's  
3 job should be to review and certify the data,  
4 as opposed - Because now the tribes have taken  
5 over entering the data into - is that?

6 MR. SPARROW: You are correct.

7 MR. ENDICOTT: Thank you.

8 MR. SPARROW: It will be corrected.

9 MR. ENDICOTT: Thank you for  
10 allowing me to speak.

11 MR. SPARROW: Mr. Endicott, thank  
12 you for speaking. Okay, thumbs up on talking  
13 a few minutes on the salon. Another question?  
14 Mr. Pete, you have to go second, sir. Just  
15 hold on a second, Mr. Pete.

16 MR. PETE: Good morning. Leonard  
17 Pete from the Navajo Nation. In your last  
18 overhead, recordkeeping/reporting requirement,  
19 BIA region and the tribes should continue to  
20 ensure that NTTFI is sufficiently updated to  
21 provide all necessary information indicating  
22 the new, and the condition and construction

1 cost of all proposed and existing facilities.  
2 According to the formula, what they only use  
3 is the population, the mileage and then also  
4 the mileage, and then also the percent, the  
5 historical percent funding. If the cost to  
6 construct and then the need is not considered,  
7 then why keep record of all these things?  
8 That's a waste time. Am I misunderstanding you  
9 on that?

10 MR. SPARROW: Thank you, Mr. Pete.  
11 When it comes to, again, the inventory, you're  
12 absolutely correct in saying "Anything I do to  
13 update my inventory now is not going to  
14 generate more money for me." That's a true  
15 statement. All I am saying, from the director  
16 of the program perspective, nationally, is "We  
17 don't know what's going to happen in 2015."  
18 And the formula may change. Or Congress may  
19 say "Don't use the mileage in your 2012  
20 inventory, use the mileage in your 2015  
21 inventory. Or use these additional factors."  
22 We just don't know. When I'm saying they

1 should continue, it's more of an encouragement  
2 to you all, so that when the new bill comes  
3 out, if the formula is changed, your data is  
4 current. Will it generate more money for you  
5 now? No. Could it generate more money for you  
6 starting in 2015? Absolutely. Because if you  
7 wait till 2015 to update it, you may miss the  
8 bus and have to wait till the next  
9 reauthorization. That's all I'm trying to say.  
10 Yes ma'am.

11 MS. JACK: Jennifer Jack with the  
12 Salt River Pima-Maricopa Indian Community. I  
13 just have one item to mention for  
14 clarification. It talks about the different  
15 set-asides, and then in section 170.203, it  
16 talks about how the planning funds are made  
17 available, but nothing in the regulation  
18 really specifies how the other funds are going  
19 to be made available to the tribes. Bridges,  
20 safety. I know you mentioned in the  
21 presentation that there's going to be a NOFA  
22 and call for projects, but the regulations

1 don't really specify how that money is being  
2 made available to the tribes.

3 MR. SPARROW: Very good comment.  
4 When we put this together - well, first of  
5 all, let me go back. For the bridge, there's  
6 another set of regulations for the bridge. 23-  
7 USC 661 is the regs that cover the bridge  
8 program. They're in the process of being  
9 updated as well, and going through the  
10 clearance at Department of Transportation  
11 before they're brought out, really, it changes  
12 IRR to TTP, and there's really no change in  
13 how that program will develop. The 2% safety,  
14 there are no regulations for the 2% safety,  
15 but because it's viewed as a discretionary  
16 program, that's why there's a NOFA out there  
17 now, and from that NOFA they will issue a call  
18 for projects. So it's really contained in that  
19 NOFA and the call for projects, how that  
20 money's going to go out. We had a timing  
21 issue here, quite honestly. We're trying to  
22 come out with these, and the safety is still

1 kind of underway at the same time. If we can  
2 coordinate that when we get to the NPRM, we  
3 definitely will, but right now we don't have  
4 anything to put in here. Okay? And I'll talk  
5 about the safety here shortly, or this  
6 afternoon.

7 This is a copy of the funding  
8 diagram. I'll try to go through this in the  
9 next 15 minutes, so then we get out for lunch.  
10 I gotta be ambidextrous here. The money is  
11 authorized, \$450 million dollars a year. Then  
12 we have five statutory set-asides, the  
13 administrative expenses, PM&O, and each one of  
14 these has a statutory reference to them. 2%  
15 planning - this is 6% - 2% planning, 2%  
16 safety, 2% bridge, and the supplemental  
17 Funding. The safety funds are made available  
18 directly to the tribes directly through the  
19 safety program. The Bridge program funds are  
20 made available to the tribe through the  
21 bridge. They're not part of the tribal shares  
22 at all. The tri-station planning funds are

1 made available to the tribes as that 2%  
2 planning based on your tribal shares. So once  
3 those five come down, we have the FY11 shares  
4 based on the RNDP and PAF percentages, that's  
5 one of the factors. We have supplemental  
6 Funding, that's one of the factors. And we  
7 have the tribal shares that are calculated  
8 through the formula. And they all add up to be  
9 the tribal shares. So we start off with the  
10 funding formula itself. After we take out  
11 those five set-asides, 2% for planning,  
12 bridge, and safety, 6% for PM&O, and the  
13 tribal supplemental funding, we have three  
14 factors, as I said earlier, in the funding  
15 formula. The first factor is mileage. 27% of  
16 the money that's made available, by the time  
17 we get down to this funding formula, 27% goes  
18 to mileage. Congress says "The eligible  
19 mileage shall be computed based on the  
20 following facilities in the FY12 inventory.  
21 Roads that were included prior to 2004, which  
22 were the non-BIA, non-tribal, roads by the

1 tribal government, and roads by the BIA. The  
2 second factor is the 39%, and that's the  
3 NAHASDA population. This used to be 10% under  
4 the - 20%. So it's doubled in its importance  
5 in the funding formula. But it's the same  
6 factor, but it's the most recent data. Again,  
7 so, June or July every year we get numbers  
8 from HUD, and those are the numbers that we  
9 use to calculate the funding tribal shares the  
10 following year. Yes? Mr. Gishi, you have a  
11 question?

12 MR. GISHI: Yes, LeRoy Gishi, BIA  
13 Transportation. One of the things I wanted to  
14 - since we have a number of California tribes  
15 here, I wanted to point out, if you begin to  
16 look at - and as we go back east, we will also  
17 mention it in Minneapolis, also, there are a  
18 number of tribes that have been newly  
19 recognized tribes. So you look at this  
20 formula, and it says in there you have to have  
21 a database that includes non-BIA, non-tribal  
22 routes prior to 2004. Well, if you weren't

1 recognized until 2009, you don't have any for  
2 that to show. If you were only recognized in  
3 the last year or two, you haven't had a  
4 opportunity to develop a road inventory even  
5 for BIA and tribal roads, you probably don't  
6 have any miles associated with that also. If  
7 you're so newly recognized that you haven't  
8 developed a relationship with HUD to develop  
9 a housing need, you probably don't have a  
10 population in that database. And we have 26  
11 tribes in the 2012 database, that's used for  
12 this year's allocation, 26 tribes that has 0  
13 population in the NAHASDA. In the past, when  
14 we did it under the regs, we had the  
15 flexibility under the regulations to use  
16 either the labor force reports or other data -  
17 that's not the case. This is a statute now.  
18 It doesn't say you can use other things. You  
19 have to use this database. And third, another  
20 factor is using the historic percentages. If  
21 you didn't have a program in 2005-2011, you  
22 have no historic program. So now you're

1 looking at - and if you were to get online and  
2 download the tribal shares that's established  
3 for 2013, there is one tribe that has 0  
4 dollars. That tribe was recognized in the last  
5 year and a half. The formula, basically - it  
6 overlooked them. So from that standpoint,  
7 that's one of the things we were - we can't  
8 change that here. We can't do that in the  
9 regulation. That's a statutory formula. But  
10 giving you that opportunity, when Bob's going  
11 through this, this is where those things  
12 really point out, some of the areas of how  
13 this is being implemented in terms of the  
14 numbers associated with it. But I just wanted  
15 to bring that up, particularly with this one,  
16 with the population.

17 MR. SPARROW: Question?

18 MR. OLIVER: Aaron Oliver, Cahto  
19 tribe. So when the underlying most recent data  
20 - we recently worked with our NAHASDA  
21 department, and there was an increase in  
22 population. We didn't get a ruling from

1 NAHASDA until after June, after they put out  
2 their public information for NAHASDA numbers.  
3 Now we have a ruling from them stating that  
4 our population has increased. Do we supply  
5 that to BIA for inclusion in the new formula,  
6 or how does that work?

7 MR. SPARROW: It would be included  
8 in this coming year's numbers.

9 MR. OLIVER: This coming BIA to  
10 FY14?

11 MR. SPARROW: Yes, so in the FY14  
12 numbers, those current numbers will be in  
13 there.

14 MR. OLIVER: OK, even though it was  
15 done in 2012?

16 MR. SPARROW: Was it done in 2012,  
17 or 2013?

18 MR. OLIVER: No, 2012. It was  
19 submitted to Pacific Region.

20 MR. SPARROW: Well, the numbers that  
21 we're running -

22 (Off mic comment)

1 MR. GISHI: And this is what Bob  
2 pointed out - LeRoy Gishi here - what Bob  
3 pointed out was he specifically talks about  
4 this database and they have -- if you look in  
5 under Google under pending program they have,  
6 you come to a full screen, and off on the  
7 right hand side is the list of - population  
8 data that is the most recent, and those for  
9 one more year, June-June - Based on the  
10 publication of that information, that database  
11 will not change from now until they talk to us  
12 again in June of 2014. So the result of that  
13 is that's how - You have to keep that in mind.  
14 That's why under current events, you have the  
15 opportunity to participate in any way in the  
16 NAHASDA -

17 MR. OLIVER: I just feel that the  
18 most recent data term to me, as we work with  
19 HAS and NAHASDA, we got a ruling from them,  
20 from their director, and to me that is the  
21 most recent data. So I think it's just a  
22 general term that needs to be identified and

1 defined.

2 MR. SPARROW: Thank you. That's a  
3 very good comment. The third factor in the  
4 formula is the historic tribal share, is based  
5 on the historic tribal share distribution from  
6 2005 to 2011. 34% of the money. What we have  
7 to do with this factor is we initially  
8 distribute it, we initially distribute it  
9 equally amongst the 12 regions. Yes sir?

10 MR. CHIMBURUS: Going to go back to  
11 the second factor, and I have a question on  
12 the population on this. When you're counting  
13 the population, you're saying that it comes  
14 from the NAHASDA program. What happens if  
15 tribes are building their own homes, and  
16 they're using tribal funds to build these  
17 homes? Are they counted as one of your  
18 factors?

19 (Off-mic comment)

20 MR. CHIMBURUS: Oh, my name is  
21 Phillip Chimburus. I'm with the Ute Indian  
22 tribe.

1 MR. GISHI: If I'm understanding the  
2 question, it's if tribes do not participate in  
3 the programs associated with NAHASDA, and  
4 don't have any need to have that data  
5 published, but handle any need associated with  
6 that process on their own, and they don't  
7 participate - do those numbers come in - and  
8 that's the whole point here, is, from the  
9 standpoint of what I was just mentioning, we  
10 have 26 tribes, we know they exist, we know  
11 they have a number, but the statute primarily  
12 says it is zero. But in terms of that, we have  
13 to utilize that number in the form, because we  
14 get that database, and it just goes down  
15 there, and finds that tribe, the code  
16 associated with the tribal code, and goes over  
17 to that column in that database that is  
18 published by NAHASDA, and it gets that number.  
19 And if that number is zero, it runs it back  
20 through the formula, so that's essentially  
21 what it's doing.

22 MR. CHIMBURUS: Okay.

1 MR. SPARROW: So again, it doesn't -  
2 we have no flexibility, other than what is  
3 provided to us by HUD. This last factor is  
4 divided by - I'm sorry?

5 MR. LARGO: Mr. Sparrow, before we  
6 go, I want to comment on this last question -  
7 I will, in a minute, and Mr. Gishi's. My name  
8 is Anthony Largo, I'm with the Reservation  
9 Transportation Authority. The question that  
10 was posed, and you answered, was regarding  
11 housing and tribes building housing on their  
12 own. That's not population. If the equation  
13 figures in population and NAHASDA is reporting  
14 housing inventory, how does that equate to  
15 numbers?

16 MR. SPARROW: Again to respond -  
17 that's one of the issues, I guess, the  
18 questions that came up. We were using this -  
19 if you look at the regulations, it says in  
20 there, the regulations specifically, that the  
21 population numbers were using the formula, the  
22 old formula that was used, this very same

1 database and those numbers. But it wasn't  
2 regulation, and the flexibility was to be able  
3 to - if someone came in with an appeal, the  
4 Secretary had the authority to be able to say  
5 "Okay, this makes sense." Now that it's in the  
6 statute, from that standpoint, you're right.  
7 It may not have anything to do with it, but  
8 there is a specific database that's published  
9 on an annual basis, that's referred to under  
10 the Office of Native American Housing under  
11 HUD, but it's called American Indian Alaskan  
12 Native Database Population that's published  
13 for the world to see. And that's the numbers  
14 that we are using. So from that stand point,  
15 how does that relate? There is a computation  
16 that they use to come up with that number, but  
17 we don't have any idea on how that works.  
18 That's what they're going through right now  
19 the rule-making, and that's one of the issues  
20 I think they're going to be talking about, so  
21 that may change. That may change, and how that  
22 process works also.

1 MR. LARGO: I guess I understand  
2 what you're saying, only I think we're trying  
3 to display to you a weak link. You can't  
4 equate houses to a population, necessarily.  
5 And the NAHASDA domain for reporting is  
6 changing. Last year's domain that was used by  
7 the housing authorities did collect  
8 population. This year's domain, as we see it  
9 and understand it, because like a manager I  
10 went also to a housing authority and said "How  
11 are we reporting this?" They said "Well, it  
12 changed this year." It's not collecting the  
13 population data. They're only looking at  
14 inventory. And even at that, those houses that  
15 are tribally built, self-built, or are BIA  
16 houses, they're not carried on that management  
17 inventory. Only those houses that Housing  
18 Authority is actually managing are the things  
19 that get reported in the domain. I even asked  
20 "Then, well, how does that equate to a  
21 population?" Obviously your housing waiting  
22 lists and that kind of thing certainly give

1 you data, but if you're not reporting that,  
2 then how can this figure be accurate to be  
3 used for a formula that will actually end up  
4 in giving somebody a dollar?

5 MR. GISHI: I agree. I absolutely  
6 agree. And that's the reason why we're trying  
7 to communicate that information, because from  
8 the standpoint of a lot of things you're  
9 saying, that was some of the comments that we  
10 provided early in the process, and in the  
11 development of this, and - Congress is all-  
12 powerful.

13 MR. SPARROW: Yes sir?

14 MR. PETE: Leonard Pete with the  
15 Navajo Nation. How do you chase down all  
16 Native American, Native American Indians, or  
17 Alaskan Nations, that wandered off to the  
18 metropolitan area. How do you count them? How  
19 do you chase them down, saying "Have you been  
20 counted? Have you been counted?" It's hard for  
21 me to swallow that. The other one I want to  
22 make reference to is the factor one. In your

1 presentation, under the headline NTTFI-  
2 Continued, it says inventory will require BIA  
3 regional office to maintain, certify, and  
4 enter the data for their region. The problem  
5 we have always had is with the data that are  
6 being entered. I don't know who's going - I  
7 don't know if BIA has the money and also the  
8 staff to be able to certify every data that's  
9 entered. There's thousands and thousands of  
10 road out there. How do you certify them? Do  
11 they have enough personnel on staff to be able  
12 to do that? That's one of the questions I  
13 have. I think the catch point would be, the  
14 BIA's going to have to make sure that what  
15 goes into the data is real, it's out there. I  
16 don't know if I will trust BIA or not. I have  
17 worked with them for 26 years, I don't think  
18 they'll be able to try every road out there  
19 and say "Hey, it is correct what's being  
20 submitted!" I do question that also.

21 MR. SPARROW: Thank you, sir. Go  
22 ahead.

1 MR. STROBEL: Andrew Strobel,  
2 Puyallup Tribe of Indians. I was curious,  
3 under working with NAHASDA, if a tribe was  
4 able to adjust their population factor if -  
5 that the equation for Fiscal 14, would the  
6 population factor, say, of a tribe that has 0,  
7 would it use the Fiscal Year 12 population, or  
8 would it use the updated NAHASDA population  
9 figure, similar to like the mileage issue that  
10 we're talking about.

11 MR. SPARROW: Good question. The  
12 population factor is the one factor that will  
13 change every year, Because it says the most  
14 recent data. So as that list is published by  
15 HUD, that's what is used in the calculations  
16 the following year. So any updates that take  
17 place during the year, come July when HUD  
18 issues those numbers, those are the numbers  
19 that are run the next year. So there will be -  
20 that factor will be updated. OK?

21 The third factor, to get back to a  
22 question earlier. 34% of the money is provided

1 for this particular factor, and the first  
2 thing that we do is we have to take whatever  
3 dollar amount that is and we have to divide it  
4 equally amongst the 12 regions. So if we go  
5 down through the funding formula, and this 34%  
6 actually equals 12 million dollars, and I'm  
7 just using this as an example, that means each  
8 BIA region gets a million dollars. Then you  
9 look at the tribes within that region, and  
10 determine the percentage of the RNDF and  
11 population adjustment factor, and the tribal  
12 shares, what percentage of all the tribal  
13 shares of all the tribes in that region did  
14 that tribe get when you look at 5, 6, 7, 8, 9,  
15 10, and 11? Once you determine that  
16 percentage, you apply that towards that one  
17 million dollars, and that's what gets sent, or  
18 added to your tribal share for that year. So  
19 if you got 12 million dollars, it doesn't  
20 matter if you've got 229 tribes in Alaska, 110  
21 plus or minus tribes in the Pacific region, or  
22 the one region of Navajo. Each region gets the

1 same amount of money. And then the tribes  
2 within that region share based on what  
3 percentage they had of the region's total  
4 money in the last 7 years. Does that answer  
5 your question?

6 (Off-mic comment)

7 MR. SPARROW: OK, well, we can talk  
8 afterwards.

9 Then you've got the tribal  
10 supplemental funding, this other section that  
11 came down. The language states, in the law,  
12 exactly how much money is supposed to go into  
13 that supplemental funding. And for \$450  
14 million dollars, it's \$104,375,000 dollars.  
15 What we do with that \$104 million is we split  
16 that up 12 ways. But we don't split it up  
17 equally 12 ways. It's how much does each  
18 region, and the tribes within in each region,  
19 how much, under the new formula, what's the  
20 percentage that they get of all the money  
21 that's made available through the formula. So  
22 if the tribes in the Pacific region receive

1 10% of the money nationwide, they only get  
2 10%, for that Pacific region. If the tribes in  
3 Oklahoma, or eastern Oklahoma, received 20% of  
4 all the money, by the new formula, they would  
5 get 20% of this amount. So initially it's  
6 distributed regionally, again, but not  
7 equally. It's based on what is generated from  
8 the formula. Then we have to take a look at  
9 the tribes, the tribal shares, and compare  
10 them back to FY11. Did the tribe receive less  
11 money going this way than they did in FY11?  
12 And if they are negatively impacted by this  
13 new formula, the supplemental money is given  
14 out to those tribes to get them back to their  
15 FY11 level. If all the tribes in the region  
16 are brought back to the FY11 level, and  
17 there's still money left, then all the tribes  
18 within that region share what's left by  
19 whatever respective percentage they have of  
20 the region's shares. If there's not enough  
21 money to get the negatively impacted tribes  
22 back to the FY11 level, then those tribes are

1 brought back to the same percentage of their  
2 FY11 level together. So if there's only enough  
3 money to get all the negative tribes back to  
4 95% of what they got in FY11, those tribes all  
5 get brought back to 95. The tribes that have  
6 a positive impact don't receive any of the  
7 money then. So it's there to try to offset  
8 negative impacts of the new funding formula as  
9 compared to FY11.

10 Then on top of everything else, as  
11 I said earlier, we have a four-year  
12 transition. When we are working our way down,  
13 through take-downs and everything else, we  
14 have to take, for this year, determine how  
15 much money was given out in FY11, take 80% of  
16 that dollar amount, and distribute it  
17 according to the tribal shares of FY11. That's  
18 before we ever get to the funding formula. So  
19 this year, everyone starts out at 80% of what  
20 they got in FY11. That's before the  
21 supplemental funding, that's before the  
22 funding formula and everything else. So you

1 see, this year, there's quite a bit more money  
2 available. And most of the tribes actually  
3 went up, across the country, just because  
4 there's that much more money available. Next  
5 year, when you take 80%, and what's ever left,  
6 20%, plus or minus, but whatever's left, you'd  
7 run in through the new formula. And it's  
8 really not 20%. It's really whatever's left.  
9 We have to correct this, LeRoy. And in FY14,  
10 we have to take 60% of what was in FY11 and  
11 that is given out to everybody under the FY11,  
12 and more money is run under the new Formula.  
13 In FY15, it's 40%, and 60% of the remainder  
14 with the new formula. In FY16 and thereafter,  
15 20% is taken off, based on the FY11 shares,  
16 given out to the tribes, and the remainder  
17 comes under this new formula. When you do all  
18 of this - and it never goes to zero, the old  
19 formula, the FY11 tribal shares, will always  
20 be at 20% until congress changes it - when you  
21 do this, this fiscal year, and you take down  
22 the supplemental fundings, and you take down

1 the set-asides, and you take down this, and  
2 you take down that, and you take off 80% of  
3 the funds and you make that available -  
4 there's about 14 million dollars that's run,  
5 across the entire country, in the new formula.  
6 Less that 4 million for mileage. About 5  
7 million for population. And about 5 million  
8 for the tribal shares. So you look at that  
9 65,000 miles of road and you divide it into  
10 4.5 or 4.4 million dollars, that's not a whole  
11 lot per mile, of what's in the inventory.

12 Now, next year, because more money  
13 will be going into the new formula, yeah, it  
14 will make a bigger difference. And the year  
15 after that, and the year after that. And when  
16 you start seeing some of the tribes that  
17 really have a negative impact if you just use  
18 the formula straight, that supplemental  
19 funding which now is proving everyone up to  
20 FY11 and then everyone shares it, you're going  
21 to see as the numbers go on in FY14, FY15, and  
22 FY16, those folks that are negatively impacted

1 will be more negatively impacted, and that  
2 supplemental funding may not be enough to get  
3 them up to the FY11 mark. But all in all -  
4 LeRoy, correct me here - there are three  
5 regions in FY16 that are negatively impacted  
6 as compared to FY11. Alaska, Pacific - no,  
7 that's the opposite. Midwest, and Navajo. And  
8 that really - doesn't really take effect,  
9 where you really see it, until this last year.  
10 So new factors, supplemental funding, four  
11 year transition, regional percentages, NAHASDA  
12 population, partial mileage, it's complicated.

13 Mr. Endicott, please come to the  
14 microphone.

15 MR. ENDICOTT: Rob Endicott,  
16 Cherokee Nation. I probably should have  
17 brought this up during the takedowns, because  
18 it's not specifically related to this  
19 regulation, but statutorily, there's varying  
20 schools of thought on how the ob-limit applies  
21 to the Tribal Transportation Program. And at  
22 one point, we thought that we were going to be

1 exempt from it, but another point, we're being  
2 told "No, we're not" or "Yes, you are subject  
3 to it." And we read the statute, it's really  
4 not all that clear. When the administration  
5 goes to start applying a list of programs that  
6 are specifically exempt from the ob-limit,  
7 we're not listed, but it starts going off  
8 into specific language, about pulling the  
9 money away, but it doesn't ever say what to do  
10 with it. At least that's the way I read it.  
11 But to me, there's an intent to redistribute  
12 it back to the program. It's not specifically  
13 stated, but there's an intent there. And so I  
14 was wanting to know what you guys are thinking  
15 about on the ob-limit, because again, there's  
16 varying schools of thought as to how that's  
17 suppose to be applied to the Tribal  
18 Transportation Program, and - Vivian, are you  
19 listening to me?

20 MS. PHILBIN: Every word.

21 MR. ENDICOTT: Thank you.

22 MR. SPARROW: First of all, I just

1 want to clarify, it doesn't matter what LeRoy  
2 and I think. That decision is made well above  
3 us.

4 MS. PHILBIN: Unless otherwise  
5 specifically exempt the Tribal Transportation  
6 Program is not otherwise specifically exempt;  
7 it is subject to the operation of the - that  
8 question has been raised and answered a  
9 hundred time. I understand your concern; it's  
10 shared, I'm sure by a lot of folks in this  
11 room but it is subject to -

12 MR. SPARROW: One thing to add, Rob,  
13 is that all of the set-asides, the way the  
14 language is written now, all of the set-asides  
15 including the 6% PM&O, are subject to ob-  
16 limit. So the 9 million in authority that's  
17 provided to the safety, bridge, and planning,  
18 actually have a 4.1% ob-limit takeaway, so  
19 it's like 8.69 million is actually the cash  
20 made available.

21 (Off mic comment)

22 MR. SPARROW: Hold on one second. Go

1 ahead.

2 MR. ENDICOTT: I just wanted to  
3 respond - thank you for that, Vivian, did - is  
4 that in writing from the solicitor's office,  
5 or is that something that's just been spoken  
6 word?

7 MS. PHILBIN: I'm not sure if it's  
8 on the MAP-21 website or not but it's not just  
9 something that can just be handed down ... the  
10 cover page a real interpretation has been made  
11 and it might be on the website or not. If you  
12 want something - we have addressed - so if you  
13 want something in writing, send me an email,  
14 but I think it's on the website.

15 MR. SPARROW: Well, it's a good  
16 comment that we've captured, so we'll make  
17 sure it gets addressed.

18 MR. ENDICOTT: Well, Okay. We'll do  
19 that. Thank you.

20 MR. SPARROW: Thank you, Rob. Yes  
21 sir.

22 MR. CONCHO JR.: Good morning. My

1 name is Raymond Concho, Jr. I'm with the  
2 Pueblo of Acoma in New Mexico. First of all,  
3 I just want to thank you all for being here  
4 and sharing information and the proposed  
5 language that we'll be looking at, and I know  
6 that there's tons of information that we have  
7 to review and do comment on. But there's just  
8 a number items that I want to bring to your  
9 attention at this time. In terms of having a  
10 true tribal and BIA roads program, it's not  
11 there. It's not there. Many tribes in the  
12 Southwest, and I can say for New Mexico, is  
13 that we have been implementing and  
14 administrating the tribal and BIA roads  
15 program. And just like in other regions, we're  
16 now expanding to also include our county and  
17 roads program. I kind of get frustrated, on  
18 one side of it, it's kind of gone out beyond  
19 the intent of what this program should be. But  
20 I also realized that a lot of our hands are  
21 tied in terms of going beyond what's already  
22 written in statute. But I kind of also look at

1 the Indian tribes, not just in this room and  
2 in our respective regions, when negotiated  
3 rulemaking could happen, that was a good  
4 opportunity for Indian tribes to meet with the  
5 Federal government and come to some  
6 resolution. But it's also frustrating that  
7 sometimes Indian tribes don't come to an  
8 agreement, to consensus, for that reason, the  
9 old formula was taken out, Congress said  
10 "Well, Indian tribes cannot come to agreement,  
11 so let's do the formula for them." So I think  
12 that the message here at the same time is that  
13 when Indian tribes do get back together, we  
14 have to come to agreement to make a true  
15 tribal and BIA road program work for all  
16 smaller and large Indian tribes. So that's  
17 just for the record. One thing I do want to  
18 also question is on the allocation, in terms  
19 of how the distribution is affecting regions  
20 and tribes, and you didn't mention that. It's  
21 on the website, am I correct? But the formula  
22 distribution for the next four year period is

1       there?

2                   MR. SPARROW: The tribal shares for  
3       FY13 are on the website. The distribution for  
4       14, 15, and 16 are not up there yet. They will  
5       be soon, but they will be up there with a lot  
6       of caveats, because we don't know the numbers,  
7       we don't know the obligation limitation, we  
8       don't know how it's going to be affected. But  
9       you can look at it and utilize it for trend  
10      purposes only. But it will not be the accurate  
11      14, 15, and 16. It won't be exactly the 14,  
12      15, and 16 numbers. But we will get them up  
13      there as soon as we can.

14                  MR. CONCHO JR: It would be good to  
15      review that, if you could have it on the  
16      website before the June deadline approaches,  
17      to make comments.

18                  MR. SPARROW: Understood:

19                  MR. CONCHO JR: Thank you.

20                  MR. SPARROW: One quick comment  
21      about obligation limitation. It's something  
22      that difficult to explain, but basically the

1 program is what they call an apportioned  
2 program, and it's based on authority. And we  
3 get \$450 million dollars worth of authority  
4 per year. But when you take a look at what you  
5 spent or didn't spend the previous year, and  
6 you kind of carry it over, you end up with  
7 more money than what you had started for, or  
8 what you're authorized to spend each year. So  
9 Congress comes - there's a formula that's in  
10 there, and half a dozen different factors, but  
11 the biggest factor is how much was there on  
12 the table at the end of the year. And the more  
13 you leave on the table, the higher the ob-  
14 limit is on the following year, because  
15 Congress tells the Department of  
16 Transportation "Although you are authorized at  
17 \$450 million dollars a year, you are only  
18 allowed to spend, or your limitation is this  
19 much." And if you got a whole bunch from the  
20 previous year, they're going to say "You gotta  
21 take 4, or 5, or 6" - it's been as high as  
22 13.6% one year, when there was a whole bunch

1 of money that was carried over. Now, that  
2 money is gone. That's limitation. And it takes  
3 authority and limitation to make cash. So we  
4 have \$450, but they may come in and say "You  
5 only got - based what you carried over last  
6 year, you're only going to be able to use \$435  
7 of the \$450 this year." And it's run through  
8 the formula. When Rob said about  
9 redistributing it, and back to the programs,  
10 that's really just redistributing the  
11 limitation at the end of the fiscal year. We  
12 want to get the money obligated and get the  
13 money out, because if we don't, then the  
14 following year we're going to get hit by  
15 Congress. So they shuffle around these funds,  
16 trying - within the states, unfortunately, and  
17 that's the way Congress has set it up, to try  
18 to at least use the limitation, and within the  
19 states, they pay each other back the following  
20 year. But it's kind of like a credit card  
21 limit is the easiest thing. So every year it's  
22 authorize at 4 - and one thing that we have to

1 do this year, and then we'll break for dinner,  
2 or break for lunch - is because it's an  
3 apportioned program, we have to run the  
4 formula based on \$450 million dollars. As if  
5 there's no ob-limit, no recision, no nothing,  
6 we have to run in on \$450 million dollars.  
7 Then we have to apply all those factors - the  
8 ob-limit and the take-down, etc. etc., to come  
9 up with how much money we actually have, and  
10 how much goes on in tribal shares. But the one  
11 thing we're required to do now is - you may  
12 have been, when we ran through the \$450 with  
13 no take-downs, you know, you still had set-  
14 asides, but no take-downs, let's say your  
15 tribal share was \$500,000 dollars. When we ran  
16 the ob-limit of that \$500,000, you actually  
17 got \$475,000. So your tribe is credited with  
18 \$25,000 of authority that you don't have the  
19 limitation for. And we have to track that  
20 every year. So you might get \$25,000 this  
21 year, you might get \$25,000 next year, you  
22 might get \$25,000 the year after that. That's

1 authority. You can't spend it, but it's kind  
2 of sitting there, waiting. How many of you  
3 remember RABA, the RABA bill. How many besides  
4 Rob? That was a bill - I mean, times were  
5 really going well, and Congress basically gave  
6 us a bunch of extra limitation. So now, if  
7 we're keeping track of this year by year by  
8 year, and Congress says "Wow, things are  
9 really going well, here's some additional  
10 limitation," we can say "Well, you know what,  
11 this tribe has \$75,000 dollars worth of  
12 authority, we can give them that \$75,000 worth  
13 of limitation, and they can get the extra  
14 money." So we have to keep track of it. From  
15 this point forward: how much authority fo you  
16 have versus how much money you actually  
17 receive, and keep track of that gap, so, in  
18 the future, if extra limitation is made  
19 available, we can provide it out to the  
20 tribes. But we're the government, nothing  
21 easy. All right? But something's new this  
22 year, because of having an appointed-type

1 program.

2 It's a little bit after 12. Break  
3 for lunch till 1:15, if you can, so we can get  
4 back through the rest of these sections. I  
5 appreciate everybody's time, and look forward  
6 to seeing you this afternoon.

7 MR. GISHI: Just one comment about  
8 that. Will we bring up that price sheet that  
9 you can download?

10 (Whereupon, the above-entitled  
11 matter went off the record at 12:08 p.m. and  
12 resumed at 1:28 p.m.)

13 MR. SPARROW: Sorry about the delay  
14 here. We had a little IT issue. Welcome back  
15 after lunch. We finished subparts A, B, and C  
16 this morning, and then this afternoon we'll go  
17 through the rest of the reg pretty much  
18 through the same process from a general  
19 overview, and then what the highlights are,  
20 and if then there's any reporting and  
21 timeframe requirements. So Subpart D talks  
22 about planning, design, and construction

1 requirements of the Tribal Transportation  
2 Program Facilities. And we have handouts for  
3 Subparts H and I, which we'll hand out when we  
4 get there, and I understand we've got copies  
5 of the reg coming. As soon as we get them  
6 here, we'll make them available to you.

7 I haven't even started yet.

8 MR. SPARROW: Yes, sir.

9 MR. TIPTON: My name is Steve Tipton  
10 with the Tohono O'odham Nation. We spent two  
11 days going through this, and there was some  
12 comments, but nobody has come up yet, so I'm  
13 going to be the first. Section 170.157 talking  
14 about the TTP coordinating committee, item B.  
15 It says "operate by consensus or majority  
16 vote." And the feeling was to recommend making  
17 the change to "simple majority or two-thirds  
18 majority vote." Then in Section 170, 411, it  
19 gives a fully definition of the long-range  
20 Transportation plan and what it's supposed to  
21 include, then going over to section 170.443,  
22 Item B, it references a copy of the tribe's

1 transportation plan, long-range transportation  
2 plan, and basically kind of gives a different  
3 definition. And the suggestion was simply to  
4 say "A copy of the tribes' transportation plan  
5 as described in Section 170.411." So they're  
6 consistent. And there was one other item. On  
7 section 170.451 about the environment. In Item  
8 C, it says "Limited mitigation." First of all,  
9 how is limited defined? And the feeling was to  
10 eliminate the word "limited", because whatever  
11 mitigation is required in order to control,  
12 like, floodwaters, then that's the measure  
13 that needs to be taken in order to keep the  
14 road in place. So the suggestion was to  
15 eliminate the word "limited." That's what I  
16 have. Thank you.

17 MR. SPARROW: Thank you, sir. Good  
18 comments, thank you. All right, when you read  
19 through Subpart D, the first part that you'll  
20 see talks about transportation planning, and  
21 it outlines the responsibilities and  
22 requirements of transportation planning that

1 found under 25-USC 134 and 135, and that's the  
2 Federal Highway Title 23 planning regulations,  
3 or planning code, let's put it that way. It  
4 identifies potential funding sources that can  
5 be used for transportation planning, and it  
6 also provides the requirements for developing  
7 a transportation improvement program, or TIP,  
8 the various aspects of the TIP being a Tribal  
9 TIP, or a TTP TIP, Tribal Transportation  
10 Program TIP, or how it works into getting to  
11 a TTP TIP, and also discusses what should be  
12 included in the definition or the in the  
13 development of a long-range Transportation  
14 plan, including when you should have public  
15 hearings, as well as when public input is  
16 required.

17 There's another section about the  
18 National Tribal Transportation Facility  
19 Inventory. What is it, what the component of  
20 its are. And honestly, this is the first time,  
21 at this point, it's been in the reg. Because  
22 it's in the definitions in Part 5, it's talked

1 about again in Subpart C, and now it's talked  
2 about again in Subpart D. What are the  
3 components of the inventory? The statute,  
4 what's included with regards to what goes in  
5 the formula, and that mileage factor? How do  
6 you use the facility, or how do you use that  
7 inventory in developing your long-range plans  
8 and your TIP, etc. etc. How do you go about  
9 updating the inventory, and what are the  
10 minimum attachments that are required to put  
11 a new facility into the inventory? The minimum  
12 attachments, just as a sidebar, is something  
13 new. It was not in the original reg. And for  
14 any of you that were on the coordinating  
15 committee, one of the first few meetings we  
16 had, back in 2005, after the regulation was  
17 published, was working to develop what those  
18 minimum attachments should be. The next  
19 section talks about environmental and  
20 archaeological requirements. When constructing  
21 the project and designing the project, what  
22 environment and arch requirements have to be

1 met?

2                   Next section then contains  
3 questions and answers on the design  
4 construction, and constructing monitoring  
5 standards. What kind of standards have to be  
6 used in the design of a project? State  
7 standards, federal standards, local standards?  
8 That gives the definition of what can be used.  
9 And when you have a design exception, that you  
10 are building according to a certain design,  
11 but you have to have a design exception,  
12 because maybe you don't have enough overall  
13 room, you've go to move the guardrail in or  
14 whatever, or a curve has to be done slightly  
15 different to meet the requirements and  
16 restrictions of the project, how do you go  
17 about asking for that exception? So the  
18 process in there is included, and it pretty  
19 much follows what as been in the regs since  
20 2005.

21                   Something near and dear to Mr.  
22 Endicott and myself. PS&E approvals. Something

1 that Rob and I worked on for a long time  
2 during the negotiated rulemaking aspect. How  
3 that has been changed after the rule was  
4 published and it was statutorily changed. So  
5 that section has been update to reflect, now,  
6 what the law says.

7 Monitoring and closeout procedures.  
8 "Procedures", a spelling error. For TTP  
9 construction projects, the roles and  
10 responsibilities. Who's required to do  
11 construction monitoring? What is the  
12 construction monitoring requirements? What  
13 kind of records have to be kept? What kind of  
14 report has to be done for closeout of the  
15 projects? Issues like that are covered in that  
16 particular question. And there there's some  
17 Q&As on management systems, and then some Q&As  
18 on bridge inspections. So that covers, pretty  
19 much, what's in Subpart D. It's from the  
20 planning through construction, through design  
21 and construction of actual projects. So,  
22 transportation planning. Go back to the

1 beginning. What are the highlights that we're  
2 seeing under there? There's a definition of  
3 planning. What's the purpose of planning? How  
4 can it be used? What are the roles? What are  
5 Federal Highway and BIA's role in  
6 Transportation planning, and what's the  
7 tribe's role in Transportation planning. It's  
8 all outline.

9 Pardon me. What are the funding  
10 sources, as I've said? We've got the 2%  
11 planning funds, the set-aside funds. But also  
12 you can use the other tribal share, formula  
13 funds that you get. So there's discussion in  
14 there about that as well. You're not just  
15 limited to the 2% planning.

16 Long-range transportation planning.  
17 What's the purpose of a long-range plan? How  
18 do you develop a long-range plan? What should  
19 be included in a long-range plan? How is  
20 approved? How is it updated? What's the public  
21 involvement requirements? And what's including  
22 in what we call "pre-project planning"? The

1 difference between project planning and  
2 overall program planning for the tribe. So  
3 we've tried to include something - most of  
4 this is close to what it was back in 2005. But  
5 that's - what you'll find, I'm sorry, in those  
6 sections.

7           The TIP defines what's a tribal  
8 priority list, and what's the tribal TIPS. How  
9 do you develop that? You take the projects off  
10 the long-range plan. What's the process of  
11 getting a tribal priority list or a tribal TIP  
12 together. Is it financially constrained? And  
13 then from that, how is the TTP TIP, which is  
14 the overall program TIP for the Tribal  
15 Transportation Program, which, in essence,  
16 encompasses all of the tribe's projects and  
17 activities. What's in there? How is that  
18 developed. What parts of that TTP TIP then  
19 gets transferred to the state TIP, that  
20 identifies regionally significant projects. So  
21 it describes that whole process. The  
22 development right through that TTP TIP. Again,

1 what's the public's role? Do they need to  
2 participate? Once you have a TIP and you work  
3 it through the process, and it's approved by  
4 Federal Highway, we're the last ones that  
5 approve it. It's not approved until we sign  
6 it, or my team signs it. Well, now you want to  
7 update it, or you want to add something to it,  
8 or you want to amend it. That information is  
9 included in the reg. Again, remember, by law,  
10 you can't expend any money on a project or  
11 activity that's not included on an approved  
12 TIP. That's in the law. So this part is very  
13 important in making sure that you get your  
14 projects and activities on that TIP and get  
15 them approved. This helps you with the process  
16 of going through that process.

17                   Public hearings. We said earlier,  
18 developing a long range plan, sometimes, with  
19 a TIP, when you've got a regionally  
20 significant project - how do you determine  
21 whether or not you need public hearing? And  
22 what funding is available to carry out those

1 public hearings. And then how do you inform  
2 the public? How do you conduct the meeting?  
3 And if a decision is made from that public  
4 hearing that you don't really agree with, how  
5 do you appeal that decision. Or can you appeal  
6 that decision? So, again, getting deeper and  
7 deeper into the planning process of what's  
8 required to develop the long-range plans and  
9 to develop the TIPS.

10 Another section on the National  
11 Tribal Transportation Facility Inventory. I  
12 like IRR inventory a lot better, as I said  
13 before. It defines what it is. It describes  
14 the requirements for adding a proposed  
15 transportation facility to the inventory.  
16 Those of you that have been around for a while  
17 know that there was a bit of an issue with  
18 access roads and proposed roads. And the  
19 coordinating committee had worked on that, so  
20 the recommendations that came out of the  
21 coordinating committee are put in here for  
22 getting a proposed road in the inventory. A

1 proposed road is a road that does not exist.  
2 It's not that I'm proposing to add this road  
3 on the inventory. It's almost like I'm  
4 proposing to put this proposed road on the  
5 inventory. It's a road that does not exist. So  
6 if you have a road that does not exist, what  
7 are the requirements for putting it on the  
8 inventory? How do you update the inventory  
9 itself, we talked about the importance of  
10 continuing to update in the inventory to keep  
11 it as accurate as possible. Well, what's the  
12 process for getting that updated, and, again,  
13 talking about when you do add facilities to  
14 the inventory, what are those minimum  
15 attachments that got to accompany that  
16 information or that request to the regional  
17 office ultimately down to BIA-DOT for  
18 approval?

19 What requirements - our  
20 environmental and archaeological requirements  
21 must be files. We still have NEPA. We have  
22 Archaeological. We have 106. Those of you from

1 building projects, or working with projects,  
2 know that. So in this reg it identifies the  
3 environmental and archaeological requirements.  
4 And then it also says that you can use the  
5 tribal transportation program funds to meet  
6 those requirements. So it's providing funds  
7 showing that you can use your tribal shares to  
8 satisfy environmental and archeological  
9 requirements on projects.

10 Design. If you have a professional  
11 engineer that designs the project, that  
12 project has to be built to an acceptable  
13 design standard. It identifies the standards,  
14 and those of you that design projects know  
15 what I'm talking about. How are those  
16 standards used, and again, like we said  
17 earlier, if there's an exception, how do you  
18 request an exception. And then if that  
19 exception is denied, how do you appeal that  
20 denial? So that process is included in the  
21 regulation as well.

22 Review and approval of PS&Es, Plan

1 Specifications and Estimates. This is a big  
2 change from what was in the regulation before  
3 with regards to second-level reviews and the  
4 tribes approving their own TIPS if X, Y, and  
5 Z is met, and etc. etc. Congress, with the  
6 passage of SAFETEA-LU, said "Tribes can  
7 approve their own PS&Es as long they provide  
8 assurance from the registered professional  
9 engineer that the design meets health and  
10 safety standards, and provides the  
11 certification of that meets or exceeds hale  
12 health and safety standards, the certificate,  
13 let's say, to the secretaries or their  
14 representatives, meaning BIA or Federal  
15 Highway. So the professional engineer, the  
16 consultant, signs and stamps the PS&E and  
17 sends a certification that it's been designed,  
18 and usually on the plans it says it's designed  
19 according, using this standard, and this  
20 project meets or exceeds health and safety  
21 standards. That's the approval of the project.  
22 It also continues, though to say what's the

1 Secretary's role in reviewing these PS&E  
2 packages, and if BIA or Federal Highways  
3 identifies a deficiency, what actions need to  
4 be taken? Who needs to be notified? What's the  
5 process of getting that deficiency  
6 corrected? So that section has  
7 changed to reflect what happened in SAFETEA-LU  
8 and continues on in MAP-21. Construction and  
9 construction monitoring. So we've gone from  
10 the planning to the design, now we're  
11 constructing the project. What are those  
12 construction standards with regards to  
13 inspection, with regards to reporting, with  
14 regards to daily diaries, etc. etc. What about  
15 project administration? Questions and answers  
16 regarding project administration. Like I said  
17 earlier, construction records that need to be  
18 kept. And there's a difference, a little bit,  
19 between BIA and tribal, if the BIA is  
20 constructing the project or the tribes are  
21 constructing the project. And at the end of  
22 the project, when we're looking at closeout,

1 final acceptance and reporting, what are the  
2 requirements of that? Who needs to be invited  
3 to the final acceptance meeting, or the close-  
4 out? Who does the reporting? Who puts together  
5 the construction report, and what goes into  
6 that construction project closeout report?  
7 There's a table in there that identifies that  
8 information. A couple of questions on  
9 management systems. Pavement, BIA working with  
10 Federal Highways, working on developing a  
11 pavement management system, a bridge  
12 management system, a safety management system.  
13 The congestion management system has kind of  
14 been waived, but it defines what's in those  
15 management systems. One of the things that  
16 you're going to see with MAP-21, is the fact  
17 that it's really performance based. That's the  
18 way that Congress seems to be pushing. We've  
19 given you X amount of dollars, what have you  
20 done with those dollars? It's a performance-  
21 based system, for performance-based type  
22 measures. So that's becoming more and more

1 important. So these management systems are  
2 something that can be used to do the reporting  
3 up to Congress, and help us determine, and  
4 help you all determine, what projects really  
5 should be undertaken in the future.

6 Pardon me. Bridge inspections.

7 There's a whole new section. I'm sorry. MAP-21  
8 - well, let me back up. In the past, the state  
9 and the Feds have been required to inspect  
10 bridges on their systems every two years. What  
11 MAP-21 did was it added Tribal Bridges to that  
12 list. So now every two years, any bridges that  
13 are on tribal roads - hence, Tribal Bridges -  
14 will need to be inspected, and they'll need to  
15 be entered into the National Bridge Inventory  
16 System. So this is something new. So there's  
17 a new statutory requirement of when and how  
18 these bridge inspections are to be performed,  
19 as well as what are the minimum qualifications  
20 of a bridge inspector, and the distribution of  
21 the bridge inspection reports themselves. Now,  
22 most of what you will see in the reg - and I

1 don't know the number, and I apologize -  
2 refers back to the bridge inspection  
3 requirements that are in another part of Title  
4 23. That was in MAP-21. Vivian, can you look  
5 that up for me, please, real quick? Bridge  
6 Inspections? It's in the front part of MAP-21.  
7 Or I can look that up. Excuse me one second.  
8 I got it tagged.

9                   It's section 143 of Title 23, I'm  
10 sorry, 144 of Title 23. It's for those of you  
11 that may have a book like this that references  
12 MAP-21, it's actually in section 1111 of MAP-  
13 21, National Bridge and Tunnel Inventory  
14 Inspection Standards. And it pretty much  
15 establishes what the inspection standards need  
16 to be. So what we've done with this reg,  
17 because they're going through a rule-making  
18 and finalizing what those bridge inspections  
19 need to be, we are just referencing, for the  
20 most part, that particular section, so  
21 whatever comes out is something we're going to  
22 have to follow. Appendix - there's three

1        appendices. Appendix A to Subpart D talks  
2        about the cultural resources, archaeological  
3        and environmental elements of the program. It  
4        gives examples of what needs to be followed.  
5        Appendix B to subpart D is design standards,  
6        so those are the approved design standards for  
7        your projects, and if you want a different  
8        design, or you need to add a different design  
9        standard, that's what we need to hear from you  
10       on.

11                    Appendix C to Subpart D is  
12        primarily what was in Appendix, what was in  
13        Subpart C in the old rule, which talked about  
14        the inventory, and talked about cost to  
15        construct, and talked about functional  
16        classifications. So getting that information  
17        updated in the inventory, we transferred that  
18        appendix to Appendix D. Because, quite  
19        honestly, it doesn't have anything to do with  
20        the funding formula any more. It has more  
21        primarily to do just with the inventory. We  
22        heard in Alaska that maybe parts of this don't

1 need to be in there, that it's too cumbersome.  
2 We also heard that other tribes wanted it in  
3 there for reference purposes to keep the  
4 inventory updated and keep it aligned with how  
5 it's been carried out in the past. So if  
6 you're looking for that cost to construct  
7 information, it's now under Subpart D. There's  
8 various timetables in the reg now that have to  
9 do with Long-range transportation planning.  
10 It's pretty much like it was before, talking  
11 about advertising, meeting, public meetings 15  
12 days before, having a 30-day comment period on  
13 the TIP, walk it through the process, how to  
14 submit the TIP, amending the TIP, and the  
15 priority list timeframes associated with that.  
16 Also saying within 45 days the BIA regional  
17 office or Federal Highway must review the  
18 submitted documentation and respond. So  
19 there's requirements on the federal side as  
20 well.

21 We talked about public hearings.

22 Sections 438, 439, and 40, there are some

1 specific timeframes in there that talk about  
2 30 days prior to a hearing, BIA or tribe must  
3 post or publish a notice of public hearing. 5  
4 days after the hearing, written comments are  
5 received, and 20 days after that you've got to  
6 have a hearing statement. Those are the exact  
7 same time frames that were included in the  
8 original regulation.

9           If there is a design exception  
10 requested, there's a time frame in there for  
11 BIA and Federal Highway to respond. Review and  
12 approval of the PS&E, we had 30 days here and  
13 there in the past. I left this in there  
14 because this is what the law says. "May review  
15 and approve its plans based on assurance that  
16 the PS&E meets or exceeds applicable health  
17 and safety standards, and a copy of that is  
18 provided." There is no time frame, I just  
19 wanted to re-emphasize that fact.

20           Project closeout. It says in there  
21 that if you do a project closeout, the  
22 closeout report's supposed to be done in 120

1 days. And the bridges need to be inspected  
2 every two years, as I said earlier. There's  
3 some information on record-keeping and  
4 reporting requirements from public meetings  
5 and public notices, under section 413.  
6 Reporting requirements, again, for public  
7 participation. Developing the TIP. When and  
8 how Federal Highway and BIA notifies tribes of  
9 updating the TIP and projected TTP Funding  
10 amounts, and how Federal Lands, my office,  
11 needs to provide the TIPS to the states, so  
12 that the projects can be included in the Stem.  
13 So that's all identified in there as far as  
14 reporting requirements. We also have an issue  
15 in there about a proposed TIP amendment. We've  
16 got to - that TIP amendment has to be approved  
17 by Federal Highway. Anything having to do with  
18 TIP, that TTP TIP, is not approved until  
19 Federal Highway approves it. So if you amend  
20 it, you have to go back through the process to  
21 get Federal Highways approval again, because  
22 you're adding a project or activity that

1 wasn't on there earlier, and again, by law,  
2 you have to have it on there and it has to be  
3 approved before you can spend the funds.  
4 There's recordkeeping on public hearings that  
5 the report has to contain, if it's scheduled.  
6 What records have to be kept, etc. etc. We  
7 talked earlier about construction records.  
8 When you're on a project, what kind of records  
9 reporting needs to be done? And if when the  
10 tribe and the BIA has to make those reports,  
11 they're made available, and how do they  
12 develop a project closeout report, and who  
13 develops the project closeout report, again,  
14 depending on who's running the project. And  
15 that's Subpart D.

16                   Again, we went from planning to  
17 design to construction, providing information  
18 to the tribes. Mr. Gishi, you got your  
19 computer working?

20                   MR. LUJAN: Question. Ohkay Owingeh  
21 Indian, Ben Lujan. In regards to Subpart D,  
22 right now we're contracted to Federal Highway

1 not through BIA, for our Funding. Are we  
2 required also to have BIA come out in the  
3 closeout of our projects when they are not -  
4 we don't use their engineers or anything like  
5 that to, for our projects?

6 Is there any - do they have to  
7 stick to anything that they can say to the  
8 project or delay it, or...

9 MR. SPARROW: They are not the  
10 engineers of the project, but as the facility  
11 owner they have got to accept the project.

12 MR. LUJAN: OK.

13 MR. SPARROW: Federal Highway and  
14 BIA, one of them has to accept the project.

15 MR. LUJAN: OK. And another question  
16 is, it says on Section 170 421 what, What is  
17 the TIP, must identify the implementation year  
18 of each project, to begin within the next four  
19 years. How do we go about it, because right  
20 now Federal Highway require us to five? Five  
21 years.

22 MR. SPARROW: We've asked that they

1 go out five years, and again it's a planning  
2 document.

3 MR. LUJAN: And in regards to public  
4 hearing, you know, in our tribe, the Tribal  
5 Council has full authority over what goes on  
6 and what roads are, the projects that are  
7 being designated. Shouldn't they be the one  
8 speaking on behalf when public hearing or  
9 meeting should be assembled?

10 Because in our tribe we have public  
11 meetings, community meetings, throughout the  
12 year, 4 to 6 a year, and that's where we get  
13 a lot of our input, and we do a lot of surveys  
14 in regards to the projects that we're  
15 proposing for the next 3 to 5 years on our  
16 short term...

17 MR. SPARROW: So for all intents and  
18 purposes I'd say, pretty much trying to tell  
19 you, you've got a regionally significant  
20 project that you need to go through the public  
21 hearing process.

22 MR. LUJAN: OK. And the last one I

1 have is, you know, for our Pueblo, Ohkay  
2 Owingeh, BIA hasn't updated the inventory for  
3 more than five years. We've gone through the  
4 RIFDS training now to kind of do our own road  
5 inventory, but it's taking - excuse me - it's  
6 taking the authorization approval process more  
7 than a year to complete, to allow us to get  
8 into the system. That's kind of long for the  
9 wait for that, going through the  
10 fingerprinting and all of that. But at the  
11 same time, BIA's not being held responsible  
12 for the lack of initiating our inventory list  
13 every year.

14 MR. SPARROW: Thank you sir. Shawna?

15 MS. BALLAY: Good afternoon, Shawna  
16 Ballay, Pueblo of Isleta. I just want to make  
17 sure I heard what you said correctly, a second  
18 ago, Bob. Are you stating that BIA does not  
19 have signature authority for the exception and  
20 approval, once we're completed with the road  
21 construction project? The Federal Highway has  
22 the sole authority?

1 MR. SPARROW: We are working on  
2 that. The stewardship agreement between the  
3 two agencies, when you're looking at final  
4 approval and who's accepting the project,  
5 whether BIA accepts the project, or Federal  
6 Highway accepts the project on BIA's behalf,  
7 if they don't arrive, or if they don't show up  
8 at the final meeting. That's something we're  
9 still working through. We'll try to have  
10 clarification in the NPRM.

11 MS. BALLAY: Thank you.

12 MS. WALKER: Bob, LeRoy, Liz Walker.  
13 I had a question spurred by the gentleman just  
14 a minute ago. I wasn't at the last TTP  
15 committee meeting. Where are you with the  
16 inventory? I know that you had a consultant  
17 that was finishing working on that updated  
18 inventory. Has that been completed?

19 MR. SPARROW: Yes. And I have a  
20 presentation at the end of this.

21 MS. WALKER: On that?

22 MR. SPARROW: Yes.

1 MS. WALKER: And the other - this is  
2 a process question, because I haven't been  
3 through this type of consultation before, but  
4 my understanding - you're presenting this to  
5 folks, so you're outlining the regulations and  
6 what the different areas from the new statute  
7 encompass. But it's hard to know where the new  
8 regulations may really differ from the old.  
9 You're doing a good job being very clear on  
10 the presentation, but for example, the TTP  
11 committee worked on the access roads and  
12 proposed roads, and we know that you're saying  
13 that those recommendations have been added  
14 into the regulations. But it's still not  
15 clear, as I'm sitting back here, where the  
16 differences are except for maybe in that case  
17 where the new law is requiring you to make  
18 some changes to the regulations. And then if  
19 we know where those points are, then it's  
20 easier to say "OK, this is where we've got to  
21 really scrutinize and see if we want to  
22 comment, because these new changes are going

1 to cause us problems trying to comply," or we  
2 have a different suggestion. Because not  
3 everybody here is on the TTP committee where  
4 they're involved every day, and these are more  
5 often in these kind of details. So I don't  
6 know if you're going to, at the end, kind of  
7 summarize that for the group, or how this  
8 process works from here. Because I know we've  
9 got a deadline coming up the 14th, June 14th,  
10 to make sure we really scrutinize this and get  
11 comments in, so.

12 MR. GISHI: When we do that, the  
13 portion that we're talking about, where we  
14 discuss the proposed roads and access roads,  
15 and it's part of the National Tribal  
16 Transportation Inventory Update, we will talk  
17 about that. But be sure to bring that up,  
18 because I know what you're asking about  
19 relative to - what is it that MAP-21 required,  
20 and what is it - and as I mentioned earlier  
21 this morning, one of the reasons why C&D were  
22 so significant, because there's a lot material

1 that used to be in C, it was a part of the  
2 formula, that's now in D, which is basically  
3 the planning aspects of it. Of the program.  
4 And so - and that's kind of what we want to  
5 make sure we said that, and showed you, what  
6 Bob just showed you is where those were. Now,  
7 as part of that process --

8 MS. WALKER: Right. I had that  
9 question at the break, because I didn't  
10 understand that. That's what I'm saying. I'm  
11 trying to just see, make sure I understand. MR.

12 GISHI: Right. And the best way to look at that  
13 is to look at specifically those portions of  
14 D that can, that speak of proposed roads and  
15 access roads that talk about a QA-QC team. And  
16 those are things that we kind of came out of  
17 the meetings last summer in consultation, but  
18 how they actually fit in terms of what we are  
19 looking at to finalize it, that's why we're  
20 here. We want to know is that part of the  
21 process that's workable and is that part of  
22 the way that we're going to be looking at

1 proposed roads and access roads. Because  
2 clearly, the formula just looks at eligible  
3 miles. It doesn't care whether it's an access  
4 road, if it's a proposed road, if it's a four-  
5 lane, two lane, one lane, primitive, earth-  
6 paved. It just looks at it as miles. And so  
7 from that standpoint, those aspects of what  
8 was in the Subpart C under the original  
9 regulations don't even apply any more, so  
10 they're moved over into the category. And one  
11 of the things that came up in the last  
12 section, we were talking about, was there's  
13 state aid funds, federal aid funds, where the  
14 state's going to say "I need you to tell me  
15 what classification this road is, because it's  
16 for these functional classifications of roads  
17 that we're going to provide this funding."  
18 Well, if you're going off the BIA system, they  
19 may tell you "Well, that's a BIA functional  
20 classification system. You really need to have  
21 something that relates to what we've got." So  
22 we put a table in there that shows a

1 corresponding classification from the BIA  
2 system to the federal aid classification  
3 system for that purpose, because, again, it's  
4 to be able to satisfy those needs that you may  
5 have. Likewise, the whole inventory and  
6 planning process are geared for that also,  
7 because, someone made a good point, well, we  
8 don't need to add any more. It's just a waste  
9 of time. No, it isn't! Because if someone  
10 expects you to put that road in there, and  
11 they have certain criteria, and it's updated,  
12 then you'll be able to make it respond to it  
13 from that standpoint. And that's just good  
14 planning, what we should be doing.

15 One of the things, if I may add to  
16 that. Can't record it unless I talk into the  
17 mic. Before I talked in to the mic, I was  
18 saying how much I - one of the things I think  
19 you're saying is maybe - and we've heard these  
20 things in the past, a recommendation that  
21 there's a red line side by side. We've heard  
22 that, and we'll take that into consideration

1 when we get to the NPRM stage. The other thing  
2 that you're going to see probably is in the  
3 preamble to the NPRM, we have to describe what  
4 the changes are. OK? Is it done now? The side  
5 by side? No, it's not. We're in here in  
6 advance. Things are changing right up to the  
7 last minute, and we just don't have a side by  
8 side. But it will be, and we have heard, and  
9 I think that's what you're stating, is that it  
10 would be a useful tool during the NPRM. Now,  
11 you said the comment period ends June...

12 MS. WALKER: 14th.

13 MR. SPARROW: 14th. That's the  
14 comment period for this draft. There's another  
15 whole comment period right around the corner.

16 MS. WALKER: But the draft is what's  
17 hard to compare right now.

18 MR. SPARROW: I understand. But we  
19 don't - things were changing right up to the  
20 last minute. There is no side-by-side right  
21 now. There's a side-by-side that was put  
22 together for some of the subgroups when we

1 were working with the coordinating committee,  
2 but even that now is old, because the language  
3 isn't exactly the same. That has changed. So  
4 I think that is something you'll see as a tool  
5 when we come out with the NPRM and we put the  
6 NPRM on the website, we'll put a side-by-side  
7 on the website so people can see that as well.

8 MS. WALKER: All right. And the  
9 other thing is, if I'm following you right,  
10 which I think the point you're making about  
11 inventory, which is why I asking about whether  
12 the inventory had been completed, because you  
13 have this sort of very long phase-in period  
14 from SAFETEA-LU to MAP-21, and the inventory  
15 that's going to be right now 80% of the  
16 funding formula is based on this current  
17 standard for the inventory. But you were  
18 having a review of inventory. So that  
19 inventory's somewhat going to change as you  
20 review what should have been it and shouldn't  
21 have been it over the years. As I understand  
22 it. Right? And then the other 20%, that

1 percentage grows of MAP-21 over the next  
2 number of years, of the new formula. And so  
3 the impact of the inventory in terms of the  
4 rules, of what you claim to go in the  
5 inventory, it's much more simple now with the  
6 new rules, that's where understanding how that  
7 formula's going to be implemented by the new  
8 rules, and what you're up to with that, would  
9 be the most useful. So, again, that it's  
10 changed in terms of being in Subpart C,  
11 Subpart D. But the part I'm kind of losing you  
12 is how this formula, and the phase out, is  
13 impacted between what you're doing now with  
14 the inventory and what people are going to  
15 doing in the future with the inventory, if you  
16 follow me. So that's the only question I have.  
17 And I know it's kind of a long question, but  
18 if you have a way of showing us that impact?

19 MR. GISHI: Well, we have this  
20 graph, we wanted to, we mentioned that we  
21 would show, that will kind of explain a little  
22 bit about what's actually going into what

1 you're talking about, the funding formula, and  
2 what elements will change or can change, and  
3 which ones will not. So that establishes how  
4 the formula goes. But keep in mind that the  
5 bulk of our emphasis has been in terms of  
6 inventory, the 2012 has only been BIA and  
7 tribal roads. So if you are looking in your  
8 inventory, if you look at RIFDS and you have  
9 access to it, and you see a route and it's  
10 still in process or at BIA-DOT or somewhere  
11 that says "well, this has been updated" - if  
12 it's an ownership in terms of non-BIA or non-  
13 tribal, we're finishing those up. But it  
14 didn't impact the formula. Our first concern  
15 was to make sure we got the pre-2004 and BIA  
16 and tribal ownership in terms of what's in the  
17 inventory through 2012 so that we could run  
18 the formula. So I know there was some concern,  
19 we had some questions in the previous meeting  
20 about that, and that was clarified with that.  
21 So, having said that, when you take a look at  
22 that, hopefully it'll show you what that is,

1 and we can go over it again, because it's  
2 really - Bob and I do this all the time, and  
3 if we are off a month not doing it, you have  
4 to really remind yourself on where these steps  
5 are, because it's pretty complicated as a  
6 formula.

7 MS. WALKER: And the other part  
8 that's in Subpart D, this planning piece, in  
9 terms of your steps for planning, how that  
10 impacts the - of course, you already have your  
11 2012 inventory, which this is going to be  
12 based on, but I'm not sure if I understand how  
13 this planning piece might possibly impact your  
14 formula under MAP-21.

15 MR. GISHI: It will not.

16 MS. WALKER: It won't?

17 MR. GISHI: It will not.

18 MS. WALKER: It will not. It's just  
19 because you don't know what the next MAP-21 -

20 MR. GISHI: No. It will not ever. As  
21 long as Map-21 and the way the laws written,  
22 it will never have an impact. It is closed as

1 to the inventory data that goes into the  
2 formula as of the end of 2012. And then  
3 another one was back before even 2004, prior  
4 to. So those - if you've seen that little I,  
5 little 2i, little 3i, that were in red, that's  
6 what impacts the formula. And one of them has  
7 long passed nine years, and another of them  
8 just ended at the end of 2012.

9 MS. WALKER: OK. All right, thanks.

10 MR. GISHI: OK. Subpart E.

11 MR. BEGAY: My name is Jonah Begay  
12 with the Navajo Nation, I just needed a quick  
13 clarification on the process on NPR. My  
14 understanding is right now, the tribes are -  
15 can provide comments on the draft up through  
16 June 14. After June 14 is an NPR process. OK,  
17 what happens after June 14? Does the final  
18 draft of the 25-CFR is published on the  
19 website? Can the tribe still provide comments  
20 after June 14 on the finalized draft, right?

21 MR. GISHI: Yes.

22 MR. BEGAY: Up to when after June

1 14?

2 MR. GISHI: 45, 60, 90 whenever it  
3 is that when we work with the department, they  
4 decide. Remember what we said was at that  
5 point, it becomes the department's rule, and  
6 not BIA's rule. In terms of - and this draft,  
7 what we're trying to do is we're trying to get  
8 started with the formal rule-making process at  
9 a point where we've already given tribes the  
10 opportunity to take a look at what's in there,  
11 and in terms of ownership, we're basically  
12 saying "This is what we see, this is what's in  
13 statute, this is what we got comments from the  
14 TTPCC. Here's where we're at. But we're by no  
15 means anywhere near finalized." This is the  
16 process that we'd like to get comments for a  
17 30-day period of things, and we just had some  
18 good comments here earlier that are part of  
19 the record. Either email them, when you get a  
20 chance to take a look at them, and then we  
21 start at that point with a little better idea  
22 of what the rule is starting to look for,

1 forward to, in terms of before we go to the  
2 formal rule-making process.

3 MR. BEGAY: Thank you.

4 MR. GISHI: Yes?

5 MR. BENDS: Michael Bends, San  
6 Xavier District, Tohono O'Odham Nation. My  
7 question is about right of way. We have an  
8 important, longstanding tribal road,  
9 ironically called San Xavier Road, that leads  
10 into our district, that has no legal  
11 documentation for the right of way. What do we  
12 do?

13 MR. GISHI: That is more of a  
14 process question as opposed to a regulatory  
15 question, but certainly from the standpoint of  
16 when you begin looking, and this is an  
17 important part of what we're talking about  
18 here, when you start to take a look at one of  
19 the first portions of the definition under -  
20 and we'll talk about this when we get to  
21 Subpart G and the road maintenance, is who has  
22 that responsibility, and it's identified in

1 statute with what we call a public authority.  
2 Public authority is any entity that has the  
3 ability to maintain, operate, improve, any  
4 toll, non-toll facility, and in other words,  
5 they're like for lack of a better word, the  
6 owner. And from that standpoint, they have  
7 certain responsibilities, but they also have  
8 certain rights relative to that. So what  
9 you're talking about is a realty question.  
10 It's part of process, that would probably be  
11 better handled when we work with the region  
12 and those folks in terms of making that  
13 determination as to where you're - now, if  
14 it's a BIA road, the definition of a BIA road,  
15 as mentioned, is any road that the BIA has or  
16 intends to get right of way. And so it could  
17 go into that category as a BIA road, but it  
18 may not have the documentation that meets  
19 their needs, that satisfies the tribe relative  
20 to any type of undertaking, and certainly the  
21 tribe has the ability to work with that. So  
22 it's a process question. You need to be able

1 to work with the region folks on that as to  
2 how you want to go forward with that.

3 MR. BENDS: Thank you.

4 MR. GISHI: Certainly. Subpart E.  
5 Delivery of services. Service Delivery for the  
6 TTP Program. Under the original regulation,  
7 this was a big part of where we began to  
8 develop procedures on how, at that time, the  
9 two primary areas that we are looking at, as  
10 I mentioned earlier, was under the 638  
11 process, was self-determination contracts  
12 under Title 1 and Title 4 for self-governance.  
13 Since then, we have a few more methodologies  
14 that are available. This attempts to update it  
15 to include those in terms of how those are to  
16 be handled. I mentioned also before this that  
17 a big part of what we are looking at was, is  
18 that under these contracts and agreements,  
19 particularly if they pertain to the self-  
20 determination act, unless specifically  
21 determined or specified in Title 23 for this  
22 program, pretty much follows 900 and 1000. And

1 900 and 1000 were last updated prior to 94 and  
2 96, I believe. And so they're still in place  
3 as regulations. They're still being utilized.  
4 The transportation regulations, and the  
5 transportation laws have been updated in 98,  
6 of course, 91 and 98, 2005, and now again in  
7 2013, and most people would tell you that when  
8 one statute is updated that changes how  
9 programs are run or handled, you assume that  
10 Congress knows in doing that, that that's what  
11 they were doing, and the impact of it is, is  
12 that's how programs are to be run. And it's  
13 advantageous to tribes who are operating the  
14 program, because the flexibilities that we  
15 feel that are out there related to the changes  
16 as they were initiated by tribes, as far as  
17 SAFETEA-LU and MAP-21, are in fact advantages  
18 in terms of the things we're seeing. For  
19 instance, the approval of the PS&E, which is  
20 available, as opposed to not being available  
21 under the self-determination and self-  
22 governance procedures. This part covers

1 Funding in terms of general funding, how it is  
2 to be provided. Contracts and agreements that  
3 are out there, and miscellaneous provisions,  
4 pretty much everybody knows about contract  
5 support costs, how they kind of relate and fit  
6 in, again, to a transportation program that's  
7 tribal shares. Startup activities. Forced  
8 account methods that are available, and we  
9 will talk a little bit about what forced  
10 account really means in the context of what  
11 we're looking at here. And TTP functions that  
12 are not otherwise contractable, or those  
13 activities that we have to do as a federal  
14 agency, that we can't contract out but we  
15 still have to be able to perform, and that's  
16 where Bob talked about that 6%. This subpart  
17 tells us how the Indian Self-Determination and  
18 Education Systems Act, the Federal Highway  
19 agreements, programmatic agreements and other  
20 program-appropriate agreements and contacts  
21 can be used for programs that are under the  
22 TTP program, self-determination contracts,

1       which is Title 1, pretty much project by  
2       project agreement has certain limitations in  
3       terms of how the tribe and bureau of Indian  
4       Affairs interact. Self-governance, a little  
5       more flexibility in terms of a program  
6       agreement instead of a project-by-project  
7       agreement. And then, of course, by virtue of  
8       its name, the FHWA the program agreements is  
9       just that: programmatic in nature. That's  
10      where we talked about more of a government to  
11      government, and then the BIA government to  
12      government agreements are essentially a mirror  
13      of the Federal Highway program agreements, but  
14      as they apply to the Secretary of the  
15      Interior. But it talks about right of first  
16      refusal in terms of what's in the law relative  
17      to that, that this is offered up, but the  
18      whole emphasis of these regs was to push  
19      toward providing these functions, services,  
20      programs, activities to the tribe for them to  
21      be able to undertake those. So you see that,  
22      but we also have to have provisions in there

1 for direct service type activities, if the  
2 tribe wants the BIA to perform that work, or  
3 wants the BIA to contract that work out  
4 through another mechanism as a whole. How to  
5 handle contingency funds, typical things that  
6 you'd see that are in a lot of the contract  
7 procedures associated with most contracts.  
8 Cost overruns, how to handle those. And, yeah,  
9 application of advance payments, which - boy,  
10 when we first started this back in 1998,  
11 excuse me, 99, 2000 - advance payments was one  
12 of the tough things out there. A few of you  
13 that were in that process will remember that  
14 it was probably one of the most contentious  
15 discussions as part of that rule-making. And  
16 we look at it 15 years later, now what were we  
17 arguing about? It just makes sense, if you  
18 look it from the context of where we've come  
19 from, and where we're getting going. Too loud?

20 It's my heart. And so when you get  
21 to that, and you see them, and you hear it's  
22 good information, it's applicable, it's there,

1 but that's the background from a lot of the  
2 stuff that we worked with in the past. Indian  
3 preference vs. local preference. The  
4 provisions reiterates a lot of what's in not  
5 only in Title 23, but in 25. Contract  
6 enforcement, how to go through the process of  
7 reviews and so forth. The application of the  
8 Buy Indian Act, and the Buy American Act, the  
9 application of Davis Bacon wage rates, FARS,  
10 there's still an element of that, in terms of  
11 when we work with the projects in which the  
12 BIA actually goes out to or other part of our  
13 contract efforts, and that's under the Buy  
14 Indian act when we go out and solicit projects  
15 for qualified Indian-owned contractors. And  
16 all of that, of course, applies to the  
17 different types of agreements that are out  
18 there, that are available to us. And like  
19 anything else, as part of the process, those  
20 methods are available and at the tribes'  
21 discretion, obviously, through each of the  
22 procedures there is an element of risk

1 assessment that the government will do.  
2 Whether it's self-determination, whether it's  
3 the FHWA agreements, of the government process  
4 that goes through to be able to make that  
5 determination. Again, a little bit more of the  
6 same. We're talking about technical assistance  
7 to tribes. A big part of this whole concept of  
8 where we've come from and where we go back to  
9 Subpart A, what is the policies of the  
10 secretary in terms of this program, the TTP.  
11 It was clear that what we were saying there,  
12 at least from the standpoint, we want it to be  
13 a government-to-government relationship. We  
14 want it to be a relationship in which tribes  
15 are self-determined and self-governing in  
16 terms of how they choose to implement the  
17 program based on what's in the law, and what's  
18 in the regulations. Well, a big part of what  
19 we're looking at now in this 2013 and 12 and  
20 10 and then on in the future, is what  
21 technical assistance can the Federal  
22 Government provide to tribes to be able to be

1 successful, and in performing this work, not  
2 necessarily is that pointed out to be there,  
3 to say what kind of oversight do we need to  
4 do, what kind of managing and monitoring, but  
5 more from the standpoint of providing that  
6 technical assistance. So all these agreements  
7 that we're looking at under the Federal  
8 Highway Program agreements and the other  
9 appropriate agreements, the BIA ones from  
10 government to government, are designed in that  
11 direction. So keep having that in mind, that's  
12 kind of where we're looking at to be able to  
13 comment. Is that in fact what we're heading in  
14 with these regulations, to be able to reflect  
15 what it says as part of our policies and  
16 procedures.

17 Savings. Again, there's a number of  
18 provisions that are out there. By the  
19 uniqueness of the program itself, although  
20 there are saving provisions in 638, and what  
21 it talks about are, at least from the  
22 standpoint of interpretation, these are tribal

1 shares. Unlike other programs within Interior  
2 that are in the Operation of Indian Programs  
3 and so forth, sometimes those funds are made  
4 available on a need basis or a request basis  
5 or an application basis. Here these are tribal  
6 shares. The law has said since 1998, that  
7 funds will be made available to tribes, on  
8 request, based on a formula, and they describe  
9 what the formula is going to be. So from that  
10 standpoint, we're dealing now with tribal  
11 shares. So if there is savings, there's really  
12 a savings to the tribe. It's not a savings to  
13 the program. So from that standpoint, these  
14 regulations have been written in that manner  
15 to reflect that. Clear, unclear? You need to  
16 take a look at those.

17 Publication of notice of  
18 availability of funding. As I mentioned, the  
19 technology has changed, has improved  
20 dramatically. I think there was a period of  
21 time, even when we were first getting started  
22 with the regulations, the new regulations that

1 were published in the 2004, that we couldn't  
2 get out there with any kind of notification.  
3 There was no ability to get out there and be  
4 able to communicate with the public, in a lot  
5 of areas. That's changed now. The availability  
6 of webinars, the availability of training  
7 sessions, and of course the ability to be able  
8 to post things as need for use, much like we  
9 did with the information here, is available to  
10 us, so when those things are published, they  
11 are available, and it's a matter of just  
12 having people get familiar, get used to  
13 reviewing and looking at those pages, web  
14 pages at Federal Highways and BIA to make sure  
15 they've got the information. But part of it's  
16 the continued coordination between us and  
17 Federal Highways also. There's an explanation  
18 of how additional funds may be acquired if  
19 unforeseen costs - you're looking at,  
20 basically, 100% of the pie has been cut up,  
21 and any additional funds really are just that.  
22 It would have to be additional. They certainly

1       couldn't be out of the pot that we have  
2       available.

3                       BIA and FHWA forced account  
4       procedures. When we're doing the work in-  
5       house, we employ a couple regions, a number of  
6       Indian employees that do perform construction,  
7       that do perform design, that do perform  
8       monitoring, all of those. And so this  
9       describes what the responsibilities and  
10      authorities are. Obviously, if a tribe is  
11      doing the work, it's not listed here. The  
12      tribe is actually the contractor, and you,  
13      whether you're doing it through a contractor,  
14      whether you're doing it in-house, whether  
15      you're causing it to be transferred as part of  
16      a cooperative agreement for someone else,  
17      you're doing the work, and it's consider a  
18      forced account from that standpoint. So  
19      there's no real explanation from that  
20      standpoint. It is - it's assumed that that's  
21      what happening. And that's ultimately where  
22      the funds will be going anyway.

1           It clarifies again, legislation.  
2           Regulation requires where it's specifically  
3           not stated in one of the other laws, we have  
4           to be able to come up with something that  
5           addresses it, or if it is specifically stated,  
6           like some of the provisions we talked about  
7           earlier, it is in here.

8           Contract support costs. Again, as  
9           100% of the pie comes down, as you're looking  
10          at the availability of funds, how a tribe uses  
11          it to accomplish those contract support  
12          activities are really at the discretion of the  
13          tribe and that capability, and any kind of  
14          procedures that outline that the tribe may  
15          have within its own contract management,  
16          within its own administrative management  
17          procedures are eligible under this process,  
18          and for the most part we haven't had a problem  
19          with that. It's handled, it's managed within  
20          house. But are there additional funds that  
21          come from the BIA? No, there are not. Because  
22          these are additional DOT funds of which the

1 total amount has been made available by law.

2 What functions may a tribe assume  
3 under the self-determination - these different  
4 types of agreements, again? What provisions of  
5 the -- special provisions of the contract may  
6 be included in there, it talks a little bit  
7 about how they may be included. How do we fund  
8 non-contractable project activities? In this  
9 passage of SAFETEA-LU, the provisions that  
10 talk about program management and oversight  
11 change to include project-related  
12 administrative expenses. And I mentioned  
13 before, I think I mentioned this more in -  
14 previous to this, whenever we had work  
15 performed on a project, regardless of what it  
16 was, if it was design, if it was monitoring,  
17 if it was inspection, and we were performing  
18 the work that it was those inherently Federal  
19 functions, we would charge it to the project,  
20 which means it would come out of the tribe's  
21 share, whatever funds are available. SAFETEA-  
22 LU came in and said "No, you can't do that

1       anymore." Everything you do, from an  
2       inherently Federal responsibility, in other  
3       words, something that cannot be contracted.  
4       Only you can do, related to not only the  
5       program but to a project, you have to take it  
6       out of the 6% that's available, and otherwise,  
7       the only other way that you can perform the  
8       project related functions would be if the  
9       tribe asked you to do the work, and you were  
10      doing the design, you were doing the  
11      monitoring, inspection, and so forth.  
12      Otherwise, if the tribe's doing the work, no  
13      funds come off the top. As a matter of fact  
14      under Federal Highways agreements, there's a  
15      provision in there that a portion of the funds  
16      that are made available for the - what we call  
17      - that are not otherwise available to the  
18      tribe - a portion of that is made available  
19      through those agreements, to be able to  
20      perform that work. And that's stated in the  
21      law as part of SAFETEA-LU. And that's areas  
22      that we're referring to when we talk about

1 those functions for a non-contractable project  
2 activities. The overall budget that  
3 establishes this PM&O and PRAE is also  
4 referenced that on an annual basis, the  
5 Secretary of Transportation and Interior, BIA,  
6 will establish a national budget for the  
7 purposes that we're talking about. And again,  
8 re-emphasizing technical assistance and its  
9 role in this process to provide that to  
10 tribes. Yes sir.

11 MR. PETE: Leonard Pete, from Navajo  
12 Nation. Under a technical assistance, under  
13 section 170.166, of this proposed legislation,  
14 what service do your TTACs provide? There's  
15 a whole lot they can be able to assist with,  
16 provide with, give some guidance to the tribe.  
17 I never can recall such program until about  
18 three weeks ago. I never met any kind of  
19 representative from that program till about  
20 three weeks ago. Never. From all of the  
21 trainings that we have, guidance that we need,  
22 direction that we need, I don't know, if

1 somebody's dropping the ball, or not. And also  
2 with the amount of needs we have on Navajo  
3 reservation, with all the needs that we are  
4 confronted with, and with the amount of funds  
5 that we receive, I believe that we should have  
6 a center near the Navajo reservation that  
7 would be able to help us. The closest might be  
8 Denver. And I'm not quite sure how often they  
9 make a trip down to the Navajo reservation. I  
10 just want to stress that, and then for the  
11 record, there's a lot that they can do. I  
12 don't know how they can be able to get their  
13 feet to the fire, and keep it there, and so  
14 that we can be able to receive the help.  
15 Thanks.

16 MR. GISHI: Certainly there is an  
17 individual that is at Federal Highways, not in  
18 Federal Lands, but within Federal Highways  
19 that does the monitoring of the TTACs or the  
20 Tribal Transportation Assistance Centers that  
21 are out there, they could probably provide you  
22 with some guidance, some information relative

1 to that. But that's important, because that's  
2 been in the law and regulation since 1991, and  
3 it continues to be a big part of what tribes  
4 are doing out there, and can provide that  
5 support.

6 Indian Preference, again, visions  
7 how that's handled. Again, we've deferred to  
8 the governing regulations that are found in 25  
9 CFR and 25 USC. Waivers of regulations when  
10 certainly a role in there for the Secretary to  
11 waive regulations based on the procedure  
12 described in this. Not just for this, but for  
13 other regulations as a whole. Appendix A. The  
14 highlights. We have an appendix A to Subpart  
15 E which basically is those functions that are  
16 not otherwise contractable, so you kind of  
17 have an idea of some of the things that BIA,  
18 that Federal Highways, the agencies, the  
19 region office, need to be performing. And it's  
20 broken out by the specific type of office, at  
21 a central office level, at a region office  
22 level, in terms of what those functions are

1 and what should be provided, and what is  
2 actually provided, and that's what basically  
3 pays the 6%, pays for in addition to the  
4 program management as well as the project-  
5 related type stuff.

6 Timetables. There's a number of  
7 timetables, timelines, and requirements that  
8 are already in 900 and 1000, which there's  
9 numerous ones, too many to list, but keep in  
10 mind that the point being there's a set of  
11 regulations out there, 900 and 1000, that talk  
12 about how projects, construction projects, are  
13 to be administered. What type of requirements,  
14 and the application process, what the  
15 expectations are, those are in place. The  
16 intent here was not to change those or modify  
17 those, but to continue to support those. And  
18 so those are there, and that would be some of  
19 the key dates as far as some of the timelines  
20 associated with that, that you are probably  
21 already familiar with, and certainly your  
22 contracts administrators are familiar with

1 also.

2 And this talks about as far as  
3 record-keeping and reporting, BIA and FHWA  
4 will determine on an annual basis, developing  
5 a national budget for non-project-related  
6 functions, so those non-contractable  
7 activities we talked about, and I was  
8 referring to that, that we do develop a budget  
9 on an annual basis and it's basically divided  
10 up by -- among each of the regions, base on a  
11 workload, and it's pretty consistent across  
12 all regions. The exception is California and  
13 Alaska, simply because they have a larger  
14 number of tribes that they have to provide  
15 services to.

16 OK. That's Subpart E. Again,  
17 delivery of services and the TTP. Any  
18 questions? Comments? We'll take a ten-minute  
19 break then.

20 Subpart F, program oversight and  
21 accountability. As I mentioned, the - in the  
22 previous regulations, the bulk of which are

1       seen in there, were lists in the appendices.  
2       So you did see eligible activities, which  
3       functions were in Subpart E, which activities  
4       were not otherwise contractable. It has that  
5       list. So if you see the regulations, and you  
6       see each subpart, these other sections usually  
7       have pretty long lists associated with it, but  
8       the actual portion that talked about sections  
9       are much smaller. Program oversight and  
10      accountability, section that talks about the  
11      responsibilities that each of the roles that  
12      each other entities have in the process,  
13      whether its' the tribe, whether it's BIA,  
14      whether it's federal highways, in terms of  
15      what those are. And in terms of the BIA and  
16      Federal Highways, a stewardship plan, as a  
17      question brought up earlier, how are co-  
18      ordinating some of those activities? And Bob  
19      brought up the fact that there is a  
20      stewardship plan that is in place, that has to  
21      be updated to reflect the changes, likewise  
22      between our roles, and especially since we now

1 have Federal Highways entered into direct  
2 agreements with tribes, we try to develop our  
3 program, for the most part, after SAFETEA-LU  
4 when it became very apparent that we were  
5 heading in toward, in a direction of providing  
6 technical assistance, more and more tribes  
7 entering into 638 or other types of  
8 agreements. We have several regions as a whole  
9 where every tribe within the region contracts  
10 the program, functions, services, and  
11 activities. We have a few regions still that  
12 do provide some direct service, forced account  
13 type of work. For the most part, we're heading  
14 in that direction. So when we do, we have to  
15 make sure that we're geared up toward the  
16 process of providing technical services or  
17 technical assistance in terms of those  
18 services. This subpart talks about some of  
19 those roles and where we're heading in that  
20 area, including development of Memoranda of  
21 Understanding, and with direct service tribes.  
22 In the past, the tribes that received the

1 direct service with the BIA or the Federal  
2 Highways, they would basically just say "Go  
3 ahead and do it, and then let us know what the  
4 project looks like. We expect to be able to  
5 drive on it." This process allows for more  
6 participation in terms of timelines, in terms  
7 of exception, Because, as governments, we need  
8 to be able to get in that context of not just  
9 saying "If you want us to do it, we'll do it.  
10 Don't bother us." But as more in terms of  
11 "Here's what we need to do." This MOU process  
12 allows for that capability so that the tribe  
13 can at least have some agreement,  
14 administratively, with the entities to be able  
15 to say "This is what the expectations are.  
16 This is our roles and responsibilities from  
17 both sides to be able to do that."

18 The process. What processes do we  
19 use, in terms of monitoring all the TTP  
20 program activities, by the Secretary both of  
21 Transportation and Interior? And then the use  
22 of formal program reviews. Whereas we, from a

1 government to government perspective, we've  
2 stepped back from a lot of the day to day  
3 activities that from a FARCON contract type  
4 activities, were taking us 10, 15 years back.  
5 In a government-to-government context, we need  
6 to be able to leave that to: the law supports  
7 it, Congress supports it, Congress has written  
8 the laws in that manner. And we're now at a  
9 point where we need to be able to let that  
10 work be done. But on the other hand, we still  
11 have a responsibility as a Federal agency to  
12 ensure that there is a process in place to  
13 review procedures, to review programs at the  
14 tribal levels, to make sure that we can  
15 provide a technical assistance to stay on line  
16 with what's required with the law, and that's  
17 where these formal program reviews, and we'll  
18 talk a little about those, including some  
19 timelines that are associated with it. And  
20 this is not just from a standpoint of  
21 monitoring tribes. It's also from the  
22 monitoring regions who perform the work on

1       behalf of tribes, that same process applies.  
2       The stewardship plans, as I mentioned, is a  
3       formal agreement that we have with Federal  
4       Highways that outlines roles and  
5       responsibilities, and obviously when you start  
6       looking at more and more of the program as a  
7       whole, particularly when we're talking about  
8       Federal Highway agreements, we need to be able  
9       to define those more. We currently have  
10      guidance out with for the programs, but this  
11      will help us to formalize that into an actual  
12      agreement between Secretary to the Secretary.

13                    Again, define roles and  
14      responsibilities in the memorandum.

15      Memorandum's an agreement between tribes who  
16      are receiving work from the BIA region in  
17      terms of the project, and here is the ability  
18      to be able to do that. Through an agreement  
19      that can be adhered to, that the tribe feels  
20      that they have a way to participate in the  
21      process even though they may not be performing  
22      all the work. Timetables, timelines, what

1 happens for the review process identifies and  
2 area for improvement. Then, of course, the BIA  
3 regional office or the tribe has a certain  
4 number of days to be able to develop a  
5 corrective action plan as part of that program  
6 review. So that's one element there. Another  
7 one, as under D, is the tribe that's reviewed,  
8 or the BIA region that's reviewed, will  
9 implement a plan that reports to, either  
10 annually or biannually, to BIA-DOT, which is  
11 headquarters, BIA and FHWA headquarters on the  
12 implementation, accomplishments. Again,  
13 anybody who's out there that knows that BIA,  
14 Federal Highways may be certainly for the  
15 standpoint as an oversight agency has roles  
16 and responsibilities, but behind us we have  
17 the department, we have the Department people  
18 who are also overlooking those things, and  
19 behind them is our two good friend GAO or the  
20 IAG. And in order to be able to work through  
21 those, particularly in terms of program  
22 procedures, having procedures in place is

1 really critical. So part of this process is to  
2 make sure, to encourage through the formal  
3 review process, is for tribes to develop their  
4 own procedures on how they're addressing  
5 implementation of the program. I tell you,  
6 nine times out of ten, if you have those in  
7 place, and even through you may have some  
8 implementation or carrying, problems carrying  
9 out that process, if it's in place you can  
10 adjust it based on that as part of a  
11 corrective action, and you go on down the  
12 road. If there's nothing in place, my  
13 goodness, they'll have field day with you in  
14 saying "How come this is not in place, that's  
15 not in place?" And, of course, part of our  
16 procedures are geared toward making sure that  
17 we help develop, through examples or through  
18 other avenues, be able to develop procedures  
19 to be able to do that. A big part of that's  
20 the asset management plans that will be coming  
21 up. We'll address that. We talked about the  
22 bridge inspection, making sure we identify all

1 public bridges that are out there that are  
2 tribally owned, and, again, when we say owned,  
3 which the tribe has, is the public authority  
4 that's responsible for maintaining and  
5 improving, constructing and reconstructing  
6 those facilities. Then, as that entity, you  
7 have certain roles and responsibility that you  
8 have to perform. For instance, if there's any  
9 change in the structure, within 90 days you  
10 have to notify the Federal Highway  
11 Administration of what that change is. It  
12 washed out on so-and-so date, and we're  
13 notifying you, and as of now it's been posted  
14 as closed, or we've changed the load rating on  
15 it. Those are things that a public authority  
16 has to do. Part of the process is making sure  
17 that tribes that now get into that arena and  
18 being able to do those things, and of course,  
19 certainly with technical assistance from BIA  
20 and Federal Highways.

21 Again, that's pretty  
22 straightforward, Subpart F. Program oversight

1 and accountability. Now we can take a break,  
2 Bob says. 10, 15 minutes. We're good. Thank  
3 you.

4 (Whereupon, the above-entitled  
5 matter went off the record at 2:46 p.m. and  
6 resumed at 3:04 p.m.)

7 MR. GISHI: Can you hear me still?  
8 Bob was telling me I'm making too much noise.  
9 OK, let's go to subpart G. Under the current  
10 regulations, 25-CFR 170, the title of this is  
11 BIA Road Maintenance Program, and as you are  
12 well aware, that it's not just the BIA  
13 maintenance program that we have now; we also  
14 have the program under the Utilization of  
15 Tribal Transportation Program Funds, the 25%  
16 or \$500,000, whichever is greater, that is  
17 available to be able to be utilized. So,  
18 likewise, we have to change the regulation to  
19 reflect the maintenance program, and in this  
20 process we have delineated between what goes  
21 into the BIA road maintenance program, what  
22 goes into the TTP road maintenance program,

1 and what in general applies to both in terms  
2 of are eligible for both program. So this  
3 subpart covers, again - we mentioned earlier,  
4 someone had asked about, in terms of ownership  
5 of roads and rights of ways and things of this  
6 nature. Again, definition of the process that  
7 we've gone through, and how we've treated  
8 these roads that we refer as BIA roads has  
9 always been roads that are held for the  
10 benefit of tribes. And in doing so we have, in  
11 terms of actual right of way, we have status  
12 in which certain roads have actual rights of  
13 way documented in terms of amount of easements  
14 of this nature, or roads in which are to be,  
15 in which the BIA intends to get rights of way.  
16 That means that up to now, there may not be  
17 any funds that are expended on it, because  
18 there hasn't been any type of Federal action  
19 on it, so in that case there isn't a need to  
20 get a right of way. But once we begin that  
21 process of doing it, we have to have those  
22 procedures in place, which really may differ

1 in terms of - as time changes. 15 years ago,  
2 it may have been the intent of BIA to do this,  
3 and the tribe didn't concern itself with that,  
4 because it wasn't their priority. 15 years  
5 later, BIA says "We're going to begin working  
6 on that", and we've identified that in the  
7 inventory as BIA would like to start the  
8 process of the acquisition of rights of way,  
9 and the tribe may say "You know what? We want  
10 to do that road, and it's critical to us, and  
11 we'd like to be able to function in that  
12 capacity, so no. We need to do that."

13 And of course, procedures that  
14 obtain to the tribe, in terms of them being  
15 the public authority kicks in, and that whole  
16 process, again, is in place at that level. In  
17 fact, one of the things that we've been  
18 wrestling with in our department program is,  
19 is every year the Department of Interior  
20 require all the Bureaus to provide a list of  
21 what they call Federal Real Property, and  
22 those are akin to anything you see out there

1 where you see a red, white and blue sign, and  
2 it says "No Trespassing, Property of the  
3 United States Government."

4 And that's kind of what they're  
5 looking for. And we've told them, "You know,  
6 aside from those roads that we've acquired off  
7 Indian lands for the purpose of providing  
8 access, in which BIA's actually done that,  
9 those would be those roads that we would look  
10 at under Federal Real Property. But for the  
11 most part, these roads are held for the  
12 benefit of tribes, for the purpose of a public  
13 corridor, and for that reason we have to be  
14 able to identify the public authority  
15 associated with it." And in that case, we go  
16 off our rudimentary data sheet, and those  
17 roads which are identified as BIA, and we have  
18 the ability to be able to perform maintenance  
19 on those, even though we may not have the  
20 right of way, we have other roads that have  
21 rights of way that are either in that location  
22 as the reservation, or the region as a whole.

1 So public authorities are entities that are  
2 responsible for maintenance activities, in  
3 this case of maintenance.

4 So if it's a county road, it's the  
5 county. If it's a state road, it's the state.  
6 If it's a tribal road, tribal public, it's the  
7 tribe. Likewise BIA, National Parks Service,  
8 roads which belong to other BLM, other  
9 entities that might be out there also. So  
10 that's what this covers.

11 The also - the provisions for  
12 what's referred to as the Transportation  
13 Facilities and Maintenance Program, the BIA  
14 portion of it, and what's eligible there, what  
15 facilities are eligible under that program.  
16 The funding, it talks about the distinction  
17 between tribal Transportation Program Funding  
18 as well as the annual DOI appropriations.  
19 Eligible uses of the highway trust fund or  
20 program by tribes, and agreements that they  
21 have with either the BIA or DOT to perform any  
22 of these facility functions and maintenance.

1 Because they can, again, as long as TIP - it  
2 has be on a TIP, it can be included in there  
3 as activities that are eligible under the  
4 program.

5 In reference to the standards, that  
6 we have to be able to have standards, we used  
7 to use the old BIAMS in the past. We've now  
8 had to kind of move into a direction of a more  
9 general IAM, and reference handbooks, manuals  
10 that refer to how we do things. Likewise, a  
11 number of tribes have developed similar type  
12 of handbooks on how they do their maintenance  
13 works. Again, it looks to procedure, it looks  
14 to what's eligible, it looks to those  
15 procedure that are in place and how they  
16 comply with what's in the law.

17 What kind of facilities that are  
18 out there, and activities are eligible with  
19 the use of the BIA funding? I know the program  
20 associated with the BIA, bridges, roads,  
21 walkways, anything that's out there that's  
22 identified as ownership of two. And provisions

1 for road, for emergency maintenance also.  
2 Describes the BIA road maintenance program,  
3 again it talks about the funds that are  
4 available, that's generally consistent with  
5 what's published in annual green book, the  
6 budget book that's put out each year, that's  
7 approved by OMB, approved by the secretary,  
8 describes activities that relate to what our  
9 budget that we receive is geared to do,  
10 including FTE and specific functions where  
11 it's routine maintenance, emergency  
12 maintenance, bridge maintenance, snow and ice  
13 removal, all those things are similar.

14 Biggest part of this section, this  
15 subpart, of course, is the list. The list, of  
16 course, tells all the things that are  
17 eligible, not just for the BIA facilities but  
18 also for tribal transportation facilities. So  
19 if you enter into agreements with other public  
20 authorities to perform work, you're utilizing  
21 these funds, these are the type of activities  
22 that would be eligible under the program. And

1 that's included as part of this Appendix A to  
2 this subpart. There are no timetables  
3 associated with it, no timelines or mandated  
4 requirements from that standpoint.

5 Reporting. This is something that  
6 has been out there, was initiated actually by  
7 the rule-making committee. Primarily it's  
8 designed that if roads that are on the Tribal  
9 Transportation Facility, in other words, are  
10 part of that National Tribal Transportation  
11 Facility Inventory, are not being maintained,  
12 it's the responsibility of the Secretary of  
13 the Interior to notify the Secretary of  
14 Transportation that this is not happening, and  
15 where we find that out is tribes coming  
16 forward and telling us this is the case, and  
17 it's a way of notifying folks that we have a  
18 responsibility to perform this work, and if it  
19 isn't performing, being performed, and  
20 likewise, what are you going to do? That's to  
21 the extent that we have - the authority  
22 provides, but at least it's a mechanism of

1 being able to notify other entities.  
2 Obviously, if it's a BIA facility, then that  
3 process is also considered in-house, but it  
4 doesn't have to go to the Secretary of  
5 Transportation. It goes to the Secretary of  
6 Interior. And of course the affected tribe is  
7 notified also of that.

8           Any comments? Subpart G, again,  
9 very much the list. Take a look at the list  
10 when it refers to, for instance, what can be  
11 maintained. We've had questions in the past  
12 regarding "Can we maintain airport runways?  
13 Can we maintain trails? Can we maintain  
14 specific roads that are private driveways to  
15 people's homes?" Any number of those things.  
16 If you look at the list, that attempts to make  
17 sure that those are understood, and if it's  
18 not understood, we need to make sure we  
19 provide that clarification as part of the -  
20 Yes, Shawna?

21           MS. BALLAY: Hi, good afternoon  
22 again. Shawna Ballay, Pueblo of Isleta. LeRoy,

1 I think I confused myself by looking through  
2 the CFR regulations, because in Subpart A,  
3 Section 170.116, it says that activities not  
4 eligible for TTP funding says that the  
5 purchase of construction and maintenance  
6 equipment, unless approved by BIA and Federal  
7 Highways. Subpart G, Appendix A, Eligible  
8 Activities Number 12, says "Leasing and  
9 purchasing of maintenance equipment." To me,  
10 when I read the regulations, these two  
11 contradict each other. So I'm hoping that you  
12 can clarify that.

13 MR. GISHI: Read the first one  
14 again?

15 MS. BALLAY: Subpart A, Section  
16 170.116, it says activities not eligible for  
17 TTP funding. Is the BIA facility and Tribal  
18 Transportation a function of the TTP now in  
19 the new regulations? Because if it is, these  
20 two contradict.

21 MR. GISHI: One refers to the  
22 construction program, and it is in terms of

1 being able to - and the way we've been  
2 operating is, we have to have approval of the  
3 request to purchase equipment under the  
4 program. And those who are familiar with the  
5 Recovery Act procedures, that's probably where  
6 it came into play in terms of being able to  
7 identify that. And there's a simple process of  
8 being able to request eligibility for that and  
9 that taking a look at what the program  
10 entails, taking a look at what kind of ongoing  
11 equipment maintenance procedures are in place,  
12 basically to protect the investment for the  
13 tribe in terms of what they're being able to  
14 do. That's in terms of construction. What  
15 you're looking at under the BIA Road  
16 Maintenance program, and we've had that in  
17 terms of a number of the programs where under  
18 the Road Maintenance portion, then it  
19 qualifies under the 25%, and has been part of  
20 that process.

21 MS. BALLAY: Then can I make a  
22 suggestion that under Subpart A, Section

1 170.116, that it doesn't say purchase of  
2 construction and maintenance equipment, it  
3 just says purchase of construction equipment?

4 MR. GISHI: Well, in those cases,  
5 when you're looking at under the maintenance  
6 utilizing the 25%, then, of course it has be  
7 approved on the TIP. It has to be on the TIP.  
8 So that - you consider that part of the - so  
9 we can clarify that, if you wrote it up that  
10 way, to make it, make sure that we clarify it,  
11 as part of the TIP improvement process.  
12 Because under the road maintenance program,  
13 well, whatever you receive you have the  
14 ability to go out and of that. That's one of  
15 the eligible activities under the OIP BIA road  
16 maintenance program, is to be able to purchase  
17 equipment. And it just makes a clarification  
18 that under the TTP, since SAFETEA-LU - and  
19 remember, this is in there prior to SAFETEA-  
20 LU, we're trying to update. If it isn't clear,  
21 we need to make sure it's clear that it is an  
22 eligible activity.

1 MS. BALLAY: OK, thank you.

2 MR. GISHI: Thank you. Yes, sir.

3 MR. PETE: Hi, Leonard Pete, of the  
4 Navajo Nation. When it comes down to road  
5 maintenance, I have a problem with that. It's  
6 like you're trying to dance to two different  
7 drumbeats. When the tribes get a contract to  
8 maintain the BIA system road, the BIA says  
9 "You need a clearance, you need to comply with  
10 the environmental." And years and years has  
11 gone by with BIA has been maintaining these  
12 roads. They don't have our clearance. They  
13 don't have EA. If you're going to put a five  
14 years into them, you need to get a study of  
15 what size pipe you're going to put in there.  
16 It's never done before. And when the tribe  
17 wants to step in there, it says "You didn't  
18 comply with all these things. These are  
19 federal regulations." And they never comply  
20 with it. When you have two standards to play  
21 with, what do you do? I just want to pose that  
22 question.

1 MR. GISHI: This is a process  
2 question relative to the regs, and if we need  
3 clarification on that, we need to. But in  
4 terms of what you're referring to, is -  
5 there's - a lot of the requirement for  
6 implementing a program are the result of  
7 addressing, a lot of times a tribal NIPA  
8 process that's in place, and I think in this  
9 particular case, that has been the case there.  
10 But overall, there are ways to be able to do  
11 that. As long as you maintain, again, the  
12 definition of maintenance, in terms of what  
13 we're looking at, is to stay within the  
14 template of the road. It's not go out 15, 20,  
15 30 feet.

16 That's not maintaining. You've got  
17 to maintain the road that's there, and in the  
18 as-built condition. It's not an improvement  
19 process. So part of that process is just part  
20 of the normal procedures to make sure that  
21 that's done, and of course, I don't know of  
22 anybody that - based on the amount of money

1 that we get, that people are out there  
2 improving the roads using maintenance funds,  
3 because there's just not enough there to be  
4 able to do that. So to answer your question,  
5 if it isn't clear, how do we make it clear?  
6 How do we get to the point where we  
7 specifically state that in terms of what we're  
8 asking the tribes to do, that we're consistent  
9 in having the BIA do likewise? But I think the  
10 important thing that we need to note is that  
11 anything we have to comply with has to be  
12 concurred by or initiated by the tribe in  
13 terms of what they want to be able to see as  
14 a part of the road maintenance procedures  
15 itself. And that, a lot of times, really  
16 actually drives the process.

17 Yes, I'm done with G. OK. We've got  
18 to go on to H.

19 MR. SPARROW: I'm learning that  
20 possession is 9/10ths of the law, if it's on  
21 your computer, you have to do it. I didn't do  
22 this the other day. Subpart H really is

1       miscellaneous, and most of the stuff is in  
2       here for informational purposes only. And  
3       very, very little of it changed. I can't get  
4       this in my -- with regards to the old reg.  
5       This subpart provides information on the  
6       transportation, the transport of hazardous and  
7       nuclear waste through the tribal lands. Indian  
8       preference and tribal employment rights, and  
9       the applicability of tribal taxes and fees for  
10      TTP projects, as well as information on the  
11      emergency relief program, or ERFO, in  
12      establishing and operating tribal  
13      Transportation department, and what eligible  
14      activities and functions can go with the  
15      establishment of a tribal transportation  
16      department. This subpart also covers tribal  
17      regulations with regard to oversized and  
18      overweight vehicles, reporting requirements,  
19      and tribal employment rights.

20                   Alternative dispute resolution  
21      procedures to the resolve any TTP disputes,  
22      and research activities that are available for

1 TTP projects. So again, this is kind of a  
2 catchall at the very, very end.

3 Hazardous and nuclear waste  
4 transportation. You'll see questions and  
5 answers and information in there about  
6 transporting hazardous and nuclear waste, the  
7 roles of the state the tribal and local  
8 governments, accident response and the  
9 training and handling of cleanup of hazardous  
10 material. Reporting requirements and Indian  
11 preference identifies the TTP information that  
12 Federal Highway and BIA must report to the  
13 tribes. If a tribe asks for an information on  
14 the TTP, what do we have to do, and how must  
15 we respond, and what information can we  
16 provide back to the tribes? Also a Q&A on  
17 Indian employment, training, and contract  
18 preferences. And tribal employment taxes and  
19 fees. Again, not intended to fully cover these  
20 areas, but just give a Q&A with respect to  
21 this particular area with regards to the TTP  
22 program. Emergency relief. Provides

1 information on the ER program as contained in  
2 23-CFR part 668. You've got the ER program,  
3 which the states and counties use for  
4 emergency relief on their Federal Highway  
5 eligible projects.

6 And then on top of that we've got  
7 the emergency relief for Federally owned  
8 roads, or ERFO, which is part of ER which is  
9 run out of my office, which provides emergency  
10 relief fund through the BIA to the tribes for  
11 their emergency relief projects. There's some  
12 information in there about developing a Tribal  
13 Transportation Department. What's the  
14 definition of a department? What kind of  
15 funding can you use to develop that department  
16 within your tribe? Talking about regulating  
17 oversize and overweight vehicles traveling on  
18 the roads under your jurisdiction. Using  
19 alternative dispute resolution procedures is  
20 discussed, when it talks to resolving  
21 disputes. And as we said before, there's other  
22 miscellaneous provisions on transportation

1 research and funding eligible Transportation  
2 services, just some informational stuff to the  
3 tribes. There's no dates, there's no time  
4 frames, record keeping, as we said before,  
5 describes what information on the TTP program  
6 or projects the Federal Highway must provide  
7 the tribes. Can you click that, LeRoy, please?  
8 And 935 describes how a direct service tribe  
9 begins the alternative dispute resolution  
10 process. So we're kind of getting away from  
11 the TTP talking about tribes, transportation  
12 departments and tribal contracts and tribal  
13 procedures as a whole. And that's Subpart H.

14 Last section is the new Subpart I.  
15 Just let me get out of here. Don't really have  
16 the same sort of breakout on Subpart I,  
17 because Subpart I is brand new, and it really  
18 is only one section. As I said earlier, the  
19 high priority program was a set-aside, or a  
20 take-down of the IRR program, and it was all  
21 the questions and answers were contained in  
22 Subpart C. Congress, when they passed MAP-21

1 said that this particular program no longer  
2 exists, but they did establish a new, high  
3 priority program over and beyond the TTP  
4 program. This program is funded through the  
5 general fund, as I said earlier, and in order  
6 to receive funding it requires a complete,  
7 separate action by Congress specifically  
8 providing funds out of the General Fund to  
9 this program. It is not funded for this fiscal  
10 year.

11 Those of you that have MAP-21  
12 information, it's under section 1123 of MAP-  
13 21, but what they did was they literally took  
14 the question and answers that were in the old  
15 red, took them out, and put them in this new  
16 section of MAP-21. Same ranking criteria. The  
17 old table that was at the back, it's a the  
18 very last page of the regulation, if you have  
19 a copy of the reg with you. It actually says  
20 in that statute that projects are going got be  
21 ranked according to the evaluation criteria  
22 that was used in 25-CFR 170 at the time of

1 when this act was passed. What is different,  
2 though, is the timeline. If you went back to  
3 the old reg, it would say applications are due  
4 December 31st of every year, and that BIA and  
5 Federal Highway ruling view the applications  
6 and by January 31st we'll let you know if the  
7 applications are accepted, and then by March  
8 30, or February 31st, or 28th, let you know if  
9 you were successful, and blah blah blah, until  
10 by April 15th or May whatever, the funds are  
11 made available to the tribe.

12 Well, because the program is not  
13 necessarily funded every year, there is no  
14 submitting dates by December 31st. What it says  
15 is that Federal Highway will issue a call for  
16 projects no sooner than 60 days after the  
17 funding is made available. So if Congress  
18 provides for the program, a notification, a  
19 NOFA, probably, will come out from Federal  
20 Highway saying "Here's 30, we got \$30 million  
21 dollars, applications are due X" And then the  
22 applications come in. The Q&As that you have

1 in front of you say what should be in an  
2 application, and then we will rank them  
3 according to that matrix at the very, very end  
4 and make funds available starting at the  
5 highest number, ejaculated number one project,  
6 excuse me, we'll work our way down until we  
7 run out of money. That's how we operated  
8 before. Still have a maximum award amount of  
9 one million dollars. That hasn't changed.  
10 Emergency projects can be funded. That hasn't  
11 changed. And the scoring matrix is the same.  
12 That hasn't changed. So really, the only thing  
13 that's changed about it is the fact that  
14 Congress has to make a separate action, and it  
15 may or may not get funded. Once it is funded,  
16 it's pretty much going to operate the way it  
17 was before.

18 And that's Subpart I. Again,  
19 because it's not part of the TTP program, it's  
20 in this reg for informational purposes only,  
21 because it's so closely tied to the TTP  
22 program. Any questions on that? I love a late

1 afternoon crowd. Yes ma'am. Don't raise your  
2 hand, just come forward.

3 MS. WALKER: This section under  
4 1000b, it says "Applicants eligible for the  
5 program," this says, "An Indian tribe whose  
6 annual allocation of funding is insufficient  
7 to complete the highest priority project." I  
8 thought before the regs said that if you got  
9 funding above a certain level, you couldn't  
10 apply for a high priority project. Or  
11 something like that. I thought it made it very  
12 difficult for tribes that had funding over a  
13 certain level to get --

14 MR. SPARROW: Well, it pretty much  
15 is the same. The issue here is the fact that  
16 if you get three million dollars and you spend  
17 2.7 on your projects, and you've got \$300,000  
18 left, and you need another \$500,000 for your  
19 highest priority project that's not the intent  
20 of this program. The intent of this program is  
21 to provide up to a million dollars for a  
22 project that the tribe does not have enough

1 money for, period. It is the tribe's number  
2 one priority project, and their tribal shares  
3 are not adequate to fund that project. It's  
4 not that their tribal shares are not adequate  
5 after they've done other activities, it's that  
6 their tribal shares are not adequate to cover  
7 that project, and they have no other projects.

8 MS. WALKER: Right.

9 MR. SPARROW: It's pretty much the  
10 same with how it was before.

11 MS. WALKER: So it pretty much will  
12 benefit tribes that get much less money.

13 MR. SPARROW: Small money.

14 MS. WALKER: Very small money. OK.

15 MR. SPARROW: Any other questions?

16 Mr Caulum, you have the floor. You have to  
17 close it out.

18 MR. CAULUM: Do we have the final  
19 comments section?

20 MR. SPARROW: Oh, we could have  
21 final comments. I asked if there were any  
22 other comments.

1                   MR. CAULUM: Well, I think, just to  
2                   make sure, if anybody has any additional  
3                   comments beyond Section I here, any sections  
4                   will be covered before, but you now have  
5                   something to ask or discuss...

6                   MR. MACKEY: James Mackey,  
7                   Susanville Indian Rancheria, Northern  
8                   California. About 18 months ago in a  
9                   consultation process, we talked about the  
10                  transportation plan. Roads being available to  
11                  be in there even if they're not generating  
12                  funds, and at that time the IRR committee had  
13                  made recommendations on what would be  
14                  allowable. I have not heard of what might be  
15                  allowable to be in there. I do not want to  
16                  spend funds on a Transportation plan on roads  
17                  that, let's say, may be 50 miles between a  
18                  checkerboarded reservation, so I would hope  
19                  that we would have a little bit of  
20                  clarification on what the closest two points  
21                  are that are identified in the transportation  
22                  plan.

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MR CAULUM: Thank you. Anybody else?  
Going once... going twice... three times. All  
right. Now we'll formally conclude the  
consultation part of our meeting today, for  
our court reporter, you don't have to take  
down the remainder, so that concludes now  
today at what time? 3:34. So we're a little  
ahead of schedule, I guess.

(Whereupon, the above-entitled  
matter went off the record at 3:34 p.m.)

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Date: 05-16-13

Place: Phoenix, AZ

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Court Reporter

**NEAL R. GROSS**

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