

BUREAU OF INDIAN AFFAIRS
TRIBAL CONSULTATION SESSIONS
COMMENTS ON TRIBAL TRANSPORTATION PROGRAM

25 CFR PART 170

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Thursday, January 29, 2015

Third Floor
Student Center South
OSU-OKC University
900 N. Portland
Oklahoma City, Oklahoma

The above-entitled hearing was
conducted at 9:00 a.m., , Andrew S. Caulum,
presiding.

PRESENT:

Andrew Caulum
Jay Adams
Charley LaSarge
Kirk Carson
Tom Simpson
Sheldon Kipp
Michael Vasquez
Michael Heusley
Randle Carter
Samuel Riffel
C. Colt Donelson
Richard McCulley
Art Muller
Denise Smith
Bill Blandkenship
Jim Self
Rob Endicott
JoLynn Tiger
Rhonda Fair
Darcel Collins

Janice Maddox
Michelle Vanhoose
Milton Sovo
Rhonda James
Sylvia Dempsey
Andrew Warrior
R.C. Kissee
Chuck Tsoodle
Angela Blind
Charmian Hunter
Lee Grimes
Truman Carter
Steven Landsberry
Kent Collier
Wayne Wylie
Tom Edwards
Michael Lynn
Charles Woods
Ed Mouss
Mark Farris
Franklin E. Akoneto
Bo Ellis
John Ellis
Karla Sisco
Chris McCray
Rachel Dinwiddie
Ray Ball
Alene Adams
Denea Burgess
LaRue Guoladdle
Robert Sparrow
Vivian Philbin
Martha Ghodoumpour

LeRoy Gishi

Berdina Tohee

Carla Davis

P R O C E E D I N G S

1
2 MR. CAULUM: Good morning everyone.
3 Good morning everyone. My name is Andy Caulum.
4 I work with the Solicitor's Office in the
5 Division of Indian Affairs at the Department of
6 the Interior, and we'd like to begin the
7 consultation on 25 CFR 170.

8 Just I'm going to -- my colleagues and
9 I will be going through certain parts of the NPRM
10 in our presentations, so we're sort of in a tag
11 team. And I'll take the beginning, Mr. Sparrow
12 will -- Bob Sparrow will take the next section,
13 I'll come back briefly and then Mr. Gishi,
14 Sheldon Kipp and -- will also take part in this.

15 First, we want to welcome you all to
16 consultation on the update to 25 CFR 170. This
17 is a notice of proposed rule making, so this is
18 obviously not the final rule. We're out getting
19 feedback, tribal comments, comments from the
20 public at both of these meetings and in written
21 form. And we'll go to the -- later on we'll show
22 you where you can submit written comments as

1 well.

2 But first off we do want to welcome
3 you. And this is formal consultation. We have a
4 court reporter here and everything that's being
5 said here is being taken down and will be -- and
6 a transcript will become available which we'll
7 then publish on BIA's website for anyone to read.
8 Any documents that are submitted today -- we've
9 had a few letters from tribes commenting on the
10 NPRM. Anything submitted today will be made part
11 of this record as well.

12 The comment process and identification
13 procedure. If you rise to speak, we'd request
14 that you -- each time you speak you'd state your
15 name, and if you're here representing a
16 particular tribe, also tell us which tribe you're
17 here representing. If you're here just on your
18 own you don't have to say that of course.

19 Questions will be taken throughout the
20 presentation. There will a microphone here that
21 Mr. Kipp or someone else will have available so
22 just raise your hand and we'll get it over to

1 you. We would like you to use the microphone so
2 we're sure that the court reporter gets down
3 everything that you have to say. It's very
4 important to us because when we go to put
5 together the final rule, we need to have an
6 accurate record of everything that was said.

7 Handouts. Outside at the sign-in
8 table there was a copy of the proposed rule, as
9 well as the entire PowerPoint. Both of those of
10 course are available on the consultation website.
11 The PowerPoint itself is also available on that
12 site.

13 You are seeing the same presentation
14 here that we have done in Sacramento, California;
15 Phoenix, Arizona; and earlier this week in
16 Minneapolis, Minnesota. That's a very important
17 aspect of consultation, that each location the
18 same presentation is made and we follow the exact
19 same agenda. We'll be going from here in two
20 weeks to Anchorage, Alaska and then Seattle,
21 Washington, and again, the same presentation will
22 be made there as well.

1 Meeting expectations. As I mentioned,
2 we'll be going through the same agenda that we
3 have used since the beginning of the
4 consultations. And we will get through the
5 entire agenda today. So far, depending on how
6 many comments we've had, we seem to have plenty
7 of time to get through everything by four
8 o'clock. In one case we got done a little early.
9 But we will make it through the entire agenda.

10 One thing that we have done that makes
11 it a little easier for the court reporter is ask
12 that everybody introduce themselves, just tell us
13 who you are and if you're representing a tribe or
14 another entity, where -- who you're representing.

15 And, Mr. Kipp, do we have the
16 microphone? And start maybe from the back corner
17 here, these well-dressed men. Mr. Kipp, to your
18 right. To your right. Best-dressed guys in the
19 building.

20 MR. J. ELLIS: My name is John Ellis
21 and I work for the Chickasaw Nation.

22 MR. B. ELLIS: Bo Ellis, Director of

1 the Chickasaw Nation Roads Program.

2 MR. LYNN: Good morning. I'm Michael
3 Lynn from Cherokee Nation, Roads Department.

4 MR. ENDICOTT: Rob Endicott, Cherokee
5 Nation, Roads Department.

6 MS. JAMES: Rhonda James, Pawnee
7 Nation, Transportation.

8 MR. McCRAY: Chris McCray, Pawnee
9 Nation, Transportation.

10 MS. BLIND: Angela Blind,
11 Transportation Director for the Cheyenne-Arapaho
12 Tribes.

13 MR. WARRIOR: Andy Warrior, Absentee
14 Shawnees.

15 MR. TSOODLE: Chuck Tsoodle, employed
16 by Cross Timbers Consultants.

17 MR. EDWARDS: I'm Tom Edwards with
18 Cross Timbers Consulting.

19 MS. SMITH: Denise Smith, Citizen
20 Potawatomi Nation Transit Driver.

21 MR. MULLER: Art Muller, Citizen
22 Potawatomi Nation, Roads Director.

1 MR. LaSARGE: Charley LaSarge,
2 Muscogee Creek Nation Transportation.

3 MR. CARSON: Kirk Carson, Muscogee
4 Creek Nation Transportation.

5 MR. MOUSS: Ed Mouss, Thlopthlocco.

6 MS. TIGER: JoLynn Tiger,
7 Thlopthlocco.

8 MR. WOODS: Charles Woods,
9 Thlopthlocco Tribal Town.

10 MR. KISSEE: R.C. Kisse, Eastern
11 Shawnee Tribe, Department of Transportation.

12 MR. ADAMS: I'm Jay Adams with the
13 Oklahoma Department of Transportation.

14 MS. DEMPSEY: Sylvia Dempsey, BIA,
15 Eastern Oklahoma Region.

16 MR. WYLIE: Wayne Wylie, Choctaw
17 Nation.

18 MR. BLANKENSHIP: Bill Blankenship,
19 Choctaw Nation.

20 MR. SOVO: Milton Sovo, Comanche
21 Nation, Realty and Land Acquisition.

22 MR. AKONETO: Franklin Akoneto, Budget

1 Analyst for the Comanche Nation Transportation
2 Transit Private Drives Program.

3 MS. VANHOOSE: Michele VanHoose with
4 Comanche Nation Transit. I'm a manager.

5 MS. MADDOX: Janice Maddox, Tribal
6 Administrator for Delaware Nation.

7 MS. HUNTER: Charmian Hunter, Delaware
8 Nation, Transportation.

9 MR. SIMPSON: Tom Simpson, BIA,
10 Southern Plains.

11 MS. SISCO: Karla Sisco, Southern
12 Plains TTAP.

13 MS. FAIR: Rhonda Fair, Oklahoma
14 Department of Transportation.

15 MR. SELF: Jim Self, Southern Plains
16 TTAP.

17 MR. FARRIS: Mark Farris with Red
18 Plains Professional Consulting Engineering.

19 MS. COLLINS: Darcel Collins, Federal
20 Highway Administration, Tribal Transportation
21 Coordinator.

22 MR. KIPP: Sheldon Kipp, Supervisory

1 Highway Engineer, Division of Transportation,
2 Central Office, Albuquerque.

3 MR. R. CARTER: Randle Carter,
4 Assistant Planner of the Sac and Fox Nation, Iowa
5 Tribe.

6 MR. T. CARTER: Truman Carter,
7 Transportation Manager for the Sac and Fox Nation
8 and the Iowa Tribe, Oklahoma.

9 MR. VASQUEZ: Michael Vasquez,
10 Southern Plains Region.

11 MR. SPARROW: Good morning everybody,
12 I'm Bob Sparrow. I'm the Director of the Federal
13 Highway -- at Federal Highway for the Tribal
14 Transportation Program.

15 MR. GISHI: Good morning. LeRoy
16 Gishi, Bureau of Indian Affairs, Transportation,
17 Washington, DC.

18 MS. PHILBIN: Good morning everyone.
19 Vivian Philbin, Assistant Chief Counsel, Federal
20 Lands, Federal Highway Administration. Thank
21 you.

22 MR. CAULUM: And as I said, I'm Andrew

1 Caulum. I'm an attorney advisor in the
2 Solicitor's Office, Division of Indian Affairs in
3 the US Department of the Interior in Washington.

4 I'll turn it over to Mr. Bob Sparrow
5 now and he'll go forward with the next few items
6 in our PowerPoint.

7 MR. SPARROW: Good morning everybody.
8 Can you hear me all right? That one's loud, this
9 one's not quite as loud.

10 (Pause.)

11 MR. SPARROW: You've got the handouts
12 to show the agenda. As Andy alluded to earlier,
13 we have finished before the four o'clock time in
14 the previous consultations, but we will go as
15 long as it takes to get through all the stuff
16 that we want to talk to you about.

17 Based on the questions that you have,
18 we won't close early. Historically we haven't
19 gotten everything done before lunch, which is
20 shown up here, but we've got plenty of time in
21 the afternoon that we pick up when we come back
22 from lunch and we easily have finished on time.

1 The one thing that you see up here is
2 after we close out the formal consultation, I've
3 got a short brief PowerPoint just to let you know
4 what's going on with the program from a national
5 perspective right now with regards to funding,
6 the safety awards, bridge inspections, upcoming
7 reauthorization and issues like that. So that's
8 not part of the formal consultation, but it's
9 informational. We typically have been spending
10 about 20-25 minutes afterwards just to let you
11 know.

12 So why are we here? Well, if we go
13 all the way back to TEA-21, when TEA-21 was
14 passed in 1998, it directed the Secretary of the
15 Interior to enter into negotiated rule making to
16 develop program regulations and establish a
17 funding formula for what was then known as the
18 Indian Reservation Roads Program. And as a
19 result of that negotiated rule making, 25 CFR 170
20 was published in July of 2004.

21 One of the things that TEA-21 also did
22 was that it established an Indian Reservation

1 Roads Bridge Program at that time. It's a set-
2 aside off the main program. It was \$13 million
3 as a set-aside at that time.

4 Well, then the final rule was
5 published in July 2004 and it became effective in
6 fiscal year 2005, and then shortly thereafter in
7 2005, Congress passed the next highway bill,
8 SAFETEA-LU. And it made some significant changes
9 to the Indian Reservation Roads Program at that
10 time.

11 It provided an opportunity for tribes
12 to enter into funding agreements directly with
13 the Federal Highway Administration. Prior to
14 that, Federal Highway's part of this program, or
15 involvement in this program really was from a
16 national perspective of stewardship and oversight
17 of the Bureau of Indian Affairs, as well as
18 getting the funds out and approving TIPS. So
19 suddenly now some tribes that were deemed
20 eligible could enter into funding agreements
21 directly with Federal Highway.

22 It also allowed 25 percent of each

1 tribe's share to be used for maintenance. Prior
2 to this point the BIA Road Maintenance Program
3 could be used for maintenance, but the Indian
4 Reservation Roads funds could not be used. So it
5 opened up that door to allow the tribes to use
6 funds for maintenance.

7 It's specifically identified the
8 amounts of program management and oversight funds
9 that could be used by BIA and Federal Highway to
10 administer and do stewardship and oversight of
11 the program. It allowed tribes to approve their
12 own PS&Es after certain conditions were met. And
13 we'll talk about that a little bit more when we
14 go through the regulation.

15 It identified the National Tribal
16 Transportation Facility Inventory and what was
17 involved -- and what was included in the
18 inventory. And then it -- what it did was it
19 broke out the Indian Reservation Roads Bridge
20 Program and made it a stand-alone program of \$14
21 million. So now you had the IRR and then you
22 actually had the IRR Bridge as a separate

1 program.

2 The program was -- the highway bill,
3 SAFETEA-LU, was authorized through 2009, and it
4 was extended nine times out to 2012. So when
5 SAFETEA-LU was passed, BIA and Federal Highway
6 moved ahead at that time to update 25 CFR 170.
7 It had just been published, but there were some
8 substantial changes that needed to be made to the
9 reg.

10 So we worked together to reflect the
11 changes that came about as a result of SAFETEA-
12 LU, but when we were getting ready to publish it
13 as an NPRM or as a draft, we are right at the
14 point where the administrations were about to
15 change. National elections were coming up for
16 the president, and at that time they said, and
17 this was about a year ahead, they said they
18 didn't want any -- the administration directed us
19 and said, We don't want any NPRMs or new
20 regulations coming out before the election. So
21 everything kind of stopped.

22 Now the elections take place in 2008,

1 the administration changes, new folks come in,
2 the new secretaries come in respectively to
3 Interior and Transportation. But now by the time
4 that happens, which is typically about the March
5 time frame, SAFETEA-LU was expiring at that time,
6 we thought, just a few months down the road.

7 So we decided to hold off and not
8 publish anything because, you know, there was
9 going to be a new highway bill. And at that time
10 we didn't know SAFETEA-LU would be extended for
11 another three years. So it was piecemeal. So we
12 sat there and really couldn't make the changes to
13 the reg that we wanted to make.

14 So then finally in 2012 MAP-21 was
15 passed and it made some additional changes. It
16 changed the program from Indian Reservation Roads
17 Program to the Tribal Transportation Program.
18 Between the four of us going around the country,
19 we've got a little coffee pot, and every time we
20 say IRR when we're not supposed to say IRR, we
21 have to put a dollar into the pot.

22 Chuck, it's tough, buddy. I'm telling

1 you.

2 For those of you who have been around
3 the program -- Robert, you've been around the
4 program a long time -- IRR still rolls off our
5 tongues once in a while. I think we've got about
6 20 bucks in the pot is the bottom line.

7 It replaced the existing fund -- a
8 major issue when MAP-21 was passed was it
9 replaced the existing funding formula that was
10 developed through that negotiated rule making
11 process that was established in TEA-21 years
12 prior with a statutory funding formula. Congress
13 now says from the Tribal Transportation
14 perspective, here is your funding formula, here
15 are the factors of the funding formula, here's
16 the data that goes into those factors of the
17 funding formula.

18 And quite honestly, every single penny
19 is identified of where it goes, what set-asides
20 it goes to, what goes into tribal shares, and how
21 those tribal shares are calculated. And we'll
22 get into that later.

1 When it came -- when we talk about
2 maintenance we said SAFETEA-LU allowed the funds
3 to start being used for maintenance. MAP-21 kind
4 of expanded that and gave the tribes more leeway
5 and more say in being able to use additional
6 funds for the maintenance purposes.

7 It made further clarifications to what
8 the National Tribal Transportation Facility
9 Inventory is. One of the things -- major --
10 another major thing that MAP-21 did was it
11 removed one of the set-aside programs that was
12 developed through negotiated rule making and
13 included in the reg, and that was the High
14 Priority Projects Program.

15 It removed that from the Tribal
16 Transportation Program and it made it a stand-
17 alone set-aside program that is not funded with
18 the highway trust fund, but it's funded through
19 the general fund. So even though it's in the
20 bill, it's in MAP-21, it requires an additional
21 action of Congress to fund it.

22 The appropriations bills that are

1 provided to DOT and DOI and everything else that
2 you hear about, it's not included in those
3 appropriations bills. It requires Congress to
4 specifically mention this program and provide
5 funding for this program from the general fund,
6 not the highway trust fund.

7 It established a new set-aside for
8 safety, and it established the authority for the
9 tribes to receive federal aid funds from a state
10 to carry out the work, that the funds -- the
11 federal aid funds that a state receives, if the
12 state wants to provide those funds to the tribes,
13 it gave us the authority for the state to send
14 the money back to Federal Highway for us then to
15 make available to the tribes. So additional
16 major changes to the program that was established
17 in 2004, or 2005.

18 So we began to update 25 CFR 170. We
19 kind of picked up where we left off, we had to
20 make additional changes to the changes we had
21 already made, but we had to get -- it was decided
22 we had to get the reg to reflect the current laws

1 and the operational processes.

2 And although all parts of the existing
3 25 CFR 170 were reviewed, we really only are
4 looking with this update that -- to the sections
5 that were required to be updated due to the
6 changes in the law, either the updated operations
7 of how things are going now as compared to 2004.
8 If you -- a lot more things on the internet now.
9 The processes are a lot more smooth than they
10 were 10 years ago.

11 So trying to update those processes to
12 reflect how the program's actually operating.
13 And then other additional things that were
14 approved from a policy perspective that had
15 worked their way through the Coordinating
16 Committee and reached consensus to be included in
17 the inventory -- or to be included in the rule.

18 And then we developed this draft and
19 we worked with the Coordinating Committee and got
20 comments from the Coordinating Committee and we
21 developed a draft NPRM, which may -- hopefully
22 you'll remember, it was a while back, but it was

1 published in April of 2013. And we carried out
2 three consultations across the country, in
3 Anchorage, Phoenix and Minneapolis, to gather
4 comments specifically on that draft to the NPRM.

5 Comments were received, we made
6 changes to the draft where we could and where we
7 agreed. And the NPRM we're going to be
8 discussing today was finally published in the
9 Federal Register on December 19. The comments
10 that were received are posted on the BIA website,
11 and will be posted as the comments are posted to
12 the docket. And Andy will talk about that in a
13 few more minutes and tell you about where to send
14 your comments in with regards to this NPRM. So
15 that's kind of the history of how we got to where
16 we are.

17 So, Andy, you're back up here.

18 MR. CAULUM: Okay. There were -- so
19 why are we here, continued. There were two
20 versions of the NPRM that were made available,
21 and that was not our intention. There should
22 just be one version. The BIA -- we posted the

1 version that we sent to the Federal Register that
2 was signed off by me and going up the Assistant
3 Secretary of Indian Affairs on December 12, 2014.

4 The Federal Register then published
5 the NPRM on December 19. However, there were
6 some differences and a few of them were
7 important, and we're going to address these when
8 we do the final rule. We want to make sure that
9 everybody is aware of the changes. First, there
10 were some -- primarily some editing and format
11 changes. The Federal Register has changed some
12 of what they do and what they allow since the
13 current rule was published in 2004.

14 There were two sections that were
15 modified though. Subpart C, 170.202, sub D,
16 statutory reference to the date of MAP-21
17 enactment, in effect as of June -- July 5, 2012
18 was removed. We have to keep that though because
19 it further clarifies the time frame that the MAP-
20 21 funding formula must use when determining
21 tribal shares. You may be aware that the current
22 formula is a statutory formula, so it removed the

1 negotiated -- the formula that was present in the
2 negotiated rule.

3 And it took a snapshot of the
4 inventory as of July 5, 2012 and from that
5 snapshot it moves forward for -- was it five
6 years, or for six, I forget -- five years. It
7 uses that snapshot going out five years. So even
8 though MAP-21 was only a two-year bill, and now
9 it's been -- I'm sorry, four years, it goes out
10 four years, not five -- even though it was a two-
11 year bill -- I don't know what Congress's view
12 was, but maybe they thought, Well, we better have
13 it just in case we can't make -- we can't come to
14 an agreement on a new bill like what happened
15 with SAFETEA-LU, so we are going to continue
16 using the statutory formula for year three and
17 four, and then after that we'll have to figure
18 that out. Hopefully we won't have to get to that
19 point, it'll be a new bill.

20 Subpart C, 170.226(b), the word
21 "proposed" was deleted from this language. In
22 this case "proposed" means new and not previously

1 approved. Again, we'll have to work with the
2 Federal Register on that as well.

3 And as -- with respect to both of
4 these sections in -- or both of these provisions
5 in Subpart C, if Congress does end up enacting a
6 new transportation authorization, this might
7 become moot because, you know, who knows what
8 they'll do with the formula. They might leave it
9 as it, they might change it. If they leave it as
10 is, we may have to address this. If they change
11 it, then that'll be a different situation
12 altogether and we'll just have to address that
13 when the time comes.

14 So what's the purpose of today's
15 session? As I mentioned earlier, we're going to
16 present the proposed rule and the proposed
17 changes to 25 CFR 170 and listen to and record
18 your comments and concerns. We like to hear what
19 you have to say. That is very important to us,
20 it's why we come out to Indian country and why
21 we're doing about six of these sessions.

22 You may recall in the draft

1 presentation we went to three locations I believe
2 it was. We feel it's important to try to get to
3 all of the regions. Unfortunately, with
4 financial constraints and what-not, we were able
5 to do six of the 12 rather than all 12, but
6 ultimately that's up to the Secretary to decide
7 and he approved the consultation schedule that we
8 proposed, knowing that he probably wouldn't allow
9 for 12 sessions.

10 With respect to the work and effort
11 that took place in the development of the current
12 rule more than 10 years ago, we only made the
13 following changes in the NPRM. We had to make
14 changes to follow the statute, both SAFETEA-LU
15 and then later MAP-21. You may recall, if you
16 were involved in the program a number of years
17 ago, the current rule was adopted in the summer
18 of 2004. Congress then a year later enacted
19 SAFETEA-LU.

20 No regulation can contradict a
21 statute. So there were some changes, sort of
22 what the lawyers would call automatic changes in

1 the regulation as a result of SAFETEA-LU. But
2 the rule was never -- you know, there was -- as
3 Bob mentioned earlier, there was an effort to
4 update the rule at that time but then it got
5 stymied at the end of the Bush administration.
6 So we are working through the NPRM to address
7 that, those basic changes here.

8 Updating the operational procedures.

9 In 2004 there was no such thing as an agreement
10 directly with Federal Highway. Today there's 128
11 tribes that contract with Federal Highway. Even
12 in 2010, so after SAFETEA-LU's original
13 expiration date, there were no tribes that
14 contracted with BIA under a similar agreement
15 that Federal Highway has. We call it program
16 agreement or government-to-government agreement.
17 There are now 150 tribes that contract with BIA
18 for the Tribal Transportation Program now.

19 So for those of you that have been
20 involved in this for quite some time and even for
21 maybe not very long, the way the program is
22 delivered to tribes has changed dramatically.

1 When you think about the fact there's 566
2 federally recognized tribes in the United States,
3 you're looking at nearly half of the tribes
4 partaking in the program now through a method
5 that didn't exist in 2004.

6 So, and, you know, from a -- you know,
7 tribes have more options, we believe, for the
8 Tribal -- to have the Tribal Transportation
9 Program delivered to them than really any other
10 program that they receive funding for from the
11 federal government, we believe, especially
12 because of the advent of the program grievances,
13 we call them.

14 The policies of the IRR the Tribal
15 Transportation Program Coordinating Committee
16 developed and passed by consensus were ultimately
17 approved by the Secretaries. Are any of you
18 aware that each region has a representative and
19 an alternate for the Tribal Transportation
20 Program Coordinating Committee?

21 The committee review issues of
22 interest for the Tribal Transportation Program

1 and makes recommendations for changes on policy
2 matters to the Secretaries. Those are only
3 recommendations, but the Secretaries often do
4 respond and follow the recommendations from the
5 committee. And there have been some
6 recommendations that were made that we are now
7 putting in the final rule.

8 OMB has changed some of the rules in
9 the Federal Register regarding what is allowed in
10 an NPRM. No material may be included for
11 information only. This is a big change because
12 the current rule has the number of pages really
13 of reference material that is really handy when
14 you're out in the field in particular, or just
15 even at your desk and you have a rule available
16 right there, here it is, you know, here's the
17 reference to this standard or whatever it might
18 be.

19 OMB and the Federal Register have said
20 you can't do that. The result is that all the
21 information-only material that was included in 25
22 CFR 170 is not in this NPRM. The material will

1 also not be included in the updated 25 CFR 170.
2 That is something we've already gotten quite a
3 few comments on, very good ones. We will have to
4 see whether the Federal Register is willing to be
5 flexible on this.

6 What we have done, as you may have
7 noticed in the final rule, is provided links to
8 BIA or Federal Highway's website, which will then
9 have further links to whatever the -- say maybe a
10 construction standard or something of that nature
11 has available.

12 On the one hand, I definitely can
13 understand where the Federal Register is coming
14 from because those things can change. I mean the
15 current rule's been in place for now, what, over
16 10 years. And so those things I suspect have
17 changed -- well, we know those things have
18 changed over time. So stuff get's published and
19 the rule doesn't get updated again, it becomes
20 out-of-date and then can be confusing.

21 On the other hand, we've had some very
22 good comments from tribes saying, You know, that

1 was -- that stuff was put in there as part of the
2 negotiated rule making and now you've taken it
3 out. And some of the comments have taken the
4 position that that was important to tribes as
5 part of the negotiated rule making and should be
6 left in.

7 That'll be a discussion that we have
8 to have with the Office of Management and Budget
9 and the Federal Register, keeping in mind that we
10 work for the President of the United States
11 through the Secretary of the Interior. OMB is
12 within the Executive Office of the President of
13 the United States. So the White House, in fact,
14 directly runs OMB and the Federal Register.

15 So we both work for the same person,
16 but since it's -- the Federal Register controls
17 what actually gets printed, sometimes the answer
18 is, You want your rule printed, you've got to do
19 it our way. Maybe there's a way to persuade them
20 differently. We'll see.

21 Use of appendices have been minimized,
22 and much of the information that's in the

1 appendices will now be available on the Federal
2 Highway websites. Again, same caveat as I
3 mentioned earlier, based on some of the comments
4 we got, that might change.

5 The preamble, what's included in the
6 preamble. It gives a background and the overview
7 with a history of 25 CFR 170 since its
8 publication in July 2004. Kind of going back to
9 what Bob mentioned just now, laws have been
10 passed that affected the Indian Reservation Roads
11 Program, now known as the Tribal Transportation
12 Program; efforts that took place to clarify the
13 policies and procedures that were established;
14 consultation sessions; locations; schedules and
15 agenda; explanation of the proposed revisions
16 that are contained in each subpart of the NPRM;
17 and other informational and procedural
18 requirements of publishing an NPRM.

19 The preamble. What is this NPRM? In
20 broad overview, the NPRM revises and updates 25
21 CFR 170 to comply with legislation governing the
22 Tribal Transportation Program. As I mentioned

1 earlier, there have been some changes in the law.
2 I mean fundamentally MAP-21 changed the name of
3 the program from the Indian Reservation Road
4 Program to the Tribal Transportation Program.
5 And actually in other parts of the law, anywhere
6 that -- I think anywhere they use the word
7 "Indian" they changed it to "Tribal" when they
8 had other references in MAP-21 to Indians.

9 To reflect changes in TTP, delivery
10 options are available to tribal governments,
11 primarily, as I said earlier, related to the
12 program agreements, but there are other -- some
13 other changes as well. Made technical
14 corrections to clarify program-related
15 responsibilities and requirements for tribal
16 governments, BIA and the Federal Highway
17 Administration.

18 Clarified the requirements for
19 proposed roads and access roads that tribes
20 request to be added to or remain in the NTTFI.
21 Removed certain sections of the current rule that
22 were previously included for informational

1 purposes only, but we're directing the reader to
2 BIA or Federal Highway websites for the most
3 current information available.

4 Now one thing -- I'm going to go back
5 to this -- the preamble for the proposed rule is
6 very different than what you'll see for the final
7 rule when we eventually get to that. If you --
8 if anyone had a copy of the current Part 170 when
9 it was published, there's multiple pages of sort
10 of comment and response, comment and response.

11 So even though they negotiated a rule,
12 the preamble talks about why the -- ultimately
13 it's the President's rule, the government's rule.
14 Right? So where there were some differences
15 between what the rule-making committee wanted to
16 do and what the government decided, you know,
17 this is where we think we have to be, the
18 government has a responsibility to explain why
19 they did or didn't accept a suggestion.

20 For example -- this is somewhat
21 current because there's an effort ongoing right
22 now to revise the regulation that 25 CFR Part

1 169, which is the right-of-way regulation, there
2 was a discussion in the preamble for the current
3 170 that talked about why the current rule did
4 not really get into the issue of right-of-ways,
5 and other than, you know, the fact that you need
6 to have right-of-way before you can begin
7 construction, because there's a different rule
8 that addresses that. Just as sort of a small
9 example.

10 But there will be a very different
11 question and an answer. And so the comment and
12 response will be based on the comments we
13 received at these consultations, as well as
14 written comments we receive online.

15 The preamble we had -- as I mentioned
16 earlier, we've already done consultations in
17 Sacramento, Phoenix and Minneapolis. We're here
18 today in Oklahoma City. In a couple of weeks
19 we're out to Anchorage. Hopefully the weather
20 will be a little better than it is today. And
21 then on to Seattle.

22 And then the written comments will

1 be -- we will be receiving written comments until
2 March 20. You can email them in at
3 consultation@bia.gov. Please make sure that you
4 include that control number so it gets put to
5 the -- or gets sent to the right consultation
6 proceedings. There's a number of consultation
7 proceedings that are ongoing and comment
8 proceedings that are ongoing.

9 You can mail them to Ms. Elizabeth
10 Appel in the Office of Regulatory Affairs and
11 Collaborative Action. She works for the
12 Assistant Secretary. Again, please make sure you
13 put in that control number. You can submit them
14 over the internet at regulations.gov. It's a
15 little bit different document ID number, 2014005.
16 Or you can hand-delivery them to Ms. Appel at the
17 Department of the Interior.

18 Does anybody have any questions about
19 today, the consultation process, the preamble,
20 anything like that?

21 (No response.)

22 MR. CAULUM: Okay. Very good. On to

1 the next section.

2 (Pause.)

3 MR. GISHI: Good morning everybody.

4 Thank you for taking the time to come out this
5 morning. And the nice thing about all of this is
6 for most of you -- a lot of you who were involved
7 in the rule-making process, hopefully it's
8 something that -- information that you've seen
9 progressively grow through the process. And the
10 fact that we're out here in the field doing the
11 pre-consultation I guess on the proposed rule was
12 a big part of that.

13 I'm not sure how this is --

14 (Pause.)

15 MR. GISHI: And so most of you are
16 familiar with the rule from that perspective and
17 it has gone through a lot of changes from back in
18 1983. Someone's -- some of you were actually a
19 part of that process too back in 1983. I'm not
20 going to say who, but some of you have been a
21 part of that process.

22 As we get started with the Subpart A

1 through C here, the way the format is laid out,
2 if you'll notice in your handouts, we'll go
3 through each of the sections and if they're --
4 we'll identify the changes that have taken place
5 in there in those particular sections. If there
6 aren't any, we'll either say there are no
7 changes, or they were not significant changes in
8 terms of it, which generally that means what Bob
9 covered. A lot of the terms that were in there
10 that referred to the IRR Program are changed to
11 reflect TTP. So from that perspective you'll be
12 able to see a lot of those.

13 Starting out with Section 170.1, the
14 basic statement in there regarding the policies
15 and the applicability and the definitions. What
16 does this part do? Primarily, two main things
17 that it begins to do is it includes the Secretary
18 of Transportation, it refers to both Secretaries
19 from the Interior and Transportation. It also
20 references in the list that -- with the -- what
21 was referenced earlier in the Indian Self-
22 Determination Act.

1 It basically covers Title 1 and Title
2 4. It now included program agreements, which are
3 program agreements that the Secretary of
4 Transportation enters into with tribes as well as
5 other appropriate agreements which includes the
6 TTP agreements that BIA also enters into with
7 tribes that are very similar to the program
8 agreements with Federal Highways.

9 So those are primarily the -- and
10 you'll see a lot of that through whenever it
11 refers to this long list of agreement types,
12 they'll include those in there where applicable.

13 170.2, one of the areas that Andy
14 indicated was -- is there's a reference to the
15 BIA Road Maintenance Program in 25 CFR. It has
16 been removed. Primarily the justification for
17 that was because it's funded through a different
18 appropriation. Now we say that, but at the same
19 time keep in mind that as we get to Subpart G,
20 when it starts to talk about maintenance there,
21 that section there talks about the TTP program,
22 and really, when you're looking at it from that

1 perspective, one of the eligible -- facilities
2 that's eligible for maintenance under that
3 program is the BIA road system.

4 So essentially they cover some of the
5 same activities. Maintenance is maintenance and
6 with the exception of the unique features of the
7 TTP program and how it's referenced with regard
8 to road sealing and how that -- in terms of
9 funding and any caps or limitations, it's
10 explained in there that it isn't considered part
11 of that. And we'll cover that when we get there
12 in Subpart G this afternoon.

13 Also it references that, again, the
14 section right here, that it doesn't include those
15 sections that were identified for reference
16 purposes. That section, 170.2, is quite long and
17 lengthy because it talks about really what the
18 policies of the program are.

19 It updates where it has to the
20 information about making comments and how to --
21 in terms of the addresses that are associated
22 with that. The one area that -- of note is part

1 of the preamble. If you look in there, there's a
2 section that talks about information collection.
3 Information collection is whenever a federal
4 agency collects information from the public, it
5 is required to publish in the Federal Register a
6 notice that says, This is what we have estimated
7 it's going to take in terms of burden hours, cost
8 to collect this information.

9 And so that part of it is in the
10 preamble portion. The comment period for that is
11 not the same as the March 20 comment period,
12 which is for the body of the regulation, so keep
13 that in mind. And if you -- when you look
14 through that preamble portion and it talks about
15 information collection, you need to be able to --
16 if you have comments on that and you look at the
17 analysis that's there, if you agree or disagree
18 with it, then you can make comments. It also is
19 establishing the actual location where to make
20 those comments, and it isn't the same one that is
21 part of the rule-making process.

22 And of course a necessary part of what

1 every rule that's out there that requires
2 information, and we'll talk a little bit later in
3 the, I believe H, as to what those are, what it's
4 referring as those bits of information.

5 Subpart A also contains definitions.

6 These are the areas where we've added
7 definitions. A lot of them refer to new things
8 that came about either as a result of SAFETEA-LU
9 or the MAP-21 terms that were not necessarily
10 there in the beginning in terms of -- for
11 instance tribal road system, Tribal Transit
12 Program, those are areas that really were not
13 programs that were identified previously, and
14 there was a process that needed to be included in
15 there, and anything referring to TTP.

16 In addition to that there's a couple
17 here that -- DOT is in there. Financial fiscal
18 constraint. The other area is -- you'll notice
19 access road. Access road was a pretty hot topic
20 and issue, along with proposed roads, during the
21 question 10 scenario, and the Coordinating
22 Committee working within -- the tribal

1 representatives there came up with a
2 recommendation on how to address proposed roads
3 and access roads for purposes of including it
4 into the inventory. And eventually obviously by
5 including it in the inventory they also would
6 count toward the funding formula. This is the
7 funding formula for pre-MAP-21.

8 Well, when the new statutory formula
9 came out, it basically, for purposes of the
10 formula, no longer looks at or considers
11 specifically any type of classification or any
12 type of definition as to the road type, road
13 category. It simply just looks at miles. So you
14 could have 10 miles of one-lane primitive road in
15 a very rural location with less than 10 vehicles
16 per day, or you could have 10 miles of four lanes
17 with five foot shoulders, evenly divided, and
18 from the standpoint of what you're looking at,
19 and if you have 10 miles of road -- in this new
20 statutory formula it just looks at miles; it
21 doesn't care what type.

22 A lot of that which was really

1 designed to update the 25 CFR at the time was no
2 longer included. And so the definition that's
3 here is actually a definition that's associated
4 with the definition in 23 CFR on access roads.
5 And in the previous three meetings we've had some
6 of the tribes comment on that. So I just want to
7 make sure you're aware of it. And that's --
8 excuse me -- about the only place where you --
9 there's a definition. It refers to it in the
10 body of the rule but this is where the definition
11 is for access roads.

12 It modified, based on, again, those
13 changes. The definitions that were previously
14 included in the regulation agreement obviously
15 includes now the program agreements as well as
16 the other appropriate agreements. Maintenance
17 from the perspective of -- because now
18 maintenance is an activity, which it wasn't prior
19 to the old reg, it was not a eligible activity
20 under the TTP program, so this particular
21 definition is a reflection of the TTP program.

22 The National Bridge Inventory, a

1 significant area of contention with regard to
2 MAP-21. Bob will talk a little bit more about
3 the status of -- during the update, the -- when
4 we break from the formal consultation we'll do an
5 update on where that's at in terms of the
6 regulations also. Again, these are the ones that
7 have been modified. They were previously in
8 there but have been modified to reflect those
9 changes.

10 There's two definitions that were
11 removed. The IRR program construction funds,
12 which those of you will recall back then it was
13 basically most of the activities that were
14 described or that were being identified in the
15 program were construction based. So we would say
16 you got construction funds, you have planning
17 funds. And construction funds certainly were
18 eligible for other activities, but it was always
19 referred to as construction funds.

20 Now you've got -- those specific
21 activities are identified like safety, like
22 bridge, like transit in the rule itself so

1 there's no need to have the definition that
2 reflects just the construction funds because it
3 identifies it's one of the eligible activities.

4 Office of Self-Governance is an office
5 within the Department of the Interior, so when it
6 references Title 4 contracts or Title 4
7 activities, it simply refers to the Secretary of
8 the Interior, and so for that reason that was
9 taken out also.

10 And then the table just shows what is
11 in the existing 25 CFR that's been replaced
12 because there were some cases we had a definition
13 that talked about an actual road or route,
14 facility, and what it now becomes in the new
15 rule, because it expands it to include all
16 transportation facilities.

17 The same with the bridge. We used to
18 have this -- this was a title within the statute.
19 In the new statute, in MAP-21, it's changed to
20 Tribal Transportation Facility Bridge Program.
21 And likewise, as we go down through a lot of the
22 IRR stuff is replaced with TTP information.

1 As you get to 170.101 under the
2 consultation, collaboration and coordination,
3 primarily here it looks at -- it is looking at
4 the process as an activity, it is the safety
5 funding, which is specifically an activity that
6 was established under MAP-21, whereas the funds
7 were used as eligible activities for safety
8 previous to this. MAP-21 established a specific
9 set-aside for safety in Title 23, so that's
10 included as activities that are covered under
11 that process.

12 102 combined with 101 and 103, this is
13 where we had -- if you look at our table of
14 contents we do have a 101, 102, 103, but when you
15 go to the body of the regulation we have two
16 103s. And the first 103 is what it should be,
17 and the second -- oh, excuse me, the second 103
18 is what it should be and the first one should
19 actually be numbered 102. So and that will be
20 one of the areas that Andy talked about that we
21 will be making and including the correction
22 process.

1 It clarifies that consultation is
2 required before allocating any TTP funds for
3 direct service tribes. Essentially this is a
4 continuation of what the rule-making committee
5 had put together when they met back in 2004, and
6 that is how the tribes have -- or know what kind
7 of projects are being built or constructed or
8 what kind of projects or efforts are being tended
9 to by the BIA, if they're performing a direct
10 service. This allows for a process to be able to
11 do that, and the option -- a tribe can include
12 that process, the consultation agreement
13 mechanisms, whatever.

14 104, no significant changes there.
15 105 is re-worded for clarification purposes. And
16 106, 107 and 108, no significant changes. Again,
17 a lot of these are just the changing of the
18 terminology of IRR to TTP. 109, and this is one
19 I want to make sure -- the state and local
20 government officials "shall work with tribes" is
21 changed to "will work with tribes."

22 And there's a lot of discussion again,

1 and we've had a couple of meetings there with
2 regard to that statement. And we have -- we'll
3 receive comments on that certainly from the folks
4 that are out there. And again, a lot of this is
5 just depending on what administration is in there
6 in terms of the administration policy. It goes
7 back and forth from "shall" to "must" to "will."
8 And for those that are written as "may" of course
9 those pretty much stay as may, but this is one
10 that of course is changed to like "will."

11 110, no significant changes there.

12 111, eligible uses of TTP program funds. It
13 includes a reference to 23 USC 202(a)(1). If you
14 recall, under the old statute, even under
15 SAFETEA-LU, it listed -- the list of eligible
16 activities was actually included as part of the
17 contact mechanism under 638, what activities can
18 a tribe contract under self-determination. And
19 that list is there.

20 Under MAP-21 they took the list
21 basically out of that area and they brought it up
22 to the front to say -- first and foremost, if

1 you'll notice that this is 202, 202 is the
2 Tribal Transportation section in the statute; (a)
3 was the very first subsection that comes under
4 that, which basically identifies what the
5 activities are that are eligible for the program
6 regardless of the agreement mechanism that's out
7 there. This is basically what it's saying. It
8 also references Appendix A. This subpart has a
9 more detailed listing of eligible activities than
10 111.

11 112 references maintenance activities.
12 It lists ineligible activities. This rule was
13 finished in 2004, in 2005 SAFETEA-LU said, You
14 can use these funds for road maintenance. It was
15 all -- at that time all IRR, or all roads which
16 are through the inventory that reflect those
17 roads which provide access to more within Indian
18 communities, reservations, lands and so forth.

19 And prior to this it was not an
20 eligible activity. Well, SAFETEA-LU made it so
21 that has to come out of there. And of course we
22 know that MAP-21 kind of enhanced that again, and

1 kind of made sure that there was a flexibility in
2 the funding amount that also increased relative
3 to that.

4 It clarifies -- Section 112 clarifies
5 that the equipment -- first, the construction and
6 maintenance equipment must be approved by BIA and
7 FHWA. Again, depending on the type of agreement,
8 and generally that approval process, depending on
9 the variation involves including it on the TTP.
10 And once it's there, that's one of the mechanisms
11 for inclusion of construction equipment. And
12 what we're talking about here is big stuff to
13 actually do construction work.

14 Previous to this the only eligible
15 equipment was that associated with establishing
16 or running a transportation program department,
17 total stations, GPS type of equipment, in-house
18 computers, those type of things. And to the
19 extent, even radar guns also, as you recall. But
20 this now kind of makes it wide open from that
21 perspective of equipment.

22 113 clarifies about new use of TTP

1 funds as follows. It is dependent on where --
2 what the facility is, Federal Highways or BIA.
3 Being a non-BIA road, obviously it'll go to
4 Federal Highway; if it's a BIA road, it'll go
5 to -- or facility on inspecting roads. Then it
6 identifies the address of where, and what process
7 we need to use to request the new use of TTP
8 program funds.

9 Most of you know that through the past
10 10 years that this regulation has been out, the
11 process of thinking -- the committee, when they
12 sat down about 2004 and prior, what their simple
13 rule was, if it's eligible under Title -- excuse
14 me, Chapter 1 of Title 23, then we want to make
15 it eligible under this program. Of course,
16 that's how the regulation was written, from that
17 standpoint.

18 So when you look at -- so it's pretty
19 much -- the list that's there is pretty much
20 inclusive, but you never can tell when there's
21 specific things that you may want to take a look
22 at as a new use, and this allows you to be able

1 to follow a process that will give you a decision
2 whether that's possible or not. And that new use
3 will be posted on FHWA and BIA websites.

4 This right here is a byproduct of the
5 response back from the Executive Office of the
6 President, which is OMB, basically saying, if you
7 want them, you need to put them in a location
8 where you have the ability -- if things change,
9 additions can be made that can be there, and
10 you're not -- don't have the exact thing in a
11 regulation. And we've gotten comments on that
12 also.

13 Use of Tribal Transportation Program
14 and cultural access in terms of the facilities
15 themselves in 114. All facilities in the NTTFI,
16 instead of being referred to as the road
17 inventory, is now facility inventory. It must be
18 open and available for public use. This is
19 consistent with the definition that's in Title 23
20 itself.

21 It identifies when these roads can be
22 temporarily closed, permanently closed, in terms

1 of the procedures that are there, and sometimes
2 you need to be able to do these things and it
3 outlines how to go about that.

4 Section 115 and 116, no significant
5 changes there. And that of course is the
6 cultural access roads. And 117 combines the old
7 portion in the regulation, 123, 24 and 17, into
8 117, excuse me. It clarifies that TTP program
9 funds can be used on seasonal transportation
10 routes that are included in the inventory.
11 Again, we begin seeing a lot of those changes
12 through the last 10 years where we're looking at
13 board roads and boardwalks and ice roads, and
14 we're looking at walkways and a lot of things
15 that are addressed in terms of trails and
16 wilderness type of things where tribes have been
17 looking and putting those on the inventory. And
18 from that standpoint seasonal transportation
19 routes is one of those also.

20 The housing access road pretty much
21 the same, no changes there. Toll, ferry and
22 airport facilities. There's an agreement on

1 there for the table that talks about the types of
2 agreements, the program agreements under FHWA
3 that were added to that.

4 No significant changes in 121. Just
5 one of the things that was brought to our
6 attention, that table on 120, the second line, if
7 you read that it just doesn't make any sense.
8 And that was an error on the Federal Register
9 folks. When they were formatting it, they left
10 out a number of words that are in there. So if
11 you go to the website and you find the January --
12 excuse me, December 12, your tribal leader letter
13 that references the advance notice of the
14 regulation, that's the Word version. It has that
15 old section in there.

16 That's the same one that was sent to
17 the Federal Register and when the Federal
18 Register reformatted it, they left out self-
19 determination agreements, Title 1, FHWA program
20 agreements and other program agreements that's in
21 that list. And so -- and we thought we caught
22 everything, and I believe it was in Phoenix that

1 someone, one of the attendees there pointed that
2 out. So that's something -- one of the parts of
3 the error sheet that will be included for
4 updating.

5 122, again, clarifies the use of how
6 these funds can be used for airport access roads
7 and maintaining airport facilities, those things
8 that help to support the public's interaction
9 with a facility, airport facility, and what you
10 can and what you cannot do relative to that.

11 Recreation, tourism and trails, a big
12 part of the changes in 2004. This updates
13 references for the funding. A lot of it is you
14 know that they consolidated over 100-some
15 programs down to very few and they -- when they
16 passed MAP-21 it was all part of the process of
17 eliminating programs that then make it ineligible
18 under -- either eliminating them completely or
19 make them eligible under other programs with
20 different names. And what this does is it just
21 goes through and updates those references to say,
22 This is where you need to look if you're looking

1 for funding sources regarding recreation, tourism
2 and trails.

3 124 clarifies the way a tribe can
4 obtain these funds. 125, no changes there. And
5 126 -- just to make sure -- 126 we have one place
6 that's in Indian Country that specifically states
7 where we cannot build roads, and that's in
8 special designation called wilderness and wild
9 areas. It's in Wyoming. So if you're down in
10 this area, you don't have to worry about that.
11 But we have to print that -- put that -- make
12 sure we put that into the regulations.

13 Highway safety. Highway safety,
14 again, as we mentioned, was included in the
15 previous regulations, but it was included as an
16 eligible function, which it still is because you
17 can do -- I think, you know, one would argue that
18 our old TTP program is, when you're looking at
19 tribal facilities, is just one big safety program
20 because many of these roads have never ever been
21 built to standard. They're either acquired
22 through other means or were just roads that were

1 kind of developed and functioned through the
2 years.

3 What this does is it identifies
4 that -- the highway safety functions and ties
5 them into the particular program under the TTP
6 safety funding, which is set-aside of 2 percent
7 that's established on an annual basis. And Bob
8 will talk a little bit more about that in terms
9 of its uniqueness, and also any update of the
10 status of that.

11 That was part of one of the set-asides
12 that the formula goes through. It starts off and
13 establishes, before you start distributing any
14 money, you need to set aside these particular
15 amounts for these particular functions, and this
16 is where highway safety -- or safety is being --
17 is covered, identified.

18 What type of funds are available for
19 those safety funds, 128. What eligible
20 activities. Many of you who may have received
21 some funds under that program, primarily it was
22 developed with -- in consultation with the

1 Coordinating Committee and tries to address the
2 four Es in terms of the type of projects that
3 tribes can utilize these funds on, and included a
4 description of how these funds will received in
5 129.

6 And of course always references to how
7 tribes can obtain non -- other funds to be able
8 to -- for safety projects and activities, simply
9 because, like I said, safety is an area where you
10 pretty much -- most of the project work that you
11 have out there is probably associated with,
12 normally or not, the safety program.

13 Transit facilities. Back in actually
14 TEA-21 in 1998, that long list that I was
15 mentioning of eligible activities that was buried
16 under the contract mechanism, the change included
17 two words, transit facilities. We didn't know
18 what that meant, but we learned. And Chuck was
19 the ones that helped us learn it and the process
20 of transit facilities.

21 Well, now transit facilities is not
22 only expanded, we have a lot of tribes operating

1 transit programs, participating with other local
2 governments in a transit program. 131 talks a
3 little bit -- there's no changes there because
4 it's already established primarily under the
5 previous regulation.

6 132 now updates the other sources of
7 funding, including the Tribal Transit Program
8 that's established under FTA that's a grant
9 program and fortifying information on that. And
10 simply because it can be used as -- in
11 conjunction with the TTP funds when you're
12 looking at an overall transit project or activity
13 on -- for that particular tribe.

14 133 identifies that -- how the TTP
15 funds can be used to satisfy the local match of
16 various transit funds, because you do have state
17 transit funds, you do have the Tribal Transit
18 Program and of course you have the TTP program
19 that has -- is also eligible. So there's various
20 type of mechanisms that are out there. And of
21 course a lot of local governments also apply and
22 cooperatively work with the tribes, and this

1 helps to explain a little bit about that.

2 134, operational costs as eligible use
3 of TTP funds, and updates 49. This is -- Title
4 49 -- this is an area where, as we begin to
5 develop a process, a lot of these questions are
6 coming up and it was stated in the old
7 regulation, but it was -- it clarifies it here as
8 to what operational costs are associated with and
9 can be used. It clears up a lot of discussion
10 and uncertainty out there up till now we haven't
11 had, because the rule was very light on it.

12 And it came from -- you know, the
13 transit facility terminology came in the same
14 time that the requirement for the rule-making
15 came in, in 1998, so working with that obviously
16 we've learned more, we have more experience with
17 that process through the years.

18 The Coordinating Committee. The
19 Tribal Transportation Program Coordinating
20 Committee was a committee established by a
21 regulation through the rule-making process. And
22 essentially the way the organization was set up,

1 it was established as a committee, advisory if
2 you will, for purposes of providing input and
3 recommendations to the Secretary of the Interior
4 and the Secretary of Transportation.

5 And the changes here it -- pretty much
6 it stays the same, the changes are identified are
7 that the membership was essentially 12 primary
8 representatives and 12 alternate representatives,
9 and with specific rules on how the alternates
10 would interact with it. They would be available
11 on primarily [10:16:30]. But essentially -- but
12 when it came to committee business, that the --
13 only the primary could vote, or in the absence of
14 a primary, an alternate could vote.

15 What the rule proposes to do is to
16 eliminate reference to the alternate
17 representative, but keep the 24 regional reps on
18 there so they'd all have the ability to vote.
19 And this is just from experience through the past
20 10 years. The alternates -- basically the
21 committee said, We want them at every meeting;
22 they have been at every meeting. We want them to

1 participate and make comments; they have been
2 doing that.

3 So this is a recommendation that came
4 forward from the committee saying, We'd like to
5 have them all in that process, be part of the
6 whole decision making, the input and
7 recommendation process.

8 It clarifies again what the tribal
9 representatives, in terms of their -- what type
10 of nominations can be expected, the nomination
11 process. It updates the election terms simply
12 because the first regs told us to establish, this
13 is how you're going to get started. It's already
14 started, it's already in operation, all of what
15 to do here is basically showing that how -- the
16 continuation of this committee will be nominated
17 and appointed essentially is that difference.

18 136, it advises of the
19 responsibilities, particularly in terms of
20 getting information out to the public, to tribes
21 within their regions. That is a requirement to
22 be able to do that, which is not -- it's lacking

1 in -- it's in the protocols that they established
2 but it wasn't in the regulation, and this is what
3 we want to be able to put into it to include that
4 process.

5 137, because of the changes in the --
6 never knowing what's going to happen, as Bob
7 indicated we had nine extensions in SAFETEA-LU
8 and to MAP-21, and even within MAP-21 we're
9 sometimes just writing a CR, seven one day, 240
10 in three days, 80 days. And during that process
11 the funds only come down based on that amount.

12 So the committee wanted to establish
13 a meeting approval process that will allow them
14 to have approval of meetings with the --
15 certainly with the communication that was based
16 on funds being available, and get approval for
17 the fiscal year in terms of meeting schedules so
18 that it would be not only convenient for them to
19 be able to plan their year, but also for the
20 public to be able to attend the meetings.

21 The Tribal Transportation -- Tribal
22 Technical Assistance Centers, the TTACs, better

1 known as the TTAPs, this provides a description
2 of it, just an -- this is actually the title
3 that's in the statute, but we all know them by
4 the TTAP centers. And so this provides a
5 description of the centers, the information to be
6 found. All the references have been removed
7 because this is actually part of the Federal
8 Highway network out there that establishes the
9 old TTAP centers through cooperative agreement.
10 And previously to this we put information in
11 there that talked about how the whole process of
12 selection and a number of these things.

13 And of course the fact that it wasn't
14 really a part of the program in terms of how it
15 was managed, that was taken out and removed. We
16 did make some description of it because it is in
17 the statute, but in terms of all the details,
18 that's best handled by the program who
19 administers that, the Federal Highway
20 Administration.

21 Appendix A to Subpart B, there's a
22 long list of references and citations in there.

1 Those have all been corrected to show the most
2 recent or updated citations. We went through all
3 of those, and some have been eliminated because
4 they were either duplicate entries or, as I said,
5 were now combined in another program that has a
6 different citation in law.

7 It added -- and that subpart is items
8 for which TTP program funds may be used. This is
9 one of the areas that when we first got -- they
10 want us to move all appendices to a website, and
11 this is one that we felt very strongly about, and
12 they looked at it and they said, Yeah, it makes
13 sense to keep that here because it's in
14 regulation.

15 But it added purchasing, leasing and
16 renting of equipment as eligible. Again, when
17 we're talking about it, we're talking about the
18 big stuff. And it'll be new equipment purchases
19 must be accompanied by a cost analysis. And of
20 course that all reflects back into, depending on
21 what you're looking at, into the Transportation
22 Improvement Program, the TIP.

1 Are there any questions on Subpart A
2 and B? Again, just an overview of a policies and
3 how the implementation of the program needs to go
4 forward. Now we'll start getting into more of
5 the nuts and bolts about planning, the funding
6 formula and those aspects.

7 Let's take a 10-12 minute break and
8 then we'll come back in, if there are no
9 questions. Thank you.

10 (Whereupon, a short recess was taken.)

11 MR. SPARROW: All right. If we can
12 think about sitting down, we'll get going with
13 Subpart C and D.

14 (Pause.)

15 MR. SPARROW: Before we get started
16 with Subpart C, I'd like to ask if anyone came in
17 after the introductions and has not introduced
18 themselves, if you'd take just a minute to
19 introduce yourselves and who you represent, and
20 then we'll get started with the next subpart of
21 the reg.

22 (Further introductions were made.)

1 MR. SPARROW: Anybody else?

2 (No response.)

3 MR. SPARROW: Going once, going twice.

4 (No response.)

5 MR. SPARROW: All right. We're going
6 to take a couple of minutes and talk about
7 Subpart C and go into D and we'll get to a
8 breaking point that we go for lunch, and then
9 we'll come back and finish D and the remainder of
10 the reg after lunch.

11 Subpart C talks about the Tribal
12 Transportation Program funding. In that
13 particular section itself, or that subpart of the
14 reg, if you look at the old part of the reg, this
15 is the subpart that really has a lot of changes
16 from the old part, because Congress, when they
17 passed MAP-21, gave us that statutory formula.

18 So if you go back and you take a look
19 at the original reg from 2004, you had all sorts
20 of tables. You had a chart with the annual
21 tribal transportation allocation methodology, and
22 then you had appendices in the back that talked

1 about the population adjustment factor and the
2 relative need distribution factor and the
3 infamous Q-10 is in there.

4 The cost to construct and all those
5 tables that talked about adequate standard
6 characteristics and ADT and current ADT and
7 default ADT and percent of grade and drain and
8 incidentals and aggregate surface. All those
9 tables have been removed because cost is no
10 longer part of the funding formula.

11 If you'll take a look at -- and we'll
12 go into this -- with the new funding formula that
13 Congress told us about there's different factors,
14 and because none of this cost stuff is no longer
15 part of the funding formula, it's been removed.
16 So that's the first thing I just wanted to say.

17 So Subpart C, as it says, under MAP-21
18 Congress replaced the funding formula that was
19 established under negotiated rule-making, and as
20 I said earlier, as a result all the references
21 and calculation formulas and the tables and the
22 cost tables and everything else that were

1 associated with the old funding formula,
2 including the population adjustment factor and
3 the other tables I'd previously discussed, have
4 been removed from the NPRM and replaced with the
5 statutory language in the formula. Congress
6 basically said in MAP-21 -- and all we've done is
7 literally cut and paste what's in MAP-21 and put
8 it into the regulation.

9 So 170.200 talks -- describes how the
10 TTP funding amount is determined. It talks about
11 the set-asides and it talks about the transition.
12 So if you look at 200, it says, you know, set-
13 asides for bridges, a set-aside for planning, a
14 set-aside for safety, a set-aside for
15 administrative expenses, and a set-aside for
16 supplemental pot of money or supplemental
17 program. So all of this, again, is exactly
18 what's in the statute, and it's telling us this
19 is how you're going to determine the tribal
20 shares and get the funds out to the tribes.

21 The other part of 170.200 talks about
22 the transition. As I think Andy alluded to

1 earlier, even though MAP-21 was a two-year bill
2 and we've extended into that third year, it
3 provided a four-year transition from the
4 negotiated rule-making formula to the new
5 statutory formula. So this Subpart 200 also
6 describes how that transition is going to take
7 place in 2013, 14, 15 and 16. Now we left 13
8 off of here since we're already into 14 -- and
9 actually we're already into 15 -- but it
10 describes, again, exactly how Congress is telling
11 us to get the funds out.

12 170.201 talks about the formula
13 itself. So we've -- the first one talks about
14 the set-asides, it talks about the transition.
15 201 now tells you what the formula is. And it
16 describes what the three factors of the funding
17 formula are. The first one, 27 percent in the
18 ratio of eligible road mileage. But Congress
19 tells us exactly how to calculate the road
20 mileage. If it's a BIA or tribal road, it's what
21 was in the inventory in FY 12. If it's not,
22 it's what was in the inventory for fiscal year

1 05.

2 So all the mileage that was added to
3 the "IRR inventory," which is now the NTTFI, that
4 was -- if they're non-tribal or non-BIA, the
5 miles that were added from 2006, 7, 8, 9 up to
6 now, they're in the inventory, they're eligible
7 to have the funds spent on them, but they do not
8 generate funding for the tribe.

9 Likewise with tribal and BIA roads, it
10 tells us, FY 12. So if you added tribal roads
11 or BIA roads were added in FY 13, FY 14 or
12 added this year, all it is doing is saying, the
13 funds, once they're in the National Inventory,
14 funds can be expended on those facilities. But
15 adding those facilities will not generate any
16 additional funds for the tribe.

17 So that's one of the major things and
18 the major change of the statutory formula. The
19 eligible miles for this particular factor are
20 locked.

21 The second factor talks about the
22 population and 39 percent and use of the NAHAS

1 numbers, which are updated and provided to us
2 from HUD every July, Sheldon? Those numbers are
3 put into the formula. So those numbers actually
4 can change every year, those numbers are updated
5 every year as they're made available to us from
6 HUD.

7 And then that third factor is really
8 what we call a historic factor. It's -- first of
9 all, the money is kind of divided between the 12
10 BIA regions and then you take a look at the
11 historic funds that each tribe receive between FY
12 05 and FY 11 and do a calculation and a
13 percentage and apply that percentage to that pot
14 of money and that's the third factor.

15 So because it references historic
16 tribal shares up through FY 11, those are
17 locked. So the only aspect of the new statutory
18 funding formula that really can change year-to-
19 year are the population numbers. So 170.201
20 explains how the formula actually works.

21 170.202 describes how the tribal
22 supplemental program funds are determined and

1 distributed. And this was one of those set-
2 asides that's referenced earlier in 170.200, and
3 really was -- it's a pot of money to try to
4 offset negative impacts to tribes from
5 transitioning from the old factor -- or the old
6 formula to the new formula.

7 And it's there to, as I said, to
8 minimize the impact over the four-year
9 transition. Each tribe is going to see a
10 substantial negative impact as a result of the
11 new formula. This supplemental funding, along
12 with the way it's being transitioned in, tries to
13 soften the blow, let's say, and ease -- that you
14 don't see a huge change all at one time, but you
15 would just see a change over a period of time
16 over a period of years. So 170.201 -- I'm sorry,
17 170.202 tells us, again verbatim out of the law,
18 how that supplemental funding is to be provided
19 to the tribes.

20 170.203 clarifies how the TTP planning
21 funds will be distributed. Really not much of a
22 change, 2 percent planning, you know, is a

1 percent of the share of the tribal shares. It's
2 very similar to how it's being done now. But
3 this particular section, because the references
4 in it, the statutory references, were changed
5 when MAP-21 changed some things, we had to update
6 the change to reflect the new references.

7 The bottom bullet on this particular
8 slide says, All references to the IRR high
9 priority projects has been removed. As we talked
10 about earlier, this program was taken out of the
11 TTP, or out of the IRR -- let me back up. When
12 the IRR transitioned to TTP, this particular sub-
13 program, or set-aside of funds that was made
14 available for the high priority projects program
15 was removed.

16 And it was established, as we said
17 earlier, as a stand-alone program funded through
18 the general fund. If you look at the statute and
19 you take a look at -- if you have that in your
20 right hand and you have the original 25 CFR 170
21 from 2004 in your left hand, Congress almost cut
22 and pasted the things out of the reg and put it

1 into the law, including how -- it references how
2 the projects are to be evaluated and ranked and
3 awarded. It changed the program -- or the awards
4 size that could be done. But it is its own
5 separate program. So because of that it's not
6 part of the TTP and it's no longer part of this
7 regulation.

8 170.204 identifies that TTP funds can
9 only be expended on activities and projects that
10 are identified in the appendix and contained on a
11 Federal Highway approved TIP. Again, that's
12 pretty much -- the second part is language out of
13 the statute and the list of projects and
14 activities that can be utilized references back
15 to what LeRoy was talking about earlier as the
16 appendix in Subpart B, and the Federal Register
17 allowed us to keep that appendix in there which
18 lists all those eligible activities.

19 170.205 outlines a time frame by which
20 funds are to be made available to the tribes. It
21 references that 30 days after the funds are made
22 available to the Secretary of the Interior, the

1 funds are to be made available to the tribes.
2 Again, this is pretty much statutory language
3 that's part of MAP-21.

4 The TTP inventory and a long range
5 transportation plan, 170.225, describes the
6 correlation between the inventory and the long
7 range transportation plan. And that the
8 facilities in the inventory are developed through
9 the development of the long range transportation
10 plan.

11 There is a reference in there,
12 however, back to the high priority program that's
13 in there. We missed that going through -- we
14 thought, as Andy had said earlier, that we
15 thought we had caught everything, but it is in
16 there by error and it will be removed.

17 The final parts of 170 Subpart C, the
18 formula data appeals. 170.226 identifies what
19 data can be appealed by the tribe. And again, it
20 identifies where you can -- also identifies where
21 you can find the other appeal processes for
22 different aspects of the program. So this talks

1 about the data appeals for the formula, but there
2 are other data appeals like design standards and
3 issues like that which are referenced in other
4 parts of the regulations and that -- those
5 references are included in this section.

6 The last part of this group now talks
7 about flexible financing and it provides
8 information on how the flexible financing can be
9 used and how you can leverage funds and paying
10 the loan back and how the tribe needs to
11 identify -- the amount of money that it's paying
12 the loan back every year has to be identified on
13 a TIP. Pretty much how the process operates now,
14 but just updated to reflect, like I say, how the
15 process operates.

16 If you do have flexible financing,
17 what's been done in the past, say you borrow X
18 number of millions of dollars and you pay it back
19 at 250,000 a year, or 50,000 a year, what we've
20 done in the past is just identified that 50,000 a
21 year, that loan payback actually right on the
22 TIP. So then everything is identified, you're

1 following the law of expending the funds for
2 activities on a TIP and that's an eligible
3 activity.

4 So Subpart C, which used to have like
5 a jillion tables and all the references has
6 really been simplified to simply reflect what
7 Congress has told us how the funds are going to
8 be distributed. Is there any questions?

9 (No response.)

10 MR. SPARROW: I like it. Thank you
11 very much. I'm going to turn it over to Mr. Kipp
12 who'll run you through Subpart D. Save all your
13 questions for Sheldon too.

14 (General laughter.)

15 (Pause.)

16 MR. KIPP: Okay. I'm going to be
17 reviewing Subpart D, which is --

18 (Pause.)

19 MR. KIPP: Subpart D, which has
20 several groupings of questions in that particular
21 section. The first grouping of questions starts
22 with transportation planning. As I go through

1 these questions and the answers, in addition to
2 what's on the screen here, I'm going to be
3 identifying a few changes that are particularly
4 important as far as things that may change from
5 the existing regs to the proposed regs.

6 Number 400 updates the relationship of
7 transportation planning to the GTP. That basic
8 question and answer in the regulation is very
9 similar to the existing regulation. Not a lot of
10 change there. 401 now includes updates to
11 everybody and updates the list of planning
12 activity that BIA and FHWA would carry out.

13 You're going to notice that in a lot
14 of these groupings of questions in Subpart D,
15 that the reference to FHWA was added to a lot of
16 activities there. And the reason for that being
17 is that the tribes that have program agreements,
18 their day-to-day contact with the federal
19 government is with FHWA, so the FHWA and their
20 employees.

21 And when they interact with the tribes
22 that have the program agreements, FHWA plays a

1 much more I guess in-your-face role, like the BIA
2 used to. So there's a lot of questions and
3 answers in these groupings that basically add --
4 change BIA to BIA/FHWA, depending on what
5 particular agreement or contract or agreement
6 that you have in place will dictate that.

7 402 updates tribal list of planning
8 activities to reflect program changes. That
9 particular question and answer there, basically
10 one of the grammatical differences there, it adds
11 the word "program agreements." And you'll notice
12 that, like when Mr. Gishi and Mr. Sparrow's
13 presentation of that, the term "program
14 agreements" is added quite a bit here and there
15 throughout the questions.

16 403 identifies what TTP funding can be
17 used for planning. And that particular question
18 very similar to the existing regs.

19 404 explains how a tribe can use their
20 unexpended planning funds after all planning
21 activities are completed. The question is very
22 much the same as the existing regs, but in the

1 answer it is also very similar, but it does
2 eliminate a small portion that references 35,000
3 or 5 percent of your funds can be used for
4 construction. That particular reference is now
5 not in the proposed regs.

6 So when you look at the proposed regs
7 that you have on your table there, that's not
8 going to be in there. You actually have to go
9 back to the existing 2004 regs to see what I'm
10 talking about there because, like I said, these
11 are -- there's some wording that was eliminated
12 from the existing regs to what you're looking at
13 now. But it does pertain to the amount of
14 funding that can be used.

15 404 -- 405 identifies how a tribe must
16 use their planning funds. The question and
17 answer very similar to the existing regs.

18 You will notice that in the regs there
19 basically is a little bit of a gap in the
20 numbering there, 406, then we leap to 409. There
21 are no questions in the proposed regs. And I
22 think there's a little blurb in the proposed regs

1 that say that 406 to 409 is reserved, just for
2 future use.

3 410 describes the purpose of long
4 range transportation plan and what it should
5 include. That question and answer, very similar
6 to the existing reg, but again, just a reminder
7 that the LRTP is identified to be a 20-year
8 length as far as the time frame.

9 So it very much coincides and is very
10 similar to what the states do when they draw up
11 their long-range transportation plans. A 20-year
12 time frame is applicable to tribes when they
13 develop their LRTP.

14 413 identifies how the tribes' LRTP is
15 developed and approved. Updated to include the
16 coordination with FHWA.

17 Again, here I think what's going to be
18 important, if some of these questions and answers
19 in these particular groupings, like was brought
20 up before, there's a lot of changes from "shall"
21 to "will" to "should" to "must," those types of
22 things. I think with the implementation of these

1 particular regs, once they are finalized,
2 there'll be a lot more attention paid to those
3 types of things. And I'll kind of give you a few
4 examples as we move through some of the
5 questions, as we go through there.

6 413 identifies the public role in
7 developing the LRTP. That particular question
8 and answer very much similar to what's in the
9 existing reg. But again, it does add the term
10 "FHWA" to the actual implementation of -- or the
11 development of the LRTP by a tribe.

12 414 describes how the LRTP is used and
13 updated. This is an example here that when
14 you're reading the question and you're reading
15 the answer, just because the question is the same
16 as the existing reg does not mean that the answer
17 is the same. This is going to be an example,
18 414.

19 One of the -- part of the answer
20 basically identifies that -- it references
21 identify and justify the tribes' updates to the
22 NTTFI. It goes back to understanding the rule of

1 long range transportation planning and the
2 identification of you in the tribe of what your
3 NTTFI is. The long range transportation planning
4 must identify and define the National Tribal
5 Transportation Facility Inventory, it defines
6 your inventory.

7 I think for those of you that are
8 probably familiar with the road inventory
9 process, it goes back into presentations during
10 those training sessions, the chicken or the egg,
11 LRTP or NTTFI, which one comes first, and
12 understanding that role. There is a little bit
13 of a change in the wording there.

14 The last sentence of that particular
15 question there is a small word change. The
16 existing regs say "should," the proposed reg that
17 you have in front of you says "must." It should
18 be consistent with state NPO and RPO planning
19 practices. The TTP long range transportation
20 plan must be reviewed annually and updated at
21 least every five years. Like I said before,
22 wordsmithing the word that changes is "should" to

1 "must" in this particular question.

2 415 pre-project planning and
3 identification studies have been part of the
4 overall planning process. There's just a list of
5 eligible items there, and that is basically
6 added.

7 420 defines the tribal priority list.
8 The question is very similar to the exiting reg,
9 but the answer basically conglomerates a previous
10 reference, A, B, C and D into just one paragraph.
11 The answer is in paragraph 1, identifying it as
12 A, B and C and defining what a tribal priority
13 list is. So in the review process just kind of
14 be cognizant of that particular change.

15 And you will notice there that I did
16 jump from 415 to 420. But what's missing in the
17 proposed regs is that little blurb that says that
18 416 to 419 is reserved. It's small note, a
19 grammatical note there.

20 The second grouping of questions and
21 answers in Subpart D pertain to the
22 Transportation Improvement Programs. 421 updates

1 the definition and use of TTP to better align
2 with planning requirements. The question for
3 421, What is the Tribal Transportation
4 Improvement Program. The question -- the answers
5 are basically the same, but you will notice that
6 there was addition to this particular proposed
7 reg of the term "financially constrained."

8 And the answer to the question for
9 421, there is an addition that says the TIP must
10 be financially constrained. And that is a new
11 addition for the proposed reg. So just kind of
12 be cognizant of that also.

13 422 updates the definition and use of
14 TTP, TIP to better align with planning
15 requirements. You'll notice there that the
16 question itself, what is the TTP, Transportation
17 Improvement Program. The question is very
18 similar, TTP overrides the IRR on the question
19 but in the answer for Subpart B. All
20 requirements associated with that project or
21 activity must be satisfied before expenditure
22 actually occurs. So the subpart B in that

1 particular question is in addition over the
2 existing regs.

3 There was additional wording for this
4 particular question and this particular answer.
5 And in that context it basically -- just
6 basically says that when an approved activity is
7 identified in the TIP, there's still a great
8 thing that has to be performed to have to perform
9 that activity, and that's basically what the
10 addition to that section basically answers.

11 423 updates the process of how
12 projects are placed on a TTP/TIP to better align
13 with planning and statutory requirements. The
14 real only change for 423 is going to be the
15 reference. In the existing regs it says three-
16 to five-year TIP. In the proposed regs that are
17 in front of you it says a four-year TIP.

18 Which you are probably all pretty much
19 familiar with that because we've kind of
20 implemented that process in the last probably
21 four to five years anyway. But that's just a
22 grammatical change, the existing regs to say

1 three to five years, the proposed regs basically
2 says four years.

3 424 describes the public involvement
4 process in the TTP/TIP development. You'll
5 notice here that the only real change
6 grammatically between the existing regs and
7 proposed regs is that the acronym BIA is removed
8 from the proposed language. The existing reg
9 basically answered the question that the BIA and
10 tribe must publish a notice. You'll notice
11 what's in the existing reg, it's says, "the
12 tribe" will publish a notice. The wording BIA in
13 the existing reg has been changed to just "the
14 tribe must."

15 425 provides information how the
16 TTP/TIP annual update is carried out. Again, it
17 does reference that TTP/TIP is a four-year
18 document. Not a three- to five-year document but
19 a four-year document.

20 And in the answer it basically does
21 eliminate the reference of a July 15 deadline for
22 all the checks that we do every year. So the

1 July 15 deadline that was actually in the
2 existing regs has basically been removed in the
3 proposed regs that are in front of you. Just be
4 cognizant of that small change.

5 426 updates all the TTP/TIP has
6 approved. The actual question, How is the
7 TTP/TIP approved. There's a three-portion answer
8 there. That particular question and answer is
9 more of an oversight role. Once you and the
10 tribe prepare TTIP and you submit it to the
11 regional office, what happens next? What is the
12 BIA's role, what is FHWA's role in actually
13 approving. And that's the approval process,
14 that's the purpose of that question.

15 427 describes how a tribe can amend
16 its TTIP. The only note I have on here is
17 that -- just pay particular attention to the --
18 it does say that the public process must be
19 followed in the amending of your TIP or you add a
20 new project.

21 So if you submit a TTP/TIP TIP it goes
22 through the approval process, gets approved and

1 you run off a brand new project. It's not as
2 simple as it used to be when you just submit
3 another TTIP at the regional office and go
4 through the approval process and get some sort of
5 verification that that new project -- that that
6 project has gone through some sort of public
7 notification process to be added to the TIP.

8 It goes back into "should" changes to
9 "must," "will" changes to "shall." There's a lot
10 of that going on in some of the questions and
11 answers. So there'll be a lot of I think people
12 at the administrative level checking on the
13 regions to make sure that there's some sort of
14 thing going on as far as the public process.

15 428 describes how a state will receive
16 the TTIPs. No significant change in the answer
17 or the question really, but just a change in the
18 IRR TIP to the TTP/TIP. But that's the
19 Transportation Improvement Program questions.

20 Moving on to the next grouping of
21 questions pertaining to public hearings. Updated
22 to reflect current actions and requirements. No

1 significant changes between questions 435 and
2 441. When is a public hearing required, how are
3 public hearings of TTP planning and projects
4 funded, if there's no hearing, how much BIA,
5 FHWA, or tribe inform the public. A lot of the
6 questions and answers there are very, very
7 similar to what's in the existing reg for this
8 grouping of questions.

9 The next grouping of questions
10 pertains to the TTP Facility Inventory. This is
11 actually one of the new definitions that LeRoy,
12 in his part of the presentation, identified, that
13 there is a definition for the TTP Facility
14 Inventory.

15 He alluded to the fact that our
16 database has basically progressed way beyond
17 roads and bridges. We not only have roads and
18 bridges, we have bar docks, pier docks,
19 boardwalks, we have public docks, we have transit
20 bus stops, there's educational bus stops, we have
21 facilities such as vertical construction, roads
22 maintenance buildings, tribal administrative

1 buildings, transit buildings.

2 And again, the TTP Facility Inventory
3 is part of the definitions I believe, so it does
4 greatly expand as far as what's eligible to be
5 considered part of the inventory and eligible for
6 TTP fund use.

7 442 describes the NTTFI and what is
8 included. Primarily it consists of statutory
9 language. Although this question is answered in
10 three parts, you'll want to pay attention to
11 basically the last portion. I think it's (d) of
12 that first question under 442, it does make
13 reference to bridges shall be inspected and
14 recorded and submitted to the National Bridge
15 Inventory.

16 It basically says all bridges within
17 the NTTFI, which includes your tribal bridges. I
18 believe, as Mr. Sparrow identified, is that
19 tribal bridges are now applicable to being
20 inspected and they are on a public system. So
21 you as a tribal entity have the responsibility of
22 coordinating inspections, making appropriate

1 data, submit it to Federal Highway so that it can
2 be included in the NBI. And MAP-21 made that
3 requirement. It wasn't the part of SAFETEA-LU or
4 any previous authorization.

5 443 defines a proposed facility, and
6 includes the process and requirements to
7 successfully include it into the NTTFI. Question
8 443 is a brand new question. It does not exist
9 in the existing regs. And it does go through and
10 answer -- identify that there are going to be
11 certain justifications, certain documentations
12 that must be performed by you or the tribe if you
13 wish to add the proposed facility to the
14 inventory. And primarily that justification and
15 that documentation will also be required for
16 proposed facilities that are already in the
17 inventory.

18 443, for the transportation-planning
19 people here in the room, basically if you have
20 proposed facilities, there's going to be some
21 documentation there. So you'll want to pay
22 attention to reviewing those -- the listing of

1 what's going to be there, because A through F
2 there's a lot of documentation there. That
3 pertains to proposed facilities to be added to
4 the inventory, and also to be documentation for
5 proposed facilities that are in the inventory,
6 443.

7 444 describes how the NTTFI is
8 updated. Again, here the modification to the
9 answer portion of this particular question
10 reflects those November 1 deadlines, March 15
11 deadlines, May 15 deadlines. So the inventory-
12 related personnel, you probably recognize those
13 dates. Right?

14 This particular question in the
15 proposed regs basically identifies and keeps
16 those dates very similar for adding new
17 facilities to the inventory and what do we do for
18 facilities that are already in the inventory.
19 And also I would add the portion identifying with
20 your request to add something to the inventory
21 and the BIA regional office, but Federal Highway
22 said, No, you can't have that facility.

1 The appeal is referenced in there also
2 now in 444. So that is a new addition for that
3 particular question.

4 445, 446 describe the strip map and
5 the minimum attachments required. 445, the
6 question is, What is a strip map? Very similar
7 wording in the proposed regs versus what's
8 already in the existing regs.

9 But it does make reference to a TTP
10 coding guide in that particular answer, so as we
11 move through the formulation and the review of
12 the comments on these regs once they're
13 finalized, the TTP coding guide will thus also be
14 modified and submitted in final form so that we
15 will be able to identify appropriately, you know,
16 some of the fields in there that will be affected
17 by the regs.

18 446, minimum attachments question.
19 That is also a brand new question, 446. What
20 minimum attachments are required for an NTTFI
21 submission. As Mr. Gishi and Mr. Sparrow
22 identified, as we went through and implemented

1 the previous formula in the SAFETEA-LU, a lot of
2 attention was paid to, and given to, access roads
3 and proposed roads. So as we go through this
4 particular question and answer, you'll see there
5 that it is inventory related.

6 You probably heard in previous
7 presentations reference to the Ragsdale memo back
8 in 2007 of minimum attachments. This particular
9 question and answer basically I believe intended
10 to supersede that policy memo and what type of
11 minimum attachments are required when you submit
12 a facility in the inventory. So that -- but
13 again, that is a brand new question, 446.

14 Any questions on any of the groupings
15 so far?

16 (No response.)

17 MR. KIPP: Okay. If not, we'll go to
18 the next grouping of questions, environmental and
19 archeological requirements. 450 identifies that
20 the TTP environmental and archeological
21 requirements are located on the BIA and FHWA
22 websites. That's the primary change for that

1 particular question.

2 There used to be reference there to
3 one of the appendix there that basically has all
4 the environmental laws that must be identified
5 and complied with, all of the archeological laws,
6 there's a big list of them. And it identified
7 previous -- in the presentation that appendix is
8 now being removed from the regulations and being
9 posted on websites.

10 451 indicates that TTP funds can be
11 used for compliance and other activities. The
12 question for 451, Can TTP funds be used for
13 archeological environmental compliance. The
14 answer is basically yes. But again, for approved
15 TTP projects.

16 And if you think of that question and
17 answer, archeological environmental activities
18 can be funded with TTP funds if that project is
19 on the TIP. And that's kind of the key thing in
20 the answer that you're going to consider when
21 you're in the commenting process.

22 452, when can TTP funds be used for

1 archeological environmental activities. Again,
2 the basic answer there basically expands on the
3 facility must be not only in your LRTP, it must
4 also be in the NTTFI, your inventory. Just
5 another checks and balance question and answer
6 when identifying when you use your TTP funds for
7 archeological environmental clearance, the
8 project must be identified by the tribe in the
9 LRTP and NTTFI.

10 The next grouping of questions pertain
11 to design. Question 454 identifies the
12 requirements of design standards and where they
13 can be found. It also describes how the use of a
14 new design standard can be proposed.

15 454, 455, 456 are very similar
16 question and answers versus the existing
17 regulations for this grouping of questions. 456,
18 457 states how tribes can request design
19 exceptions and the appeal process if the request
20 is denied. Those particular questions and
21 answers are also very similar to the existing
22 regulation.

1 One last comment on these portions of
2 these questions. For question 455, what other
3 factors must influence the project design. Just
4 kind of pay attention there. That references the
5 design life for a road, 20 years. It references
6 the design life of a highway bridge, seven to
7 five years.

8 Or if you want to build a transit
9 building, the design life for a transit building,
10 the design life for a pier dock, the design life
11 for a boardwalk. So consider your -- what you
12 have in your inventory when you're answering some
13 of these questions, because some of these
14 questions are very specific. In the design here
15 it basically makes reference to the road and to
16 the bridge, and it specifically made reference to
17 any other type of facility that you may have in
18 the system.

19 The next grouping of questions, review
20 and approval of plan specifications and
21 estimates. 460, 461 identifies the composition
22 of a project package and the procedures for a

1 tribe to approve their PS&E. Question 460
2 specifically says, What must a project package
3 include. The answer is consolidated a little bit
4 versus what's in the existing reg.

5 (a), (b), (c) and (d), and (e)
6 basically identify what a project package is.
7 And when you're reading some of these questions,
8 it is important to understand the terminology
9 under which we use these terms. Project package,
10 as the question and answer defines this, you can
11 almost relate that to that term that we used
12 quite a bit.

13 Do you remember that term that we
14 used, shovel-ready projects? You pretty much
15 remember that. Right? That basically means that
16 your plan, your specifications and your estimates
17 are done and complete. Your environmental and
18 your archeological documents have been completed,
19 processed and they've been approved. And the
20 right-of-way pertaining to your construction
21 easement and your road maintenance have been in
22 place and all you need is cash to make that

1 project move.

2 And keep that in your mind when
3 you're -- when we reference project package.
4 Simply having the plans and specifications and
5 estimates done and completed, signed and stamped,
6 does not mean you have a project package.
7 There's a lot of other documentation that needs
8 to be completed, as this question basically
9 defines, before you're actually shovel ready.
10 Just keep in that in mind when you're reviewing
11 some of these questions and answers.

12 Did I see a question? I thought
13 somebody was going to raise their hand. No?

14 461 we have tribe-approved plans,
15 specifications and estimate. And as you read
16 through that answer, you'll see that that
17 particular answer was basically updated by
18 SAFETEA-LU. The biggest change between the
19 negotiated rule and the final rule that's in
20 place and what's being proposed right now, as Mr.
21 Caulum said, that SAFETEA-LU made a change in the
22 PS&E rule process.

1 SAFETEA-LU eliminated the second-level
2 review. I believe in the existing regs there is
3 a reference to second-level review. We have an
4 engineer sign and stamp a set of plans, you must
5 get another engineer to review it, that second-
6 level review, and that's what's in the regs now.

7 That's what it was, that's what came
8 out of the negotiated rule-making. When SAFETEA-
9 LU came out, it basically eliminated the
10 requirement of a second-level review. It
11 identified that there must be health and safety
12 certifications being done, those types of things.
13 But it does eliminate that. So when you're
14 looking at this particular answer for 461, just
15 be cognizant of that. And basically the answer
16 reflects what SAFETEA-LU intended.

17 463 identifies the actions to be taken
18 if the Secretary identifies a design deficiency.
19 That question and answer is very similar to what
20 is in the existing regs. And as far as that
21 particular sub-group, or that grouping of
22 questions for review and approval of plans,

1 you'll see that question 462 does not exist
2 again. So in the final regulation you might see
3 that little bracket that says, 170.462 reserved.
4 There is no 462 in the proposed regulations.

5 Okay. Moving on to the next grouping
6 of questions that pertain to construction and
7 construction monitoring. 470, 471 identifies the
8 construction standards that must be used in how
9 projects are to be administered.

10 The question for 471 -- 470 and 471,
11 the questions and answers are very similar to
12 what's in the existing regs. It basically
13 identifies when you're -- the inspection process
14 and project documentation for the construction
15 phase of the projects.

16 472 clarifies what construction
17 records must be kept accessible for review on
18 construction projects. Small table there with
19 the reference to Part 900, or Part 1000 for the
20 tribes that have those documents, or those
21 agreements in place. Have some there for the BIA
22 as far as when we are performing some of the

1 activities there.

2 473 provides information on when a
3 project is considered complete and by who a
4 project close-off is required. The question for
5 473 specifically, When is a project complete.
6 Every once in a while that does come up, when is
7 a project complete.

8 I think you go into identifying
9 what -- substantially complete is probably a term
10 that's probably more -- more in the back of your
11 mind is what substantially complete means. But
12 that identifies basically when a project is open
13 and ready for public travel.

14 474 is now listed in the actual
15 PowerPoint here, but the question still does
16 reside in the proposed regs. 474, the question,
17 Who conducts the project close-out. Small table
18 there identifying that the BIA or tribe is in
19 charge of the actual construction management.

20 Coming down to the last couple of
21 groupings of questions for Subpart D. The next
22 one is management systems. In general, as the

1 PowerPoint identifies, program reviews were
2 removed from this section as the work is now
3 included in the National Business Plan.

4 But again, there is still a single
5 question there, 502. It identifies the
6 requirements for the national management systems,
7 and also as well what funds a tribe could use if
8 desired to have its own management systems.

9 This particular question is fairly new
10 to the question must reside in the existing reg,
11 but the question and the answer have been
12 modified. It's that these were identified as we
13 have some responsibility as far as preparing
14 appropriate management systems for what they used
15 to call a safety bridge pavement congestion
16 management type systems.

17 And it also identifies that when
18 tribes have program agreements they also have the
19 ability to use their TTP funds and be their own
20 management systems. They could manage their TTP
21 program. That is an eligible use of TTP funding
22 in the development of those type of systems.

1 The last grouping of questions for
2 Subpart D pertain to the bridge program. 510 to
3 514 identifies the TTP Bridge Program as a source
4 of funding for bridge work where additional
5 regulations can be found, how funds are made
6 available to tribes, and also the bridge
7 inspection requirements that have been set in
8 place by MAP-21.

9 510, what funds are available to
10 address bridge activities. I believe that is
11 basically just updated to reference the 23 USC,
12 the specific section in MAP-21 that identifies
13 where the Tribal Transportation Program -- Bridge
14 Program is.

15 511, what activities are eligible for
16 Tribal Transportation and Facility Bridge funds.
17 Again, that basically is a reiteration of
18 basically where and how the IRR Bridge Program
19 identifies what is available there.

20 512, how will Tribal Transportation
21 Facility Bridge funds be made available to
22 tribes. 513, when and how are bridge inspections

1 performed. The bridge program, as we kind of
2 view it in these regs basically have questions
3 and answers that try to attempt to clarify but
4 not specifically identify what the IRR Bridge
5 Program does, because the IRR Bridge Program has
6 its own set of regulations.

7 The Indian Reservation Roads Bridge
8 Program does not exist in 25 CFR Part 170. Those
9 regulations reside in the 23 CFR Part 661 in the
10 Department of Transportation regulations. So as
11 you read those questions and answers, you'll see
12 that they made reference to the 23 CFR, because
13 that's where the Indian Reservation Road Bridge
14 Program resides.

15 So as we go through these regs and we
16 update the TTP program, at some point in time
17 you're going to see Federal Highway program.
18 They'll probably be sending some sort of updates
19 from 23 CFR Part 661, and we'll make the changes.
20 They'll probably change the name to Indian
21 Reservation Road Bridge Program to the Tribal
22 Transportation Facility Bridge Program. You'll

1 see that in separate sort of updates.

2 The last comment here for Subpart D,
3 you'll see there are two appendices, A and B, to
4 Subpart D have been removed from these proposed
5 regulations. And again, updated Appendices A and
6 B will be available on both BIA and FHWA
7 websites.

8 Any questions on any of the groupings
9 for Subpart D?

10 (No response.)

11 MR. KIPP: Going once, twice, a third
12 time?

13 (No response.)

14 MR. KIPP: We're done.

15 (Pause.)

16 MR. ENDICOTT: My name is Rob
17 Endicott, and that's spelled with an E. I'm with
18 Cherokee Nation. I have a question on -- that
19 relates to 427 and 428, at the request of
20 somebody at my table.

21 Do you guys consider an amendment to
22 be a new project, or -- I notice it says

1 "significant change in funding," but let's just
2 say you're just updating the -- updating your TIP
3 to just -- you know, revising the dollar amounts
4 up and down a little bit. Is that considered a
5 TIP amendment, or do you just consider -- or do
6 you consider an amendment to be a new project?

7 MR. KIPP: A new project.

8 MR. ENDICOTT: Okay. So if we're just
9 making financial changes, you know --

10 MR. KIPP: Updating it

11 MR. ENDICOTT: Yeah, you're just
12 updating it, it's not necessarily -- I mean we
13 already went through the involvement process to
14 update that -- or I mean to get that project on
15 the TIP to start with. And so if we're just
16 making, you know, minor financial -- just
17 updating the TIP, then we don't have to re-go
18 through another public involvement process.

19 MR. KIPP: That's correct.

20 MR. ENDICOTT: Okay.

21 MR. KIPP: That's correct, yes.

22 MR. ENDICOTT: All right. Thank you

1 very much.

2 MR. KIPP: Yeah. I think what it is
3 important for you as tribes, as you are managing
4 your program, from one project to another project
5 on your approved TIP, it's still important for
6 you to keep track of that as far as which one is
7 going from one place to another.

8 Ten, 15, 20 years ago we used to use
9 a term called a control schedule. How many
10 people remember hearing what that is? That's
11 kind of like an internal program. We have a TIP
12 project for \$400,000 and you want to use
13 \$200,000, you move that money so it won't go for
14 something else.

15 That's not something that we require,
16 or this particular question is intended to say.
17 You have to submit a new change because basically
18 you're managing the program. As long as your
19 funding is being used on the projects that are on
20 your approved TIP, you're good to go. But once
21 you identify a brand new project that you want to
22 spend your funding on, submitting a brand new TIP

1 basically is required. And the public process of
2 adding a new project to that TIP is required.

3 And I think that's kind of one thing
4 to keep in mind is that when a project comes up
5 brand new in the past, we just submit a brand new
6 TIP, right, and go through the approval process
7 and we get it approved. Again, for this
8 particular set of regs the public process in some
9 way, shape or form must be identified. It must
10 be identified.

11 Any other questions for Subpart B --
12 Subpart D?

13 (No response.)

14 MR. KIPP: Okay. With that I'm pretty
15 much finished.

16 MR. CAULUM: Let's take a break till
17 one o'clock, 1:00 or 1:15.

18 (Whereupon, a lunch recess was taken.)

19 MR. CAULUM: Let's reconvene the
20 consultation, so.

21 (Pause.)

22 MR. CAULUM: We'll move on through our

1 agenda beginning with -- we'll be in Subpart E,
2 which is service delivery for the Tribal
3 Transportation Program. Just a reminder, if
4 anybody's arrived later, or they're just going to
5 attend the afternoon session, please make sure
6 you go sign in outside. And if you rise to make
7 any comments here, let us know who you are, where
8 and which tribe you're representing, if any, if
9 you do want to make a comment here.

10 Just starting with Subpart E, service
11 delivery for the Tribal Transportation Program.
12 170.600 was updated to reflect how tribes are
13 notified of annual funding amounts, as well as
14 the time frame by which those funds must be made
15 available to tribes.

16 This was a clarification, in part due
17 to the process that happens with Federal Highway.
18 When Federal Highway actually receives funds
19 from -- or receives contract authority from the
20 treasury and then when those funds are sent over
21 to BIA, we just wanted to make sure we had some
22 clarification there.

1 170.602 identifies that under existing
2 statutes no additional funding is available to
3 tribes who don't receive construction costs. The
4 miscellaneous section in Subpart E, 605, describe
5 force account methods may be used in the TTP.

6 This has become I think a pretty important
7 portion of the program for tribes that have their
8 own transportation departments and staff. It
9 allows you to use that force accounting, you
10 know, use -- you guys can use your own staff to
11 do the work.

12 606 identifies the legislation and
13 procurement methods -- or, I'm sorry, procurement
14 requirements. The Tribal Transportation Program
15 doesn't have any significant changes there. And
16 607 to 609 describes use of funds for contract
17 support costs and start-up activities.

18 This hasn't been so much of an issue
19 in the Tribal Transportation Program in part
20 because of the tribal shares, the structure. But
21 in the road maintenance program start-up costs in
22 some cases have been a bone of contention at

1 times.

2 Subpart E contracts and agreements.

3 610 just identifies the functions that tribes may
4 assume in their agreements with BIA or Federal
5 Highway. 611 identifies the special provisions
6 that apply to self-determination contracts.

7 There's weren't any significant changes here. We
8 just wanted to make sure we clarified what
9 provision applied with this.

10 612 describes that non-contractual
11 activities are funded out of the funds identified
12 in 23 USC 202(a)(6) which are the program
13 management -- the 6 percent set-aside for program
14 management and oversight. So that's the funding
15 available to Federal Highway and BIA, which then
16 is also divided up among Federal Highway's
17 division offices and then the BIA regional
18 offices to oversee the program, and can be used
19 only BIA and Federal Highway. It identifies that
20 these activities can be found in the appendix to
21 the subpart.

22 614 updated to reflect the tribe may

1 receive partial funding as that funding becomes
2 available to Federal Highway and BIA.

3 Continuing resolutions or extensions.

4 As many of you are aware, sometimes the funds for
5 a particular year come out as somewhat of a
6 trickle, and even though there's an authorization
7 for a total amount, some of -- when they -- for a
8 particular transportation authorization, now we
9 can actually send it out to tribes. It's based
10 on the CR, the continuing resolution in this
11 case.

12 So if Congress for example actually
13 comes up with a project for the government --
14 well, for Interior in this case, and Federal
15 Highway, theirs is largely out of the
16 transportation authorization, but for Interior
17 and the government itself they have a whole-year
18 budget done that all funds that are authorized to
19 be made available.

20 Right now we're under a CR that lasts
21 until May 31 --

22 MALE VOICE: No, no, CR -- we aren't

1 under a CR.

2 MR. CAULUM: Oh, that's right, we're
3 no longer under a CR, they funded the government
4 through the end of the fiscal year. Right?

5 MALE VOICE: Right. Yeah.

6 MR. CAULUM: But the transportation
7 authorization, this is where they come in to play
8 with one another, transportation authorization
9 runs out in May. So we're in sort of an opposite
10 situation than we were in previously, which was
11 that a lot of times the CR would be running out
12 before the transportation authorization would.

13 So right now the amount that's been
14 made available -- we always look at it as a
15 numerator over a denominator -- is 243rd of
16 365ths of the funds available, and we'll go
17 through that this afternoon.

18 615 to 618 updates the availability of
19 advance payments, receiving additional funds if
20 they become available to TTP on a nationwide
21 basis, contingency and savings to align with new
22 statutes.

1 Subpart E, 619 is contracts and
2 agreements. 619 identifies when tribal
3 preference and Indian preference apply to the
4 TTP. No changes other than program agreements
5 were added as a reference.

6 620 clarifies the reimbursable and
7 other agreements with state or local governments
8 for a TTP project may include Self-Determination
9 Act's Indian Preference Agreement.

10 This is somewhat applicable to the
11 program agreements, but a little bit more
12 involved with the title -- tribes that use the
13 contract or the program from Title 1. Over
14 various times in the last seven or eight years
15 we've had situations where a tribe in, say, a
16 township or a county want to work together. The
17 tribe wants to contribute funds for a project;
18 let's just say a mile of paving.

19 And in the past we called these
20 agreements cooperative agreements, and there's
21 sort of a political reason for that, because
22 obviously -- not obviously, but many tribal

1 governments don't want to be viewed as sort of
2 subordinate somehow to a township or a county,
3 and they are not. And so in fact it is those two
4 governments cooperating.

5 But from a practical perspective in
6 terms of the actual contracting, the way the
7 contract section is working is the tribe is
8 somewhat in effect reimbursing the township, if
9 the township's going to do all the work. Say
10 it's a paving project that comes to the
11 reservation, or the tribal lands, really not on
12 tribal lands.

13 We call them cooperative agreements in
14 effect, and, in fact, they're reimbursable
15 agreements, so it discusses that aspect of it.
16 And that if the tribe would like, they can try to
17 get the township or county in that example to
18 agree to use Indian Preference.

19 621, no significant changes, other
20 than, again, adding Federal Highway and BIA
21 Tribal Transportation Program agreements as
22 referenced.

1 622, no significant changes. 623 to
2 625 no significant changes other than for
3 clarification purposes. And then 626 identifies
4 how a tribe can request a waiver of the
5 regulation. In the appendix the list of non-
6 contractable activities did not change in any
7 significant way. There might have been a tweak
8 or two here and there just for clarification
9 purposes.

10 Subpart F, program oversight and
11 accountability. 700 describes what the TTP
12 Stewardship Plan and National Business Plan is.
13 The National Business Plan now is the National
14 Business Strategy. Right? Is that right?
15 Strategy. So that'll be -- that'll likely be
16 changed in the final rule. That's in the process
17 of hopefully being finalized soon.

18 701 clarifies that a tribal BIA MOU
19 may be used to identify work the BIA will carry
20 out with the tribe. This is particularly
21 applicable to tribes that have a program
22 delivered to direct service as opposed to the,

1 what I've been told is the old days, you would
2 get a regional road engineer who would decide
3 what projects are going to be done with the money
4 that was available to the region.

5 Now with having tribal shares and
6 self-determination, the changes have gone on in
7 the program, the regional road engineer will work
8 with the tribal government, in the case of a
9 direct service situation, to identify what the
10 tribal government would like to have done, and
11 carry that out within the limitation of funds
12 that might be available.

13 702 identifies the Secretary who'll
14 review and monitor the performance of all Tribal
15 Transportation Program activities. And 703 and
16 704 describes what program reviews the Secretary
17 is conducting and how improvements are
18 identified.

19 And this is a situation where your
20 regional road engineer's office -- representative
21 of a regional road engineer's office or a Federal
22 Highway regional office will come out, sit down

1 with your transportation folks and take a look at
2 what's gone over the course of say the last year
3 since they've been there and then discuss
4 anything that they see that might be an
5 opportunity for improvement or answer any
6 questions you might have, and then later on they
7 would provide a written review or written summary
8 of what was discussed and the suggestions. So
9 that's E and F. Thank you.

10 Oh, I'm sorry, I should have asked
11 this. Are there any questions or comments?

12 (No response.)

13 MR. CAULUM: Hearing none, Mr. Gishi?

14 (Pause.)

15 MR. GISHI: Okay. Subparts G and H
16 are primarily the road maintenance and the
17 miscellaneous. And this is one of the areas
18 where there was a significant change in the
19 regulations. It all goes back to what we
20 discussed earlier about how we were asked to
21 remove any references to the BIA Road Maintenance
22 Program.

1 So that section that really talked
2 about the relationship between BIA appropriations
3 and the highway trust fund and how they kind of
4 all work together, there used to be a chart in
5 there, that's all gone. It's no longer in there.

6 But where it refers to the necessary
7 parts of how, what's expected in terms of what's
8 eligible under road maintenance, those portions
9 are still there because obviously road
10 maintenance is an eligible activity, and those
11 activities don't necessarily vary based on the
12 funding. It's the use of the funds that
13 certainly -- and the authority of the funds,
14 that's the big difference here.

15 In general, as we start off, it
16 removes, as I mentioned, it removes references to
17 the road maintenance, BIA Road Maintenance
18 Program and focus strictly on those activities
19 that are associated with TTP. And the first part
20 of that, 800, talks about what the -- identifies
21 the funding for maintenance activities under the
22 Act.

1 And it talks first and foremost that
2 words provided from 202 Print 8 talks about how
3 much is available. Twenty-five percent of the
4 TTP program funds or 500,000, whichever is
5 greater. It can be used to maintain any facility
6 that's located on the NTTFI, which means we have
7 our road inventory as of last year has been
8 hovering right around 158-, 159,000 miles.

9 In addition to that, when you don't
10 really register in miles, the number of
11 facilities that are associated with transit,
12 ferry docks, those kind of things, they're also
13 eligible for maintenance under this program.
14 Those are all activities -- all those facilities
15 are -- that regardless of whether they're
16 tribally owned, BIA owned, state and local
17 government owned, or other federal agency, the
18 tribes are eligible to be able to utilize it.
19 But obviously the decision to do that is up to
20 the tribe.

21 As we go through road sealing, the
22 unique feature in all of this is most public

1 authorities, public agencies consider road
2 sealing as strictly a maintenance activity for
3 purposes of just the actual function of it. And
4 so they can't do road maintenance with their
5 funding. Under the TTP program you can.

6 But Congress made the distinction that
7 for purposes of the funding limitation only road
8 sealing is not considered part of the process.
9 So that's 25 percent, the 500,000, road sealing
10 is not considered part of that in terms of
11 limitation.

12 So you can do 25 percent or 500,000,
13 whichever is greater for the maintenance work.
14 And on top of that you can do road sealing and
15 the process and procedures are pretty much the
16 same as you would go through those type of
17 things. A very simple set of plans, standards.
18 And then of course -- because generally what
19 you're doing is you're looking at a preventative
20 maintenance process that is actually redoing the
21 surface or doing something that'll allow you to
22 be able to improve the comfort, rideability of

1 the surface.

2 And then also the two other sections
3 that are in there, just re-emphasizing the
4 Secretary -- for BIA roads, for the BIA program,
5 the Secretary is still responsible for ensuring
6 that on an annual basis that a budget's submitted
7 for those roads and that not only maintains that
8 responsibility but also makes sure that when
9 funding's available, this fund -- these funds are
10 not to be used to -- in lieu of funds from other
11 agencies.

12 In other words, if someone has a
13 maintenance responsibility that's not a tribe,
14 then, you know, it should -- the cost of
15 maintaining those roads shouldn't be borne
16 completely by the tribe, that these funds are to
17 supplement any other funds, not to be used in
18 lieu of or to completely supplant any other
19 efforts out there to maintain roads. So that's
20 Section 800.

21 801 clarifies the funds designated
22 for -- maintenance cannot be used for

1 improvements. Essentially that's the --
2 primarily the criteria for maintaining roads in
3 the as-built condition so to speak. In other
4 words, you can't be doing any improvements like
5 increasing the facility to a higher -- or road
6 classification to a higher standard or capacity,
7 thinking of gravel road and paving it, that type
8 of thing and the standard consisting of what was
9 in there before.

10 802 verifies that the tribe can carry
11 out maintenance activities. In other words,
12 tribes can perform road maintenance activities
13 under the different type of agreement mechanisms
14 that are available to them, and this is where the
15 reference to Federal Highway agreements, as well
16 as the BIA agreements -- the TTP agreements come
17 into play.

18 803 identifies the standards which
19 will be that informal guidance will be provided
20 on the website. And again, road maintenance
21 standards are just that, they're typically
22 standards that are pretty much used consistently

1 across the board. The flexibility with 803 is it
2 allows tribes to be able to develop standards
3 themselves, particularly for their tribal roads
4 and in which they will be able -- can utilize,
5 combine work with local agencies to be able to
6 come up with standards for maintenance purposes.

7 And if you are doing road maintenance
8 under a BIA contract, then obviously you can
9 incorporate those because most likely your crew,
10 your workers are going to be doing the same
11 thing. So it's not like you don't want to have
12 them retool for something else if they're already
13 doing that, it's a matter of just utilizing those
14 standards also.

15 170.804 describes what actions can be
16 taken in the event that roads are not being
17 maintained. Primarily the rule-making committee
18 put this together back in 2004 and the idea was
19 that -- it's re-stating essentially what's in
20 25 -- 23 CFR 316 states that if the road's not
21 being maintained by appropriate authority, it's
22 actually referencing the state or funds that are

1 provided to state, the roads that are constructed
2 using these funds.

3 Then it's very important to the
4 Secretary of Transportation -- this follows that
5 similar process but it specifically addresses it
6 from the tribal perspective as to who to contact
7 and who the Interior Secretary would contact in
8 terms of making a notification. In addition to
9 that whatever actions are taken the Secretary
10 will be required to provide that information to
11 the tribe so the tribe's kind of aware what's
12 happening as a follow-through to the non-
13 maintenance of those roads.

14 805 identifies that the BIA and FHWA
15 websites will try to find a list of maintenance
16 activities. If you see one of the handouts that
17 was provided to you, there's a list there. It's
18 also -- that list is also going to be posted on
19 the websites that are there. FHWA, BMA and it
20 basically contains the appendices.

21 And I mentioned this earlier, but in
22 any of those areas, if you feel strongly one way

1 or another, obviously if you don't have any
2 preferences, that's kind of the way it is right
3 now in this proposal, but if you feel other
4 way -- otherwise that you want to see it posted
5 in the regulations, please make that note in your
6 comments.

7 But that's what is the format that
8 will be posted on the website that will show
9 eligible activities, new uses, those kind of
10 things that we mentioned earlier that were only
11 references you'll find them on the websites.
12 That's what those are.

13 And that basically, for lack of a
14 better word, is Subpart G. It's very, very short
15 in relative terms. As I mentioned before the
16 make up was primarily all the graphs and tables
17 that were associated with how BIA funding itself
18 came about and was established.

19 Subpart -- are there any questions on
20 that, on road maintenance as a whole?

21 (No response.)

22 MR. GISHI: Thank you. Then we'll go

1 on to Subpart H. Subpart H was sort of our
2 catch-all miscellaneous. Under the current regs
3 when the rule-making process took place, and it
4 is the same, except there are certain things that
5 have been taken out. In this case the materials
6 that were included in the section before, in
7 Subpart -- excuse me, that was there for
8 reference purposes only, and where it was
9 actually for information purposes only, was the
10 hazardous and nuclear waste transportation and
11 emergency relief.

12 But the committee at the time felt
13 like they needed to have something at least
14 identified with some general indication or
15 pointers for people who were looking at the regs
16 and say if they came across something they could
17 at least point them in a direction of where they
18 could go. Offices, regulations, statutes and
19 this sort of thing, that's kind of where it was
20 before.

21 And then under this current
22 administration and their preferences, they

1 indicated that is not how they treat the
2 regulations, certainly the body of the
3 regulation. And so they put that asterisk to
4 remove that purpose -- for purposes of actual
5 authority. There's some where they felt like the
6 information can be contained and more easily
7 updated and made available and more current
8 through the appendices.

9 There are other things where they felt
10 that it had no business being in the regulation
11 because the authority associated with the program
12 the Secretary of the Interior did not allow for
13 this kind of information, this is one of those
14 locations. The other one was in terms of
15 primarily the funding authority, the TTP, even
16 though it was the Secretary of the Interior that
17 was the road -- BIA Road Maintenance Program.

18 And another part, the part that was
19 left -- oh, another part was ER, the emergency
20 relief. It is a program, it is functioning, it
21 is handled through the Federal Lands Highways
22 Program as a part of the larger emergency

1 relief -- ER Program under Chapter 1 of Title 23.

2 And they just completed and updated a
3 manual, an ERFO, Emergency Relief for Federally
4 Owned Roads, which includes BIA roads and tribal
5 roads. And that is up-to-date now and it
6 describes exactly the process, procedures of
7 which you need to be able to do, who you need to
8 make contact with. So there's a manual out on
9 that.

10 Again, the funds do come through
11 Chapter 1. Again, it's a concept that the
12 authority under the funding is not available
13 under this -- under 202 of Title 23. So for that
14 reason emergency relief was taken out of that --
15 of this section.

16 Reporting and requirements and Indian
17 preference. This is pretty much the information
18 on -- that was previously there with a little bit
19 of modifications and updates, in particular 910,
20 what information on the program or the projects
21 must BIA and FHWA provide. Basically it talks
22 about how you can get that information and sort

1 of a time line, and all those references
2 reasonable time for that to be made available.

3 Eleven, 911 through 17 deals with
4 Indian preference in employment. No significant
5 changes in that other than updating the
6 citations. You pretty much know that when Title
7 23 was updated with MAP-21, we used to have
8 portions of our -- portions of what we do in 201
9 just very general in Federal Lands, at that time
10 Indian Reservation Roads, Section 201, we had a
11 few things in 202 and then we had more things
12 over in 204. So it basically had three sections
13 that kind of dealt with the program at that time.

14 Since then they've flipped, the
15 program is completely dedicated to the Tribal
16 Transportation Program in 202. And there's some
17 references, there some reference or referrals of
18 general information in 201, and it's all in 202.

19 Well, some of that information that
20 was in Indian preference in hiring and in
21 employment was in those other sections, so when
22 they did that, they moved them back under 202.

1 And so this section is basically an update of it,
2 that looked at those citations and broadened them
3 to make sure that they're consistent with what's
4 currently in the law and basically they represent
5 current statutory and program references. And as
6 far as -- that I can tell under Title 23, they
7 didn't change anything, they just moved it to a
8 different location.

9 Section 918, this is where I mentioned
10 earlier this morning the collection of data, what
11 applies to the Secretaries' collection of data
12 under the Tribal Transportation Program. Two
13 particular areas that we have that apply to is
14 the inventory and condition information that is
15 required as an annual report to Federal Highways.

16 We have to report every April on the
17 miles of public roads, certification of public
18 roads, and the condition. In fact, this morning
19 we got an email from one of Bob's counterparts
20 that we're at that time of year again, please
21 send us the information. And so we generally --
22 what we utilize is the RIFDS, or the Road

1 Inventory Field Data System to report that.

2 The data that goes into that comes
3 from you as you're doing your updates for
4 projects that you're not only completing and
5 updating, as well as new projects that you're
6 looking at considering down the road through your
7 long range planning process. All of that is
8 information that's collected.

9 And so that's what 11 -- excuse me,
10 918 refers to is, is that's one of the areas
11 where we have information collection. The other
12 location is -- the other area is bridge
13 inspection and inventory, which is, again,
14 required by law, Title 23 United States Code 144,
15 and the new provision that's there that Sheldon
16 explained this morning was that in this case all
17 tribal bridges that are public bridges have to be
18 inspected.

19 And so what this does is it basically
20 highlights those are the two areas where
21 information needs to be collected for purposes to
22 comply with the law to be able to have access and

1 use of these funds. And that whole portion that
2 speaks to information collection and other
3 information that's needed is in the preamble and
4 including the analysis data on what it would take
5 for an individual, average individual entity to
6 take that on and what the total cost of that's
7 anticipated for an endeavor for an entire year.

8 Tribal -- the next section there is
9 tribal transportation departments. Essentially
10 one of the things that when we first started off
11 doing this a lot of the contracts, a lot of the
12 agreements, a lot of the program implementation
13 was done based on Subpart J, Title 1, which
14 basically is a contract maintenance that allows
15 tribes to take on the role of the Secretary in
16 the performance of projects, individual projects.
17 But it really did emphasize an overall global
18 DOT-type atmosphere.

19 We've seen that change significantly
20 obviously since 2004. And if we go back to 2004,
21 we did have a lot -- a number of tribes who were
22 doing this at the time. And what this does is

1 this basically allows for that process of
2 continuing to support tribes in taking over the
3 program and developing and establishing
4 transportation departments. So there's no real
5 big changes in that, other than, again, to update
6 the references and reflect -- to reflect the laws
7 that are current.

8 934 and 35, the use of alternate
9 dispute resolutions. Again, no major changes.
10 The only difference here is to include the
11 agreement mechanisms in there that Federal
12 Highway uses with the tribes to include a
13 provision on -- that would be included in the
14 resolving disputes, or alternate dispute
15 resolution process.

16 The other miscellaneous provisions,
17 941 and 942 -- will you look at that, we're
18 moving right down to the wire here, the last
19 page, so we can hear a drum roll -- discussed
20 transportation research. Essentially what's
21 available out there, what the tribe can do in
22 terms of participating with like TRB,

1 Transportation Research Board, can these funds be
2 used to support efforts that involve research,
3 quality of life programs.

4 And that was always something that was
5 part of the regulations, anything that Title 23,
6 Chapter 1 was doing, the states and local
7 governments and other federal agencies. It was
8 intended for tribes to be able to do likewise.
9 So that continues to be in there.

10 943, the last one, what is the -- this
11 basically is the portion that talks about what is
12 the High Priority Projects Program, and that it's
13 not part of the TTP and where the information can
14 be found, websites and so forth. Essentially
15 that wasn't in the regulations before as the IRR
16 HPP and now as the DTP HPP or whatever it is, and
17 it hasn't been funded, so -- and I don't think
18 it's going to be, at least till the next
19 authorization comes forward.

20 Bob will talk a little bit about
21 administration's status and what they feel on
22 that. And otherwise this is just for information

1 purposes only. So this section, again,
2 miscellaneous, and just trying to kind of catch
3 everything that really didn't fit into an area
4 but we still had some allocation in the program
5 that we had information on and we either had
6 authority from a secretarial standpoint or
7 funding authority standpoint, and that's why
8 they're there.

9 That pretty much concludes all of our
10 sections, subparts of the rule. It's really kind
11 of compacted down, it's easier than Subpart D
12 that Sheldon covered. Lots of stuff there still
13 about how long-range planning really is helpful.
14 And then of course Subpart C is the formula, how
15 that works. And it's interesting. You know,
16 someone really had to be on something good to
17 come up with that formula. It's pretty amazing.

18 But otherwise that concludes our
19 informal consultation portion. Are there any
20 questions, any comments, if you have any -- all
21 the documents that you want to have entered into
22 the record, let us know, bring them forward and

1 we'll make sure we scan them and get them to the
2 court report so she can include it in the record
3 also. Otherwise, any questions?

4 MR. LaSARGE: I have a question on --

5 MR. GISHI: State your name and --

6 MR. LaSARGE: Charley LaSarge,
7 Muscogee Creek Nation. I just had a question on
8 if there was idea when the -- which tribes will
9 be notified who receives safety money.

10 MR. GISHI: Yeah, we'll cover that
11 with the update of the program. Okay?

12 Anything on the regulations?

13 (No response.)

14 MR. GISHI: I want to -- those of you
15 who made -- yes.

16 MR. CAULUM: Just one -- this is Andy
17 Caulum with the Solicitor's Office -- one brief
18 reminder, if you have any questions or you'd like
19 to submit any comments after you leave today, you
20 have that ah ha moment when you're driving home,
21 please, don't hesitate to submit any comments you
22 might have electronically at either the websites

1 or take the form of email to the address that was
2 listed in the PowerPoint or that you'll find in
3 the NPRM that was published.

4 Go ahead, Bob.

5 MR. SPARROW: This is Bob Sparrow.
6 But do not send it regular mail.

7 MR. CAULUM: Well, you can --

8 MR. SPARROW: You can, but we might
9 get it in August.

10 MR. CAULUM: Yeah. And --

11 MR. SPARROW: And the federal
12 government, when any regular mail comes to
13 Washington, it gets shipped away to get anthrax
14 proofed and whatever and comes back. And
15 everything is melted together, especially if it's
16 any sort of picture or --

17 MR. GISHI: Photos, yeah.

18 MR. SPARROW: -- you know, photos,
19 emblems, anything that's on there, the paper just
20 disintegrates.

21 Priority mail is fine, FedEx is fine,
22 UPS is fine, snail mail, by the time this all

1 goes back and forth typically it takes well over
2 a month. So, and then you've also got -- you
3 know, what was on there earlier is the electronic
4 version.

5 MR. CAULUM: Adobe Acrobat or the
6 Print to PDF function in Word if you have that
7 that you can use it when it comes to submitting
8 stuff to the federal government these days.

9 MR. SPARROW: I want to thank you all
10 for taking the time to come here today.
11 Hopefully you got an understanding of the update
12 and what we were trying to do with the update and
13 getting it current with the law and current with
14 what's been passed by the Coordinating Committee.
15 And then, as I said earlier, updating it to the
16 operations and the processes that were actually
17 doing things now as opposed to how things were
18 being done in 2002 and 2003.

19 As LeRoy said, this would close the
20 formal consultation. We take about a 10-minute
21 break or so, maybe 15 minutes, so we can get the
22 court reporter all packed up and out. Then we'll

1 come back and I'll do an update on the program.
2 It won't last very long, 20-25 minutes. Is there
3 anybody who is not signed in?

4 MALE VOICE: Did we have to sign in
5 again in the afternoon?

6 MR. SPARROW: No, just once.

7 MR. KIPP: No, just once.

8 MR. SPARROW: No, you've got to sign
9 in on your way out.

10 All right. Is that it?

11 MR. CAULUM: That's it.

12 MR. SPARROW: Thank you all. We'll
13 see you in a few minutes.

14 (Whereupon, at 1:51 p.m., the
15 consultation session was concluded.)

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This is to certify that the foregoing transcript

In the matter of: Tribal Consultation Session

Before: US Bureau of Indian Affairs

Date: 01-29-15

Place: Oklahoma City, OK

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