The meeting was held in the William A. Egan Civic & Convention Center, 555 West Fifth Avenue, Anchorage, Alaska, at 9:00 a.m., LeRoy Gishi and Robert Sparrow, Co-Moderators, presiding.

PRESENT

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

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Adjourn
MR. HARTFORD: Good morning, ladies and gentlemen. We're going to kick this off. It's 9:00 o'clock. Mr. Gishi asked me to welcome you all here.

I am Stu Hartford, the regional road engineer for the BIA Alaska Region Office, and it's my pleasure to participate in this today.

This is all about the rewrite of the regulations for the Tribal Transportation Program. The regulations were heavily impacted by the new legislation that was passed last July for MAP-21 which affected the Tribal Transportation Program in many ways. So the regulation rewrite is necessary, and this session today is all about you providing input to that.

We're delighted to have several folks from Washington, D.C. with us today.

And starting off is going to be Mr. Andrew
Caluum who's going to give the first presentation. And, Andrew, will you be introducing the follow-on speakers after that?

Okay.

My staff is here to assist you in any way, so please let us know what we can do to help you out.

Again, welcome and we're going to kick it off with Mr. Caluum.

MR. CALUUM: Yeah. And I just want -- my name is Andy Caluum. I'm a lawyer with the Department of the Interior. Part of my portfolio has been working on -- when I first arrived, it was known as the Indian Reservation Roads Program, and Congress recently changed that name for us to the Tribal Transportation Program.

I want to just do a basic introduction on the consultation aspect of this, and then Vivian Philbin, who's been with Federal Highway for a lot longer than I've been Interior, will go ahead and do the sort
of historical background on how we got to where we are now, and then turn it over to Mr. Gishi and Mr. Sparrow.

This is the first consultation session of three that we're having on the draft rewrite of 25 CFR Part 170. As many of you know, the actual law for the Tribal Transportation Program is in Chapter 2 of Title 23, which is the Department of Transportation's part of the federal statutes, but Congress some time ago directed that the Secretary of the Interior go ahead and do the rulemaking to implement the program, so that's why the rules for this program are in 25 CFR, which is where the Interior rules -- or where the tribal program rules typically reside.

This is the first session as I said. We're going to going down to Phoenix, Arizona for a consultation session that will occur on Thursday of this week. And then on Tuesday of next week we'll be in Minneapolis.

You are at this session -- this is
not a formal rulemaking as yet. This is largely in response to a tribal request from leadership of tribes, that tribes be involved at one of the earliest possible opportunities when there's a revision to regulation going on, and that is why we want to go out and do these consultation sessions now. And there's a really important aspect to that as well, and that is if we go to what's called a notice of proposed rulemaking, the department, the program really loses some control on that, because the Office of Management and Budget then is heavily involved when you go to NPRM. So this is an opportunity, before we get to that more formalized point with the NPRM, to get input and feedback from tribal leadership now before we get the rule to the point where it's set for being sent to OMB and then moving forward with notice of proposed rulemaking.

To date we have -- internally we have done the initial draft rewrite. That was presented to the Tribal Transportation Program
Coordinating Committee. That was formerly known as the Indian Reservation Roads Program Coordinating Committee. That committee was established in 25 CFR 170, and it's a committee the assistant -- or the Secretary of the Interior that's appointed by, well, now her just recently. We have a new Secretary of the Interior, Sally Jewel, who replaced Ken Salazar.

And so we met with the Coordinating Committee in Albuquerque, New Mexico about two months ago, or two and a half, three months ago. Many of their recommendations have been incorporated into the draft that we are consulting on today. And their input going forward will continue to be very important.

For many of you who don't know, there are representatives from each of the BIA regions on the Coordinating Committee, and then one alternate. And the meetings are open to the public, so sometimes we get people who
are not on the committee itself, but attend,
who have been very interested and have been
heavily involved with the Tribal
Transportation Program for many years, and so
they also may have made some inputs through
their regional representative as well at that
point.

Just basic rules for the
consultation here. Mr. Gishi and Mr. Sparrow
will be going ahead and doing their
presentation. We welcome questions, we
welcome comments. There's a court reporter
here today, and she will be taking down the
comments that are made and what we're saying
here today. So when you rise to speak, or
when you're recognized to speak, please give
us your name, and if you're representing a
particular tribe or village, let us know who
that is. You're not required to be
representing anybody, of course, as well, but
if you are here on behalf of a tribe or
village, please let us know that as well.
And one thing that's really important is that the court reporter can only take down one person speaking at a time; otherwise it gets confusing and she can't do her job very well.

And then what we will do at the end is we will take the transcripts from the three consultation sessions as well as comments that people are welcome to make through the BIA website, and it's in your packets that are available. There's the email addresses where you can send your comments as well until June 14th of 2013. At that point, the comments on the draft revisions to 25 CFR 70 will close, and we will then gather and work through those comments and make changes. And hopefully somewhat soon thereafter we'll be ready to go to a notice of proposed rulemaking and then move forward with further consultation sessions on the NPRM.

So with that, if you have any questions briefly for me, or -- do you have
one for me?

MR. THOMAS: Yes, I do.

MR. CALUUM: Go ahead.

MR. THOMAS: Good morning. My name is Sam Thomas. I'm from the Organized Village of Kasaan on Prince of Wales Island.

And I was just wondering whose consultation policy you're following in regards to consultation, because the definition of consultation in here is different than what the consultation policy is for the Department of Interior. And in here it's identifying that an action that has already been taken, and you're just doing probably public information. I mean, it looks like a lot of the actions that have been incorporated into the 25 CFR Part 170 have kind of already been -- and you're just giving an overview of what's being taken place.

MR. CALUUM: I don't think respectfully, I don't think there's been any federal action that's taken place. We haven't
published the rule in a final form. We haven't published it in a notice of proposed rule. We have --

MR. THOMAS: So how are comments --

MR. CALUUM: -- made the rule available to the Tribal Transportation Program Coordinating Committee for their input. The rule -- you know, we now are having a public session on this. I believe that this is consistent with the department's consultation policy. This is not a final product as yet. Having said that, if there's -- but I respect your view on it, but I don't believe that this is anywhere close to being a final rule.

MR. THOMAS: How are public comments being weighed out then for their integrity or their weighing? I mean, we're commenting on something within this document -- I'm reading this 170.443 that we consulted on a year ago in June on proposed roads and
primary access roads. We never really heard
an outcome of that, and now we're seeing a
document that has those proposed actions
incorporated into the 170 -- 25 CFR Part 170.

MR. CALUUM: Yeah.

MR. THOMAS: Never really got an
overview of that and how it got incorporated
in there. So that's kind of where I wanted
this, on how this has all been played out.

MR. GISHI: We will cover that
when we get to that subpart. And if you
notice, just sort of as a refresher, that
portion was actually in (c) before, subpart
(c), which is the formula portion. Now it's in
(d). It's still part of the rulemaking, it's
still part of the process. The consultations
that were done last year were in response to
a way to include data for the formula, and
that has changed. And that's what we want --
we're going to make sure we make that very
clear, because we want to be able to get input
and feedback relative to that, because we did
make some of those -- comments were made last year as we were heading toward a process of updating regulations and policies affecting the funding formula. And so that .443 is now in the .500 areas also. So to give you some indication, that's kind of where we're going with this. And obviously we welcome those comments through that process.

MR. THOMAS: Okay. Thanks.

MR. CALUUM: Okay.

MS. BALTAR: I am Julianne Baltar with Bristol Bay Native Association.

What I was wondering is, I know that the new Tribal Transportation Program Coordinating Committee met to review an initial draft back in January. Were most of their comments and recommendations for changes included in this? Because I've noticed at least a few that were recommended for change that don't show the change now. So I'm just wondering how much of this document includes input from that last TTPCC meeting.
MR. CALUUM: I will say that -- I think that that's something that should be addressed when Bob and LeRoy are doing their presentations as we get into those particular aspects of it. And if people are -- have comments as we get to those particular sections, they should definitely raise those both here, and they're also again welcome to raise them in written form through the process that's been described on the BIA and Federal Highway website.

MS. DILTS-JACKSON: Good morning. My name is Arlene Dilts-Jackson. I'm with the Ketchikan Indian Community.

Since we're talking about the consultation process, I think I have kind of one very, very important point to make. And that's that the language of MAP-21 doesn't prohibit the Secretaries from using negotiated rulemaking, which is the most meaningful way for us to set rules in place for an Indian program, and clearly this is an Indian
But even though MAP-21 doesn't mandate it, what is mandated is that the Secretaries under the general negotiated rulemaking statute assess whether there are a limited number of identifiable interests that will be significantly affected by the rule, and that means the tribes. And I think we have this situation here.

MR. CALUUM: Thank you. All right. With that I'm going to turn it over to Vivian Philbin, and she will then send Bob and LeRoy on their way.

MS. PHILBIN: Thank you. Good morning everyone. Thank you. Good morning everyone. My name is Vivian Philbin. I'm the assistant chief counsel for federal lands for the Federal Highway Administration. It's nice to see some familiar faces, and always good to see new faces in tribal transportation.

I'm going to give you a brief overview of why are we here. But first off,
please make sure everyone signs in on the
sign-in sheet. This is a consultation
session. We have a court reporter as Mr.
Caluum indicated. It's very important that
you identify your village, tribe, village
corporation, regional corporation, or if
you're here speaking as an individual. But
sometimes it's difficult for the court
reporter to get down exactly who's speaking
and the spelling of your name, so make sure
you sign in and make sure that we don't have
a dialogue going on because they can only --
we can only get one person's comments down at
one time.

So why are we here? There's a lot
of people here that have been with this
program for a very long time, which I'm going
to go back a little bit in front of this
slide. Would you stay on that slide, please.

In 1982 the FLIP program was
established with the STAA off of 1982. And
that was a Federal Lands Highway Program. In
1987, which was our next re-authorization after that star, there were very few changes to what was then the IRR program. Previously it was funded in 1982 at $100 million a year. It went down in '87 to $80 million. In 1991 we had a next re-authorization. That's when some of the people in this room may have started working with ICE-T, which was a heavy emphasis on planning, and the IRR funding, and this is for all of the federally-recognized tribes throughout the United States, went up to $191 million a year.

So then we come to why we really are here, which was T-21 in 1996 which mandated a negotiated a rulemaking for what was then the IRR program. There are some people in this room, I don't want to identify all of you, that have been involved with this negotiated rulemaking. I'm one of them. Mr. Gishi was as well. Mr. Sparrow later. And that was a multi-year effort. And finally we had a final rule published for 25 CFR Part
170, which are the rules and policies for the Indian Reservation Roads Program, in 2004, which is effective in 2005.

Let me backtrack so I get to this slide here and go through all the information. So we have the first published regulation in 1974 as a roads to the Bureau of Indian Affairs. And the reason that it became important as I started with the STAA of 1982 was prior to 1982 the Indian Reservation Roads Program was funded under annual appropriations. So you never knew, the department new knew, let alone the tribes, how much money was going to be available, because they were not part of any multi-year re-authorization with any -- so you could do any type of transportation planning. So with the STAA the IRR program became part of the multi-year re-authorization for surface transportation.

Okay. We have the regulations were updated in July of 2004. They became a
final rule effective for FY 2005 pursuant to T-21. So what happened in FY 2005 is we had a new surface bill, we had SAFETEA-LU. Next slide, please. And, of course, immediately with SAFETEA-LU there were some changes to the IRR program. And so this update to 25 CFR has really been ongoing since 2005. While there hasn't been any official publications in the Federal Register, there have been notations made that because of changes in the law, certain changes had to be made to 25 CFR Part 170.

So what really happened that was the real kicker was as all of you in this room know, that we have a new highway bill, a two-year bill for FY 13 and 14 called MAP-21. It was signed by the President this summer. And MAP made some significant changes to the IRR program.

First, it's now the TTP program, the Tribal Transportation Program. Second, there is a statutory formula for the
distribution of the TTP funds. So that in and of itself is the impetus, along with the other changes that have occurred and that we've noticed that needed some correction since the original publication of the final rule in 2004 for what's happening today.

So as soon as MAP-21 was published, we started working on the rewrite of 25 CFR Part 170. And it went to the TTP Coordinating Committee. As Mr. Caluum said, it used to be the IRR Coordinating Committee. They had a number of conference calls and some, at least one or two in-person meeting, I'm not sure if there was two or there was one, to discuss all of the proposed changes. And as Mr. Sparrow and Mr. Gishi go through, they'll indicate some of the changes that were made.

Now, this today is not a formal rulemaking process. This is in advance of the NPRM, because during the 25 CFR Part 170 process, when Mr. Gover was then the assistant
secretary of Indian affairs, many of the tribes requested the opportunity to make comments, which is what we're doing today and in Phoenix and in Minneapolis, and by the prepublication of this in advance of the NPRM. Now all the comments that are made today are going to be taken down by the court reporter, and in addition any written comments will be accepted until June 14th.

So this is all in advance of the NPRM being published. And as -- I mean, this cannot be said more often than not, as a last bullet, this is an advance opportunity to review the proposed regulation and make any comments or recommendations. So we'll be taking questions, we'll be taking notes.

Do you have another slide? That's it.

Please, if you have any questions, ask them. Please make sure you sign in. And with that we look forward to a very productive day.
Sir. Mr. Thomas.

MR. THOMAS: Is there a reason why we didn't receive a red-lined version of the document to know -- we had to go through and cross reference two different documents to identify what was being proposed changes, because to me --

MS. PHILBIN: I'll repeat the question. Mr. Sam Thomas asked why there was a reason there was not a red-line version. I can only answer that this has been a work in progress. We've been working up to it to the very last minute. I don't even know if we have a word document in a side-by-side comparison. I know various individuals are very aware of some of the changes that are there, and we can point them out. And sometimes -- a red-lined -- sir, a red-lined document would have one document indicating all -- with all the changes and where each change is, which for some individuals, they're very used to reading that. For others, it
become terribly confusing.

And I think our intent, because, for example, every time the word IRR was mentioned in the prior rule, the word TTP is in there. And sometimes it becomes very difficult when you're looking at a jumbled mess of cross outs.

So for the substantive changes, which are what are most important -- obviously there's some technical corrections, statutory changes because a statute changes, but for the substantive changes, we intend to point them out today. And I guess I know that's not the answer that you want, but that's the answer I'm going to give.

So, ladies and gentlemen, we look forward to a very good day. Please don't be hesitant to ask any question. If you're new to the program, go ahead, go for it, ask the question. We need those questions asked.

Thank you very much.

MR. GISHI: Thank you, everybody.
I want to continue on -- you don't have a copy of this. Excuse me, you had a comment?

Okay. Very good. Thank you. I appreciate it.

If we could just take a short while for everybody that's here to introduce yourselves. Can we just start at the front and go around the back and then -- and the court reporter won't need to write this down, because we have a sign-in sheet for that, but just so we get an opportunity for people to introduce themselves. We have Andy Caluum introduced himself, Vivian Philbin, and my name is LeRoy Gishi with Bureau of Indian Affairs Transportation Office in Washington, D.C. And we'll start there at front.

MS. KLEIN: Christine Klein with Calista Corporation.

MS. CHAVEZ: Minerva Chavez, Alaska Region BIA.

MS. PHILBIN: Let's speak up.

MR. CHARLIE: Keith Charlie,
Minto, tribal transportation coordinator.

MR. TITUS: Charlie Titus, Chief of Minto Tribe.

MS. CALCOTE: Delice Calcote, Alaska Inter-Tribal Council, executive director.

MR. LANMAN: Jess Lanman, Alaska Inter-Tribal Council, director.

MR. STEVIG: Gary Stevig, Chickaloon Village, assistant director of transportation, planner.

MS. McDONALD: Brandilyn McDonald, Tlingit and Haida Central Council, transportation program coordinator.

MS. HOLMES: Good morning. Raeanne Holmes, Central Council Tlingit and Haida, interim manager for our tribal transportation program.

MS. HENRY: Tamara Henry with Chalkyitsik Village Council, tribal administrator.

MR. PETERSON: Hi. Frank
Peterson, Chinook Tribe of Kodiak.

MS. BORROMEO: Good morning.

Nicole Borromeo, Sonosky, Chambers.


MS. NEWMAN: Good morning. Bonnie Newman from the Ketchikan Native Community.

MS. DILTS JACKSON: Arlene Dilts Jackson, also with the Ketchikan Indian Community, tribal transportation director.

MS. GARCIA-ALINE: Sandra Garcia-Aline, assistant division administrator in Juneau.

MR. HAWLEY: Stan Hawley, Native Village of Kivalina.

MS. HAWLEY: Good morning. Millie Hawley, Native Village of Kivalina, president.

MR. MANN: Good morning. Terry Mann, Kokhanok Village Council, president.

MS. MANN: Tina Mann, Kokhanok Village Council.

MR. ISAACSON: Todd Isaacson with
Bristol Engineering.

MR. HAWLEY: Oral Hawley, Native Village of Kivalina, member.


MS. REED: Terri Reed, Native Village of Tyonek.

MS. TUNUCHUK: Clara Tunuchuk, tribal administrator, Chefornak.

MR. BREDERMAN: Larry Brederman. I work for Manley, Rampart, Ruby, and Minto.

MR. COMMACK: James Commack, tribal transportation coordinator, Shungnak.

MR. LEE: Billy Lee, Native Village of Shungnak.


MS. JANITSCHECK: Good morning.
Barb Janitscheck, Maniilaq.

MS. FOSTER: Dolly Foster, Native Village of Kivalina.

MR. BRINK: Zack Brink, ONC, executive director.

MR. DANIEL: Clarence Daniel, AVCP transportation.

MR. KNAGIN: Rodney Knagin, Native Village of Port Lions, tribal transportation coordinator.

MR. YELLOWTAIL: Good morning. I'm Randy Yellowtail, BIA transportation here in Anchorage.

MR. METZGER: Dan Metzger, engineering tech, BIA, Anchorage.

MR. HENDLER: Good morning. David Hendler, also BIA.

MR. SMITH: Greg Smith, BIA.

MR. GRAY: Chase Gray, Native Village of Council, chairman.

MS. BARENGO: Denise Barengo, Nome Eskimo Community, executive director.

MR. PETERSON: Good morning, everybody. My name is Brian Peterson with Rodney P. Kinney & Associates.

MR. THOMAS: Dennis Thomas with Crooked Creek Tribal Council. I'm the transportation director.

MR. THOMAS: Good morning. Sam Thomas, transportation infrastructure specialist for the Organized Village of Kasaan. Also the Alaska representative to the Tribal Transportation Program Coordinating Committee.


MS. HERBERT: Hi. I'm Melanie Herbert, Tanana Chiefs Conference.

MR. HARMON: Good morning. Jeff Harmon, BIA, transportation.

MR. LEWIS: Good morning. Dale
MR. BALTAR: Good morning. Bruce Baltar. I'm general council with the Bristol Bay Native Association.

MS. BALTAR: Good morning, Julianne Baltar, director of transportation, infrastructure development for Bristol Bay Native Association.

MS. BARNES: Good morning. Liberty Barnes, planner of transportation and infrastructure development, BBNA.

MS. FAIR: Melodie Fair, grant writer at WHPacific.


MR. GOLLEY: Robert Golley,
Chuathbaluk Traditional Council, chairman and transportation planner.

MS. LARSON: Good morning.

Dorothy B. Larson. I'm the tribal administrator for the Choggiung Tribal Council in Dillingham.

MR. WINNESTAFFER: Good morning.

Brian Winnestaffer with Chickaloon Village, department director for transportation.

MS. RAUF: Good morning. My name is Rebecca. I'm the southwest area transportation planner for DOT in Anchorage.

MS. BILOON: Hi. I'm Joselyn Biloon. I am the area planner at Alaska DOT.

MR. WASSILY: Good morning.

Joseph Wassily, Clark's Point Village Council.

MS. GEORGE: Aurora George, member of Clark's Point Tribal Council.

MS. LAMPE: Good morning. Doreen Lampe, Inupiat Community of the Arctic Slope, executive director.

MS. BAHNKE: Good morning. I am
(speaking Native language) Melanie Bahnke. I am the president of Kawerak.

MS. MICHAELS: Good morning.

Denise Michaels, transportation director at Kawerak.

MR. WILLIS: Good morning.

Michael Willis, the Law Firm of Hobbs Straus Dean & Walker.

MR. BIOFF: Good morning. John Bioff, general counsel for Kawerak.

MR. DELGADO: Joseph Delgado, Native Village of Ouzinkie.

MR. HARTFORD: Stu Hartford, regional road engineer, BIA, Alaska Region.

MR. McKINNON: Good morning. Mike McKinnon, Denali Commission.

MS. SMITH: Good morning, Addison Smith, Denali Commission.

MR. AKARAN: Good morning. Pius Akaran from Kotlik, planner, tribal transportation planner.

MR. GISHI: Thank you, everybody.
Did we get everybody? Thanks for taking the time. I know it takes a little time, but it's always good to kind of get an idea of where everybody's from, and everybody's given the chance to introduce themselves.

I want to go back a few slides and post up here the agenda. As we go through the day, we'll be covering the topics that we identified on the agenda itself. It was published in the Federal Register. In addition to that, we will also be covering the different subparts, Subpart A through Subpart I, sequentially or in order, and obviously some of these subparts are very, very sort. Others are much longer. And we will have discussion.

If we could -- as we go through, if you have a question, there is one mic out here, and we'll be moving that around as needed.

For the most part, we want to be able to cover the first parts of this and then
go through the actual portions of it where we start talking about the discussion and updates of 25 CFR, we will -- that's when we'll start the discussion on the subparts themselves. You should have a copy of the handouts that are associated with these presentations.

This one is not in your handout. It's something we tried to put together as the intro portion to make it a little more -- provide a little more information from a visual perspective. But we will have all of these, we will have all of these also posted on the website that's identified in the Federal Register notice. If you go there right now, you'll find a number of things, including the Federal Register notice, the copy of the proposed reg that you have, the draft reg that you have right now, as well as the Federal Register notice, the dear tribal leader letter, and a number of things. And then we'll also post these on there, the different subparts so you'll have those
available in addition to the hard copies that you have.

So we want to -- Vivian covered a little bit of the history of the Tribal Transportation Program, 25 CFR as a whole. I want to talk a little bit more about kind of what -- the MAP-21 and its impacts on 25 CFR. When I cover this information here, it's meant to be very broad and very general so you get an idea. We'll about more of these in detail as the specific subparts come up, as we go along.

The TTP replaced the IRR. So one of the things that -- for a long time, since 1982 and prior that, the program was referred to the Indian Reservation Roads Program. The roads was a major part of the program back then. As the program has evolved, as Congress has found funding to be able to include other activities, including a transit program, including, of course, a lot of the programs that are non-road related. The eligibility of
things that tribes do became more and more
evident, just like 25, 30 years ago a lot of
the state DOTs were called state highway
departments, because they dealt with highways.
As they evolved, they became state DOTs,
departments of transportation, to include a
lot of the elements that are associated with
transportation as a whole. And, of course,
we've seen that evolve also in the tribal
programs through the years since 1982.

So that's one of the areas that --
of course, what we're doing here is we're
talking about specifically MAP-21 and the
changes and impacts that is has specifically
on the Section 202 in Title 23.

A little bit -- everybody is
familiar that in this environment of
constrained budgets, we were very fortunate to
maintain our numbers from last year of $450
million. I think that's one of the things
that the tribal attorneys have been -- and the
tribal advocates have been very helpful in
that whenever they develop or make
recommendations for an authorization, they
always try to make that last year as big as
they can, because what usually happens is that
that number, because Congress doesn't usually
act immediately, carries over in extension
years, and we can continue to maintain that
high number at least for a couple years.

And this is the first year that
the funding for the program in a new
authorization didn't go up in the initial year
or in subsequent years, but, you know, we
still have work to do. When I say work to do,
you know the process is already starting right
now on reauthorization efforts as a whole.

The impacts. One of the big
impacts, of course, is the formula. The
formula is statutory. What that means is
Congress wrote the formula. And the formula
is basically -- has changed in a number of
ways, but also has not changed, because it
continues to use elements or portions of or
things that look like, even words that kind of sound familiar with the previous formula.

The big thing that is identified as part of the process is, of course, the name change as a whole. It utilizes data from the previous formula and the previous statute. It looks at a frozen database for inventory. It looks at a transition process from 2013 through 2016. And most of you are familiar in terms of kind of what that means, but we'll explain a little bit more. Bob will go into extensive detail on that process. So you'll get -- hopefully by the time you leave here, we'll be able to discuss and be able to understand what has gone on with this formula as a whole.

There are set-asides that are within the $450 million. And those are six percent for program for program admin; two percent for transportation planning; two percent for improving eligible deficient bridges; two percent for safety projects. And
then, of course, there's a supplemental funding that's available, and we'll talk a little bit more about how that works in the supplemental area, and how that's determined as a whole.

It talks about and revises the eligible activities to the extent that it's identified as part of a much more extensive list, but it also -- in terms of the list it talks about what type of facilities are out there, what type of facilities are eligible, and what type of activities are eligible, and it makes changes to those, including operation and maintenance of transit programs and facilities. And, of course, that any transportation project that's eligible under Title 23 is also eligible under the Tribal Transportation, the facility or activity as a tribal transportation facility or activity.

This is something that really the rulemaking group of tribal members that put this together back in 2004 basically just went
through the whole Title 23 and anything that
-- any program that was there in Chapter 1, 
brought it over and found a way to write it
into it. And that's very beneficial, because
now we're seeing a lot of that now in statute,
sort of following up on things that were done
by the rulemaking committee.

The limitation on maintenance,
although it's referenced to a limitation, only
refers to the fact that there is funds
available and there is a formula or a criteria
on how those maintenance funds are made
available, but really the flexibility has
increased that much more from SAFETEA-LU that
was passed in 2005.

I'll talk a little bit about the
set-asides we have prior to the distribution
of the funds. These are the amounts as we
talk about how these are impacted, and you --
Bob will show you a little bit of a graph on
how all of these are interrelated. You'll get
a chance to see just really what the impact is
from these amounts as it pertains to the total funding scenario as a whole.

There are new definitions, two specific -- two definitions that are in there are the tribal transportation facility and the tribal transportation facility inventory and how they relate to one another. Vivian mentioned that the TTP is the Tribal Transportation Program. The IRR program was a program. The IRR was actually a term that described the eligible roads/facilities that were previously in there. And this take a little bit of a -- it clarifies it in terms of the use of these two terms as to what we're looking at in the inventory and what is eligible.

One of the things that we talked about, the bridge safety and other program features that are out there, when you begin to look at those, you begin to see that the funds for the bridges are by application. They have to meet the criteria of a certain deficiency
or sufficiency rating.

And the safety projects, you've seen a NOFA, Notice of Funding Availability, that came out about a week ago, Bob? A little more than a week ago. That it announced comments on the proposed procedure for applying for safety funds. And that's out there, and it's part of -- it's the way the whole statute was written, that that responsibility falls on the Secretary of Transportation, and for that reason that notice went out for people to make comments on. If you're looking for where that's at, that can be found at the Federal Highway Federal Lands website. That information that's there also.

And in addition they've had some webinars and some training. I think they had a couple of them the last week or so that people could have access to, and I noticed there were a number of people called in from different places on the program itself.
In addition, any projects that would be eligible for federal aid funds under section 104, which is a huge part of the program, is also eligible under the TTP program either as a matching funds or as activities that can be performed utilizing these funds, which really broadens the ability for you to be able to work on projects that have impacts across a lot of your transportation areas and a lot of the public authorities that have impacts on you as either a village, a community, and so forth.

There's areas. Under program administration, tribes previously -- in SAFETEA-LU there was provisions in there that tribes had the ability to have certain powers and authorities which were not immediately made available in the regulation, and that's part of one of the updates that is being included in this, in these regulations to make sure that that's identified.

Mechanisms and agreements that are
available through the statute and through the laws where tribes can actually utilize any of those agreements that are out there either through self-determination, through the direct agreements with the Federal Highway Administration, or the similar programmatic agreements called government-to-government with BIA.

Point of obligation. It's a provision that was in there before. It continues to be in there. It's a real helpful provision that allows us to be able to make sure that we don't lose the funds, particularly if we run into a time during the course of the year where we're coming upon the end of the year. This allows us to be able to do a commitment type of accounting so that we do not lose funds. And since these are tribal shares, it's very, very significant that we have that capability. And this is for all federal land management agencies, not just Indian Affairs or Federal Highways.
Of course, the planning portion that's in there, I mentioned that.

Asset management. A big part of what's in the statute was DOT, Congress is wanting to be able to get a better hold on how we manage assets, how we manage what we have. Are we finding a systematic way of being able to assess the condition, use, and utilization, and replacement of facilities that are out there. And one of the ways that Congress and Federal Highways is really going to be pushing towards is through the process of asset management. And we have a number of systems that are out there that are currently available that we can utilize.

Data collection. Bridges is a big part of that. This is the first time where tribal public bridges have to be inventoried. So we currently have about 450 to 500 bridges that are out there. We know there's more. Part of what we'll be doing through the fall of the year with Federal Highways is going out
and identifying those bridges, have you submit, give us indication of what those are so that they can get onto the inventory, and they can also be inspected, which also means that they're also eligible for replacement with a number of programs, not only within the TTP program, but also through the federal aid program, through the states, a number of bridge programs that are out there.

And, of course, one of the big things is reimbursable agreements, working with state and local governments where tribes have the ability to be able to either work through -- directly through with states, or in the case where that isn't available, to work through either the BIA in terms of developing those, transferring those funds, self-governance annual funding agreements or self-determination agreements, or the government-to-government type of agreements that we have.

So I wanted to give you a little bit of an overview of what that was. It kind
of gives you a real broad -- I mean, it's a
lot of information, but we'll go through each
one of these as we go through the subparts.

One of the things I wanted to
point out is that as we go through this, and
you look at those, anything that is in the
regulation, anything that's written down, even
if SAFETEA-LU or MAP-21 did not change, and it
continues to be there, whether you feel like
it's needed or not needed or needs to be
reinforced or clarified, that's what we need
to be doing during this rulemaking process in
terms of this advance discussion so that when
we get to the rulemaking process, at least
we've heard it several times as part of the
process. And that's generally we go through
when we start looking at comments is, is the
explanation that goes with the actual comments
and recommendations associated with the rule.

You've got a question over here?

PARTICIPANT: I was just
wondering, can we get a copy of these slides
today?

MR. GISHI: Yes, you can. Most of the slides on the subparts are out there.

This is -- we're going to post this. We just did this this morning, so kind of transition into the -- it provides just an overview, so when we get to this part right here, we actually have -- the slides you have in fact supports this. So we can do that.

MS. PHILBIN: Just a reminder, if you have questions, and this was a general question, but from henceforth please state your name and your tribe or village or corporation, village or regional corporation that you're here or an individual. Thank you.

MR. GISHI: Any other questions before we get started into Subpart A.

MS. LAMPE: Doreen Lampe from Inupiat Community of the Arctic Slope.

Can you briefly give a little bit more discussion on your point of obligation?

MR. GISHI: Oh, certainly. The
question is, is a little more explanation on
point of obligation.

Point of obligation, as you're
aware, the federal aid funding that comes down
through the states, when it is provided to the
states or local governments, once they are
provided those funds, they have a mechanism in
a lot of ways to be able to commit the funds.
They usually have a list of projects that are
quite long, so they have the ability to be
able to commit those projects to those --
those funds to those projects.

As a federal agency, one of the
problems we ran into is we didn't have the
ability to carry funds over. When you look at
other programs within the Bureau of Indian
Affairs and Interior, you always hear about
carry-over funds. If -- when the books close
on September 30th, midnight, those funds can
actually -- all they do is hit a switch on the
computer, those funds roll over, and they're
available in the new year. Because federal
aid funds, which is basically what we operate off of in the Tribal Transportation Program, carries with it not only contract authority, and this is -- and we're starting to get way in the weeds here with -- and there's some good publications if you go out there and want a little more information about it. In fact, I have a file that I can send you if you're interested in leaving a card. I can -- it's a matter of just emailing it to you. Not only deals with contract authority, but also what's called obligation limitation.

And it's like -- the best way to identify it is those of you've been in the military, were in situations where they would -- at a certain day they would change out the money. New script, because if it got in the wrong hands, and, of course, everybody have it, and so people were told to bring in their new -- old money, and they changed it out. Blue dollars to green dollars, and the blue dollars were no longer accepted and they
expire. So the green dollars are what everybody's using until a certain period of time, and then the green dollars are collected and red dollars are put out there. So the currency is always up to date.

Well, obligation limitation is kind of like that. It expires at midnight on September 30th. So what happens is, is our books may say we left -- a region may have left 200,000 on the table, because they couldn't get it obligated. At midnight or thereafter we report back to Federal Highways that we left an amount that was unobligated. Well, in prior years, prior to 1998, what would happen was, is we would run into a situation where we might get that back on October 1, or we might get it back four or five years later at 50 cents on the dollar. But we had to prove it -- what it amounted to was, is we didn't fully obligate the funds that were given to us, so by leaving money out there is like bad carry-over.
So the point of obligation was --
Congress put that in in 1998 for us to be able
to say, if we commit these dollars in a point
of obligation in the name of a tribe into our
finance system, then the system doesn't report
back to Federal Highways that there was any
money left on the table. So that's one of the
advantages of having that. And that's not
just us. That's Park Service, that's BLM, and
others.

And the idea was, that's a good
provision, because it allowed us to be able to
-- because sometimes you're thinking, we're
going to negotiate this contract. Two days
before the end of the year we're pretty close
to it. Something happens, and you can't get
it obligated. So it rolls over. This way, if
we know that it's not going to happen, we can
actually get it committed on the day before or
the day of the last day, and it allows us to
be able to recover it the next year on behalf
of the tribe.
So a little bit of explanation on
-- Bob, do you want to add anything else to
that? Okay.

Subpart A -- any other questions?

MR. THOMAS: Sam Thomas from the
Organized Village of Kasaan.

I just wanted to identify, I
didn't see it in your presentations, Mr.
Gishi, but you identified the safety program.
I brought the notice of funding availability,
and Stuart's going to print it off, and it's
a short time window on there, and I think it's
an opportunity for the tribes to utilize those
funds for developing safety plans. And I
think it's important to, if you don't have a
copy of it, to get a copy of it, but they'll
be out here, out front.

MR. GISHI: Thank you. That's
absolutely correct. There's a number of
programs you'll see out there that we'll talk
about where there's going to have to be some
extra effort in terms of developing
applications, submissions, and a number of things that are out there. So it's not a program where it was -- it's just made available as part of the other funds. That's a little different in SAFE -- excuse me, in MAP-21.

Subpart A. Subpart as most of you are familiar with, is the portion that talks about the policy, the applicability and definitions. It's primarily the introduction portion that talks about how these regs are developed. What it identifies is the authority of the rule itself.

Much of what's in Subpart A, if you were going to take the old rule and this rule, are pretty straightforward and the same. The major changes that we did was when it started to speak in terms of the available agreements, we included reference to not only the Self-Determination Act agreements and contracts if you will, the self-governance agreements, the direct agreements with Federal
Highways in terms of the programmatic agreements that are there, and then other appropriate agreements, trying to make sure that it encompasses all the availability of agreements that are available to tribes depending on what they chose -- choose to do in administering or participating and performing the work on behalf of the Secretary. So the authority's in there.

The purpose and the scope of the final rule is in there, and the policies with respect to the Tribal Transportation Program, and the BIA road maintenance program. This is something that prior to this -- and I think I have two programs in there. One of the problems of having -- retyping everything as you go -- is that the rulemaking committee wanted to make sure they had -- we had something that referenced or talked about the eligible activities for the BIA road maintenance program. So during the rulemaking process, Subpart G, when we get to it, was
included in there, and that has also been revised to now reflect the changes of MAP-21. But it was important to be able to include that in there as part of that process, and, of course, it continues to be there today.

When policies and guides associated with the program apply, directives, and, of course, the big part at the end is the definitions that are out there, gain many of which are a carry-over from the current regulation with the exception of some of those major ones. Obviously the IRR program or the IRR definition is no longer there. It talks about tribal transportation facility inventory, the national tribal transportation facility inventory. A number of things that are in there also you may want to take a look at.

The highlights is, first of all, the authority for the rule itself is MAP-21 as well as 23 USC and 25 USC, and any of the applicable and accompanying regulations that
are associated with those, whether it's bridge, whether it's management systems, and, of course, the TTP program also.

The purpose of the rule is that the -- to provide rules and a funding formula. This is what initially -- the big change from 1979, the regulations when they were updated in 1979 to 2004, was the incorporation of program rules and a formula. And it continues with that theme. We have program rules as they have been changed by SAFETEA-LU and MAP-21.

And we also have a formula. Previous to this it was a negotiated formula between the representatives of the federal government and representatives of tribes. This time that formula is a statutory formula. And so that's all contained in there also.

And including in this is when we reference that it applies to -- in terms of the programs which are introduced as part of Title 23, we have a number of programs that
are in Chapter 1 of Title 23 that provide funding, that -- fundings availability through availability to tribes through separate programs, but they're there, and this tries to make sure that we bridge that gap and definitely identify that those are eligible activities under this program also to participate through those agreements under Indian self-determination contracts and agreements.

Again policy includes the Secretary's policies -- the Secretaries' policies, which is both the Secretary of Transportation and the Secretary of the Interior, on the TTP program and the BIA road maintenance program, obviously under Interior. Trying to provide uniform and consistent rules for the program, and facilitating knowledge of the programs.

A lot of -- some -- there's about three or four sections or portions of sections of the rule, if you -- when you first turn to
that, you'll note that it says, this is for information purposes only. We did not have the ability on some of these programs, because they were actually the responsibility of and administered by other agencies outside of the Bureau of Indian Affairs. Again the rulemaking committee felt it was very important to at least put informational references in there on those programs so the tribes had at least a location they can go -- come to in the regulations where they could read up on like the procedures for establishing the tribal technical assistance centers out there, as well as how hazardous waste can and should probably be handled in terms of the program itself. So those are things that are there.

So in addition to being rules for the program, there were provisions that were put in there for information purposes in terms of knowledge and education. And those are areas again that we don't have a real
tremendous grasp on as we started putting
together, certainly from a federal
perspective, and even in the coordinating
committee, and limit -- as limited as they
are, and we were looking -- as people -- as
you look at those, we need to make sure that
those are still applicable.

There may be certain things -- one
of the things -- one of the things that came
up after this whole process -- in fact, I
think we were at the meeting working with the
coordinating committee, and during that week
or at the end of the week when our meetings
ended, the Stafford Act was amended to
include tribes -- ability for tribal
leadership to participate in FEMA projects,
and that wasn't in there. So when you see
this, those are areas that you need to really
take a look at and scrutinize and get your
comments in relative to that.

The concept that the -- in terms
of what we're looking at under Subpart A is,
in terms of policies, procedures, guidance,
one of the things that we -- that the tribal
committee members wanted to make sure was that
there was an effort to work with and consider
the comments, consider the concerns of tribes
in terms of implementation of the program, and
also to construe any type of activities that
are associated with the program in favor of
the tribes. And so there's a lot of areas
when we go through the program itself, this is
where it notifies not only our Interior
people, our BIA people, but everybody else
that's out there, that these regs are written
with the purpose of advancing tribal
sovereignty, tribal -- in terms of capacity-
building, those areas that are associated with
the program. And this is all covered as part
of the Subpart A portion.

Again, that's -- we're liberally
construing the rule for the benefit of tribes,
and particularly in terms of implementing
self-determination and self-governance. When
we use that word, a lot of times it doesn't --
people might associate it and say, this is a
-- this is only for self-determination and
this is only for self-governance. In some of
these cases the term refers to just the tribe
being able to self-govern, self-determine
themselves whether -- it doesn't matter what
mechanism of agreements they're using or if
it's even through the process of a direct
service where the Bureau is providing that
service for -- on behalf of the tribe, there's
still an element of self-determination, self-
governance in the planning process, a lot of
other areas, and Subpart A tries to clarify
that and reinforce that, that this is the
intent of the program going forward.

And allowing the tribes to
participate in the contractible contracting --
oh, my goodness, there's -- I left -- there's
an IRR in there. I thought I got -- I was
doing a search and I was trying to check all
these to make sure.
To participate in the programs in terms of everything that's available, including one of the big areas that we're seeing a lot of is, for instance, we have the Tiger Grants that came through which -- occasionally on an annual basis those are made available. Tribes have applied, tribes have received funds. Recognizing that funds that are made available through those type of programs can at the request of the tribe be included in these type of agreements, and whether it's the self-determination, Title 1, or Title 4, or other agreements that are appropriate are also included in there. And the whole idea is to make sure that there's the ability to tribes to be able to participate to the extent that the law will allow, which is -- which has been very clear, that the law will allow the tribes to be able to do that.

It also defines when the TTP policy and guidance and directives apply to
the program. And particularly when you start looking at what the original process of making sure that provisions that apply to contracting or implementing the program in terms of programs, services, functions, and activities, that we made sure that we didn't rewrite provisions of the law unless it's specifically stated as part of Title 23. And as an example, the provisions that are associated with the contracting under Subpart J for construction are referenced throughout the regulation as part of 900. There is a procedure that's there that's already been negotiated with tribes regarding construction, which is in 900. Likewise for self-governance, tribes under Subpart K, 1000. And so those are referenced throughout the regulations.

And the idea was not to come up with -- unless it was different. One of the areas that is different is there are no provisions in 900 and 1000 that hold
construction regulations as whole to allow tribes to take on the role of assuring that health and safety elements are complied with and that they in fact can perform that. That's one of the things that's very unique to Title 23 is it says in there that tribes, based on providing a certification of compliance with health and safety requirements, you can approve your own plans and specification and engineer's estimate. That's not available under the facilities program and other programs within DOI. Well, in that case, Title 23 has precedence there, and so we include those in there.

So from that standpoint, we tried to stay away from doing any changes in those areas that pertained to 900 and 1000, or if there was things that weren't very clear in terms of what we need to provide under Title 23, we made sure we include that in, not only from the standpoint of the rulemaking, but as you'll see in some of these areas where things
have changed even under MAP-21, like with the
road maintenance provisions. Road maintenance
has not been considered a construction
activity under the regulations and the law
under self-determination, but it is considered
a construction activity under Title 23. And
so for that reason, we have to be able to
develop those regulations to address that.

Then, of course, it provides
definition in terms use throughout the rule
itself, including those changes that occurred
as a result of MAP-21.

It doesn't effect the -- one of
the things it states in here is in the Subpart
A of these regulations, that this rule is not
intended and does not affect tribal rights,
and, of course, it does not affect the tribes'
sovereign immunity, and there's a lot of areas
that are in there.

Now, the different agreements has
specific rules. Like when you get to the
direct service agreements or the direct
agreements with Federal Highways, those are provisions that are identified in statute itself. We tried to expound upon those to the extent we could here, as well as the other agreements which are identified under Title 23 where the government-to-government agreements that BIA has also. But the idea is, is all of those pretty much fall in line with the concept of self-determination and self-governance by addressing issues like advanced pay. And more and more in terms of the government-to-government aspects, because looking at tribes being able to manage their programs as opposed to us asking you for your cut sheets on you steel beams or something like that. That's something that MAP-21 and Title 23 has empowered tribes to be able to do. And so for that reason, we just do the oversight and compliance process, and everything else is performed by the tribes themselves.

As part of these presentations,
we've put in there timetables or key dates if they're applicable in that subpart. And in that particular -- in this particular case there are none for Subpart A. There are no key dates or -- included this subpart itself.

And we also include if we see any record keeping or reporting requirements that are not just the -- from the tribal perspective, but from the BIA perspective, from the Federal Highway perspective. and if we have any of those that are referenced in the subpart, we'll include them here in the end so that you can see what those are. And, of course, certainly from the standpoint of your comments, as you look through this thing, you may be able -- you may want to make some comments on those that you may feel are applicable or that are in terms of things that might need to fit in these categories of key dates and reporting requirements in the regulations.

So as we mentioned before, we're
looking at this from the standpoint of what are some of the things you want to see changed, what are we -- some of the things you want to see in terms of improvements to the program as a whole.

Any questions before we take a break. We've got a question back here and one over on the side here.

MR. DANIELS: Hi. My name is Clarence Daniel, AVCP transportation.

And in your slides here, you know, there's a bullet here that says, providing uniform and consistent rules. You know, every time it comes to putting rules on us, it has to be uniform and consistent. And I understand that, but what about our facilities? Our facilities aren't the same. You know, there has to be some kind of -- you know, our development should be on par with other places in Indian Country. And our tribal members should be able to enjoy activities that are on par with other parts of
the nation when it comes to Indian Country.

And for some of our tribal members, I want to see a safe -- you know, a way for parents of basketball teams, the high school basketball team, the parents have a safe way to go to the next village to watch their kids play. You know, recently in the last two or three years we've had some people get lost out traveling to another village and ended up, you know, succumbing to hypothermia. And you don't see that down, you know, in other parts of the country. It's, you know, hop in your car and go to the next town, watch your kids play, and come back. And we don't -- our tribal members don't enjoy that I guess -- that part of it.

And you were talking about Tiger grants. Why can't some of that Tiger grant money go into developing a big infrastructure for all places that don't have an existing infrastructure?

That's my comments. Thank you.
MR. GISHI: Bob, do you have any –

MR. SPARROW: I'll talk. I got passed, by the way. I'm Bob Sparrow. I'm the director of Tribal Transportation Program for Federal Highway Administration.

At the end of the afternoon, I'll talk briefly about Tiger, because there is another opportunity, there is another round of Tiger grants that have been provided by Congress. There's a call for the preliminary applications is out now. And there's a webinar coming up, which hopefully by the time I talk about this again this afternoon I'll have the time and dates for those webinars. But I'll talk about the Tiger grants.

Is there another question?

MR. WILLIS: Good morning.

Michael Willis from Hobbs Straus Dean & Walker.

I just want to say in terms of looking at Part -- Subpart A, the themes and
policy initiatives that you guys have outlined
and are in the regulations are, you know,
outstanding ones and principles to recognize
as this drafting process goes forward
throughout each of the subsections. I think
the -- you know, the recognition of deference
to the tribes and tribal autonomy and tribal
authority, the whole issues associated with,
you know, the consistency with the Self-
determination Act, when there are
inconsistencies, the Self-determination Act

And now that there are all these
new forms of agreements, you've got, you know,
not only Indian Self-determination Act
agreements under Title 1 and Title 4, you've
got the Indian Self-determination Act
agreements in the Federal Highway
Administration. And then you have a whole new
category which are not Indian Self-

government-to-government agreements that are
interested in you're stating that you apply
self-determination principles to those
agreements.

I think one of the things as a
sort of consultation process that you're
looking at and the kind of feedback you're
looking for, one of the dynamics that's going
to need to take place is kind of looking at
these principles and then each of the
provisions going forward, because I think we
can comment on them as we go forward in the
course of the day. But as you have these
principles and some of the specific provisions
may raise questions to the extent of what some
of the oversight and reporting obligations and
other authorities are consistent with the
statutory language, consistent with these --
is the principles and the rulemaking.

So I think these are just things I
think are the challenges of kind of putting
these various pieces that you all are working
with together in a way that respects tribal
sovereignty and tribal government-to-government dialogue and activity.

    But I think the important part is recognize, is how much flexibility Congress has given to tribes and to the agencies to engage in agreements that work that make the most sense for the tribes. And I think we want to make sure as these regulations move forward those flexible provisions are retained, and as those are implemented the sort of flexibility and deference to tribes and the kind of trust responsibility and technical support available to tribes keeps moving forward, and we don't find that this provides a new mechanism for other oversight or other mechanisms that limit tribes' capacity to exercise programs with the flexibility they're looking for.

    So I think that's just of an over-arching comment on the Subpart A that I think as each section goes through, there will certainly be interesting issues to talk about
there.

Thanks.

MR. GISHI: Thank you.

MR. DELGADO: Joseph Delgado, the

Native Village of Ouzinkie.

I, too, wonder about how is this

MAP-21 and stuff, can -- we can compare Alaska
to the Lower 48. I mean, the American Indian
tribes, even on your federal papers, you have
a box where you mark whether you're an
American Indian or Alaska Native. The federal
government recognizes that we are different,
and yet we are lumped together in this program
here. So we're fighting over different -- or
the same monies whereas -- but the
transportation deals are different in that, at
least in my experience, the reservations down
there are probably more advanced than much of
our tribes up here. So how is it that we can
compete for the same monies when we're not
even at the same zip code as them in our
transportation deals here?
MR. GISHI: That's a great point.
And if you'll look at, for instance, the Tribal High Priority Projects Program under Subpart I, is a new program that was established in statute which actually gets its origin from the rulemaking process. The rulemaking process meaning when the tribes sat down, they developed a process. And a lot of the diversity of tribe size, tribe status relative to land, non-land base type tribes, and Alaska, Lower 48, all of those areas is part of that rulemaking. Those provisions were identified as a way to make sure those things were addressed.

One of them I just bring up is geographic isolation. And so when the process of ranking projects came up through that period of time under the regs -- by the way, that portion of the regulations has been deleted for the old rulemaking process, but Congress, of course, implemented a new program called the Tribal High Priority Projects
Program, which follows fairly closely the -- and it says in the statute that you'll make this thing as close as what it was before. And so there are things in there that were as a result of really get people in there in terms of sitting down and saying, this is what we think we need to do in those areas that make the program unique in certain locations, certain environments, and that's what was done.

Another part of what's happened in the past was it all happened in the rulemaking process. So that's important to note, because as you begin to look at these things, what are some of these programs that you're looking at? You have the ability right now to be able to make those kind of recommendations. And maybe you do provide something that says that one of the factors that needs to be considered in terms of any problems that are implemented is geographic isolation, because from that standpoint, it identifies that there isn't six
roads coming into a community; there's usually just one road as opposed to communities that are in the Lower 48 where there's 10, 20 roads all coming in, and the ability to access any of those to get out is there. So that's unique.

So when you're looking at this, that's what we would encourage you to be able to do is to make those recommendations, to identify those unique things that maybe are specific to this region of the country. And we've seen that it works, because that's what happened in the rulemaking process previous to this when the rule was -- the rule basically that we're amending right now.

So good point.

MR. DELGADO: Also as you're talking about one road going in, I live on an island, that we have no roads coming into our place. As -- I know this subject has been brought up before as to whether a ferry service can be added to our inventory as well.
MR. GISHI: As you can see from some of the -- when we get to the eligible activities that -- under one -- the subparts that talk about it, that's one of the elements that's in there. Again, that's been identified. We have been utilizing previous to this IRR program funds for portions of and working with and making the funds eligible to participate with projects that are associated with ferries as a whole. So that's something that's there.

What we need to do is, is it good the way it is? Is it clear the way it is? Do we need to improve upon it? Do we need to make sure that it's clearly understood what we're trying to accomplish, and that's what we're asking right now is you take a look at those, what are some of those things we can do.

Shall we take a break then?

Fifteen minutes? Thank you.
matter briefly went off the record.)

MR. GISHI: Can we grab a seat and get started again. Thank you.

As you start looking at Subpart B, it's a little bit of a continuation of more of the policy aspects of the Tribal Transportation Program. It introduces a little more discussion regarding eligibility. And this is really significant, because as we mentioned, eligibility of activities has been a big area that we've really progressed in in terms of not only Congress giving us the flexibility as a program, but also things that we've been able to develop and work with as part of the regulatory process, and for programs as they become available.

So Subpart B, basically a general overview, explains the three C's in terms of what coordination, collaboration, and consultation responsibilities there are, and how through this process that the different governmental agencies can help these efforts
and assist tribes in meeting their transportation needs.

Early on in the process of the development of the law, Title 23, we have provisions in the law that have been in there talking about participation of the federal aid side and making sure that as projects were developed in connection with on or near Indian lands, reservations, that whole concept came about early on in the 80s, has continued to be there. And the nice thing about it is it's been built on, it's been introduced. We've seen changes in the law regarding how to do agreements with the states in those areas where sometimes it comes down to states saying, well, we'd be more than happy to enter into -- to provide funds to a tribe, but we just can't do it based on our state constitution. And I know many of you are familiar with that here.

And so part of that process is, is it's been the role, and not only has been, but
should be, and continue to be the role of the federal agencies, certainly BIA and FHWA, to be able to step in and provide that capability so that projects that fall into that category that we can collaborate, we can coordinate with these other agencies to make sure that we get funds to the tribes, and that in doing so that they carry with them the ability to comply with self-determination and self-governance. And that process has been an ongoing thing. I know Vivian was really involved in that early on in the process of the program, and continues to be. So this part of what we're looking at is continuation of that. This was really an area that I thought was really inspired by the tribal membership representatives in the rulemaking process in 2004.

It also lists the eligible and non-eligible activities under the Tribal Transportation Program. And you'll notice there's a few of those that were in the regs
prior to 2005 when SAFETEA-LU was passed that
have changed and have now been included in
there, or either have been enhanced in terms
of really what we have experienced since then.

The regs have done a lot of things
for us. It has also, when we've had unique
situations out in the program where we've had
to redefine or we've had to reassess how we're
doing business, we were able to make some of
those things work and work with, of course,
the tribal governments, the affected ones, as
well as our legal people to be able to make
those things happen.

Someone mentioned in terms of
eligibility, it also lists the eligible
activities that are out there. And we've had
more and more in the last few years, certainly
since SAFETEA-LU was passed, of areas where we
not only consider specifically things that are
applicable to tribes, like cultural access
roads, housing access roads, things that just
don't normally occur out there in the other
part of America, but only occur and are unique
to the villages, the communities, Indian
reservation lands and so forth.

And there's tolls, ferries, and
airport facilities. That's -- someone had
asked about that. That's something that has
really come about in terms of number of
projects associated with that.

And, of course, other areas,
recreation, travel, tourism. A big part of
what some tribes are doing individually. And
this is a preference. It's an eligible
activity; it doesn't mean you have to do it,
but you have the capability of doing it if you
so choose.

Airport access roads. We still
don't build runways. we still don't do the
airports themselves, but we can do the access
roads. And in some unique situations we can
support the whole process of mass transit when
you're looking at that in terms of eligible
activities also. If we need to clarify that,
if we need to build on it, if there's something unique that we can do that's eligible, then certainly this is the place to do it. Seasonal transportation routes, a big part of -- something that's very unique in terms of boardwalks or -- winter trails, you know. And even to the extent that we're looking at and people have utilized for ice roads where you're participating in being able to do some things and marking them, and work in those areas. That's a big eligible activity under the regulations. So take a look at those. When you see those things, there may be some unique instances where we can build on that.

Yes.

MS. DILTS JACKSON: Just a quick -- Arlene Dilts Jackson with Ketchikan Indian Community.

Just a quick question on one of the allowed activities, because I know force account is allowed, but you force account
definition that's in front of the document
only talks about BIA force account procedures,
but the tribes also can do that, right? So is
it appropriate then to expand that definition
on the lead-off, or just to list it as an
eligible activity?

MR. GISHI: A good question. In
fact I'm glad you brought that up. If you
could note that, Andy, on the definition of
force account, because when we get to the
actual portion where we start with force
account, we added federal highways in there.
And we can work with that. It's always been
and understood that when it becomes a tribal
program, the flexibility is there. You can do
it force account, or you can actually contract
it out. And the flexibility in the law is
that you're performing the functions program,
functions, services, and activities that are
associated, which means you can contract it
out, do it in-house, whatever. And that's all
there.
But we did make that change in referring to force account in terms of as one of the eligible activities, but based on concurrence of the tribe that BIA can do that. And if that isn't strong enough, we need to make sure that that's understood.

Thank you.

Another thing we talk about in Subpart B is the terms of the general highway safety functions of the tribal transportation program, safety funds, we do actually have and talk a little bit about how those funds and referencing what's available under the program. We discuss what activities and functions and equipments may be eligible for funding. When we first started this in -- the rule in 2004 we were on that fringe. I think everybody -- many of you who are here were told that -- at some point prior to that, that you couldn't buy equipment, you couldn't buy -- I mean, it was a very clear distinction as to what you couldn't do, that this is for the
purpose of performing work like the federal aid program, but yet, you know, it became very clear that this program is identified for promoting.

And again going back to Subpart A, we talked about how can this regulation support the autonomy, the ability to be able to do things, because you don't always have funds that are separated, which sometimes the states enjoy that with other funding which is federal aid program. But under your program, that's it. This is the only show in town, and you need to be able to utilize these funds to make those decisions and those things. So a lot of that came about as part of the rule making, is making sure that we identify those things.

And even now as you begin to take a look at some of that, this is s good place to again, what is it that we're talking about? What is it that we can anticipate in terms of being able to expand this eligibility
associated with that that is still within the
timeframe of the law, but certainly is a need out there.

MR. STEVIG: Thank you, LeRoy.

Gary Stevig, Chickaloon Village,
transportation planner.

A quick question on -- never mind, I don't have --

MR. GISHI: I want to nominate that as the best question today.

(Laughter)

MR. GISHI: Thanks, Gary.

And so it also talks about -- this is again we're talking about sort of the coordination, the policy aspect of it. One of the few programs in certainly the BIA, but across government that actually has a regulatory committee that's been established for the purpose of providing input and recommendation. That is the Tribal Transportation Program coordinating committee, better known as the TTPCC. And now has been in operation since 2005, the fall of 2005, and
continues to function. This part of the regulations starts off and talks about the -- the roles and responsibilities of that. This is an opportunity for you to be able to identify what it is that you think this group needs to be doing.

We've always said, and whenever we start talking about it, the TTPCC is not a substitute for consultation. It is the ability as it's described, to provide input and recommendation on issues that occur nationally for -- to be able to bring before a group of transportation professionals that can give us input and guidance and recommendation so that we can get to the next step, so when we do, then when we come out with something like this, at least we've had -- we're -- we may not even be in the ballpark, we may be on the fringes of it, but at least we're closer than what we would have been, and certainly from the presentation standpoint, than going out and developing some
of these things. So that's what the TTPCC is
developed and functions as.

MR. STEVIG: Thank you, Leroy.

Gary Stevig, Chickaloon Village.

A quick question is, under the
Subpart A is there a clause stating that these
rules and regulations will be liberally
construed and are in favor of the tribes as
permissible rather than not?

MR. GISHE: Yes, it is. And that
continues to be in there again. That was --
it is in several places. It's identified in
there.

Yes.

MR. THOMAS: Sam Thomas.

Organized Village of Kasaan.

You talked about the coordinating
committee. I guess my question is, is it
going to be spelled out in here under the
quality control/quality assurance team on what
their roles and responsibilities are? I mean,
it's been talked about at the coordinating
committee level, and it's one of the things that's been brought up the food chain to the assistant secretary at the Federal Highways, and the establishment of the QA/QC team, so I think that's going to be a definitive factor on my comments on what the roles and responsibilities I thought would be the coordinating committee.

MR. GISHI: Exactly. That is -- that's what we're looking for. Those are the comments. And it would be up to not just here, but as we go throughout all the different consultation sessions is, what are some of the things that should be identified as the role of the coordinating committee. I know that when we met with the coordinating committee, there was a number of things they put out there that they discussed, and they kind of backed off. But individually certainly you have your comments. There were a number of comments that came through the process, but that would be a place that you
could identify. It could be one of the list
that's described as part of the roles and
responsibilities.

MR. THOMAS: Well, a lot of people
seem to have a tendency to think that the
coordinating committee is a place where you
come and air out your dirt laundry, and that's
not the intent of the coordinating committee.
I think it has more or less to do with the
regulations on the things in -- that's
identified in the 25 CFR Part 170 versus
something that's going on with the program for
an individual tribe.

And the second would be, I guess,
to identify -- I'll hold that comment. I have
some things from the tribe, and I was just
wondering when I would be able to testify or
put them in the record. But after lunch,
prior to going into the regulations, would
that be a legitimate time?

MR. GISHI: Is it a general across
all subparts, is that what you're looking at?
MR. THOMAS: It's each subpart was regarded entirely by our -- by --

MR. GISHI: That's fine. If you'd just --

MR. THOMAS: -- me and the tribe, and we have specific subsections that we want things incorporated in.

MR. GISHI: Okay.

MR. THOMAS: And then there's a general letter also in regards to the processes of the way this consultation is taking place, and I'd like to read them probably maybe sometime before the end of the day, and I was just thinking maybe after lunch.

MR. GISHI: Certainly.

MR. THOMAS: Okay.

MR. GISHI: Certainly. Just let us know, and we'll reserve some time for that.

MR. THOMAS: Okay.

MR. GISHI: As we go through, another section that's in here is the -- again
for information purposes is the tribal technical assistance centers. We have currently seven centers that are located throughout the country, that the primary purpose of them is to provide technical assistance and training and education, and also to promote in terms of technology exchange for tribes in terms of those areas associated with transportation. Sort of a capacity-building arm that's out there. We have seven of those centers that are located nationally. Again, one of the few programs that are out there that apply to tribes that is in regulation. And this is really a contract or a cooperative agreement that's developed between Federal Highways and those particular centers, but we put information here so you have an idea of how they operate and how they perform their business and do those parts of providing that training and education.

The three C's again. There's a
definition there. And the idea is that the TTP provides government-to-government consultation and coordination policies developed is identified there.

Coordinating with tribal governments, again going back to what I talked about in how do -- how do states and local governments, what they should do. It's important to note that when this first came out, much like we have here, this opportunity, and this is important, because we had a number of comments and provisions that were identified by the rulemaking group that was basically approved by the assistant secretary, and went forward to -- through the formal rulemaking process that were changed as part of this whole process by those who are at OMB. And Andy brought up a good point that -- this morning, that there are -- at a certain point when we start to form a rulemaking process, a lot of these procedures will go through that process and, of course, warrant scrutiny and
review of the Secretary's Office, and the
Office of the President and OMB.

And so we've got a few questions
before we get started. I think we had one
here and then another one over here.

MR. STEVIG: Just kind of a --
Gary Stevig, Chickaloon Village, planner.

This one -- this question is
addressing the bottom bullet, how does the
Secretary prevent discrimination or adverse
impacts. My question to that statement is,
under statutory funding methodology under MAP-
21, it has a discriminatory and/or adverse
impacts to the tribes in Alaska. And that's
something that I've pointed out. Can the
Secretaries prevent a statutory formula that
is discriminatory in nature and also has
adverse impacts? Do they have the authority
and/or -- what do I -- who do I need to talk
to to change MAP-21 statutory funding formula,
because I don't -- I don't have a problem with
the supplemental tribal shares regional, but
when they start talking about the strategic
supplemental funding where they distribute
$109 million to the regions, that is not
reflective of the tribal shares within that
region. And so each region has a different
number of tribes within that. That is not
fair, uniform, and inconsistent in
application. So I just wanted to know with
the statutory funding that's discriminatory
and it's going to create adverse effects, what
-- who do I need to talk to, and what
provisions do I need to enact in order to have
that addressed?

MS. PHILBIN: Thank you, Mr. Stevig. Your comment is noted. You know, I
can't urge you, because we're subject to the
anti-lobbying provisions. You can do what you
want as a tribal member or as an individual to
contact Congress, your local rep -- your
senators or the congressman, Congressman
Young, which most of -- I'm sure you're very
familiar with all of those individuals.
We can't urge that you do so, but obviously we -- we have to implement MAP-21 which was passed by the House and Senate, and signed by the President. In terms of lobbying Congress or things like that, we're prohibited from doing so. But if there's measures that you're unhappy with, I urge that you could communicate that. This obviously is not the first time we've heard this, the different, disparate impacts on the tribes in Alaska, but your comments are duly noted.

Thank you.

MR. GISHI: We had a comment over here.

MR. THOMAS: Yeah. Sam Thomas, Organized Village of Kasaan.

Shouldn't communication be part of the C's up there? I think you go through and look at Tribal Transportation Program, government-to-government consultation and coordination policy. Communication I think is probably the most important component of that,
because when a tribe identifies to the
government it wants to have consultation or to
coordinate or to collaborate, communication is
the lead role in that. And it also spells out
farther in the law, if the government doesn't
communicate or get back to the tribal
government in regards to their request for
consultation, or their request for
modification to an action such as maybe
requesting additional funding for a project,
then that action is so much deemed in favor of
the tribe. So I think communication should be
part of that philosophy up there from my point
of view.

MR. GISHI: Thank you. Thank you.
And that's a good point. I mean, you can't
ever do it with not enough of that.

MS. DILTS JACKSON: Sorry. Arlene
Dilts Jackson with Ketchikan Indian Community.
I also want to point out you have kind of a
limited definition on collaboration which kind
of focuses only on carrying out planning and
project development work together. And I think that it needs some strengthening by saying that collaboration means the involvement of the tribes and the federal decisionmaking process and then carrying out planning and project development, because collaboration can occur at all levels and should occur at all levels and be part of the whole consultation, you know, coordinated, you know, collaborative philosophy of the agency, because we're basically partners, you know, which to me means that, you know, the meaningful involvement is we're involved in the decisions, so I think that would strengthen it.

MS. LAMPE: Doreen Lampe with Inupiat Community of the Arctic Slope.

On your third red bullet, when the Secretary and state governments must consult with tribal governments, at what point in the Alaska does that occur, because in the Arctic Slope the state is forging ahead with a road
to Umiat, and this is not a community.

There's no community in Umiat. And this is
high priority of the state, and it's not any
of one of the eight villages, communities on
the Arctic Slope. And at what point does the
Secretary and the state governments consult
with us, because there's one village in our
region that opposed that road, and they're
using state funds and tribal transportation or
FHWA funds to go ahead and build this road
that's a high priority of the state, of the
Governor of the State of Alaska, so at what
point does bullet number 3 come into play with
the state ever consulting with tribes in
Alaska.

MR. GISHI: Not being familiar
with that process, the whole idea that we were
looking at with -- here was to be able to
strengthen, find as best we could a way to be
able to include that. And this is what the
tribal leadership was looking at as part of
the rulemaking process.
There are avenues that are out there. Obviously the -- we're seeing more and more of the participation of funding in terms of how the TTP program funds can be utilized to leverage projects to get -- to be a participant in the project process. And so those things that are out there.

In terms of how that happens, boy, if I had a dollar for every time that it came up, and when does it happen. And when does it happen. I mean, those are areas that --

MS. LAMPE: It doesn't -- it never happens, never.

MR. GISHI: Well, that's the point. In some places we're seeing that it doesn't happen. And that's an on-going process that I think part of what we talked about with Federal Highways, BIA and certainly from the region perspective, those are areas that we can do what we can to promote that, but in the end, in terms of what they have to do to comply with those, in some cases that's
something that is not available. And we've seen it.

What we can do is we can continued to remind them, and I think Vivian does a lot of that when she talks to a lot of the federal aid division offices at each of the states is to continue to promote the government's position, and the government's position in terms of working with tribes, and, you know, Vivian will be the first to tell you that it isn't always accepted or at least followed up on.

MS. PHILBIN: I would like to add that Ms. Sandra Garcia is here, if you would stand, please. She is the assistant division administrator for the Federal Highway Administration out of Juneau.

And it's ironic, because at the break we had just discussed this. I had brought up the statewide planning process and the tribes in Alaska, and even though this is not part of this rulemaking, Ms. Garcia is
enormously interested in this area. So if you have any comments, complaints, matters about the statewide planning process and the Federal Aid Highway Program, please see Ms. Garcia. She's going to be here all day.

Thank you.

MS. GARCIA: Please give me your contact information, because we have been in discussion for the past -- over two months with our planners, so please give me your information.

MR. GISHI: Thank you. I think we've got another question right here somewhere.

MS. CALCOTE: Delice. Right here.

Yes. My name's Delice Calcote with Alaska Intertribal Council.

You know, is there -- you know, this not consulting with the tribal governments is -- with the state and the tribes, this is an issue that rolls over into many programs. And it affects tribes in a
significant way. And what is the federal government going to do, you know? There is all these -- you know, the Statehood Act, the Constitution. I don't know what all that they need to have in front of them as their guidelines and their obligation and duty. And if they can't deal with us, well, then maybe the feds need to sanction them. If you're not going to consult with tribes, sanction them. Something more positive needs to happen for tribes. You know, you either -- I feel like the federal government is not standing up to their ability, their full power, and exercising their full muscle with the State of Alaska. You know, we have children that have completely grown up, and we're still dealing with this not consulting with tribes.

And I really like the definition that it's not just a mere consultation; it's fully informed prior, prior fully informed consent, you know, at all levels. It affects everything. And I just feel like the federal
government is being slack in their responsibilities and obligations.

MR. GISHI: Thank you.

MR. STEVIG: Gary Stevig, Chickaloon Village. A quick note. When I'm hearing concerns that are falling through the cracks, originally a number of years ago I started -- I helped start a tribal/state/federal task force, and that historically met like the first day of the providers. And that was forum that we created to talk about any issues for transportation that was falling through the cracks and that we were having issues with. So originally there was the Alaska tribal/state/federal task force, and that brought all the parties together, and we have a number of people that were here on the working group-slash-attorneys. And that's one mechanism. There's a second mechanism of Alaska Coalition through Synowski that seven of the tribes also pick up the legal bills to
fight legal causes. Potentially that's another mechanism.

So I just wanted to throw those out there for the people that didn't know that there are two different forums to express.

But, you know, that state/federal task force that we formed went away as far as I know. I haven't heard of any working groups, so maybe we need to revitalize that potentially for certain circumstances within Alaska.

MR. GISHI: Thank you for sharing that, Gary.

We've got a question over here.

MR. BREDERMAN: Yeah, I just have a comment. Larry Brederman. I work for four tribes in the Interior.

We work with the state off and on in different projects in our tribal communities, and when -- the state doesn't work with tribes on a government-to-government relationship. It's government-to-citizen.
They treat tribes like any citizen in the state, and you have the ability to make comments as a citizen, so it is very detrimental to the process. And if anything does come of an agreement, the first thing the state says is, well, now you have to waive your sovereignty. And if you don't waive your sovereignty, then discussion's over.

I've been reading the proposed regulations here, and Section 170.111, when can a tribe -- when can a tribe do -- what can a tribe do if discrimination and adverse impacts occurred? The first thing is you write a letter to the state and wait for a response. the second thing is, if it isn't resolved, contact FHWA and have them, like this lady said, work it from the top down. And I think sanctions would be in order, because the state refuses to recognize tribes. And it's been very difficult to get as far as we have in these programs without that recognition. And I believe we're the only

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state in the union that doesn't recognize tribes in their own state. I believe all the other states work as partners with tribes.

So that point that we're on right here would really help us if we could get state recognition for tribal governments.

Thank you.

MR. GISHI: Thank you. Again, as we go through this process, those are some of the same recommendations that we're looking at that went forward. We can develop what we have here. Based on that, those recommendations, of course, certainly has to be within what's available within the law as we move forward, but those are things that we want to be able to develop.

Another one of the highlights is eligible uses of the tribal transportation funds, both eligible as well as ineligible. And it's important to note those that are there. Take a look at the list, identify those things, what are -- and also what are --
how do we go about determining new eligible
uses for the funds. And we have a section
there that talks a little bit about that also.

The definitions and restrictions
is kind of a rehash from the standpoint of the
highlights of what tribal transportation
facilities and the cultural access roads are.
How they're unique, how to deal with them in
terms of being able to include them as an
eligible activity. Some things we can and
cannot do relative to those types of
facilities, keeping in mind all the time that
as you go through this thing, these are public
roads. Public roads basically are roads which
are open to the public and are treated the
same -- or the public is treated the same or
consistently in its use.

And that's the whole basis for the
program as a whole, and that's why we put in
there some of these other areas of seasonal
transportation routes, routes that you can
look at bring able to restrict access to
certain periods of time, but the whole idea is, is when you do that, it's restricted to everybody, not just, you know, let a few people come in and others not. It's really a process of planning and developing procedures associated with that.

Transit facilities again is in there as well as the recreation, tourism and travel aspects of the program.

The coordinating committee, again talk about how they are selected, what the roles and responsibilities are.

The centers as a whole can provide for information purposes only as I mentioned.

The two appendices that are associated with this subpart are the allowable uses and sources of funding. In areas where we could in the rule as it exists, part of the rulemaking process was to be able to identify locations or available funding sources for projects in terms of not only training, but also education. I know a lot of -- and we've
gone -- we've really progressed in a lot of areas in terms of when we first wrote this regulation. I think we have a little better background, a little better knowledge of some of the things we can do, developing our own teams, developing our own capabilities, capacity building. All these things are things -- areas that tribes have shown through the years, the last four of five years that they've been doing, and are a critical part of not only stretching the funds, but also keeping funds within the community in terms of economic development.

Yes.

MS. LAMPE: Thank you. Doreen Lampe from Inupiat Community of the Arctic Slope.

Under TTPCC, under Section 170, Part 155, under (b), the committee consists of 24 tribal regional representatives, two from each BIA region. The State of Alaska alone has 229 tribes. There's not one other state
close to that many tribes in the state. And
that two per region for Alaska is
discriminating against our tribes here in
Alaska. To have two representatives for 229
federally-recognized tribes is a gross very
under-representation of the Alaska tribes.

MR. GISHI: And certainly from the
standpoint of, again, your comments, those are
things that will be noted.

The committee did have a chance to
take a look at that in terms of what they
would recommend, and there was no consensus on
changing it. And obviously when you get into
consensus mode, that really runs a lot of how
things, how business is completed. That's how
currently the regs are written, for business
to be done as part of the committee. Those
are things that you need to take a look at,
because in terms of the protocols, the
committee develops their own protocols. And
in terms -- but they don't develop the regs,
but this is the opportunity for us to be able
MS. DILTS JACKSON: Excuse me. I have the mic. Arlene Dilts Jackson.

In order for this to be meaningful for me, you know, I'd kind of like a little more dialogue here before we move too far past this consultation thing. I have a couple of questions I guess to ask, because there are a couple of things that have been raised here that I think are very important.

The consultation, you know, the state consulting with the tribes, as far as I know, most of the money that comes into the state is from the feds for transportation, you know, whether it's managed by the state or the tribes, or, you know, municipality. You know, even though you're funding that and it comes down to the state, it doesn't relieve you of the responsibility for making sure that consultation is occurring properly. If we think that's not occurring, is there a process
that we can kick off that -- you know, in
which you will be forced to come in and review
that or give them a hand in conducting that
consultation. You know, like Kasaan, I don't
want it just noted there, I want to know if
there's a process, you know, that we can use.

As far as the discrimination, I
understand that, you know, the law itself, you
know, had a real, you know, strong impact on
Alaskans, Alaska tribes, and rural tribes in
particular wherever they are. And the
Secretary has the responsibility for reviewing
that. Even if you have to implement the law,
it would appear to me that the Secretary has
the responsibility to review that situation
and report that back to Congress that this is
the impact that this legislation had. You
know, is there an internal process to kick
that -- you know, some sort of mechanism in
place that we can kick that off, because, you
know, simply telling us to go back and get a
legislative fix for me, which we all realize
has to be done, there has to be more than
that. There has to be I think as part of the
agency's trust responsibility to protect us in
this process.

MR. DANIEL: Clarence Daniel,
AVCP. I agree with the comment about the PCC
representation, and it's been brought up many
times before. And I don't feel that it's up
to the committee to decide the makeup of the
committee. It's up to the agencies or the
regulations to do the makeup of the committee.
And it should be the number of tribes that are
being represented. The more tribes there are,
the more representatives there should be, just
like the Congressional House of
Representatives.

MR. STEVIG: Gary Stevig,
Chickaloon Village, transportation planner.
My statement's going back to the
lady's previous question on what more could
she do. I was put in that position five years
ago, and that's where I learned the peer-to-
peer program with Federal Highways, and so
that's why -- that was my only mechanism
dealing with the state. When I brought in the
Federal Highway agreements, we were having
issues, and the commissioner didn't talk to me
for one year and I couldn't build a road.

With that said, I went to Federal
Highways and said, what do I have in my
toolbox? What can we do? Peer-to-peer
program. So came back, started a
tribal/state/federal task force, and that was
the mechanism that was supposed to drag them
to the table in order to hear our concerns.
The commissioner didn't write me on ownership
and I lost a quarter of a million dollars in
indirect, and all he had to say is, I didn't
own the road.

So I had problems with
consultation. Also I had a book developed
through the Transportation Research Board
outlining Executive Order 13175. And they
interchanged the word communication,
coordination, which Sam was alluding to. But anyway the essence was there, but there's no teeth in it, and ultimately my sense was we needed Federal Highways to come in to drag the state to the table, to sit down and to hear our concerns, and provide a forum for consultation.

MR. GISHI: I think the bottom line of what we're hearing is we need to continue as federal agencies to work with each other, with the tribes, to participate in those areas and particularly when it comes to a specific project. And we may not be able to do a blanket or a global change, but maybe individually when we're looking at projects, that's areas that's areas that we can concentrate on and see what is available for us as groups to be able to do that. And that's kind of how we've been doing a lot of the work, and not just here, but in other locations with state DOTs in terms of projects also.

And this affects more of our roads and trails, waterways, all these different plans, is the regional response team meetings I've been going to for the last year, and doing emergency preparedness, oil spill response, and emergency preparedness planning. And, you know, at one time Alaska Intertribal Council was sitting there. Since the Oil Pollution Act, that made the response teams, you know, we're supposed to have a seat at the table. Well, the tribes are. So we've been sitting there, but now we don't have a vote. And, you know, I can input into them about all the needs, but we don't have a vote. And it shouldn't just be one person sitting there for anything that happens out in our waters, in our marine waterways, rivers, lakes, the waters, you know, any kind of an emergency there. There's already been a recommendation that there should be six representatives at
the ARRT for the tribal communities.

So this isn't, you know -- it's not fair. It's discriminatory again. And here even developing plans for our emergency preparedness, you know, not to have full participatory seat and voting there. So it's been really difficult. And this has to happen. You know, we need to do sanctions against the state. It's DEC and the Coast Guard that we're having to deal with, plus all the other federal agencies. Department of Interior's there. You know, Prince William Sound, all these different RCACs. We'd like to get one going for the Arctic Slope. And we -- you know, to encompass all of our planning, we need to have more full participation.

MR. GISHI: Is there --

MS. DILTS JACKSON: It's a big issue. I have to go deal with this day after tomorrow.

MR. GISHI: I know that there's a number of tribes within states who've
developed or are participating on a tribal transportation level at the state level that participates, like CALTRANS. CALTRANS has a Native American advisory group. I assume that doesn't exist here. The closest thing was your federal, state and tribal group that's there, and you're saying it's defunct now, or at least aren't meeting.

Those are issues again that are -- a lot of them are external. Working with Federal Highways. I mean, the representatives that are here in the division office are a big part of that process. And it varies. Again, like I say, it varies from state to state, region to region in terms of some of those things that are happening and are not happening. Again, even this, trying to paint this with a brush stroke that's very -- it's very broad in that perspective.

MS. DILTS JACKSON: Plus you didn't have the tribal fees, the full -- inventory.
MR. KEITH: The general direction the state's been going in is somewhat anti-tribal. This administration.

MS. PHILBIN: Excuse me, sir, please identify yourself.

MR. KEITH: My name is Robert Keith. I'm Elim IRA president and Kawerak chair.

MS. PHILBIN: Thank you.

MR. KEITH: And I do recall in the public process the Federal Highways has, you know, there was a road that was -- in the last couple years that was stopped because of the public outcry against it, and it was stopped by Federal Highways. the state does get a lot of money from Federal Highways to build roads in Alaska, but we all know where most of that funding goes. It's not just stopping projects, but also trying to get projects in our villages.

And I think -- I'm not sure what the public process is within Federal Highways,
and how we can -- I think that needs to be included, a little bit more information about that public process, because a lot of rural communities, 90 plus percent, are Native. Even though they don't have tribal recognition, we are still citizens of the state, and I think we need to exercise that public process a little bit better, but I don't -- I'm not sure how we go about doing that. I'm sure there are -- we could figure that out.

But right now most of the money, you know, gets spent in the railbelt, the federal highway money for the state, and very little gets out to rural Alaska.

MR. STEVIG: Gary Stevig, Chickaloon Village, transportation planner.

Is there anywhere in the regulations beside the two different clauses that we went over for adverse discriminatory effects? What I'm alluding to is originally going in, I'd come across some information
about this peer-to-peer program through Federal Highways that I made a request. Where is that information in this current reauthorization? Is that information available? Am I just making this up as we go along?

MR. CALUUM: My understanding is we're a little bit behind the schedule, and this is obviously a hugely important thing here in Alaska. There's no question about it. But in order to get through the material we have to get through for this consultation, and then also -- because we have to do these in a similar -- not a similar, almost the same way for each of our stops in Phoenix, and then also Minneapolis, we're going to need to move forward at this point.

However, by no means are we discouraging you from submitting written comments online. Also, at the end of the day hopefully we will have additional time, there's time in the agenda for additional
comments I believe between about 4:00 and
4:30, and so if this is something you'd like
to raise then as well, please feel free to do
so, but at this point we need to move forward
with the agenda to get to the next portion.

Thanks.

MR. DELGADO: Would you say that
you are actually trying to mold Alaska to fit
this rather than make that fit Alaska?

MR. CALUUM: I'm not quite sure I
understand. In terms of the regulations or
the law?

MR. DELGADO: Yeah. I mean as far
as MAP-21 overall? I mean, it seems as if
Alaska doesn't have as much input as we would
like into the framing of this, it seems as if
the federal government wants this to --

REPORTER: LeRoy, I'm not picking
him up.

MR. DELGADO: -- process to --

MS. PHILBIN: Sir, you need to
identify yourself and speak into the
microphone, because the court reporter cannot
take it down, and your comments are important.

MR. DELGADO: Joe Delgado, Native
Village of Ouzinkie.

It just seems that we are being
forced into this, and I understand some of it.
MAP-21 can work, but it doesn't seem as if we
have enough input into the outcome of this.
I mean, it almost seems as if you're making
Alaska fit the American tribes rather than
making this deal work for us ever, rather than
-- you know, I mean, SAFETEA-LU seemed like it
was a pretty good program, but I attended a
tribal consultation down in Rapid City, and
they certainly were very much against the --
they were very much for MAP-21 and against the
old way of doing it, because, as they put it,
Alaska was taking away their traditional
monies, and it almost seems as if Alaska's
being molded into this law or whatever.

MR. CALUUM: Well, one thing that
obviously working for the agencies, we are
beholden, and everybody is beholden
ultimately, to what Congress legislates and
the President is willing to sign. And here
they were able to forge a compromise, whatever
you want to call it, on MAP-21. And, yes, it
does have, you know, positives and negatives
for many different people that deal with not
only the Tribal Transportation Program, but
also the transportation program overall during
the two-year course of the bill.

With respect to the regulations,
we're in a position where we have to -- the
regulations cannot in effect trump the
statute, right, because the statute controls.
So the regulations have to be consistent.
They cannot be inconsistent with the statute.
So we are in a position then where to the
extent that, you know, we -- where we have to
rewrite the regulations so that they're
consistent with the statute.

MR. GISHI: Question? We've got
two more slides here.
Again going back to the Subpart B, what are some of the timetables or key dates. There's one, Section 170.104 talks about the Secretary consulting with tribal governments before obligating funds. This is a -- the only changes that are here from existing regs is, of course, the name, TTP as opposed to IRR. And in there, of course, it talks about 170.600 is the self-determination contracting or other contracts, the mechanisms in terms of what's available for tribes to perform those program services, functions and activities.

And there needs to be a notification of -- notice of availability of funds. That's part of the formula allocation process, which under SAFETEA-LU was a much different formula process in terms of gathering data and running formula. It has been changed significantly relative to that. But this is one in which there is a timeline relative to that in terms of notification of funds availability based on the whole process.
of right of first of refusal associated with the self-determination contracts also.

And again under the key dates, eligible uses, a tribe can, depending on whether it's a facility that's associated with associated with Title 25, BIA route, or a facility under the Title 25 or Title 23, then the BIA or FHWA will determine whether that is an elig -- if that new eligible use is -- that's being proposed is allowable, and if that's the case, and a response or a request comes forward, then that response needs to be provided back within 45 days of that inquiry. Again, another timeline associated with that.

As far as record keeping, the coordinating committee in terms of their reporting requirements, within 90 days provides an accomplishment report in terms of the things that they've done. And generally what they do is they -- on January of every year, and it's been posted on a number of websites, is a letter to the assistant
secretary and the associate administrator of Federal Lands talking about accomplishments and also concerns. So in addition to the accomplishments, they also added a portion about concerns that they have regarding certain issues. But this is in there as another requirement of the coordinating committee to respond to in terms of reporting requirements within this portion of the regulations.

And that completes Subpart B.

Questions.

MS. LAMPE: Yeah. Darlene Lampe with Inupiat Committee of the Arctic Slope.

Before we leave this TTP coordinating committee, could you tell me who the representatives are for the Alaska region? Are they from Alaska?

MR. GISHI: The representatives, as Sam introduced himself, Mr. Sam Thomas from Kasaan, and the other one is Joan Poulson from the Healy Lake Traditional Council, up past
Fairbanks I think is where she's at. And those are the two representatives that are on the committee. And I think -- is the last year or - I believe -- we have four regions that are renominated on an annual basis. And they rotate four each year. That's what -- that's written in the regulations that way so that each year we have four new regions that are selected, so this coming fall, beginning in September, we will have -- four of the regions will be -- opportunity for tribes to nominate for representatives to be on that committee, will be sent -- are sent into the assistant secretary and, of course, they're reviewed and then appointments are made for three years. So that is described in the regulations also, and that process again. So every year we have four basically -- potentially four new members, and eight members who are -- will continue on the following year.

Yes.
MS. LAMPE: Doreen Lampe, Inupiat Community of the Arctic Slope.

I don't know how you guys determine all these formulas that are in the best interest of the Lower 48 tribes, but if you overlay the state of Alaska over the United States of America, it covers more than one-third of the United States. And two representatives for that size of a state that covers one-third of the United States is a very gross misrepresentation of the 229 tribes in the state of Alaska.

MR. GISHI: Which gives us a great transition, because we're going to be talking about the funding formula and kind of what -- how that was developed in statute next.

Yes.

MR. STEVIG: Gary Stevig, Chickaloon Village.

Again a needs-based program versus population-based program is what we're basically hearing and talking about. And in
that funding formula, the relocation of the population adjustment factor of 10 percent basically went from needs to population, and it switched from the needs, 10 percent, over to the population. Again, Alaska tribes are huge geography, limited population. And it's Lower 48 competing against Alaska, and again it's population. And that's something that we're dealing with. A hardship.

MS. DILTS JACKSON: Excuse me.

MR. GISHI: Yes. Go ahead.

MS. DILTS JACKSON: Before you close out B, I notice that you -- B discusses a lot -- you know, defines a lot of the different roads, cultural access. We still don't have a definition for a primary access road. Is that -- and so I'm wondering how you plan to address that.

MR. GISHI: Primary access in terms of this reg is in Subpart D, because it's a function of a road as opposed to these are the physical characteristics of a road, a
type of road, housing access, cultural access
roads, seasonal roads, for the purposes of
identifying those. So when we get to that
Subpart D.....

MS. DILTS JACKSON: That's when I
provide the.....

MR. GISHI: .....we'll talk about
it.

MS. DILTS JACKSON: .....will
discuss it. Yeah.

MR. GISHI: Yes. And really how
it filters in relative to what it was before,
that's important to note how it was before and
how it is now under MAP-21.

MS. DILTS JACKSON: Okay. I
apologize. This is Arlene Dilts Jackson, KIC.

MR. GISHI: We probably -- it
might be a good idea to take a lunch break
now, and then come back. What time is it?
11:30. Can we come back at a quarter to one,
and then we'll talk about Subpart C. Thank
you.
(Whereupon, the above-entitled
matter went off the record at 11:30 a.m. and
resumed at 12:45 p.m.)

MR. SPARROW: All right.

Everybody have a good lunch? Okay. Welcome
back. My name is Bob Sparrow. I'm the
director of the Tribal Transportation Program
for Federal Highway Administration in
Washington, D.C., and I'm going to cover the
next two subparts in the regulation.

But I just want to take a minute
to again remind you, because we are behind
schedule. You heard Mr. Caluum say that.
We're trying to go over each one of these
subparts that's in the regulation to at least
give you an opportunity to hear what's in
them. And this is a draft still. We haven't
started the NPRM process. We're looking for
your comments. We're looking for
recommendations. We're looking for
suggestions on how to make things more clear.

For instance, Mr. Stevig and I talked about
something at break where there was an ambiguity which I've noted that I need to go back and address to make sure that it's clear what the intent of those rules, or the intent of that regulation is. That's the kind of stuff that we're looking for at this point.

But again you've got to remember that when it comes to -- you know, I've heard comments about Alaska and it being different from the Lower 48, which I fully agree with, it is. But when it comes to this funding formula, the funding formula was developed through negotiated rulemaking back in 2004 and 5 and 3 and whatever, Congress has thrown that out. And Congress has mandated Federal Highway and BIA to say this is your new funding formula, and this is how it will be carried out. And we'll go over that here in a few minutes. We don't have any say any more. They've told us, this is the way it's going to be.

Now, MAP-21 -- in saying that,
MAP-21 is a two-year bill. All the previous highway bills that provided funding for the IRR program and now the Tribal Transportation Program, but all the previous highway bills that funded IRR were five or six-year bills. So they, you know, went out for quite a while. This is a two-year bill. It's not to say that we won't have years and years of continuing resolutions and extensions like we had with SAFETEA-LU.

But from the Federal Highway perspective, we're looking at this as being like a transition type bill. It's something that Congress passed, and quite honestly they're starting to have some meetings now up on the Hill about future -- the next reauthorization. Son of MAP-21, MAP-21.2. We have no idea what it will be named. But there is discussions going on now.

But because Congress has told us this is the formula, we can't change it. Only Congress can change it.
So we understand and fully appreciate the comments that a lot of you are giving, but again you have to understand that we can't lobby Congress. All we can do is go to the Hill and say, here's MAP-21, here's the formula you gave us, here's where the funds are being distributed. And we've done that. One of the head committee people from the House T&I Committee, which is the House side of where these rules come from, has asked for, going out through 2016, what the tribal shares look like. So they're aware of what the tribal shares look like up on the Hill.

But all we can do is say, here's the numbers. We can't say, you know, Alaska's getting hit bad, or California's getting hit bad, or the eastern region's looking really good. We can't say that. All we can do is say, here's the data, here's the information that was provided based on what you gave to us.

Yes, Mr. Stevig.
MR. STEVIG: I believe ITA would be the mechanism to fulfill, speaking of Congress, about the statutory MAP funding issues, and to me the elements of 25 are a different organization, like the negotiated rulemaking. So I'm identifying two different organizations that need to be implemented in order to resolve MAP-21 issues that are indirectly tied to 25, Part 170. I'm seeing two different, but they're connected.

MR. SPARROW: It....

MR. STEVIG: And so for me to speak to Congress, I've been dissuaded from recreating other organizations and to use the ones that are created is what was stressed to me, and ITA was set up to achieve and fulfill that goal.

MR. SPARROW: You're correct in that it is Title 23 money, and it's -- the funds come from the highway reauthorization or the highway bill, are provided to the Department of Transportation and the Federal
Highway Administration.

Likewise, back in 1998, with the passage of TEA-21, which at that point was the six-year highway bill for everything, it directed the Secretary of the Interior to develop a regulation and a funding formula for that program. So you're right, it's two totally different organizations. This is so unique in that it is a Title 23 funded project -- or program with Title 25 regulations. I don't think -- Debbie's not here, but I don't think there's another program within DOT that's like that.

So anyway I just want to make that point before we got -- but you've all -- you've had very good comments. We've captured the comments. Some of them, you have to understand though we can't do anything about. So I just wanted to make sure that that was clear. We're looking at the regulation. The intent of this whole update was to get the regulation up to date, because it was
published actually before SAFETEA-LU. So to incorporate the changes of SAFETEA-LU and incorporate the changes of MAP-21 into this regulation.

So the focus was on getting it current with the statute, with the law, getting it current with the practices today as opposed to the practices of, excuse me, 2003 when it was being developed when everybody had dial up service. We thought DSL was the greatest thing. But if you remember back then in 2003, BIA was not on line. Everything had to be faxed. No email, not to the extent of what it is today, so trying to updated the processes that were identified in the regulation to get them in line with the operations of how things are operating today.

Federal Highway, when the rule was made, or published, again before SAFETEA-LU, there was not an option for tribes to work directly with the Federal Highway Administration. Now there is. So a lot of
cases, when you go in here, not only like Mr. Gishi says, instead of IRR you see TTP, but in a lot of cases where it used to say the BIA shall do this, it now says BIA or Federal Highways shall do this. And that's what we've been trying to do with this update, not change the regulation that was developed through negotiated rulemaking, except where statutorily required, or to get a process that may have been up -- that may have been included updated to how it's working now.

Mr. Thomas.

MR. THOMAS: Sam Thomas from the Organized Village of Kasaan.

That's all fine and right, but the thing is, is that before October 1, 2004, Alaska wasn't able to participate in the program 100 percent as it is today. So it's, you know, the dates within the regulations that are set forth is not good for us. I mean, we're going back in time instead of forward in time if you look at inventory
MR. SPARROW: Okay.

MR. THOMAS: And so it's not getting a true capture of what our identification of the need factor is up here. We were limited to two percent limitation prior to that day. And so when we were able to open it up, the gates opened up, we basically submitted our inventories at 100 percent without having the regional director making that for us, that decision. So these dates that are put forth in the recommended proposed revisions are not really attractive to us.

Thanks.

MR. SPARROW: Okay. Understand.

Yes, ma'am.

MS. LAMPE: I would like to thank you -- Doreen Lampe from Inupiat Community of the Arctic Slope.

I would like to thank you for your clarification that this is an update. This is
not a government-to-government consultation
with 229 tribes. And like Mr. Thomas said, we
don't have anything that happened from June of
last year.

MR. SPARROW: Thank you. Any
other comments.

MS. DILTS JACKSON: Have you gone
through the actual formula yet?

MR. SPARROW: Yeah. Where were
you?

(Laughter)

MS. DILTS JACKSON: I guess I
missed that whole thing.

MR. SPARROW: It was amazing, I
grew through it in 30 seconds.

MS. DILTS JACKSON: Yeah. Well,
see....

MR. SPARROW: No, we have not gone
through it yet.

MS. DILTS JACKSON: Well, see, the
point I'd like to make is one of the most
difficult things for me to figure out is what
the actual impacts are. And it's not just by looking -- I'm going to talk about your spreadsheets again. It's not just by looking at bottom line for the tribe, because you have to know what went into that bottom line. You have to -- I have to know what it looks like when it's fully implemented, because the way the act came down, it has a supplement which brings you back to the 2000 level before you see the -- get the bad, because that's coming, guys.

So in order for me to figure that out, I need those spreadsheets that you've been making available to the PCC, but haven't just been made generally available to the public here, because then in that way I can look at the impacts to my tribe, what went into it, what portion of the old funding is there compared to, you know, what are being paid -- you know, paid for now, and compare it to what I used to have in terms of inventory, and what like tribes are getting paid for and
what it's looking like for them, small, large, by state, by that. A very, very huge task, trying to really, you know, articulate what the impacts are without that. So I'm hoping that some of that is going to be made available, because I tried to calculate -- you know, pull out the figures for just my region, and I had to use a spreadsheet that we got from our Congressional Delegation. And I know that you probably have more refined figures, and I'd really like that to be made available in order for us to have meaningful input on that whole formula and how it's going to be applied over the next few years.

MR. SPARROW: There is a spreadsheet on the Federal Highway web -- federal lands, TTP website that was posted I believe last Friday, a similar spreadsheet on the BIA website, which identifies the miles, the population, the various factors, the supplemental, et cetera, et cetera for the tribal share distribution for this year. That
was just posted, because we had to wait until
some numbers were clarified by OS -- the
Office of Secretary before we could post those
numbers.

   Yes, sir.

MR. HANSON: Scott Hanson,
Chilkoot Indian Association.

   I want to go back to the dates Sam
was referring to, October of 2004. Our
experience with adding inventory at that time
in history was arduous and slow and
unreliable. We had significant difficulty
doing -- adding to our inventory. And in the
several years following that, everything
opened wide up for us, and the process became
so much easier. And what we had, we -- what
we have now we had then, but the difficulty in
getting it there was significant, and it --
and the date going back as far as 2004 really,
I think not just for us, but for a lot of
different tribes, too, kind of pulls the rug
out from under all the hard work that we've
done, you know, to get that inventory to this point in time. We would hope it would be a later date than 2004.

MR. SPARROW: Okay. Thank you.

MS. DILTS JACKSON: Arlene Dilts Jackson again.

Since he's talking about those dates that are tied to what inventory counts for the purposes of the formula, we've been back and forth discussing between various of the tribes whether or not the 2004 date was actually in MAP-21. And what it means when you read that within the context of, I guess it would be Sections .201(1)(b)(i) through (iii) and .202(b)(3)(B)(i). Because the legal read we got is those have to be read together, because together they define what portion of inventory is used for determining tribal shares. So maybe you can answer that, does the Act actually reference that date? Does MAP-21?

MR. SPARROW: I don't have the --
Section 1 of the reg, I don't have MAP-21 in front of me, so I don't have that other section.

170.226 says what facilities are included in the National Tribal Transportation Facility Inventory, and under (a) it says were included in the Bureau of Indian Affairs system inventory prior to October 1, 2004. And then it goes into tribal roads; it goes into BIA roads; and then it goes into other roads, public roads, and bridges within an exterior boundary of Indian reservations, Alaska Native villages, et cetera, et cetera, are public roads within, providing access to Indian reservations or Indian trust lands, et cetera, et cetera, or are primary access routes proposed by tribal governments. So that's pretty much verbatim right out of MAP-21.

We'll go into this a little bit more right -- as we go through these slides, because again we're trying to get through
these slides. All of your comments are good.
If you don't make them here, please write them
in, get them into the docket so that
everything can be considered. Okay.

Okay. What did I do with it?

REPORTER: Over there.

MR. SPARROW: There it is. Again
we set up these slides to talk about general
overviews of what is in each one of these
subparts, and then we go back and we hit a
highlight, and then we talk about any target
dates, and then reporting or record keeping.
So from a very general overview, and then
we'll get back into the details.

What is in Subpart C? It covers
the statutorily mandated methodology that's
going to be used to distribute the tribal
transportation program funds. Excuse me. It
includes a diagram of the funding process, a
description of what each set-aside is, the
planning set-aside, the bridge set-aside, the
safety set-aside, and also the program
management and oversight set-aside.

It also talks about the-supplemental funding. It talks about the-formula itself. What are the three factors in-the formula? Remember, it used to be cost to-construct, vehicle miles traveled and-population. Those were the three factors in-RNDF. The -- I'm so tired, I can't remember-what RNDF stands for. Relative need-distribution factor. I'm sorry. I apologize.-I'm punchy here from lack of sleep.

It's now mileage, population, and-then a historical share percentage. It is-population driven; we heard that this morning.-It's gone from a needs-based formula to pretty-much a non-transportation population type-formula where it plays -- population plays a-lot more -- or a more important part.-And then also as I said before,-how the tribal supplemental allocation works.-This particular subpart talks-about transportation planning just a little
Planning really gets fully described in Subpart D.

The National Tribal Transportation Facility Inventory. What is included in that inventory? That's now the new name, the new acronym for the BIA -- or for the IRR inventory.

General or formula data appeals.

And then a little bit about flexible financing, because that's -- you know, and you're going to see there's really no change there. That language is exactly what the old language says, if you take the old rule that was published in 2004, and you compare it to what this rule has, or is contained in this rule.

In this particular subpart you'll see one big change. Well, another big change, on top of the funding formula. The high priority program used to be part of this. That high priority program was a take-down of the RNDF. That program is gone as a take-down
from TTP and is now a stand-alone program.

But because it is tribal, it's got interest
all over the country, especially in Alaska and
California, we have included it for reference
purposes only in a new subpart. That's

Subpart I. There wasn't Subpart I before.

But if you take the questions that were in the
HPP section of the old reg in Subpart C and
you look at Subpart I, 95 percent plus of that
-- those questions are now just simply put in
Subpart I. We'll talk about that again this
afternoon real quick of what the differences
are, but for the most part that program was
taken lock, stock and barrel out of Subpart C
and put in Subpart I.

Mr. Stevig.

MR. STEVIG: A quick comment on
the high priority project funding, MAP,
Section 1123, I believe it was $30 million
that was supposed to be appropriated, yet has
yet to be appropriated. I urge Congress to
appropriate $30 million, or the money that was
identified for that program.

The other part that I'd like to talk about now is the amount. We've been at $1 million for how many -- over a decade. And within that decade, the price of road building has doubled. Right now I would challenge anyone to build a road in Alaska for a million dollars. One mile. So to me that $1 million has not been addressed or even looked at, and it's very concerning when we're tying FEMA and ERFO terminology in with the high priority project funding due to the changes in the Stanford Act and the tribes' ability to declare disasters. That's something in the comments that I want to later allude to as the mitigation plans that are going to be critically needed for funding. And that's a planning activity. We'll get into that later.

But again the HPP program is severely under-funded, and I just want a confirmation that it is no longer required that we need to indicate that in our long-
range transportation plan, because historically the applications were identified in your LRTP, and that has changed now to an application process through the Department of Interior, correct?

MR. SPARROW: No, it is not Department of Interior. It's an application process still through the Department of Transportation.

When you're looking at your long-range transportation plan and putting your TIP together, one of the things you always want to do though is look at how you think you're going to get these projects funded. A lot of the tribes in Alaska don't have -- well, a lot of tribes everywhere, but you all don't have enough money to do a construction project, exactly what Mr. Stevig just said. You might get tribal shares from this program that are adequate enough to do a design. And you may have this design and this design and this design ready, waiting for
construction dollars. Those construction
dollars you could identify to say, we
anticipate applying for HBP or Tiger or
whatever for these construction dollars. So
you still need -- you should still identify
them on your TIP and your long-range plan.

When it comes to HBP, it's not --
and I misspoke, it's not Interior, it's not
Transportation, I believe it says the
Secretaries, which would be both agencies
looking at it and evaluating, which is really
exactly the way it was done before. The
submit -- and we're kind of jumping into
Subpart I, but the submittal process is going
to be very, very similar. There's just no
dates like there was before, and I'll get into
that later on.

The funding diagram. If you take
a look at it real quick, this replaces the old
RNDF funding diagram that was in the old reg.
It starts off with the amount authorized for
the program. There's five statutory set-
aside: six percent PMNO for BIA and Federal Highway for administration of the program; two percent for tribal transportation planning; two percent for safety; two percent for bridge; and a formula that says how much money goes into supplemental funding.

From the authority level, because this is now a -- because it's a statutory formula, it's now an apportioned program, so it's much like the federal aid program that Sandra has to work with, or Federal Highway works with the states. We have to keep track of how much authority the program gets and how much actual cash the program gets. And there is a difference. But we have to keep track of that every year. So even though this is $450 million, and this is six percent, which is $27 million. This is two percent planning, which is $9 million. This is $9 million. This is $9 million.

That's not how much money is actually going to be made available. We get
authority and then we get actual dollars. And the actual dollars for this year, there's an across the board recision that hit every program at Federal Highway, or just about every program at Federal Highway. And then there's obligation limitation of about 4.1 percent. So instead of being $9 million for planning, and $9 million for safety, and $9 million for bridge, it's actually only about $8.6 million of actual cash. And that's what's made available. The $27 million for PMNO is also subject to that obligation limitation, so it's down about 26.1 or whatever. So it's not just the program that's subject to obligation limitation. All of the take-downs and all the set-asides are also subject to obligation limitation.

This tribal supplemental funding is about $104 million. We'll get into that in a minute of where that came from.

But after you take these set-asides down, we have these tribal shares, and
we have some shares based on prior year
funding. This is what's run under the
formula. This is prior year, this is
supplemental. The whole thing comes together
to give us a tribal transportation program,
tribal shares. I'll get into each one of
these a little bit more.

So we have the funding formula,
and I'll go into that. Before we get to the
formula, we have the $450 million. We have
the recision. We have obligation limitation.
We have those five set-asides. We come down
to where we have this new funding formula.

Twenty-seven percent of the money
that's made available, by the time we get down
to that formula is set aside for mileage. How
many miles does a tribe have in the National
Tribal Transportation Facility Inventory
that's eligible for this particular factor?
We said if you look at 170.226, it identifies
six or seven different categories of roads
let's say that are eligible to be in the
National Tribal Transportation Facility
Inventory, but only a certain part of that --
Congress has told us we can only use a certain
part of that mileage to actually generate the
funding for this particular factor. It's
roads included in the BIA system inventory
prior to 2004. It's the roads owned by tribal
governments, the tribal roads as of 2011 -- or
2012. And roads owned by the BIA as of 2012.
So this particular factor is frozen. It won't
change from this year to next year, or the
year after that, or the year after that until
Congress says to change it. All those other
roads that are in there that are not BIA or
tribal that were added to the system after
2004, they're in the system, but they're not
used to generate mileage.

There's about 150,000 miles of
inventory. BIA, tribal, state, county,
borough, et cetera, et cetera. Of that
150,000 miles -- Mr. Gishi walked out the door
-- I believe about 65,000 miles are all that's
used to generate for this factor. The others
are in the inventory. You can expend funds on
them, but they do not themselves generate
funding for the tribes.

So again -- and it also says,
shall be computed based on the following
facilities in the FY 12 inventory. The FY 12
inventory has been closed. We're now doing
updates to FY 12. This is FY 13. So any of
the updates that you do also will not change
this. So if you add tribal roads, they won't
generate any more miles for you. If BIA and
a tribe add BIA miles, no more money. Non-
BIA, non-tribal roads, no more money. This
factor is frozen by the FY 12 inventory.

There's a second factor in the
funding formula. Thirty-nine percent of the
money is distributed by the ratio that the
total population of each tribe has or the
population of each tribe to the total
population of American Indians and Alaskan
Natives. And the statute says, the population
is computed using, quote, the most recent
data, unquote, available under NAHASDA Act of
1996. So whatever your NAHASDA numbers are
for the American Indians and Alaska Natives,
and those get updated by HUD every year,
whatever numbers HUD sends to us by law we
have to use.

Mr. Stevig.

MR. STEVIG: Under the HUD's
population methodology, count for tribes, I am
being penalized and I'm not able to reflect
the proper amount of Indians in my area. Let
me clarify real quick. I have X amount of
tribal citizens. If it's double the amount of
my tribal citizens, American Indians in my
area, I'm only able to times two times my
tribal population, and I cannot take into
consideration Alaska Natives, American Indians
in my area. In other words, I can have 2,000
American Indians in my area, but I'm only --
and I'm capped off at 1,000. Just FYI.

MR. SPARROW: Thank you.
MR. DANIEL: Clarence Daniel, AVCP. The NAHASDA numbers are taken off the census, the census data. And I feel that the -- you know, there's no verification process on the degree of Indian blood with the census. Just they go house-to-house and they don't require any kind of documentation. So -- and I feel that's not right. It should be, you know, go through a more stringent verification process.

You know, I noticed a jump in some of the tribes. Some tribes, and I won't name names, but not located in Alaska, practically doubled. So I think it's unfair.

MR. SPARROW: Yes, sir.

MR. STEVIG: Gary Stevig, Chickaloon Village.

I talked to the state demographer about the subject, and there was two methodologies that they could use to actually do a population count and that is something the gentleman before me was somewhat alluding
to, is in the two methodologies, one was full
blood and other ones were mixed. So -- and
the state's demographer needs to actually --
I need to talk to him and find out the two
methodologies and what's being implemented and
what isn't being implemented just for that
clarification within Alaska.

MR. SPARROW: Thank you. Now, one
thing I know is that HUD has gone into
negotiated rulemaking on NAHASDA. Michael,
you've got -- I don't know where that stands.
Have you heard anything?

It's in process. Because that
could -- I mean, ultimately again, you've got
to understand, LeRoy and I have to take the
numbers that HUD gives us. We can't change
them. Again, this is what the law says. So
our flexibility is nil. So when it comes to
-- if your numbers are not correct as
reflected by HUD, that's who you need to talk
to, because once those numbers are published,
we're locked in. Okay. Just for your own --
so you're aware of what we can and cannot do.

Third factor. We started with three factors, at least we still only have tree factors. The third factor -- I'm going to say something that's going to get me in trouble.

The third factor is 34 percent, and that 34 percent, initially what we do is we divide it equally amongst the 12 BIA regions. So if we work down through this formula, and this particular factor at 34 percent, let's say, is $12 million. The first thing we do is we take the $12 million and we give $1 million to each region. Then within that region, what we have to do is we have to go and look at the tribal shares from 2005, 6, 7, 8, 9, 10, 11, and determine what percentage of that region's shares did each tribe get. And if the tribe got 2.16145 percent of the region's money within that seven years, then it gets 2.1465 percent of the $1 million.

So this factor, when the funds all
come down and we figure what gets into that, divide it by 12. Again, Alaska region, I understand 229 tribes, gets the same amount of money of this factor as the Navajos. The Navajo region is a region by itself. Alaska region is a region by itself. It doesn't matter if you have one tribe or 229, you get the same amount of money.

So that's the funding formula. No more cost to construct. Population totally different -- well, not totally different, but a different percentage, a much higher percentage. And instead of vehicle miles traveled, we're looking at what a historic distribution looks like.

If you go back to that chart, over on the right-hand side, I need like five more hands, we had tribal supplemental funding. Now here's an amount of money that Congress has told us, okay, before you do all this stuff and you get down to that funding formula, we've got to have this tribal
supplemental funding. And Congress says, okay, if the program is less than $275 million, this is how much goes in. If it's more than 275, this is how much goes in. The bottom line.....

I don't know why that says for FY 12 and 13. It should say FY 13 and 14. And again, you all are the first ones, so we're catching all sorts of errors that we see. This equals $104,375,000 that's taken out of the $450 million and set aside for supplemental funding.

Mr. Baltar, do you want to speak now or do you want to wait?

MR. BALTAR: Yeah. I'm sort of.....

MR. SPARROW: Bring it on.

MR. BALTAR: Okay. Bruce Baltar, Bristol Bay Native Association.

I wanted to back up just a little bit on the first factor having to do with road miles, and ask if proposed roads are in there
or not if they otherwise meet the three criteria. The regulations and the statute actually say are owned by an Indian tribal government or are owned by the Bureau of Indian Affairs. So I'm wondering. It doesn't say will be, it says are. So I'm wondering if proposed roads are in that road inventory that play into the 27 percent.

MR. SPARROW: Do you want to answer that?

MR. GISHI: Yes. The answer to your question is, yes. The way that the MAP-21 is written is it doesn't say 27 percent will apply to proposed roads, to access roads, to roads which are gravel, paved, five lane, two lane, one lane. It just says the mileage, the eligible roads that are in the inventory as of October 1, 2004 for non-BIA and non-tribal, and then for tribal and BIA, all the way up through to the 2012, which looks at every one of the roads that are in there. And in order for it to be in the inventory, it has
to have an associated ownership code with it.

So if it's a proposed road and it's ownership
of BIA, it would be included in the BIA
portion. And if it was a road that was prior
to 2004 that was a state, borough, county,
other roads, but it was a proposed road, it's
identified as an eligible road, because it was
eligible in the program based on the -- what's
identified in there. So when you're looking
at this formula, you've got to completely
erase from your mind anything that's
associated with functional classification,
whether it was a maintenance only road,
whether it was a proposed road, whether it was
a construction in need of others. All those
things that were in the previous formula, it
now is only looking at a database, a mileage
associated with a tribe that fits into a
category of 2004 and prior for non-BIA and
non-tribal, and then for BIA and tribal, all
of the roads that were up through 2012 that
are in the inventory regardless again whether
they were four lanes, three lanes, two lanes, one lane, primitive or paved. It is looking at eligible miles, and that's what it's going off of.

So does that answer your question, Bruce?

MR BALTAR: It answers it, but it doesn't make much sense, because for most of them, it doesn't fit, and therefore sort of by definition.

MR. GISHI: It's looking at, again, simply identify a snapshot in the inventory based on ownership and based on what it is. The more particular one is BIA or tribe, and then everything else is non-BIA, non-tribe. It doesn't say, look at the states and the county. It just says, it's either BIA or tribal, and all others that are -- that fit that category.

MR. SPARROW: Mr. Stevig.

MR. STEVIG: I was going to comment on the slide that you were on actually
to keep this thing moving. I had lost --
since our last consultation on the subject,
apparently I've -- somewhere we lost $5
million. I was under the impression that the
supplemental funding would be $109 million,
and now I'm seeing 104.375. So just
clarification. I thought it was $109 million
on our last consult -- okay.

MR. SPARROW: Gary, I think it's
been 104 since we started, so I don't see that
anything has dropped out.

Now, when it comes to distributing
that to the tribes, what we have to do is go
back to the formula, look at how the formula
distributes funds within the region and then
the percent -- that percentage -- if the
Alaska region and all the tribes in the Alaska
region in the new formula generate 20 percent
let's say of the new funding formula, then 20
percent of that $104 million gets designated
to Alaska. So we have to go back, look at the
formula, determine the percentages of the
tribes within that region, and then apply that percentage or divide up the $104 million by that percentage. So if Navajo gets 24 percent of the money, they get 24 percent of the $104 million. If the tribes in the eastern region generate seven percent, they get seven percent of that money.

So initially we divide it up by region. It's not equal like the other funding formula factor, which we said divided equally amongst the 12 regions. This one gets divided by how much money in the new formula goes to each region.

Then what you've got to do is you take a look at the tribes within a region and compare how much money they're getting to what they got or received under the old formula in 2011. And if they're receiving less money now than they were in 2011, that tribe or the tribes within that region are the first -- get first dibs at this money in order to get them back up to their FY 11 level. The intent is
to offset any negative impact back to what the tribe -- of the new formula to what they received in FY 11.

Let me just -- give me one second.

If all the tribes then within a region get back to their FY 11 level and there's money left over, then all the tribes within the region share what's left by their respective percentages.

Mr. Thomas.

MR. THOMAS: Sam Thomas, Organized Village of Kasaan.

How do you determine who gets first dibs at that pot of funds? Is it whoever has the most amount of impact from that specific region, or is it based on -- how is that being calculated out?

MR. SPARROW: What you have to do is you have to look at all of the tribes in a region that are negatively impacted.

MR. THOMAS: Uh-huh.

MR. SPARROW: Add up the total
amount of money that they're negatively impacted by, again back -- using 2011 as the baseline. And hopefully there's enough money to get all those tribes back to their 2011 level.

MR. THOMAS: Of course, we should be coming up on the time -- point in time where we should be able to figure this out, right?

MR. SPARROW: We're done. The tribal shares are out there.

MR. THOMAS: Yeah. So, well.....

MR. SPARROW: Right. So this has all been done.

MR. THOMAS: Okay.

MR. SPARROW: Then -- and if there's not enough money, which may happen down the road, because of something we haven't talked about yet, then all those negative tribes get a percentage of that money to get them back to 88 percent of their FY 11 level. So it wouldn't matter if you're at $2 million
or at $1 million. If you were negatively
impacted, you'd be back to 88 percent of what
you received. All those negative tribes would
be at the same relative percentage.

MR. THOMAS: It would have been
nice, Bob, to have this set up to where you
could show us what the impacts were and
everything.....

MR. SPARROW: Well, we.....

MR. THOMAS: .....to where you
could know going forward if this is a good
thing or a bad thing for us. I mean, you
do.....

MS. DILTS JACKSON: Yeah. We need
an Excel spreadsheet.

MR. SPARROW: Well, there's an
Excel spreadsheet, and one of your
recommendations could be to put an Excel
spreadsheet on the internet. We have the FY
13 shares on the Federal Lands and BIA
websites right now. You're not going to put
spreadsheets with numbers in a regulation,
because we don't know what it's going to be. It changes every year. It comes down -- there are so many different factors before we ever can pop -- before we can ever get started that you'd never be able to get the exact numbers in the regulation, but you can get them on -- you could easily get them on a website.

MR. THOMAS: Could I ask another thing?

MR. SPARROW: Yes.

MR. THOMAS: On the ob limits, how is that determined? It seemed like in regulation that this program was going to be held harmless to the obligation limitations, and.....

MR. SPARROW: This program was held harmless to obligation limitation until 1998.

MR. THOMAS: Okay.

MR. SPARROW: When TEA-21 was passed -- and it was not only this program, it was all of the programs of federal lands. So
the park road program, the forest highway program, Bureau of Indian Affairs -- or the IRR program, they were not subject to obligation limitation until 1998. When TEA-21 was passed, that was taken away, and the program became subject to ob limit.

MR. THOMAS: Okay.

MR. SPARROW: And ob limit is -- it's really kind of a quirky, funky formula that's based on multiple factors, the most critical one though being how much money was not spent last year, the prior year. And the higher that unobligated balance was, or that carry-over is, the higher the limita -- the obligation limitation is. You only have so much limitation every year. And if some of that is taken up by last year's money, then this year's money gets hit. And that's kind of a simple way of explaining it.

MR. THOMAS: Uh-huh.

MR. SPARROW: We only have so much. But since '98, Sam, the program's been
subject to it.

MR. THOMAS: Okay.

MS. BAHNKE: Good afternoon. I'm Melanie Bahnke. I'm the president of Kawerak.

Just from a time management stance, I recognize that this is your first --
Alaska is the first place where you're doing this tribal consultation. And I'm wondering, are we going to be able to go until we're done today, because we're not moving along very quickly. And if not, then I have a recommendation to the group that we focus on the regulations that are being proposed, because that is where we stand a chance to have any effect. The statute is -- the law is the law. So the question is, do we have all day until the evening is with you, or how are we doing time management wise? And if the answer is no, then my recommendation to the group stands.

MR. CALUUM: Bob.

MS. PHILBIN: Let Andy speak.
MR. CALUUM: We do have some flexibility with the timing, but the court reporter is here. I mean, she has obligations herself as well, and I think the point is well taken. It is a very frustrating situation I suspect for some of the people here with respect to how the formula has changed and things of that nature.

And I think President Bahnke is right. The aspect that we -- you know, we're here consulting on the draft rule. With respect to the funding formula, that's done. There's nothing we can change in that. I cannot approve a change in the rule that would affect any aspect of the funding formula, because Congress has determined that, and that is done. In terms of even any tweaks to how certain things work, this, that or the other thing, Congress did it, and there's nothing we can do at this time. In the future perhaps, in your individual capacities or whatever other organizations you use for lobbying.
Congress for the next bill, that's the time to
deal with that.

And, you know, I suspect we're
going to hear similar concerns and
frustrations at the other two consultations as
well, because it does have impacts in varying
ways. You know, clearly in western,
southwest, and then we'll be in the midwest
and the Great Plains area likely having people
there for that.

So I think it would be important
if we could focus the comments on the draft
rule that we have here as we move forward so
we can get through it in a timely manner,
because we do have to get through this
presentation today, because, you know, that's
what our charge is here really.

MS. BAHNKE: And then one final
comment is that either in the future a two-day
consultation or a facilitator or something to
help us kind of keep on track. This is a lot,
and a lot of people are frustrated. So either
a neutral facilitator to help move us along,
or give us two days of consultation so that we
can have time to discuss all of these things.

Thank you.

MR. SPARROW: Thank you.

MS. LAMPE: I'm concerned that
this is being called a consultation. You
referenced it as an update. And if this is
already set in stone, this is not a
consultation. And I would like to know if
this is truly a consultation, what can we
really consult about.

MR. CALUUM: We do view this as
tribal -- as consultation. This rule is not
set in stone. This is a draft. There will be
-- after we finish the consultations here and
the comment period closes on June 14th, which
we've talked about earlier, we'll gather all
the comments, both the oral comments here at
the meetings, the written comments, and we
will go through those, and we will develop
what is called a notice of proposed -- a
proposed rule, and there will be a notice of
proposed rulemaking, and we will go out and
we'll consult on the proposed rule as well.
This is by no means set in stone. This is by
no means final right now. This is an
opportunity for tribal leadership and people
interested in this issue to have their say now
before we get to the NPRM process where we do
lose quite a bit of control, because it's a
very structured process once you get to that
point.

MR. SPARROW: But the formula is
set in stone.

MR. CALUUM: Yes. That part
there's nothing we can do.

MR. SPARROW: That part of it is
set in stone.

Yes, ma'am.

MS. BALTAR: Yes. Julianne Baltar
with Bristol Bay Native Association.

I guess my first and main comment
would be that instead of going forward with
the notice for proposed rulemaking that you're planning to do after this initial comment period, would be to go forward as a negotiated rulemaking. The reason I state that is because I think that would get a lot more tribal involvement in the process, and it would increase the comfort level. In reality, you could go off this draft and ask a proposed rulemaking committee to go from that, compare it to the regulation, and take into consideration consultation meetings such as the one that took place last year on proposed and access roads.

It's unclear at this time how much of the TTP coordinating committee's recommendations were taken, how many recommendations have been taken from prior consultations and rolled into this draft reg.

So that's my number one would be I do recommend this be done as a negotiated rulemaking.

The second thing is that under the
process of this meeting, what would have helped me, and I suspect the audience, would be if you had focused on the substantive changes between the regulation and the proposed regulation, and just tell us what the rationale is for the change, because this is a substantive change, because MAP-21 requires it, or is there some other reason, you know, this -- was this from consultation or some other reason. But we're sort of -- we're not getting into the substance of the changes. We're really sort of glossing through it pretty well.

And I notice, for instance, under this section that you had a change for LRTP. In the past it stood for long-range transportation planning. Now in the draft it stands for the long-range transportation plan. And there are inconsistencies as you look through the document that it didn't get quite translated properly.

I also noticed it when it had to
do with the BIA system versus the tribal system. There are some, you know -- there's some changes between the two definitions. And the tribal transportation system wasn't in the prior reg.

And, you know, so there are just a few things that have changed there.

But as I said, I would strongly recommend, and comment for others to consider is that this be done as a proposed rulemaking committee so that there's more involvement by the tribes in that process.

Thank you.

MR. SPARROW: Thanks, Julie.

Highlights, just really quickly then going through this. This last factor that hits the funding formula that's identified in the reg, again was statutorily put on the program, and that is that it transitions over a four-year period to where this first year, in FY 13, 80 percent of the money actually gets distributed based on how
the tribal share percentages in FY 11, and
then those shares go down. The new funding
formula becomes more and more important as the
years go by.

Two percent planning. It used to
say before upon application of the tribe, two
percent planning is made available. Pretty
much now the two percent planning funds are
made available just as in the past. There's
really no changes.

There is a section on the National
Tribal Transportation Facility Inventory that
used to reference the BIA inventory. What we
put in there was the statute that identifies
what is in the National Tribal Transportation
Facility Inventory. Again it's kind of what
we were talking about earlier with only these
first three being the ones that are included
in that mileage factor of the new formula.

Yes.

MR. STEVIG: A quick comment on
owned, on the facilities that are in the
inventory for ownership, the coding guide
historically tied right away maintenance and
ownership all within one question. And what
I'm seeing is Q 10 trying to address the
ownership issue, but in fact also what needs
to be considered and talked about is the
coding guide to implement those facilities
into the Federal inventory. The coding guide
created some of the error and confusion,
because they snowballed three questions into
one, and ultimately what trumped all three of
them was who maintained that facility. So it
became point mute of ownership. If you
maintain that facility, then you owned it. So
just FYI, we need to comment on the coding
guide.

MR. SPARROW: Alrighty. Thank
you.

Inventory still requires the BIA
regional offices to maintain, certify, and
enter the data for the regions. That really
hasn't changed from before. The process goes
through the BIA regions before it gets final approval.

This is one of the sheets that is different than what yours says. I kind of caught it on the plane last night. When it comes to formula data appeals, because the statute says, here's what you use. You use the mileage for FY 12, what's up in the FY 12 inventory. You use the fund distribution from FY 05 to FY 11. There really isn't anything that can be appealed by the BIA. The day to appeal from the formula perspective falls upon the NAHASDA numbers. And it would a data appeal with HUD, which we talked about earlier, so that when the new numbers come out from HUD, we have the most accurate information.

And there's no longer timelines, because everything is frozen for all intents and purposes.

Flexible financing really hasn't changed. It describes how the tribe can use
the funds to issue bonds and enter into agreements and use it as collateral for loans. That hasn't changed from what was in the regulation from 2004.

Timetables. Key dates. The NAHASDA information from HUD, as I said before, is critical.

Inventory updates, they still apply. We're still trying to update the inventory on an annual basis following the same dates that were in there before.

Internally, but it's not in regulation. It's not in statute. It doesn't change your tribal shares, because it's the FY 12 inventory is what's being used, but we're still running through the inventory update process.

Flexible financing. BIA region provides necessary documentation to a state infrastructure bank to facilitate a tribe obtaining loans. That hasn't changed. The same as what it was before.

The regions and the tribes should
still work on their inventory, because we must
have as accurate an inventory as possible.
Even though it's not generating any new money
for you right now, we don't know what Congress
is going to say in 2015. If they pass a new
highway bill and it suddenly goes back to cost
to construct, and it goes back to vehicle
miles traveled, and it goes back to a totally
open inventory, you want to make sure you've
got the most accurate information in there.
So it may not generate anything for you now,
but that's not to say it couldn't generate in
the future.

And that's Subpart C. HPP is
gone. It's its own subpart.

All of those costs to construct
tables and information and functional classes
and things like that that were appendices to
this part have now been put into Subpart D.
There's an appendix at the end of Subpart D
that still has that information to help with
inventory submittals.
But all the other stuff that had
to do with the funding formula through
negotiated rulemaking, RNDF, all of that stuff
has gone, and pretty much replaced with the
statutory language.

Subpart D. How many of yours
says, update to IRR? Does yours say that? My
apologies. Another thing I caught on the
plane after I sent the stuff to Stu.

So Subpart D talks about planning,
design, and construction of the IRR facilities
or the TTP facilities. Again, following the
same thing that we have done previously, from
a general overview, and then we'll get back in
the highlights.

What's in this particular section.
Transportation planning, responsibilities and
requirements under the planning regs of Title
23, which is the federal highway planning
regs. What does the tribe have to do? What
does BIA or Federal Highway do? What are the
potential funding sources for planning
purposes are identified in this particular section.

Requirements for developing a long-range transportation plan, including how you go about with public hearings, public input. How do you develop a TIP. Public input to the TIP. That stuff pretty much follows what has been in the regs since 2004.

Instead of the IR inventory, it talks about the NTTFI again. Kind of the same thing. We referenced it earlier. What is in the inventory? What's the statute say? How is it used to generate funding? How do we update the inventory?

What are the minimum attachments to the inventory? If you remember back, those of you that were around in 2004, one of the first things the coordinating committee did was look at minimum attachments, because it wasn't identified.

You want to say something?

What came out of the coordinating
committee was added to the reg to show what minimum attachments have to be supplied in order to get the inventory -- or a road into the inventory.

What are the environmental and archaeological requirements? From a design, construction, and construction monitoring, what kind of standards have to be followed? What kind of design standards can we use? The federal standards that Federal Lands and Federal Highway uses, the FP. Can you use state standards? Can you use tribal standards? This all identified in there.

If you have a standard that's not in the reg, it further tells you what you have to do to request a new standard or request a design exception, that you can't build it to this standard, so we've got to ask for a design exception. For the consultants in the room and others, you know what I'm talking about. You have to get those design exceptions approved. How do you get those
design exceptions approved?

PS&E approvals. The tribes can approve their own PS&Es. How do you do that?

How do you do construction monitoring, inspection, close-out procedures for your projects? What kind of reports are required?

What's the roles and responsibilities of those particular projects when it comes to Federal Highway, when it comes to the tribes, when it comes to BIA.

Yes, sir.

MR. STEVIG: Gary Stevig, Chickaloon Village.

A quick note in the regulations, I didn't see the terms for Federal highway agreements that -- for the purposes of carrying out the federal contract, that they will be deemed federal employees for the purposes of carrying out that contract, and also in regards to for maintenance, the reference that tribes come with -- Federal highway agreement tribes come with anyway may
I clarify, Federal Coverage Act. And that was something that I didn't see in the regulations. Just a comment.

MR. SPARROW: Thank you. What sort of management systems are out there? What sort of management systems are required by law that the Federal Highway and that BIA have to develop and maintain.

And then some additional information on bridge inspection. Bridge inspections -- or inspections of tribal bridges are now required by law. They weren't required previous, prior to MAP-21, but MAP-21 specifically goes into detail to include tribal bridges have to be inspected every other year. So there's discussion in the regulation on how that's going to be followed. There's not much in there, because it's still kind of being developed at Federal Highway. But it referenced -- goes back and it references that part of the law which the other part of Federal Highway is fulfilling,
so we're just referencing that. Whatever the bridge office of Federal Highway comes up with of what's required for bridge inspections, that's what we're going to have to follow. Yes.

MS. LAMPE: Is that a funded mandate?

MR. SPARROW: It says in there that the funds for bridge inspection can be -- yes, it is. And if you wait until the break, I'll tell you what it is. Okay.

So let's go back to transportation planning. You've got Q's and A's in there talking about the definition and purpose of planning, what's the BIA and tribal roles. The BIA -- actually it should say BIA, Federal Highway, and tribal roles. Another correction, Mr. Gishi.

Funding sources. Another one. God. IRR Program construction funds. I'm sorry. I worked with IRR Program for 12 years. I cannot get it out of my head.
The Tribal Transportation Program funds and the planning funds, and how they can be used for transportation planning.

Long-range transportation planning.

Yes, Julie.

MS. BALTAR: So you know it's me.

MR. SPARROW: And I know it's you.

We have an issue with LRTP being used for plan or being used for planning. We'll have to clarify that.

MS. BALTAR: Well, actually this one has to do with the content.

MS. PHILBIN: Excuse, Mrs. Baltar.

MS. BALTAR: I'll wait.

MS. PHILBIN: Thank you. Identify for the court reporter.

MS. BALTAR: Julianne Baltar with Bristol Bay Native Association.

Actually my comment is to 170.411 which is under content, and it says what should a long-range transportation plan
include. And though it's a one-word change, it's a change from may in the previous regulation to should in the rewrite. And I'm just wondering, was there something in MAP-21 that required this change? Because if it's not in MAP-21, I'm not sure why you would be changing that language, because there's a big difference between may, that these things may be included in the plan versus what shall be included in the plan.

MR. SPARROW: Okay. Thank you.

From the LRTP, talking about -- it describes the purpose, the development, the content as Ms. Baltar just spoke, approval and updates to the plans. Public involvement, what kind of public involvement is required. And also what the definition of what type of work goes into pre-project planning, and is there a clarification between pre-project planning and overall program planning.

Further discussion on the Transportation Improvement Program, or the
TIP. It defines what a tribal priority list is. It pretty much follows what was in the regulation back from 2004. What a tribal TIP is. What a TTP, Tribal Transportation Program, TIP is. Then how that all gets rolled up into the STIPs. It talks about the development, how do you develop it. What kind of public involvement or public participation is required. And the process for updating and amending a TIP once it's been approved.

Public hearings and public involvement in your planning process. How do you go about determining whether or not you need a public hearing? What kind of funding is made available, or what kind of funding can be used for those public hearings. It goes into processes. How do you inform the public that you're going to hold a meeting? How do you conduct the meeting? And then how do you appeal a public hearing decision. If a decision comes out of that public hearing, how could that decision be appealed. So that's
described in this particular section.

NTTFI. Again it defines what's in there. It describes how to list a proposed transportation facility, how to update it, and what the minimum attachments are. Looking for information -- or not information, but comment on the list of proposed -- putting a proposed facility in the inventory. Provide that information back to us, please.

Environmental and archeological requirements. What kind of environmental and archeological requirements are -- have to be followed for the Tribal Transportation Program. Can you use tribal transportation funds to meet those requirements. So it's telling you what kind of requirements you need to meet and then what kind of funding is made available -- or can be used, not made available. What of the funds of the tribal share funds can you use to meet this information or meet this requirement.

Yes, sir.
MR. STEVIG: Gary Stevig, Chickaloon Village.

When I reviewed it, or initially going in, it said environmental reviews. And then later on within Title 25, Part 170, later on in the back it said in the heading, you're able to meet all the environmental requirements that are requested. And so there was a disclaimer in the back of Title 25. And originally going in, I wanted to say, what do you constitute environmental review? I didn't see a definition in there, but that was the only reference that I saw for environmental and archeological in the new draft.

MR. SPARROW: Okay. Thank you.

Designing a project. Again, what kind of design standards. It lists the various standards that you can -- that are approved for designing your projects. Asking for a design exception. The process of how you ask for that design exception. How to appeal that design exception if your exception...
is denied. So that process is included.

Review and approval of PS&Es.

First of all, plans, specs and estimate, that is the package. That's the design, the estimate, and the set of plans themselves. So it talks about what's in a project package. And then it's changed a little -- it's changed, because when the reg was put in place, it was very specific of when and how a tribe could approve its own PS&Es, and looking at second-level reviews, and all this other kind of stuff, the difference of if it's a tribal facility, a BIA facility, or another facility. Not it just talks about how the tribe can approve their own PS&E, because that's what the law says. In MAP-21, as it was in SAFETEA-LU, it said the tribe could approve its own PS&E if the tribe does this and this. So this reg has been updated to reflect those changes.

What's the Secretary's role in reviewing the PS&E package, and actions if we
see a design deficiency. That pretty much is
the same as what it was before. If you see a
design deficiency, you have to bring it
forward.

But with regards to designing and
approving your own PS&E, your professional
engineer signs and stamps those drawings,
provides a certification that the design meets
or exceeds health and safety standards.
Certifica -- a copy of that certification is
provided to BIA or Federal Highway, and you
move on.

Yes, ma'am.

MS. LAMPE: Doreen Lampe from
Inupiat Community of the Arctic Slope.

Under plans, specifications, and
estimates, when you're doing collaboration
with your local governments in your region and
they provide you gravel stockpile, but you
don't have an inspector in your region to
determine the quality of gravel is acceptable
of not, and then you have the BIA officials
come in and put their two cents on that gravel
is not suitable for road construction, what's
your -- what choices do you have? What do you
do then? You're already building it.

MR. SPARROW: I think that's
something you've got to take a look at on a
case-by-case basis, but in designing and
building the roads, there are standards that
have to be met. And if they're not met, then
the material isn't -- you know, the material
honestly shouldn't be there in the -- and put
in the road. I don't know. I'd have to look
at each individual case, but the design
standards, be it the state standards, or
federal standards, or BIA standards, or, you
know, whatever it's identified in the reg,
they have those material standards that that
material has to meet. If it's not, it's going
to fail.

MS. LAMPE: We don't have
pavement.

MR. SPARROW: Well, it's not just
pavement, that's what I'm saying. Even in
gravel roads, there's specifications of what
have to be followed for that material on a
gravel road. So I mean, I'd have take a look
at it on a case-by-case basis, but, you know,
whoever designed that road has to have a
specification for that material, and that
material has to meet it, or you'd have to ask
for a design exception and work it through the
process of a design exception, which talks
about previously when we talked about design
and asking for design exception. But that --
and it shows you the process that you have to
follow through.

Construction and construction
monitoring. What are those construction
standards? What type of monitoring? What
type of inspection? What type of -- how many
times do you have to test the concrete, or
test the gravel, or test the subgrade?
Information on the standards that have to be
followed with that.
From a project administration perspective, what kind of reports, what kind of records have to be kept on a project, or should be kept on a project. If it's a BIA project that the BIA is operating on behalf of the tribe, what are the requirements that the BIA has to follow, and providing those documents to the tribe or to the public. If the tribe's doing the project, pretty much the same sort of monitoring and reporting requirements, but what type of availability does the tribe have to make those available to Federal Highway, let's say, if we come up to look at a project.

Excuse me. And then when it comes to construction project closeout, who do you invite to the final inspection? Who gives the final approval? What kind of reports have to be provided? And then who has to do that final closeout report itself? There's a closeout to every project. Does the tribe do it? Does the BIA do it? It kind of depends
on who did the job in the first place. It
describes that type of information.

   Excuse me. Management systems.

It talks briefly about management systems.

What type of systems are required. A pavement
management system. A bridge management
system. A safety management system. Those
types of things.

I'll tell you, this new bill that
Congress has passed is really pushing towards
performance-based management, which means I've
got X-amount of money, and I did X-amount of
things, and I did X-amount of improvements,
and reporting that back to them to
substantiate the amount of public funds that
are made available. This is something that's
really being pushed now at Federal Highway,
and I don't see it changing, and I don't see
Congress making any changes. With all the
reporting that we have to do now up to
Congress, a lot of it is based on what have
you done with the money we gave you? That's
really the bottom line.

Yes.

MR. STEVIG: Originally going in, I saw our line items and budgets in 2004, it said performance based. So to me, we're already somewhat in line with respect to the new laws coming down.

MR. SPARROW: We have been. We're working towards that, but the point I'm trying to make is we've not seen this statutorily like this in the past.

Yes, Sam.

MR. THOMAS: Well, with your six percent, why don't you come up with a model template that the tribes could use for management systems along with what you guys use internally? That way it's uniform across the board.

MR. SPARROW: Good point. Good comment. Thank you.

Bridge inspection. As I said before, there's a new statutory requirement
for when and how bridge inspections are to be
performed. The notification requirements of
when someone's coming out to inspect tribal
bridges or BIA bridges. They wouldn't be
inspecting tribal bridges unless you knew
that, so let me back that up and say BIA
bridges. But the notification process that
someone is on the reservation or in the
village doing bridge inspections.

It talks a little bit about the
minimum qualifications of what the bridge
inspectors -- what kind of education do they
need? What kind of certification do they
need?

And then the distribution of the
bridge inspection reports.

Honestly, this all ties into what
-- to that whole bridge inspection section now
of MAP-21. Bottom line is the tribal bridges
will be included in the national bridge
inventory system and be recorded there. And
they'll have to be inspected.
Now, a question came up as to where the money is going to come from to inspect those bridges, and we're still trying to figure that out, because there's language in there that says it's to come out of the tribal shares. There's other, you know -- and for the money for the -- for Park Service, it comes out of the Park Service program or the Park Road Program, or it comes out of the IRR -- or the TTP program. But it says in there for tribal bridges that it comes out of the tribal shares. So we're still trying to figure out, get our hands around what sort of inspection type system we're going to have to come up with or be told we have to come up with, and then working through that process of trying to get the program underway and the bridges inspected.

Yes, sir.

MR. STEVIG: Gary, Chickaloon Village.

The tribes need the ability to
build new bridges. All the terminology is for existing bridges, and Alaska's new to the program. We need new bridges.

MR. SPARROW: One aspect on top of that -- thank you, Mr. Stevig.

One aspect on top of that is the fact that prior to MAP-21, the bridge program was a stand-alone program at $14 million. Provided funding for rehab or replacement of deficient bridges. That program as a stand-alone program, not only is it gone, it's been pulled back as a take-down. What used to be $14 million now is $9 million, which I told you before comes down to about $8.6 million. So the program's gone from 14 million to 8.6 million, and it's a take-down of the TTP program, not 13 or $14 million in addition to the TTP program.

Appendix A to Subpart D talks about the cultural resources and environmental requirements of the program. Appendix B is the design standards we talked about.
Appendix C is a new appendix. It used to be part of Subpart C. It went back with the RNDF. It still talks about cost to construct. It still talks about functional classifications and other information when getting the documentation or getting your inventory updated, or getting your new roads into the inventory.

Yes, ma'am.

MS. BALTAR: Julianne Baltar with Bristol Bay Native Association.

The cost to construct, I'm not sure why we need that any more. You had mentioned that we might go back to something in a future authorization, but it might be totally different, too. It seems like an awful lot of resources can go into that activity it's not needed at this time.

Functional classifications I think are viable, though it might be worthwhile to review them. I know that during last year's comment period I had recommended maybe an
additional functional classification, for instance, for a primary access trail needs to be included. It doesn't really fit into the other categories.

But one other section, you have -- and I think it's this section, but I could be wrong. You also have the process for adding routes into the inventory, the minimum requirements, and it seems like it has ADT and a whole bunch of things in there that really aren't required at this time for, you know -- you're just putting a route in the inventory, you're not going to generate any funding off it. It's just so that you can actually -- if you need to build a project, you can put it in your Tribal Transportation Program improvement program into that TIP, you know.

So it seems like there's things -- some things that are still in the regulation that may cause burden, particularly in this region, where we're seeing for most tribes a diminishing in funding. And we just really
don't have the funds to do a lot of this extra work based on the ultimate benefit. You know, we're not seeing a huge benefit from it. So my recommendation would be to drop some of these things.

MR. SPARROW: Thank you.


The same comment.

MR. SPARROW: Timetables. LRTP. It talks about advertising for public meeting and the comment periods. None of that has changed from before.

425/427 talks about working through the process to submit a TIP, and reviewing the documentation and responding to the tribe. That hasn't changed from before.

Public hearings. All these dates are the same dates as they were previously. Design exceptions, the same sort of timeframes as previous. There's really been no change.
Again, just review and approval of the PS&E. There really is no timeframe, but I stuck it in here. This is the language out of the statute, you know, providing assurance that the PS&E meets or exceeds applicable health and safety standards, and then a copy of that certification is provided to BIA or Federal Highway.

Project closeouts must be completed with 120 days. That's the same as what was in the regulation before.

Bridge inspections every two years, but this time it includes tribal bridges.

Reporting requirements. Again going back to the long-range transportation plan. Requirements for public meetings and public notices.

Record keeping with regards to developing your TIP. When and how Federal Highway and BIA regional offices notify the tribes of updated TIPs and projected --
there's another mistake -- IRR program funding. I've got to quit cutting and pasting.

(Laughter)

MR. SPARROW: That's just not working for me. Either that or it was just too late in the night.

(Laughter)

MR. SPARROW: You know, because, you know, sentimentally I just -- IRR is like right here, you know, I just can't get rid of it all.

We've got to quit coming to Alaska first.

(Laughter)

MR. SPARROW: This is getting brutal.

If the proposed TIP amendment, how to amend it, a current TIP, timeframe, reporting requirements, et cetera, et cetera.

Public hearings. What's that?

Again? I did, didn't I. Right there.
PARTICIPANT: Give us a million every time it's still in there.

MR. SPARROW: Oh, yeah. Yeah.

(Laughter)

MR. SPARROW: Let's see here. Construction reporting. That table is in there, and it says what needs to be kept. None of that has been changed. And that's it. And according to my records, I have no changes have to be made. There's no IRR in here. I never saw it. TTP is there.

(Laughter)

MR. SPARROW: We're going to go through the rest of it. I'll come back up and talk about the APP program at the end. I think it's going to flow real quick from this point on.

I apologize for getting into the detail on the -- in the funding formula. It is complicated. Every time we go out, we try to make sure that we explain what's going on,
because it is so complicated, quite honestly.

But why don't we take about a 10-minute break? 15-minute break.

MS. PHILBIN: Bob, TTP is changed in the rule -- the proposed draft they have in front of them.

(Whereupon, the above-entitled matter briefly went off the record)

MR. GISHI: There's lists in the appendices which are much longer than actually the portions -- the sections of the regulations are, so as we go through them, we'll identify some of those things. But in order to be able to really get a good grasp on it, you have to be able to see the list that's in there associated with -- in the subparts themselves.

Subpart E, service delivery for Tribal Transportation Program, for the TTP, primarily deals with -- initially when this was developed as part of the regulation, this was the portion that primarily addressed the
contractual procedures, the processes that involved how services are to be procured or in the case of Indian Self-determination Act, how the tribes are to perform the work. And, of course, as I mentioned before, a lot of that is already in the regulations in either 900 or 1000, and so where it was applicable to repeat those sections, we did. Otherwise we're basically saying, comply with 900 and 1000.

Now the difference here though is we also included references to the new Federal Highway agreements and the BIA government-to-government agreements in terms of availability of agreements or contracts that tribes can enter into.

This subpart basically covers the funding process, a strict part of how funds are made available; contracts and agreements. There's miscellaneous provisions that talk about how contract support cost applies; how start-up activities would be considered; force account methods. There was a question earlier
about force account, and we'll talk a little
bit about that in here also.

And talking about those Tribal
Transportation Program functions that are not
otherwise contractible. And that was a big
change in SAFETEA-LU, and actually changes
that were in TEA-21 also about the -- it has
kind of evolved, particularly in those two
particular authorizations, TEA-21 and
SAFETEA-LU, about what is available and what's
considered contractible in terms of the
program itself.

This tells how the Indian Self-
determination and Education Assistance Act,
the Federal Highway Administration, and other
appropriate agreements and contracts can be
used to contract for programs through the TTP,
and, of course, for Title 1 contracts, Title
4 agreements, and the Federal Highway Program
agreements, and then the other appropriate
agreements, which includes everything from
purely pass-through agreements that we have
sometimes where we have a state that is
looking to provide funds to tribe and does --
and the tribe knows what it's for, the state
knows what it's for, and -- but they have no
way of being able to provide those funds. And
the BIA will generally in that case act as a
mechanism to do a process of providing -- I
clean also.

(Laughter)

The rights of first refusal,
contingency funds in terms of -- all these
things that normally come up in terms of the
regular self-determination contracting
procedures that are out there, how does that
apply, what's the application of those within
the TTP program. I almost said IRR program.
In the TTP program, including cost overruns,
how are those handled. And, of course, a big
issue that was really a big issue early on
back in 2000, the early 2000, regarding
advance payments, which is not really an issue
any more, because all funds are treated fairly
closely to the Title 4 type of agreements, as well as the other agreements consider that a big part of government-to-government is the providing of funds in advance.

This also covers Indian preference in terms of contracting and hiring versus local preference. Contract enforcement. And again like I say, a lot of these are applied based on what's currently in the existing regulations in 25 CFR 900 and 1000.

Buy Amer -- Buy Indian Act as a whole, the Buy American Act, and how those apply within the TTP. We've got a little reference to that.

And the application of federal acquisition regulations and Davis-Bacon wage rates with respect to these various types of agreements also.

Again it covers, to repeat, force account work. Waivers of the regulations, who has that authority and responsibility.

Federal Tort Claims Act and how it applies and
where it applies. Technical assistance available to tribes who are planning to contract.

Again here's the IRR program. I thought I did a better job than Bob, but I guess I didn't. Another million. What are we up to now?

And/or functions and savings. And the whole idea of how savings fits into this process again. Savings is a big element that's part of the normal Title 1 and Title 4 contracting requirements, but we treat it a little differently here from the standpoint of the fact that in most programs that are out there, under the DOI appropriated programs, they're not tribal shares. They're basically -- in some cases we have TPA, but for the most part it's based on again need and -- provided as a regional formula and then based on need at that point. In this particular case, of course. And so savings are looked at differently in that perspective as opposed to
here when it's tribal shares.

The funding process. It describes the process of publication of the notice of availability of funds. We've come a long way since we started this back in 2002 when we were first working on these regulations. We now have a lot more available to us in terms of -- and as you recall, we've gone -- we went through a spell where we just actually couldn't get anything published in terms of at least the BIA -- Federal Highways has been functioning fine, but from the BIA in terms of getting on the internet and allowing people to be able to look for things and find things there.

And how FHWA approve Tribal Transportation Program TIP, the Transportation Improvement Program, how it fits into that and determining what's amount -- what the amount of funds that are available.

It explains how the funds may be acquired if unforeseen costs are encountered.
And, of course, it follows very closely what's in -- this is one of those instances where we took it as much as we could verbatim out of what's currently in the regs under 900 and applied them here.

We have miscellaneous provisions. Again, not only can BIA do force account, but Federal Highways can do force account. And the question was, is why don't we have tribes listed here? Because tribes don't have to do force account. If we do it from a BIA perspective, then generally the process of making funds available and activities available to tribes is based on first and foremost the offer to the tribe; second Buy Indian Act for -- followed by Indian companies or individuals who have the ability to do the work. And then, of course, other open contracts themselves. And included in that, obviously, the right of first refusal is the BIA or Federal Highways also being able to do the work if that's something that the tribes
agree to in that process.

   It clarifies legislation,

regulation, and other requirements for
procurement in terms of again relating it back
to those that are currently in existence with
-- in 900 and 1000.

   And then the one area that it
talks about is how -- because this is a tribal
shares program, how does this all fit into
contract support costs. And because this is
a tribal shares program, it is very much -- I
mean, there's very few, if any, programs that
are out there in the DOI arena under Office --
the operation of Indian programs or other
programs within the Interior that have a
tribal shares formula where it's in statute,
but this is what a tribe is going to receive.
And as a result of that, of course, now we
treat them in terms of some of these things
that we're looking at that are available under
the Indian Self-determination Act is
identified.
What TTP functions a tribe may assume. And, of course, we know that as those functions which are contractible and which -- those which are not are also listed as not being available or the non-contractible project activities, which is primarily -- one of the things that SAFETEA-LU did -- and these regs are pre-SAFETEA-LU. One of the things that SAFETEA-LU did was, as you read the regs now, or as they exist right now, it talked about that the funds made available for activities which are otherwise not contractible were program management and oversight. Program management and oversight. Anything that was project related was at that time considered a function that the BIA could go in and say, if it's your tribal share, and you -- and we're going to do the work of approving the plans, if we're going to do the work of monitoring the project, even the final inspection which is an inherent function, that we would go and take from your tribal shares
that amount of money to perform that function.

   Well, SAFETEA-LU make it very
clear in addition to identifying that six
percent of the funds would be available,
specifically the amount equal to six percent,
is actually a cash amount, $27 million for the
last year of SAFETEA-LU. It identified
included project-related administrative
activities. And if you -- you know,
government, we're real good at acronyms. If
you look at what project-related
administrative expenses is, it spells PRAY,
and that's basically what we started doing
when we realized that that's how the law was
written. We starting praying. Because what
we normally would do with about $40 million
for the program, at that time running at about
275 to 300, was we would use that amount to do
those project-related activities, which were
administratively required, but we considered
them as being inherently federal. Well,
SAFETEA-LU came and said, no, you need to do
all those things which are your

responsibility, inherently federal, even the

project-related stuff, and you need to take it

out of this one pot of $27 million. So that

changed a lot of things that were there.

So what this does is this takes a

look and says, how is it that we're now -- how

that funded and how is that developed. And,
of course, we talk in there about a national

budget that we develop working with the

regions in terms of being able to make that
determination, and the fact that this now just
doesn't apply to us, this applies to Federal

Highways, that we work out a process of a

budget with Federal Highways for that amount.

It talks about technical

assistance, the process of providing technical

assistance. And that's a big thing, and I

think a it is, that's one of the areas that

we're really starting to identify as areas

that we should be shifting our mission towards

is technical assistance as opposed to what we
were before, which was oversight and monitoring. Oversight and monitoring was when we were talking about earlier, saying, you know, we want to see your cylinder breaks at 7 day, 14 days, and 28 days. That's the way it used to be. That's in part some of the things that we're seeing still in Subpart J, 900. But under the concept of what's come about with TEA-21 and SAFETEA-LU, and even more so under MAP-21, it's pointing us in a direction of government-to-government so that we -- you take a look at your cylinders, you break them at seven. You know the law, you know what ASHTO says, and ASTM. You break those cylinders at 7 and 14 and 28. You know when you're in compliance or not.

You have a built-in quality control system that you're doing it, and you're not necessarily looking to us to be able -- we can still provide the technical assistance, and that's why it comes in.

That's where we're trying to emphasize our
direction to help that process succeed as opposed to I need to see your plans, can you send me your ADTs? I don't think this is -- design is right. That's why the design approval process can rest directly with the tribe. The tribe has that authority to do that as long as they have licensed professional engineers.

They certify that they're going to comply with all health and safety aspects of a project. That's not in 900 or 1000, but they still have to provide that information to the BIA under those requirements. But that's why technical assistance is a big item there. It may be one of the things that I think should receive a little more attention in terms of where we're heading in this area, but right now, rather than put it in there, it's something that is out there, and we would like some comments and feedback relative to that. Again, going back to that concept of being there to provide technical assistance rather
than an oversight role. And oversight's still there, but it's in a different fashion as opposed to what it was in the past.

   Indian preference provisions.

Again that's -- we talked about that. That's a big part of Public Law 93638. And the Buy Indian Act, both statutes. And there's other parts of the BIA working with tribes that are looking to updates those. If they do, we figured from the standpoint as a program, we needed to comply with what's there, unless specifically changed, with what's there in the existing law.

   And waiver of regulations. I think of only one place where we had a waiver early on was when we were doing the self-governance advisory -- or the self-governance pilot projects back in 1999 and 2000 did this come about, when we first started developing the regs, before we'd even finished them.

   Appendix A to Subpart E again is that -- those functions which are not
otherwise contractible. And again that's
making payments. You can't make payments to
yourself. If it comes from Federal Highways
into the system, we have to be able to make
that. That's those activities. Develop an
agreement, signing agreements, providing
technical assistance. Those are things that
are identified in there. Take a close look at
that and see what you think relative to those
functions also.

And there may be some things you
feel that may need to go in there, things that
you may think may need to come out.

Timetables. Of course, there's a
lot of timetables in terms of when we
reference 900 and 1000. There's a lot of
timetables that are referenced to that, the
fact that you get a proposal, you have a
certain number of days that you have to reply
as a federal agency, Interior. Those are all
part of it. It's referenced in there that we
will -- that we have to comply with those.

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And it goes without saying that we have to comply with the con -- awarding official who basically oversees those in terms of those agreements themselves. And a big part about it is, is that's -- those are negotiated with tribes, you directly with tribes in terms of the Indian Self-determination and Education Assistance Act.

When do BIA and Federal Highway determine the amount of funds needed for non-contractible, non-project related. This is what we talked about timeline is, is that at the beginning of the year each year the Secretaries will develop national and regional budget. And that's what we've been doing primarily since the reg came out. We developed one formula to start off with, and we since have changed it based on primarily the fact that with SAFETEA-LU in 2005, Federal Highways became a part of the process in terms of these funds, whereas prior to that it was only the BIA. So we began sharing and working
with Federal Highways, and we've modified those budgets based on that.

And pretty much it looks at the oversight function and the technical assistance function as opposed to the monitoring and those kind of things that were primarily there in the past.

Yes, Gary.

MR. STEVIG: Gary, Chickaloon Village.

A clarification. So BIA region, Alaska region, is receiving program administration funds to deal with Federal Highway agreements for the purposes of the inventory. And are all the regions receiving this money on a timely basis? Originally going in, I heard that our Alaska region was having some difficulties accessing the PMO's monies to do business with Federal Highway agreement tribes. I just wanted to restate that there is a mechanism for BIA to be compensated for working with Federal Highway
agreement tribes. I know it's on the books, but I'm just indicating I want to make sure Alaska region is receiving that money on a timely fashion.

MR. GISHI: Yeah. In the revision of the budgets, there's two regions that actually received more than the other 10 regions, and that is Pacific and Alaska for that reason, because it's just a whole different process of having to work through, and that includes Federal Highways, of course. And so far we've actually -- we've done pretty good, Stu, in terms of developing that budget. Stu wouldn't let it rest. He wanted to make sure he got his share.

And it worked, because the other tribes -- other regions were able to work through the process to be able to do that. but that's one of the big factors that we have to consider is how much money do we continue to keep at the region level relative to that to perform those functions that are associated
with activities that still apply to the Federal Highway tribes who are currently contracting directly with Federal Highways, because there's a lot of activities that are still -- that we still have to accomplish and complete there. Running the formula, of course, is one of them. Distributing the funds in terms of being able review it. The budgets and those kinds of things are part of that process. Good question.

Okay. That's delivery of service.

As I've indicated, that's pretty straight forward.

Subpart F, Program oversight and accountability. Again sort of continue to have a little bit of an overflow from Subpart E. And in terms of what program oversight and accountability is certainly has changed from where we were at when the regs were first being developed. Actually when the regs were being finalized, even then we've seen a lot of changes at that point from where we were prior
to that.

As you recall, some of you who were around, I don't want to give away your age, but some of you who were around back when we were still doing contracts back in 1998 and 1999, you recall that some of those contracts were this thick. They were just full of -- even though they were self-determination contracts, they had a lot of FAR requirements in there. They had requirements from the quality control perspective.

MS. LAMPE: Use the mic.

MR. GISHI: Excuse me? I'm sorry.

(Laughter)

I thought you were calling me Mike; I said, no, LeRoy. LeRoy.

(Laughter)

MR. GISHI: And so they were that thick, but it had all kinds of stuff in it. And the big part about that was, is how do we now, since we've come to SAFETEA-LU and since then with MAP-21, take a look at a government-
to-government process that allows us to be
able to even under those contracts develop
templates, streamline procedures that we can
reference agreements.

We have a self-governance template
that we use with tribes which basically is 10
pages, but in there it contains everything
that a tribe needs to be able to do, because
it doesn't reference procedure and tables and
charts and everything else. It basically
says, we will comply with Title 23, procedures
for design. We will design according the
ASHTO codes, the latest edition. A sentence
and a half.

And the idea is, is again going
back to the government-to-government concept
of being able to develop these agreements to
reflect what it is in terms of program
oversight.

So this section normally would be
a huge one, but it's actually fairly small
because a lot of those things are all
referenced in here that need to be addressed.

Oversight roles and
responsibilities under the program, and
through a stewardship plan. A stewardship
plan is primarily, we'll talk a little bit
about that in terms of what Federal Highways
expects of us to be able to do from the
standpoint of the roles and responsibility
that we have as an agency, and likewise that
they have.

Memorandum of understanding for
some tribes who still want to participate in
the program, but don't necessarily want to do
the work, but want to have some basis to be
able to say, this is what we expect in terms
of the service delivery.

Monitoring of the Secretary of all
Tribal Transportation Program activities.
When we get to that, we'll talk a little bit
about how the -- what the difference is, is
where we come from prior to this, and where
we're heading, and hopefully where we're at
right now in terms of the oversight and accountability.

And the use of formal program reviews to monitor regions and tribes, and for the purposes of monitoring and improving the program. Program processes. That's a big part of -- that's that trade off in terms of what we're looking at, but the trade off is really consistent with what we believe should be in a government-to-government concept. And as we get -- as you look at that part of the regs, take a look at that aspect.

Stewardship plans, or business plans somebody -- some people refer to them as, is basically identifies the roles that the Federal Highways and BIA have in administering the TTP program, and also describes the processes used in the program itself. We have -- we're starting with a new round of those in terms of -- and this is primarily agreements between the Federal Highway Administration and the BIA. We have various forms of things that
we do. We've got some guidance out there that
we've been working off of. We have an
existing plan that was approved back in 1999
or somewhere in that area.

MOUs. These are primarily between
direct service tribes. When a tribe chooses
for the BIA to perform the work of -- that's
associated with the program, generally it's
basically, yes, do the work, and we want to
see a road built, or we want to see a plan
prepared. We want to see designs on the
shelf. And that process would then of course
-- the Secretary would take that on and
perform that work.

This -- the tribes wanted to allow
their ability to develop agreements for that
purpose of just saying, this is what we -- you
know, we're not going to do the work, but it
would be nice if we had in X-number of days
these plans are going to be completed, that
this work was going to be advertised by a
certain date, that the cost of this would be
monitored and communicated with us on a biannual basis or quarterly or whatever. So those are things that you would look at under these MOUs.

And, of course, it describes how this process is to take place. Meetings, times, those kind of -- deadlines and those kinds of things as far as the carrying out of the TTP program on behalf of that tribe.

Timelines, timetables. What happens when the review process identifies areas for improvement. Part of the review process is that when we develop these different agreements, we develop a review process that allows us to first of all step back from things that we normally -- and really a lot of the states still have a lot of those built into their agreements when they work with local governments and contractors where they have certain things that have to be done, they have progress payments every two weeks. You have to submit those in, including
your payroll sheets, and that's how you get aid from a contractor's perspective. That's a contractor/government relationship.

What we're trying to work with here is a process of government-to-government, and in that context not necessarily look at those things, but also from a government-to-government perspective, we have to have a review process that allows us to be able to see what the tribes are doing, look at best practices, look at areas that we can provide technical assistance, and just in general make sure that we are -- that the tribes and we are making this project move along in accordance with the requirements of the law. Big time. Because the laws in terms of construction, there's a lot of things that are built in inherently to -- into the function, into the process of construction, design, those things which have to be complied with. We talked about this earlier, about bridge inspections and how there are
certification requirements that are associated with it. A team leader has to have 15 years of experience. Well, you have to be able to show those kind of data in order to be able to do that function. And part of that review process would be to take a look at those things and make sure that's being complied with. And that's at that very high level.

And if there's a correction action plan for the region or the tribe, than that needs to be provided within 60 days, again referring to the concept of a timeline for this part of the regulations.

Record keeping. What happens when a review process identifies areas for improvement. When the review process identifies areas for improvement, (d) says the reviewed tribe or BIA region implements the plan and reports whether annually or biennially to BIADOT, which is central office, and Federal Highways central office, headquarters, on implementation.
accomplishments. And this is not any different than any process that you go through when you do an A 123 type of review in which you're looking at complying with OMB circulars that require you to be able to make sure that you're accomplishing those parts of program implementation. The same thing happens here, except this provides a basis from a project perspective and a program perspective to be able to identify and report back and then eventually check that off as having been accomplished and then move on.

Questions. That's Subpart F.

MS. LAMPE: Doreen Lampe from Inupiat Community of the Arctic Slope.

Are your stewardship plans primarily for highway projects?

MR. GISHI: The stewardship plans -- the question is, are the stewardship plans primarily for highway projects. The plan is basically a document that just really talks about all the general activities associated
with the program. So it could be plans. It can be -- it could be development of a TIP. It could be how are projects selected in terms of what's the process that you go through in order to be able to do that. And a lot of those are actually referenced in the regulations, and in the law, because you would have to be able to say, this is why we do what we're doing, because it's in the law or it's in the regulations. So it's for the whole program as a whole. How do you -- what do you do when you have funds left over? The savings aspect. Well, savings -- you then refer to that part of the regulation that says it's tribal share, so it goes back to the tribe. That then provides a mechanism to be able to say, this is how the program operates in terms of how we oversee the stewardship of the program as a whole, not just from those activities which are contractible, but those which are not contractible which are part of our inherent responsibility to perform.
When we were breaking these out, I
told Bob I like E, F and G.

Maintenance.

MR. KEITH: LeRoy.

MR. GISHI: Yes.

MR. KEITH: I know with SAFETEA-LU
that -- my name is Robert Keith. I'm Kawerak
chair.

I know with SAFETEA-LU, I was
around before SAFETEA-LU with ICETEA and
stuff, but there was a lot of changes in --
that SAFETEA-LU brought about, and
structurally that was challenging to the BIA.
Now, with -- under -- and I'm just curious
about the -- with these new changes, is there
going to be enough resources out there for
direct service tribes or for BIA to -- because
Alaska is a pretty big, 226 or 230 some
tribes.

And I'm just curious about the
data reporting also. Is it going to be
consistent across whether it's Federal
Highways, whether it's a tribal consortium, or whether it's direct service, because that's been a problem. Data reporting to Congress has been a problem a problem with BIA in other areas with regards to self-governance when -- I don't think this will be a problem here, but you've still got three different parties, or three or four different parties, involved in roads constructions and maintenance. And is there going to be enough resources out there to handle the workload, because that was a problem under SAFETEA-LU, because that was -- that brought about a massive amount of change.

MR. GISHI: Thank you. A good question. We're going to -- if you'll give me your account, we'll transfer some funds over to you.

(Laughter)

MR. GISHI: No, he's right. I mean, that process has been decreasing. We were at one point up to 900 employees. We're down to about 600. So that kind of in a way
answers your question. We've had to in a lot of regions hold off on rehires. In a lot of regions where we've had 25 tribes in one region, 14 of them, and I think now 15 of them, have all taken on Federal Highway in terms of their contracts that are there. So we're seeing what we thought was the residual -- ultimate residual staff is what we're planning toward. If every tribe contracted, what would we look like? Well, we didn't realize that we weren't -- it wasn't going to be all 25 tribes contracting, and what would we look like managing those 25 contracts, but it turns out we're not looking at 24, we're looking at 11, because the other tribes, that funds -- those funds never come to us in terms of the program. So there has had to be some adjustments.

We're now looking at just in recent weeks the buy-out. We have a number of employees that have left the BIA in early retirement, and have been compensated for it.
And part of the requirement that the U.S. Office of Personnel requires is when you go through that process, you have to very strictly justify if you're going to rehire that position, because what you said was, if we let this person go, it's for a reason. We don't anticipate rehiring that position. And some of these were key positions that are out there. So we're struggling with that right now.

But in terms of where we're going, we've seen the funds increase, so our six percent has been able to increase relative to that. Even though there's some of that went back to Federal Highways, we're able to maintain that. And this year is really difficult, because as Bob indicated, before when the statute was written so that it said $27 million, that's a hard number. It didn't matter how much Congress took down in recision. It didn't matter how much Federal Highways reduced the program by ob limit, it
was $27 million. MAP-21 wrote -- was written differently. MAP-21 now says, those percentages are subject to those recisions and subject to that ob limit. So we're not getting $27 million now. We're getting, as Bob indicated, 26 and change. 26.5, 26.4. Which means there's a reduction of that much money also. So from that standpoint, that's an area that we've had to continue to monitor, which means that a lot of the impacts of any program is making sure that we first and foremost maintain our service to the tribes. And this is sort of an internal battle we always have at BIA no matter what program you look at, of being able to make sure that the program people who perform those functions are -- continue to be in there.

So from that standpoint, it has been difficult, and it's going to get much more difficult in terms of what is there. So we are in hiring freeze. We have to justify everything that we do. And at the same time,
we're still expected to perform these functions that are related to the program. So things that we look at are more web conferencing, more teleconferences, making sure that we get the coverage we need at a meeting, but not send two or three people. Kind of the tough life that everybody else has have to deal with over the years which we now -- has now impacted us as a program.

So I hope that answers your question. It is -- we're seeing it, and it's continued to be there, and we will undoubtedly see more and more of it, particularly in 2014 if we see some of those changes that are being predicted out there.

Subpart G used to be called BIA maintenance program, BIA roads maintenance program. It is now referred to as the maintenance program, because we have a maintenance program that came about as a result of SAFETEA-LU. Provisions of SAFETEA-LU changed, and then they continue to change...
even more under MAP-21 where we're looking at
a maintenance program that is eligible under
the TTP program, as well as the maintenance
program which this reg was initially developed
and addressing was the BIA road maintenance
program as a whole.

The question came about earlier
about how -- who has the responsibility to
maintain roads. Ultimately the entity that's
responsible for maintaining roads is the
public authority. And the public authority is
defined in not only Title 23, it's in our
regulation as a governmental entity that is --
that has the responsibility for maintaining,
can finance, construct, collect tolls for toll
and non-toll roads. Basically an entity who
has the responsibility, jurisdiction in terms
of a road itself. So from that standpoint,
the question came about was, is how does that
fit into the definitions that we're looking --
if you look at the definitions, that's what
we're trying to fashion that towards so that
if a road is identified in the reg -- in the road inventory, or the National Tribal Transportation Facility Inventory as ownership of one or two or three, then really that road is associated with in terms of the maintenance responsibility and ultimately who is responsible for that road in terms of making those improvements that are associated with it.

But at the same time we have to make sure that we understand that BIA roads are -- can be looked at from the standpoint that they are there for the benefit of the tribes. As a result of that, the tribe has a lot of say in the improvement or non-improvement of those roads relative to the tribal shares.

It talks -- we covered the tribe -- the BIA transportation facility maintenance program, and how it's unique in terms of its funding, its eligibility. Maintenance funding under the TTP program versus the DOI
appropriations. The eligible uses of TTP funds by tribes who have contracts and agreements with either DOI or DOT, primarily the highway trust fund programs funding, and the performance of those maintenance activities.

The standards that are to be used, the management system -- not necessarily the standards that have to be used, but the standards that are available out there that we can work off of. Management system requirements and responsibilities that we have to the traveling public.

Yes.

MR. STEVIG: Gary Stevig, Chickaloon Village.

How does the BAM-82-slash-draft play into this, the Bureau of Indian Affairs manual for the maintenance? Is that no longer the case, that that's a guidance-slash-regulations for maintenance activities?

MR. GISI: What you're referring
to is currently the status of the Bureau of Indian Affairs or actually what they refer to as Indian Affairs manuals, is -- are required by all programs within Interior, Indian Affairs, as to this is how we do business, or a least this is how we as an agency require ourselves to perform work associated with this program.

The IAMs have taken a very different direction in recent years. They're more like directives, more like policy as opposed to what we used to have is a real thick document that says, this is how you will -- if you cut pavement, here's -- and you put a pipe in there, this is how -- this is the cross section of how you would do it; this is the recommended depths of material. Those are no longer in the IAMs.

It basically says -- references a BIA handbook, okay, in which the BIA will then -- that's where you have those standard details of how you do things. So that part of
it is actually a process that BIA holds itself accountable within the Department of Interior, along with other programs, whether it's cultural historic preservation, whether it's record keeping, all of the things that are associated with an agency are still part of the IAM.

What we're looking at here is on a very much higher level in terms of what are the general requirements that we're looking at in order to be able to maintain roads. What are the responsibilities associated with that. Again, not getting into the details, but more on a very high 30,000-foot level.

Eligible uses of TTP funds for contracts and agreements. It mentioned that.

Standards and responsibilities to the traveling public.

List of tribal facilities, transportation facilities activities that are eligible for funding under the BIA -- under BIA facility and tribal transportation
facility maintenance. Again, that's associated with -- a lot of times we have funds that are associated specifically with that.

And we also have provisions for emergency maintenance, which is a part of anybody's maintenance program that's out there.

Funding uses for the BIA road maintenance program. Eligible facilities. When we talk about the BIA, we talk about those funds which are made available through the annual DOI appropriations. These are not the TTP program funds that primarily are the bulk of what this regulation's about.

The roles of local governments, tribes, and the BIA in this process of maintenance. And also what we -- what was put in there in the regulation in 2004 was a maintenance management system, very much is where you could probably refer to the IAM and the handbook itself would fit into this process, because it describes procedures of
what we would need to be able to do in order to implement maintenance activities, and which would include maintenance standards.

Having those things are important, particularly from the standpoint of any reviews or audits that are out there, and this is something that a lot of tribes are doing right now is they're developing standards of how they do things for the very purpose of internally within the tribe, someone's going to ask you, how do you do work? Well, this is how we do it. And 9 times out of 10, once they see that, they're going to say, okay, you've got a process.

But if you don't, my goodness, they just want to start drilling, why don't you have that? Is here a reason why? Then they start looking at performance and a number of things which they don't really need to. You may not have a problem. But having those procedures in place is a good idea, and this talks a little bit about what you need to be
able to use. You always have this to reference when you develop those standards at a tribal level for the roads that you manage and maintain.

The Subpart A is that long list. As I mentioned, this subpart is several pages long. The bulk of it is this list as to what those activities are. And the rest of it, of course, is just those sections that we covered here earlier.

There are no timetables as part of this process in terms of the maintenance and how it's -- what's concerned with that.

Record keeping. This is one of the areas that it talks about, and someone made mention of it earlier this morning, that part of Title 23 references that if for some reason there's lack of maintenance funding for a transportation facility not being maintained to certain standards, what do we need to be able to do? And there's a process of being able -- actually described in Title we that we
need to make this known to not only the
Secretary of the Interior, but also the
Secretary of Transportation. And it goes back
to that concept of -- it's -- that's one of
those tough things. It's written in there.
It's been in there for forever. We can
probably count on one hand, one finger, the
number of times that this has been actually
implemented across the board, not just on
Indian reservation roads or tribal
transportation facilities, but across the
board on all public roads that are out there
in -- on the state system, the county system
that's out there. But it continues to be
written in there, so it has to be complied
with in terms of what we need to be able to
assure that the roads are being maintained.

Yes.

UNIDENTIFIED VOICE: What does the
acronym stand for?.

MR. GISHI: Oh, transportation
facility maintenance management system. Okay.
UNIDENTIFIED VOICE: That's through IRR?

MR. GISHI: This is under an IRR.

(Laughter)

MR. GISHI: That's really TTF.

You're just not seeing it right.

Okay. Bottom line. Those are three sections that are there. Again very much different just because of where the program as a whole is progressing. We talked about contracts. Pretty straight forward. We talk about accountability and oversight. Pretty straight forward. On a government-to-government perspective, it really -- there's not a lot of things that need to be put in there other than the main things that need to be there, and that is the tribes are complying with the laws and regulations, that they have -- they can develop their own procedures to be able to assure that they are complying with those things. And the result of that is we do that from a government-to-government. We in
turn do the reviews, to make sure that we provide technical assistance, to make sure the -- from a broad perspective that the laws are being complied with.

So that's all I have for those three sections. The last section we have is the miscellaneous and the I section. Oh, okay. No, I don't have H. Okay.

MR. SPARROW: There's no change.

MR. GISHI: There's -- yeah, there's -- H is a section, miscellaneous, dealing with sort of a lot of odds and ends. Primarily though it deals with information that is for information purposes only. And when you look at like hazardous waste, how to respond to spills and things like that. Those are regulated through a number of -- Department of Energy, and what we wanted to do again as part of the concept of providing information and knowledge to tribes, and individuals who were doing this work was to make that available to them so that you can
become more informed.

The ERFO section is another part
of that, Emergency Relief, which is another
program that is entirely administered through
and by the Federal Highway Administration, the
result of which is again the information
that's there is for information purposes on
how that process works. In fact, we just got
a year -- two years now, a new updated manual
which just after they get it updated, we'll
now have to have to change, because now we
have the provisions of the Stanford Act that
were passed, and all of those things have to
now be implemented into that process, so --
but Bob's working that on it, that's his night
job.

Yes.

MR. STEVIG: Gary, Chickaloon
Village.

A quick note on the FEMA. When I
was reviewing the regulations, I saw between
the lines and the lettering, emergency relief
terminology, readiness, preparedness planning.
I'd just like to stress that in the future,
because of the changes to the Stanford Act,
there's going to be mitigation plans, and
that's going to be a requirement to activate
and allow the money to flow from FEMA.

So what I would like to stress
here is that for planning purposes that we all
-- as an eligible activity, that we can
develop FEMA mitigation plans.

MR. GISHI: That's important. I
mean, FEMA has actually developed a policy a
few years back on how it was to treat tribal
roads and BIA roads, so there -- they do have
a policy out there. I think it's -- very
little of it is known to the public, but
primarily in that perspective as to -- it used
to be they would say, well, if the roads
belong to another agency in terms of funding-
wise, then they have to deal with it. But
they actually were able to come up with a
policy on how they would begin making those
eligible, and that's out there. And so FEMA has been a big part of this in terms of coming up with solutions of what they needed to be able to do. And then, of course, the big thing is, is what we run into ERFA all the time, one of the big requirements was just as was noted, that it would only -- we could only advance this forward on -- at the declaration of the President, and now we've got certain authorities that tribes have, how does that now play into the whole process.

It was a big topic of discussion at the TIBC meeting a couple years back as to -- because at that time there was -- the Missouri River was flooding and there was all kinds of things coming up, and everybody was asking questions of what can we do to do that. Well, now you -- there's a process in place and it's going to be interesting how this thing develops as they go through developing procedures for that.

Yes, sir.
MR. THOMAS: Yeah, Mr. Gishi, would it now be the time to go ahead and address our comments that we have written? Or do you want us to hold off until later on?

MR. GISHI: He wants to do I.

MR. SPARROW: Let me do I real quick. It will be two minutes.

MR. THOMAS: Okay.

MR. SPARROW: Okay. Subpart I.

COURT REPORTER: Microphone.

MR. SPARROW: Subpart I. What I said earlier was the high priority program that wasn't Subpart C was part of a take-down and part of the whole formula under the old negotiated rulemaking formula has been eliminated, and those -- that program is now a stand-alone program called the Tribal High Priority Projects Program. But what Congress did was it basically cut and pasted what was in 25 CFR 170 and put it into law. It's a completely different section. If you look up MAP-21, the Tribal High Priority Projects
Program is listed as Section 1123 of MAP-21.

It's literally identical except for a couple of factors. One is, and we heard someone comment earlier, the fact that it's funded at $30 million, which is about what it was funded under the IRR program, but it's funded from the general fund. It's not part of the Highway Trust Fund. So because of that, Congress has to take additional specific action to fund this program. They did not do that this year. So the money -- this program is not funded for 2013. It's not to say it won't be funded for 2014. But just because we have a highway bill and we have an appropriations bill does not mean that this program is funded.

Because of that, there are different time frames. If you were successful or you made application to this program in the past, you'll remember you had to have the application in to BIA or Federal Highway by December 31st. And then by January 31st we'd
let you know that we got the application. By February 30 -- or I guess there's no 31st day in February. By the end of February we'd say, you know, we're reviewing them. and by March we'd make selection and ranking and by April the funds were made available.

All that is gone, because since it's not funded, there's no reason to day December 31st put your application in. What they've said is no later than 60 days -- or no earlier than 60 days after this program is funded, we need to have a call for projects.

So what that says is, you know, if Congress was to fund the program tomorrow, we'd have to go out with a notification that says, okay, projects are due, or applications are due 90 days from now, or something along those lines.

The most important aspect of this though is the content. It's the same as what it was before. Maximum program project size, $1 million. We heard that that's not enough, the problem -- and I totally don't disagree
with that, but the fact remains Congress says the project maximum size is $1 million.

The ranking criteria, which you see at the very end of this, it's the last of the last page, is the ranking criteria for how we are to look at the projects. That's the same ranking criteria that was in the reg. And as a matter of fact, in MAP-21 it states that -- I've got to find the exact language -- the projects going matrix established in the appendix to Part 170 of Title 25 CFR as in effect on the date of this enactment shall be used to rank all applications. So the exact ranking criteria that we used for the IRRHPP is the exact same that will be used for this if and when the program is funded.

So very little change. Just the fact that (a) it requires a separate distinct action by Congress to get funded; and (b) because of that, the time frames that were involved in the IRRHPP do not apply. It says, once it's funded, we get the call for projects
out. We have certain days, so many days to
respond, et cetera, et cetera.

Trust me, if this is funded, you
all will know. Especially you all, because of
how important this program was to the tribes
in Alaska. So it will be up to BIA and
ourselves, the TTAP centers, everyone, the
lawyers, everything else, to make sure that the
tribes are aware that this program is funded
if and when it gets funded.

I don't know if it will get funded
or not. You all know what's going on in DC
right now. Money's tight. We have
sequestration. We have everything else. But
this would require an additional $30 million
be act on by Congress.

So that's pretty much it. Okay.

Any questions on that.

(No comments)

MR. SPARROW: Mr. Thomas, do you
have some statements?

MR. THOMAS: I have to wear some
cheaters. Somehow the copying got blurry when
I copied it.

MR. SPARROW: Sam, I would
encourage you to submit that.

MR. THOMAS: Yeah. I've submitted
one to the court reporter.

Mr. Gishi, Mr. Sparrow, Vivian.

When the Organized Village of Kasaan received
the dear tribal leader letter dated April
12th, 2013, a little bit of -- and then got
the revisions of 25 CFR, Part 170, I drafted
two letters identifying (1) the content of the
actual language in the dear tribal leader
letter, along with the contents that were put
forward to the tribal government to consider
in the consultation process of 25 CFR, Part
170, as well as the proposed requirements for
proposed roads and primary access.

So what the tribe did is they came
up with two different letters. One on the
actual dear tribal leader letter and then one
on just the revisions to the 25 CFR. If I may,
I will go ahead and read the letter identifying the dear tribal leader letter and how the tribe -- then we'll go on to the next part.

It says, Dear Mr. Black. The Organized Village of Kasaan has received the dear tribal leader letter dated April 12th, 2013 announcing the Bureau of Indian Affairs will be conducting a tribal consultation on draft proposed revision of 25 CFR, Part 170, the Tribal Transportation Program, as well as cover the requirements for the proposed roads and access roads to be included in the National Tribal Transportation Inventory.

First, I would call these tribal consultation -- I wouldn't call these tribal consultation meetings, because it goes the Department of Interior's tribal consultation policy and does not meet the definition spelled out within the proposed 25 CFR, Part 170 reg revisions. Consultation means government-to-government communication in a
timely manner by all parties about a proposed
or contemplated decision in order to (1)
secure meaningful tribal input, involvement in
decisionmaking process; and (2) advise the
tribal of the final decision and provide an
explanation.

Second, the Bureau has not
provided a red-lined version of the proposed
25 CFR, Part 170 so that tribes could do an
in-depth analysis of the proposed changes and
see what kind of impacts the changes may have
on the tribes. BIA has not provided any
requirements to the tribes on the requirements
for the proposed roads and access roads to be
included in the National Tribal Transportation
Inventory.

Based on what has been set to the
tribes throughout the United States on the
proposed revisions to 25 CFR, Part 170, as
well as the new requirements to be imposed on
the tribal governments should not be
considered an official identification of
tribal consultation until all the tribes throughout the United States have an opportunity to receive and analyze the proposed revisions and requirements to see what these impacts or potential impacts on tribal governments.

This is not consultation until tribes have all the same documents as the BIA and have an opportunity to review them for their content. Therefore we do not call this government-to-government consultation. But until action that has already been decided, these meetings for their formality.

I guess the tribe's basically saying that the -- we're feeling that the decision's already been made and that we're getting secondary information, and that's why under your definition of consultation.

Okay. The BIA has conducted tribal consultation on the proposed requirements for proposed roads and access that it might want to put into the National
Tribal Transportation in June of 2012. The tribes have not been given the results or comments from these sessions of how these questions were going to be weighed out. And now the BIA has come forth with requirements for the proposed roads and access roads. It's totally not government-to-government.

Okay. These are in an area in Alaska that have no connectivity from one village to the next, and most of these villages are connected by trails that are traversed by off highway vehicles, which makes it very unsafe and challenging in just getting to the places necessary to survive in the rural area.

Tribes cannot afford to spend these funds on the resources necessary to do the requirements needed to just put proposed roads on access road -- onto the National Tribal Transportation Facility Inventory. These requirements usually happen later on within the project development or specific...
road or route. OVK feels that these should not -- that there should be a sunset clause of five years instead of just outright making tribes spend huge amounts of money to get the routes in the National Tribal Transportation Inventory.

I guess this goes about to the likelihood of what the requirements under 170.443 is identifying to make tribes spend a lot of money in the preliminary planning process of getting stuff into the inventory as a proposed action, and we don't feel it's right.

I've got a lineup behind me.

(Laughter)

MR. THOMAS: I'll let these guys speak, and then I'll speak to my proposed revisions to 25 CFR, Part 170.

MS. DILTS JACKSON: Good afternoon. My name is Arlene Dilts Jackson. I'm with the Ketchikan Indian Community.

I submitted written comments, our
input on MAP-21, and I think it should be
noted that in order for me to come up with
anything meaningful to me, I had to go outside
the materials that I see here. I was
fortunate enough to be able to attend some of
the PCC meetings and those materials were
helpful. I had to talk to an attorney. I had
to talk to an engineering consultant who was
familiar with the program who had some
history, because only in that way can you come
up with, you know -- can you make a
determination of what the impacts are to the
tribe.

I'm only going to speak to our
most important issue, tribal consultation, and
meaningful tribal consultation. I believe
that the Secretaries could have initiated a
negotiated rulemaking process there -- here in
this, you know, in a program that's designed
to impact only Indians.

And when I -- you know I need --
we need to maybe to talk about what meaningful
means. I just attended a session with the National Congress of American Indians where we had all the agencies that had anything to do with any program in Indian Country come and report and talk about ways that they had, and, you know, interacted with tribes in order to get something meaningful on the table. And it was fairly easy to see in that process those that were observing what I call the minimum requirements in order to get through a process, and those that were truly interested in partnering and in involving and in engaging their partners in, you know, achieving an outcome.

FEMA for instance. In order to get -- in order to make it possible for a tribe to be involved in the declaration of a disaster affecting the Indian community, they held hands with them. Before they went to the consultation process, there was a lot of dialogue, there was a lot of involvement, there was a lot of outreach, because -- and
the guy who led that was very -- you know, very specific. He said, we did that, because we wanted to -- we wanted this to be truly meaningful in Indian Country, because once you engage -- once you start the consultation process, there are some really set rules on what you can do.

So I think as a couple of lead agencies dealing in Indian Country, that I would expect more than this. I think here, staying on schedule became more important than the consult. I think it's your job to make sure that those smallest tribes that can't attend these meetings where the other resources are available fully understand the impacts, even if they don't have much say in how they're carried out. I would think that you would want to spend the time to make sure that that happens in a good way.

Thank you.

MR. KEITH: My name is Robert Keith. I'm the Kawerak chair. I'm also Elim
IRA president.

You know, to characterize this a little bit more accurately, MAP-21 was basically a few big tribes versus small tribes. And it's not just Alaska tribes, because there are a lot of small tribes in the Lower 48 also that -- but how MAP-21 impacted everybody is kind of like a shotgun approach. It hurt some and helped others. And it wasn't -- I don't think it was planned that way by those that propagated MAP-21.

In regards to high priority projects, that was basically a target, because primarily Alaska tribes utilized that program. And in talking with LeRoy and other -- at another meeting before, the amount -- he was suggesting that the amount is not enough, and I kind of agree with him. But the number of tribes that were applying and the number of grants that were awarded, there was -- there's disparity there. So there's a need for it to be greater than $30 million. There is a need
for that to come back. And I hope the next evolution -- or next -- I don't know what they're going to call it next, the MAP-21, I hope it does sunset after two years.

But SAFETEA-LU carried on for five continuing resolutions?

MS. PHILBIN: Nine.

MR. KEITH: Nine? Oh, my. It was five years, yeah. Yeah. Okay.

Going back to 1991, I remember putting in from our tribe for roads on the inventory and three of them were proposed. And one's a trail now, and one is actual road, but -- and an ERFA project by the way, a former ERFA project.

But that's one of the things I want to get at from Kawerak's perspective is we object to the arbitrary treatment of proposed roads and the additional submissions required by 170.443. There is no reason to treat to treat proposed roads differently. The same requirements for submission of all
other inventory should be all that is required. Nothing in MAP-21 authorized a QA/QC team to oversee this. There is no appeal process. This will create an enormous disparate impact funding for Alaska versus the Lower 48. At a minimum, any additional regulatory requirements should only apply going forward.

Last February we offered alternative reasonable requirements and would like to know the status of your review and consideration of this letter that we forwarded to you.

We will do a follow-up with more comprehensive written comments.

Thank you.

MR. DANIEL: Clarence Daniel, AVCP.

And your slides didn't really, you know, cover all the changes in here. We had to go through and look it to find them all. And your presentation didn't really cover everything. And I think it should. I think
there should be more time to go over the
things will, you know, hit the tribes hard,
impact them hard.

I've been -- I am pretty new to
transportation still, but, you know, since
I've gotten involved with transportation, I've
noticed that we've pretty much had a hard
battle, and we've have to battle through
negative -- you know, negativity, negative
images. And I feel that all of the resources,
the funding opportunities that were available
are being taken away. And with these proposed
regulations, I feel that, you know, it's
making it harder for us to try to do what we
want to do. And is it because, you know, oh,
it's Alaska, they don't need money, don't give
them money. Is it because of that? Because
that's kind of how I feel since I've started
attending some of the meetings, you know, down
in the Lower 48. I've felt that -- you know,
I've been told by some tribes from the Lower
48 that we don't need this money, we're -- we
don't need to build this, we don't need to
this, but we're the ones who are living here,
and we're the ones who are trying to improve
the conditions for our people, just like they
were trying to do it for their people several
-- you know, a long time ago also.

So I would just ask that, you
know, we get some help from the federal
agencies, you guys on try -- you know, not
trying to put up a negative image on what
we're trying to do, because we're just trying
to serve our people just like everywhere else.

Thank you.

MS. BALTAR: Almost there.

Julianne Baltar with Bristol Bay Native
Association.

LeRoy and Bob, Vivian, Andy, all
of those that have been intimately involved in
this process, I think in general that what
you've got in this draft is very reasonable
for the most part. There are some exceptions
that I've noted a few of them.
But I would say that there are some definitions what weren't included in the original regulation that could have helped an awful lot with a lot of the processes that we've had. Gary sort of alluded to one earlier regarding ownership. There's been a lot of discussion on what does ownership mean. Does it mean that you've got maintenance responsibility? We've heard that stated now and then by Sheldon when he's done the -- you know, what does he give credit for ownership in the inventory, and we've been told that if a tribe maintains it, then the tribe can claim it as tribal ownership.

In reality, we need a good definition of what it means to own a road. And that would include for existing roads and for proposed roads, you know. You've got the definition for the BIA for a BIA system road, which is that the BIA either owns or intends to acquire the right-of-way. Something very similar to that could be helpful in the
proposed side of things, too, and for
tribally-owned roads.

But in general I have to give
credit to our new planner over here at Bristol
Bay Native Association. She did sort of a
section by section review, and I can say that
having looked at what she's found, it was
pretty reasonable for the most part, you know.
But I do strongly recommend that the
government consider going forward with a
negotiated rulemaking. You could work off
this draft and I don't think it would take
anywhere near six years in order to complete
it, and there 'd be a lot ore tribal
involvement, and I think the tribes would feel
more like they were involved in the process if
you were to do that.

Thank you.

MS. CALCOTE: This is Delice from
Alaska Intertribal Council.

One of the things that I had
written down was -- and it was brought up
Ouzinkie, was the methodology for funding the waterways, you know, how is that going to -- how do you determine the mileage from one village to another, or to a hub community where they get their fuel or whatever.

I'm from a big fishing family on Afognak Island, so we're very navigation oriented, you know. And how's that funding formula going to be for those tribes that are, you know, coastal, maybe near waterway. So that's something I think we need a little more information on.

And the website information that you mentioned several times, you know, I have to send out information to about 40 villages through fax. So, you know, we do need kind of clarification on maybe some things so that when we do forward stuff out to tribes, you know, that aren't able to have webinars or, you know, they're not connected -- well, their school and their clinic is connected, but, you know, for the tribal council, I have to deal
with faxes.

So we have to remember about those 40 some villages that have no internet connectivity.

And again I just want to thank you for bringing up the emergency plans and the ownership of the facilities, because in developing your emergency plans for oil spill and emergency preparedness, with FEMA, Homeland Security, those -- the ownership of those facilities and all the equipment, you know, to have barges and go out there, and that tribes, you know, what they're looking at is tribes, or tribal communities will own the rescue equipment, so, you know, where's this going to go to, what are those hub communities. You know, there should be 22 of them for all of the emergency equipment to get to designated spots. The RCAC determined that there -- we should have 22 hub communities with the emergency equipment. So those are -- you know, this is coming down the pike for the
tribes to be looking at with FEMA and Homeland Security, oil spill and emergency preparedness.

So more navigation, our waterway, and protecting those resources. So those all wrap up into transportation. Sorry to put more stuff on your late, but it's here. And I think those were my three points.

Thanks.

MR. HANSON: Scott Hanson, Chilkoot Indian Association.

Thank you for explaining the text we have. It's 106 pages. It's a lot to go through in one day. There's not many people here, and I think that perhaps there was too much to do explaining all that and consultation, too. I think that we're all interested in meaningful consultation. Perhaps it can still be done in a meaningful way.

There are a lot of questions and a lot of details, too, but we look forward to
more meaningful consultation over the details
that this means, because it means a lot to us.
There's a lot of details, and the impacts are
great with the numerous communities
represented here. So we would hope we could
have better consultation.

Thank you.

MR. SMITH: Hello. My name's Luke
Smith, and I'm with ONC in Bethel.

One of the things that wasn't
talked about in a whole lot of detail was the
ting immunity. There's a lot of villages out there that where
I come from there's like dual governments, one
by the State of Alaska and the other by the
federal government. The majority of the work
that -- like we partner with the state at
times. It becomes very difficult. I heard
briefly this morning that the waiver of
sovereign immunity is an issue where I come
from. And I think that should be described
or, you know, addressed in a little bit more
detail, so that, you know, there can be some understanding between the two organizations, like the state and the feds.

It -- I mean, it's a hindrance. I heard that. I heard that a little bit earlier. But I think that should address a little bit more in detail so that the villages out there, and even the federal folks can collaborate somehow to address the issue.

I just wanted to bring that up.

MR. THOMAS: Me again. Yes, I'm going to read the second letter in regards to the revisions to 25 CFR, Part 170. I'm Sam Thomas from the Organized Village of Kasaan.

This goes out to dear Mr. Black, the Organized Village of Kasaan has received your dear tribal leader letter dated April 12, 2013, announcing the consultation process for the revisions to 25 CFR, Part 170, the Tribal Transportation Program. And the Organized Village of Kasaan has reviewed the proposed revisions and offers the following input for
the proposed revisions.

170.5, definition of Alaska native. And basically we just offer to use the same definition as per SAFETEA-LU.

Under the National Tribal Transportation Facilities Inventory, I'd like it to read under number, was include in the Bureau of Indian Affairs system inventory prior to October 1, 2012.

And under number 7, our primary and access routes identified by the tribal government, including roads to villages, roads to landfills, roads to drinking water resources, roads to natural resources identified for economic development, and roads that provide access to intermodal terminals, such as airports, harbors, barge facilities and boat landings.

And then under the -- another additional definition, we'd like add tribal force account, and that means work performed by tribal employee, work force, or employees.
Then under Section 170.155, under number (2)-little (b), the committee consists of 24 tribal regional representatives, two from each BIA region. And we're suggesting a primary and an alternate be included to that. And then two non-voting federal -- BIA and federal representative.

Appendix A to Subpart B, allowable use of tribal transportation funds. Another one was -- I think it reads further on in those definitions after reading it, but under (30) we added a tribal force account, which would be the same definition as under -- identified within our definition under the same letter here.

Appendix B to Subpart B, sources of tribal transportation training and educational opportunities, number 8, BIA or tribal force account operations. Before it just read BIA force account operations.

Under Section 170.226, this goes back to the first part, number (a) were
included in the BIA Indian Affairs system prior to October 1, 2012.

And then under (g) are primary access routes identified by tribal governments, including roads between villages, roads to landfills, roads to drinking water resources, roads to natural resources identified for economic development, and roads that provide access to intermodal terminals such as airports, harbors, barge facilities, and boat landings.

And then under 170.443, I think this just -- this needs to be revamped as identified in the first letter, and that others have identified. This is putting a huge financial burden on a tribal government up front. I'm going to use number (e) of this subsection identifies documentation that a proposed road is feasible for a cost, environment, and engineering perspective. That's a huge undertaking, and just coming up with the planning to put a proposed or a
primary access road in for the inventory, I think it's not called for. I think it could be a deal breaker for tribes wanting to put -- when they spend all their money up front, they're not going to have any money for construction or things thereafter or planning activity; therefore we don't feel it's justifiably needed. I think more of a sunset clause scenario, say if a tribe could demonstrate from a perspective that they have -- move forward within a certain sunset time frame, you know, either three years, five years, whatever that sunset clause may be, to allow them to move forward with those different planning activities. If they can't do it within the sunset clause, then pull them off of the inventory. I just don't think imposing those kind of financial burden on them up front is a way to go.

And then Subpart D. I think with some of the provisions, or some of the activities identified in Subpart D, making it
sound like it's more of a federal inherent function versus a tribal function for the planning perspective. So I think some of those things needs to be looked at a little more in depth. I'm not -- just in reading it and whatnot, I think, you know, and some of my brothers and sisters in here are probably a little more better at wordsmithing and identifying what those different activities are to put it in a legitimate format to where you guys could make it towards more tribal user friendly than the way it's spelled out within the proposed identity here.

MR. SPARROW: What section is that?

MR. THOMAS: Subpart D.

MR. SPARROW: Subpart D?

MR. THOMAS: D. D as in David.

The planning section.

MR. SPARROW: Okay.

MR. THOMAS: And in relationship to all this, the Organized Village of Kasaan would like to take the opportunity to speak in
relationship. We felt that, you know, the
diligence was done for -- on the high priority
project thing not to tear that up and try to
re-invent the wheel on that. And we commend
you guys for that, because as you guys
identified earlier, it's a huge program for
this region. We probably took 70 percent of
the funds out of that program and brought them
back to Alaska. And it was geographic
isolation that was sustained in there, was a
key component of the reason why we got a lot
of those funds. So thanks again.

MS. BAHNKE: Melanie Bahnke. I'm
the president of Kawerak.

And I want to thank you for coming
up and allowing us this chance to interact
with you. I hope you don't feel that the lack
of people here in terms of the number of
tribes that we have is representative of the
lack of interest. Our distance issues,
remoteness do affect our ability to
participate.
I do have a suggestion that relates to that. If you're able to post comments as you receive them to a website, I think that would be very helpful for Kawerak. Just today even hearing from other entities and their comments has been helpful. So if you're able to do that as you receive them, especially prior to the June 14th deadline, some of the smaller tribes or tribes who don't have access to consultants and attorneys, and engineers to help us wade through what these proposed changes -- or how they would affect us, they might be able to take a look at what is being submitted and echo some of the concerns if they choose to.

Thank you.

MR. THOMAS: I'm not sure if you've concluded all your presentations, Mr. Sparrow, but you were going to talk about Tiger, and from my perspective, Tiger, you know, sounds good and everything, but there's some things in Tiger that's impediment to
tribes in Alaska to be able to compete nationwide. And we've addressed those, and it looks to me like they didn't get to the higher ups when they developed the criteria for Tiger. One of them's the cost/benefit analysis ratios, that we don't score very high when we're looking at cost/benefit analysis coming forth to the forefront when we're developing projects. So I think that would be, you know, something to look at, and maybe put higher up the food chain.

MR. SPARROW: I'll speak to that in a minute.

MR. CALUUM: Okay. With that, hearing no more -- or seeing no more people who wish to comment?

(No comments)

MR. CALUUM: Okay. With that we're going to formally close the consultation part of the meeting today.

(Whereupon, the above-entitled matter went off the record at 4:11 p.m.)
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CERTIFICATE

This is to certify that the foregoing transcript

In the matter of: Draft Regulations of the Tribal Transportation Program

Before: Bureau of Indian Affairs

Date: 05-14-13

Place: Anchorage, AK

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

[Signature]

Court Reporter