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

FEDERAL STAFF PRESENT

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

BEN BANFIELD, Little Traverse Bay Bands
LEONARD CROW BELT, Fort Peck Tribes
MONTE DAVIS, Gun Lake Tribe
JIM GARRIGAN, Tribal consultant
ARON HARRIS, Sauk-Suiattle Indian Tribe
JOHN HEALY, Fort Belknap Tribes
DAVE KELLY, Oglala Sioux Tribe
WES MARTEL, Eastern Shoshone
CHRIS McGESHICK, Sokaogon Chippewa Community
RONDA METCALF, Sauk-Suiattle Indian Tribe

ED "BUSTER" MOORE, Fort Belknap Tribes
BARAK MYERS, Eastern Band of the Cherokee Nation
JASON PALMER, Colville Confederated Tribes
VICKI RADTKE, Fond du Lac
TRACY ROBINSON, Northern Cheyenne
TIM ROSETTE, Chippewa Cree Tribe

DAWN SHERK, White Earth Nation
JOHN SMITH, Shoshone Arapahoe Tribes
TOM SPRINGER, Ho-Chunk Nation
BURNY TIBBETTS, White Earth Nation
Page 3
A-G-E-N-D-A
Welcome and Introductions . . . . . . . . . . .4

Brief History of 25 C.F.R. Part 170 and

Process for Updating the Regulation . . . . . 10

MAP-21 and Its Impacts on 25 C.F.R.
Part 170. . . . . . . . . . . . . . . . . . . 25

Break

Discussion of Updates to 25 C.F.R.
Part 170. . . . . . . . . . . . . . . . . . . 64

Break

Continue Discussion . . . . . . . . . . . . .164

Closing Comments. . . . . . . . . . . . . . .306

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

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

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

As we do with all consultations we have a court reporter who is here and he's recording the entire meeting. When you make your comments there will be -- we're asking the hotel to bring in a couple of microphone stands and another handheld mic. And so if you do make comments during the meeting please head to one of the microphones that we'll
have. We'll have one over there and one over here. Because although typically with most court reporters we have them using the, whatever they call them, it's not a typewriter.

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

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

And although the Tribal Transportation Program isn't directly affected by the sequester in terms of travel and some of the other, the optics as they say in D.C. rather than going out and doing 10 consultations, or as we did last summer we did
13 on the proposed roads and access, the Assistant Secretary's Office felt it would be better in this situation to be a little wiser about the number of consultation sessions that we did.

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

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

So with respect to this rule right now we're at the point where the -- we came up with an initial draft among the agencies, Federal Highway and Bureau of Indian Affairs. That was presented to the Tribal Transportation Program Coordinating Committee.
Some of you in this room typically go to those meetings so you may be familiar with my face and of course LeRoy's and Bob's and Vivian's who have been working on this for quite some time.

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

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

We are not doing a negotiated rule here as was done many years ago. We're
actually -- which became the product of what
is the current rule. And but yet we wanted to
get out and get feedback as soon as we could.
So with the draft that's where we're at. It's
simply a draft.

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

The next process, the next step
then after that is to put it in what's called
Notice of Proposed Rulemaking. The NPRM is,
one we get to that point we tend to lose a
little control over the process. It becomes
pretty formalized at that point. The
Department sort of takes over because then there's a formalized process after that.

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

As many of you know the current transportation authorization is only 2 years. It expires at the end of Fiscal Year '14. And so whether it gets extended, nobody knows. I mean no one I think could have predicted perhaps that -- well, maybe you could have predicted that SAFETEA-LU would have been extended. I'm not sure that the money would have been on nine extensions which is what we eventually went through to get to the point where Congress then came up with just simply a 2-year reauthorization. Which is pretty unusual. Is that about the shortest
reauthorization that we ever had? Two years?
Yes. So that's the basic process for what
we're going to do today.

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

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

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

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

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

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

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

So here we have the first publication of 25 C.F.R. in 1970. And up until 1982 all of the funds were on an annual basis which made it very difficult because we
had no long-term reauthorizations for the IRR program to do any long-term planning when the funds were just on an annual basis.

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

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

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

In 1996 we had the passage -- excuse me, 1998. By the way, ISTEA saw an increase in funding in the IRR program to $191
million a year.

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

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

But with MAP-21 which was passed this summer and signed by the President, our latest 2-year bill, it became imperative because there was a statutory change to the formula that we make the necessary changes to 25 C.F.R. Part 170.
All right, so these meetings are going to discuss the current status of 25 C.F.R. Part 170 statutory changes as a result of MAP-21.

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

Also, please sign in on the sign-in sheet. Any questions for those of you that are new to the program, any question is not too basic. We have the two gurus of the program, the chief of the BIA DOT Mr. LeRoy Gishi and the TTP director Mr. Bob Sparrow here.
By the way, the crucial difference for starters is that we are now the TTP program, the Tribal Transportation Program, no longer the IRR program.

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

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

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

Excuse me, we are going to have everyone introduce themselves before we begin.

Thank you.

MR. GISHI: We'll just start from
one end here. And if you'd just introduce
yourself we'll just slide the mic around as we
go on back.

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

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

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

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

MR. MYERS: Good morning, my
name's Barak Myers. I'm the manager of the
Department of Transportation for the Eastern
Band of the Cherokee Nation, Cherokee, North
Carolina. Also the primary representative on
the Intertribal Transportation Association for
the Eastern Region, primary representative for
the Eastern Region on the Coordinating
Committee as well as the chairman of the
United South and Eastern Tribes Transportation
Committee.

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

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

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

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

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

MS. RADTKE: Good morning, I'm
Vicki Radtke. I'm comptroller for Fond du Lac
Reservation in Cloquet, Minnesota.
MR. LUSSIER: Good morning, I'm Terry Lussier from Red Lake, Minnesota.

MR. BRANCHARD: Dean Branchard from Lake Bend.

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

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

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

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

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

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

MR. LEWIS: Good morning, Don
Lewis at the Red Lake Finance Department.

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

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

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

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

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

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

MS. HOFFMAN: Wendy Hoffman, Sioux
Tribe.

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

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

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

MS. BEAR CLAW: Good morning.

Angie Bear Claw from Crow Tribe.

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

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

MR. HEALY: Good morning, everybody. My name's John Healy, transportation transit director for Fort Belknap. Also president of ITA.
MR. SMITH: John Smith, Shoshone & Arapaho Tribes, director of transportation.

MR. GARRIGAN: Jim Garrigan, transportation consultant, Northern Engineering.


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

MR. RUSETTE: Ted Rusette from Chippewa Cree Tribe.

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

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

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

MR. HARE: Wesley Hare, Yankton
Sioux Tribe, transportation planner and transit director.

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

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

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

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

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

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

MR. CONNORS: I'm Ben Connors, program manager from Bad River.
MS. WOLF: Katie Wolf from Bad River, transportation planner.

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

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

MR. KELLY: Dave Kelly, Oglala Sioux Tribe.

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

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

MR. RENVILLE: Good morning, I'm Bruce Renville from the state of South Dakota.
with the Sisseton Wahpeton Oyate.

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

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

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

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

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

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

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

MS. STAPLES: Dolores Staples,
administration assistant to tribal
construction, St. Croix Ojibwe, Wisconsin.

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

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

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

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

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

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

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

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

I go back, the Tribal

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

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

And you'd begin to see a lot of the DOTs, the departments of transportation in
terms of the states. And for -- as Vivian mentioned since 1928 it was always referred to as a roads program although as far back as 1991 with ISTEA we begin talking about more and more emphasis on planning and public involvement.

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

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

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

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

And then SAFETEA-LU came about in
2005 due to expire at the end of 2009. And it went through 2010, `11 and `12. So essentially looking again at the 8 or 9 years as far as the extensions were there concerned.

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

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

The formula if you're familiar with TEA-21, in 1998 Congress said Secretary of the Interior you will, based on provisions of the negotiated rulemaking which is in the statute, you will go and begin developing a
program rules, regulations, and a funding formula through negotiated rulemaking. And that came out in '98. A committee was organized in the latter part of '98 and went through a number of years in developing this formula between representatives of the federal government and representatives of the tribes within the 12 regions.

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

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

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

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

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

There are set-asides associated with it. And Bob will talk in more detail about how those kind of fit into and how they
compare with what was there before. There is a difference.

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

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

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

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

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

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

Maintenance was a big change in terms of SAFETEA-LU and prior in that there was -- the change here is it allows for more use -- or excuse me, use of more funds that
are associated with the TTP in terms of road
maintenance rather than the limitations that
were there before.

We're going to talk a little bit
about set-asides, supplemental funding.
Again, Bob will go in more detail on that.

Two definitions to be mindful of.
These are in Subpart A is tribal
transportation facility inventory and the
tribal transportation facility as a whole.
One of course is the -- this replaces the old
definition under IRR. Any -- in the past we
used to say an IRR is any public road,
highway, bridge that provides access to or is
within -- this is the basic definition now
that's in, not only in statute but also is
what you'll see in the regulations.

And of course the requirements of
maintaining an inventory are still there
assuring that we have an inventory of eligible
projects. In order for us to be able to do
work they have to be on this list. And this
list represents ownership of BIA, tribe, state, municipalities, urban areas, counties, other federal agencies, and so forth. And that's a continuation of what we had before in our inventory. So a lot of that stuff hasn't changed. The definition and how they apply vary somewhat and that of course is in not only the statute but also in the regulation.

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

And the big thing is -- and the nice thing you see in what's in the regulation is that when the rulemaking committee was initially working through this in 1998 one of the things they did is they opened up Chapter 1 of Title 23 and they just made a list of everything that was eligible in there. And then they took that and they incorporated it into the regulations. So many of those things that are in the current regulations have
already been transitioned over. But of course
they're there for you to review and repeat.

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

Yes, Tim. Can you introduce
yourself?

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

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

MR. GISHI: Clarification. This

is talking about eligibility. We can continue
to update the inventory. And that was a point
I was trying to make. Any project that is --
in which these funds are to be used on has to
be in this inventory.

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

Again, there are a number of other
things in terms of how the program is
administered that are part of this process.

Obviously the big thing is that's been
emphasized from the very beginning is the utilization of tribal self-determination and self-governance in the process. Regardless of the type of agreements that are used they all point to direct the efforts of the Secretaries in the direction of self-determination and self-governance.

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

Point of obligation. It's available to all the federal land management agencies. That's what that means which means
Park Service, BLM, Tribal Transportation Program, as well as the Forest Highway Program, the Forest Service.

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

Big part of what we're looking at now, everybody, all programs, Congress has really seen a need for us as public agencies, public authorities to begin the process to make sure we implement asset management. Because the funds, as I mentioned we've got a 2-year bill. One of the big discussions is how are we going to fund the continuation of the Highway Act and these eligible activities.
You recall that a big part of what we used to do in the past was the Highway Trust Fund Account, an interest-bearing account. All the features that you would want in a program that represented an ability for the program to grow.

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

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

This is a big part of the regulations. Federal Highways is going
through the whole process right now of what
you expect the states to do. And of course
Federal Lands is following suit. And we'll
have directions from them as we go into that
arena.

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

Data collection. A big part of
the safety concept and the accountability of
asset management will be a new provision that
says in the past tribal bridges were not
required to be inspected, be accounted for.
We now have to be able to inspect all tribal
public bridges and make sure they are not just
bridges that are the responsibility of the BIA
but other federal agencies that are on or near
Indian lands, but also tribal bridges, bridges
that you as a tribe own that are driven by the
public which you receive funds for. We need
to make sure those are inspected, accounted
for, rated and either acted upon by replacing,
rehabilitating, or closing is one of the other
options also.

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

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

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

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

First of all, it talks about the
authority of the rule, the purpose and scope of the final rule as it exists and as it will exist. The policies with respect to the Tribal Transportation Program and BIA Road Maintenance Program. We've got two programs in there, I just noticed that.

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

Authority of the rule of course is Public Law 112-141 which is MAP-21, Moving Ahead for Progress in the 21st Century, Title 23, United States Code, and Title 25, United States Code. Primarily from the standpoint that one applies to the highway program as a whole which is unique to transportation. There is no highway program in the Department of the Interior. And then of course we are an Interior program within the Bureau of Indian Affairs and provisions that apply to self-
determination, self-governance and other areas in terms of appeals and so forth in recognizing tribes as sovereigns. And the whole policy of Title 25 is there also to cover that aspect of it. So those are the authorities of the rule.

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

And of course the application of these in terms of the Indian Self-Determination and Education Assistance Act, the contracts and agreements that are
associated with those particular acts.

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

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

Among those are the Emergency
Relief Program associated with emergency disasters. Another program is the Tribal Transportation Assisted Program centers which we refer to as the TTAPs. We have seven or eight of them nationwide. And then we have a new one that changed under this rule and that is we used to have a program called the Indian Reservation Roads High Priority Projects Program, IRRHPP.

That changed under the MAP-21 and when it changed Congress specifically established that that program was to be developed with the oversight of the Secretary of Transportation. So in those cases where those programs that are there, the movement of hazardous waste materials, these type of information, the committee at that time felt it's important to put this information in here for purposes of facilitating knowledge of programs and the planning process so that you as planners have one document that you can refer to, at least who to contact, the basic
ideas, concepts of the programs. When you're starting to look at these other programs which are not the oversight responsibility of the program but implementation and information is available.

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

One of the areas that, again, advancing policy, increasing tribal autonomy and a discretion in program operations in terms of how programs are developed and how it
would need to be deferred to the Indian Self-Determination and Education Assistance Act as far as procedures that are there.

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

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

MR. MCGESHICK: Chris McGeshick with the Sokaogon Chippewa Community. In the
policies here that you're talking about and
the rules and everything you also talk about
the consultation with the tribes. And each
individual tribe, I don't know if everybody
here is aware of it because we all have our
different expertises here.

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

MR. GISHI: There are certain
things -- you're right. And maybe I can have
a clarification from our Solicitor on that.
You're right, there are certain areas that
definitely you can ask for a waiver, regulatory things. But there are certain things that are in regulation that are not applicable and I'll have Vivian comment.

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

And we have had a very small number of requests. And I cannot say that -- I think some may have been with the purchase of equipment. I don't really recall all of them. But there have been a small number of requests. They were carefully considered. Some were allowed and some were not. But that provision is in the consultation Executive order.
But that, my understanding, the
ability to ask for a waiver is when
regulations would be onerous. And this 25
C.F.R. is supposed to be all-encompassing. We
really wanted to have a uniform application to
the IRR program and not have section by
section requests of waivers.

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

And I just think if we had some
information here on the waiver process and
what waivers have been granted that would
benefit some of us other communities.
MS. PHILBIN: Okay. First, Vivian Philbin again. First of all, anything that has to do with the formula is not going to be waived because that's statutory.

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

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

MR. GISHI: Thank you, Vivian. A couple of the provisions that are in here that I think have just come about exactly for that reason. Because we have such a large, diverse
program here that things have been identified. And we'll actually talk about a few things here today that may have an impact on any changes that come later on. But certainly from the standpoint of what we're looking at here.

There are a few instances that I can remember. One of them was early on, the bridge program, the national bridge program which sometimes would provide funds to tribes. But the rules of it were you had to have a local match, 20 percent or similar to that. And it was through -- in those particular instances where those tribes had those requirements that they actually didn't think applied to them those requests were made to Federal Highways and waivers were made in the program in terms of the interpretation and the ability for tribes to utilize their funds to be able to make that local match, utilizing federal funds was approved. So there's certain things that are
in there. We'll talk about eligible uses of funds as one of the areas where you can get an exception to that. New uses of -- design exception, new uses of funds are also covered in there. So as we go through there may be some areas that you will be able to address -- answer some of the questions that you have.

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

And the Indian Self-Determination and Education Assistance Act was last amended back in 1996. And there are some provisions in the law that basically apply to all construction programs. And sometimes the interpretation is that, well, if it applies to construction then it applies to transportation.
The exception to that is when transportation, and you have to assume that Congress knows what it's doing when it approves new portions of authorizing legislation to say except for in this case we'll treat this different.

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

And in there it says that the Secretary will continue to do that and will not allow approval for that function, for that purpose. Yet in Title 23 it says that. So that's one of the areas where if it differs from the act in terms of specifically MAP-21, SAFETEA-LU, TEA-21, Title 23 as a whole, make that change, then that's identified here in the regs.
Otherwise, the procedures that are
associated with the program about developing
applications, about the time lines, all those
things that are in the -- in 900 and 1000,
Subpart K and Subpart J, those are applicable
to the program and are referenced in that
manner.

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

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

Ideally, though, as we mentioned
what we're looking at is to continue to promote the Secretary's policy, the law regarding self-determination and self-governance in not only agreements but also in any of the functions that are associated with implementing the program.

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

And the other big thing we're looking at as part of this process that we're seeing more and more of is facilitating and enabling the transfer of not only funding but also programs, activities that are a part of Title 23 and Title 25 by making sure that if
there's any ambiguities in this process like the bridge program and the matching funds situation so that it is favorably ruled in terms of in favor of the tribes. So a big part of kind of how this rule was written in terms of the rulemaking committee as a whole.

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

Looking at government-to-government agreements again, that whole concept of where we have been when we get to that part of Subpart E, when we start talking about those agreements we'll bring a little more about the whole concept of where we're heading with the regulations prior to this.

And what do we want to do in order to continue
to build upon that concept.

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

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

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

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

Again talking about the -- what the federal government's role is and how it views tribes in terms of trust responsibilities of the United States. And in no case is there an effort or should there be to impede awards to tribes by state and
federal agencies. In fact, doing what we can
to enhance that either by developing Section
132 agreements with the states between the BIA
or Federal Highways and the states so that we
can find a way to be able to facilitate the
transfer of funds to the tribes either --
under any of the agreements that are
available. Because sometimes as you realize
that's not always possible from the state
perspective. And the only mechanism we have
is to be able to utilize what we can. And
that effort is part of the process and the
intent of the program.

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

There's no record-keeping or
reporting requirements in this subpart.

Primarily again it talks about the policies,
the application, the definitions in general.

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

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

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

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

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

I've got an announcement that this is -- Todd, this is handled through the hotel? The hotel catering office has, there's a buffet, $11.50 that's available for lunch when we break for lunch. Or if you want to grab a
lunch box and come back in here and sit if you need phone calls or you need to get on the computer. The lunch box is available for $10. And those are available till sold. I don't know what's in there. Might be a hot dog and a bag of chips or it might be a T-bone, I don't know. But that's available from the hotel.

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

So Subpart B. A little bit more of a continuation of the TTP, Tribal Transportation Program policy. And the big part of this is eligibility. When you see some of these initial subparts they may be five or six pages long, but they only have a few Q&A's that are associated with the
program. And the bulk of it you see are large
lists, large lists of either information about
eligibility, definitions, things that are
included as part of the program. And these
sections are no different than that. And
we'll talk to you a little bit about what
those are.

General overview of Subpart B.

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

Subpart B talks about the three
C's, primarily what we refer to as
coordination, collaboration, consultation
responsibilities in terms of the roles that
the individual agencies have and to an extent
they don't have. Because when we start
looking at it certainly there is a definite
relationship from a government-to-government perspective in terms of the federal government which may vary in terms of state and local governments which everybody's aware is very different in every locale and every state.

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

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

And some of these are not
specifically stated in the portion of the
statute but are referenced by virtue of the
fact that it talks about it in the previous
Subpart A that these eligible activities are
also part of the program.

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

MR. SMITH: LeRoy --

MR. GISI: State your name.

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

MR. GISI: John, state your name.

MR. SMITH: Oh, John Smith,

Shoshone Arapahoe Tribes. Cousin to LeRoy

Gishi.

But it would be helpful to our
tribal leaders who don't really know what is
new and old. And some of the tribal leaders
have just been appointed or been elected
sometime. But this is practically done
through the negotiated rulemaking committee,
correct?
MR. GISHI: Correct.

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

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

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

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

So part of that is one of the areas that we talked about here, construction eligibility. Of course we know the program is more than just contract but really it's the meat of what we're doing. Because infrastructure on Indian lands, reservations, and so forth is -- you're very much aware that we have a number of $70 billion worth of what
we call cost to construct or cost to improve. It means that's what it would cost for us to get the system to an adequate standard, not to a pie in the sky, four lane divided, everything paved, but whatever meets the needs of the local traffic, ADT population use adequate standard, about $70 billion.

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

But that doesn't mean that we can't do other things that are eligible and particularly if you're in an environment where you have very unique instances dealing with, for instance, recreation travel and tourism. If that's a big part of what you're looking at from a tribal perspective then those kind of
activities are certainly eligible and you have the ability to be able to manage those as you need to.

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

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

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

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

The other one is seasonal transportation routes, boardwalks and board
roads and trails. Utilization of a lot of these that continue to help support movement of people and goods in our communities.

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

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

We've learned through the years through some of these exceptions that Vivian
talked about about equipment purchase and
access that these are things that are now
identified in the regulations. So it does say
in this Subpart B in the list of eligible
activities it talks about equipment purchase,
capital equipment and so forth.

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

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

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

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

Consultation, the three C's.

Consultation, cooperation -- excuse me, collaboration and coordination. And some have even been recommending that they add another one, either communication as a part of that. But it provides a definition essentially again coming from a lot of what was done in the rulemaking aspects working with tribes. And a lot of that also came from some of the existing regulations that were available to the committee at the time under self-determination and self-governance.

It talks about the TTP government-to-government consultation and coordination policies. There are a number of things that are in there in terms of where it's important here is that anything that we identify in the regs we end up sending forward to, eventually under the formal rulemaking process to OMB, to the Department. And they look at it from a different perspective. Our primary partners,
our tribes, and in doing so as an Agency as an office we push those things forward based on what we've been able to work with.

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

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

It talks about also what are some of the things that we can do to assure that we
are meeting and adhering to provisions to
prevent discrimination and adverse impacts.
We know that in a lot of cases that's areas
that sometimes we've got individual concerns
that are out there.

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

And of course since then what have
we had? We had the current administration
that has made a tremendous effort in
redefining consultation, inviting tribes to
Washington, D.C. on an annual basis and
sitting down and talking about a lot of these
things, and getting the administration's, the
Cabinet involved in talking about some of
these things, well, I think all of those
things represent areas that are not the same
environment not only that we had in the BIA
but certainly an environment we had in
government as a whole. So those are areas
that have impacts as we go forward. So when
you're looking at these take a look at it from
that perspective as you provide comments.

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

Well, now it's changed. It says
25 percent or $500,000, whichever is greater.
So as a tribe if you get your annual tribal
shares is $400,000 in the past the maximum you
could use is $100,000. Now, you can use all
$400,000 for road maintenance activities.
That's a big difference in the eligible
activity areas.
And that wasn't -- as Big John said, that wasn't written that way in the current regulation. We've added that to it but take a look at that in terms of what's written there. And so those are areas that we're seeing changes in, obvious changes that we've seen in terms of the law and what is to be updated in the regulations.

Also what was mentioned before, there is provisions to provide a request for eligible uses of the highway funds under the TTP program. We'll talk a little bit about that in terms of what it references in there. This actually was in the original -- what's originally in the rule in terms of how to go about doing that. Provides definitions, restrictions, eligibility of cultural access roads. Again, an area that tribes came up with in terms of making sure that those were included and could be addressed in terms of not only protecting cultural areas but also making sure that if there was going to be any
participation what are some of the rules that are associated with that in order to be able to make those -- to continue to function in those areas.

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

Seasonal routes, access roads we talked about, toll, ferry and airport facilities. Big one again I mentioned down here before transit facilities. It's become a big part of the program. They have a separate set-aside under FTA which they now have a portion that is provided based on data as well as a portion that's based on an application process. And all those are in the announcement with FTA which is not part of this rule. I want to make sure it's clear it's not part of this rule.
But some of the activities are associated with, and certainly from a matching perspective can be -- these funds can be utilized to support those projects that you may be working with under FTA.

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

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

And their primary purpose of what
they do, it's very clear that they are not --
they do not represent tribal consultation.
They are a supplement to the process and for
that reason that needs to be very clear as it
says in there to provide input and
recommendations to the Secretary of the
Interior and Secretary of Transportation.

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

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

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

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

And in doing so we either do it
in-house or we go out and hire contractors to
do such. And anything that affects the tribe
in terms of the program, project or activity,
the Secretary is required in some form or
fashion either through a TIP, either through a sit-down to be able to notify you of the fact that they're going to obligate funds, that they're going to be working toward a project that impacts you as a tribe. And this identifies the time lines for which those are available.

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

Let's say you want to, as an example, you want to replace all of the -- it's hard to figure out a new use for something because pretty much everything is eligible. You wanted to change your lighting from red/yellow/green to blue, orange and pink, and you thought that was a good idea.
If it was on a BIA route then you would refer that to Secretary of the Interior. If it was on other routes owned by others obviously you would go to the Secretary of Transportation meaning Federal Lands Highway Office, and then that decision would be made, a response would be -- of the requesting tribe would be 45 days.

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

The program is changing significantly, particularly under the road maintenance. If it isn't specifically stated in there, there may be areas that you would want to look at in terms of how to do that, here's the opportunity to be able to make that
change and utilizing this process in terms of
time line and response.

Yes?

MR. KELLY: Dave Kelly, Oglala
Sioux Tribe.

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

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

MR. GISHI: Okay. And I think the
key here is that once it becomes eligible, the
term is eligible whether through this process
or in the eligibility list then it's eligible
for use of funding. How it comes into the
inventory is, we talk about that as part of
Subpart D when we talk about proposed roads,
access roads.

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

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

And going with what Dave said, you
know, we have the same problem out at Rocky
Boy. He's talking about the same thing we
did. And that land is held in trust. And
this has been a contention for awhile because
we have to service those water lines that the
right of way that was purchased for those was
enough for the road so that they could be serviced, those water lines could be serviced off the reservation.

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

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

MR. GISHI: Yes, and that's important to know because what you're looking at here in some cases is a lot of the criteria that established how roads are to be counted in the formula are completely changed.

They're different. So when you're looking at
it from -- and that was Subpart C.

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

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

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

MR. ROSETTE: Actually, it's both,
you know, inventory and effect on funding because it doesn't matter. We're still going to have to maintain, somehow maintain that -- those facilities that are off the reservation, we have to maintain them. They are the tribe's.

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

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

Dave's is a little different because he couldn't get his, portions of his that he wanted to get into the inventory. But
now this is how we need to be able to address it from that standpoint.

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

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

If you're -- when Bob's doing his presentation he does a portion talking about how it's important, why it's important to continue to keep the inventory updated. Because it not only is establishing eligible projects but it also -- you guys have seen what we've gone through in the last 10 years
as a transportation program. Things have changed three times.

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

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

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

But they generally meet once a
year to provide that update. And it basically says within 90 days of the end of the year so they try to do that within the first quarter of -- first or second quarter of the year. So that's one of the record-keeping requirements that we have there.

Got a question over here.


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

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

And as a tribal leader we depend on them to review these changes, review your handling of the BIA program. And when it
comes down to the consultation side it just
seems like you completely dishonored the
tribal consultation policy.

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

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

So as a tribal leader I've really
got to question your consultation methods.
And I know at a previous meeting awhile back
in Albuquerque, Montana and Wyoming tribal
leaders asked for meetings in either Billings
or Rapid City so a lot of the tribes could get there. Because a lot of tribes are under tight budget restrictions right now and we just can't travel. Kind of out of the way for a lot of us to come to Minneapolis. I'm just glad you didn't have it in Siberia somewhere, you know.

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

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

What we proposed and what we rolled out there was the ability to be able to have -- this is in terms of the formal and informal rulemaking this is not formal rulemaking. Because if it was there's a whole set of rules associated with that.
What we're trying to do is just establish the ability to get the basic changes of what was in the law and put it out there for people to be able to look at the regs and go from there. In starting somewhere that's where we're at.

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

Unfortunately as you mentioned not only you have budget restraints but we've been going through the whole process as a whole. And some of the meetings that we've had scheduled were not able to come about as a result of certainly through direction,
leadership much higher than even our Assistant
Secretary is concerned. So keep that in mind.

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

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

But one of the comments I would
like to make is just a comment. You know, we
talk about all of this funding that's
available. But one thing you haven't
mentioned, is there any type of funding for
disasters? You know, when it comes to the
wintertime we burn all our funding up on snow
removal. You know, by the time it comes to
really maintain the roads we don't have any
funding left. So I don't know if there's
anything in here for disasters where you can
apply for special funding for that.
Being on the tribal council, you know, our constituents, they come in all the time and that's one of their major concerns is that you've got potholes and washboard roads and they're just never maintained. The funding is just not there. And that's what we hear at the council level.

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

Like I say, in the wintertime we just burn all our money up for snow removal.
But I don't know if there's any disaster funds available for something like that. So I just wanted to share a little bit with you. So thank you.

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

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

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

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

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

But it doesn't -- it also talks about -- it doesn't absolve or in any way
limit the Secretary in continuing to request funding for road maintenance on an annual basis. And that's clearly written in the regulations also.

Got a question right here.

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

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

MR. GISHI: Yes, maybe I can get the Solicitor's folks to explain exactly how that works. It's formal and informal in terms of the rulemaking but in terms of consultation it is consultation.
MR. CAULUM: Yes, this is considered consultation under the Department's policies and under the President's Executive order. What we're doing here is the first step in the process with tribes.

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

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

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

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

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

But the key I think to consider
here is that this is an opportunity, I think a very important opportunity for tribes to offer feedback before we get to that final point where we say this is the proposed rule that we want to go out and do consultations on.

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

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

MR. GISHI: I want to mention just a little bit of history of how we came about with this.
MR. MOORE: Excuse me.

MR. GISHI: Oh, I'm sorry.

MR. MOORE: Yes. Ed "Buster" Moore, Fort Belknap Tribal Council. I just wanted to go on record as well as the tribal transportation delegate from Montana-Wyoming Tribal Leaders Council that I agree with my partner here, Wes Martel, that we oppose this consultation process and this rulemaking.

Thank you.

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

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

And the request was made from a number of tribal leaders to at that time
Assistant Secretary Grover and they said before this goes to the formal process, before you send it to everybody that you need to can we take a look at that. And of course that was -- in terms of other rulemaking areas that was something the Department probably would have said no, we've already started it.

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

We learned from that from the standpoint that it's probably better for us to be able to start off with something from a very preliminary standpoint. And for that reason what we have here is for the most part a lot of it's what was in the rulemaking process. Obviously some things have changed. Those things that have changed, we've tried to highlight them.
And we've gotten comments from people saying can we get a red-line copy. We have a couple of folks who are working on that right now in terms of what was to be done and how we could handle that. So from that standpoint we fell short on that, being able to do the side-by-side.

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

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

MR. ROSETTE: Tim Rosette. I'm also part of the Tribal Transportation Coordinating Committee. You know, when this was brought to us one of the things that I saw right away, that it was not and could not have
been any type of consultation with us. It can't be consultation with us because the majority of us are tribal employees. You know, the vast majority of us are tribal employees. You know, we do represent our regions but we do not speak for the tribal governments.

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

And it was not in any way, you know, I made a motion that we are not part of
that consultation process and not to mark us
as part of that consultation process.

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

So the two big parts of what make
up or give us our direction of where we want
to head and what the Secretaries believe to be
the process and procedures to move forward
with this regulation are covered in Subpart A
and B including definitions, including eligible uses of activities, areas that really impact how you operate individually your programs at a tribal level are found in those locations.

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

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

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

(Laughter)

MR. SPARROW: Not quite as tall as others. Where's Big John? But equally as important, let's put it that way.
My name is Bob Sparrow. I am the director of the Tribal Transportation Program at Federal Highway Administration in Washington, D.C. I want to thank you all for taking the time to come today to hear what's going on, hear the process and also provide us with your comments. That's really the single most important thing that we're getting out of this is giving you the information to be able to give us the comments as you heard from Mr. Caulum and Mr. Gishi before we get into that formal process.

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

Again, we're going to continue the same process talking about each subpart from a general overview perspective and then getting into the highlights, talking about
dates and talking about record-keeping. At the end of this though I've got some slides that talk about actually discussing how the funding formula is going to work. And if you're interested once we go through these first half a dozen slides just telling you what's in the subpart I can go in and actually explain then how it's going to work if you're all interested.

Yes, sir.

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

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

MR. MARTEL: Right. But anyway, there was a lot of what we see as deficiencies within that process that this was supposed to review. So in your presentation would you be kind enough to relate that to us? Because as Big John said there's a lot of tribal leaders here that aren't quite aware of that whole
issue. Because that was one of the main issues we were always battling over. So could you please do that for us?

MR. SPARROW: I will be happy to.

When we get back into the second part of the presentation we'll talk about the formula, talk about what's important, what goes in, what actually generates funding anymore.

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

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

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

MR. MCGESHICK: Chris McGeshick with Sokaogon Chippewa Community.

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

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

MR. SPARROW: That's a very, very good question. Basically with this new funding formula and the Tribal Transportation
Program funding itself as a whole is dictated to us from Congress. They passed a highway bill that included the Tribal Transportation Program, funded it $450 million a year.

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

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

So what you see with Subpart C, if you have an old copy of 25 C.F.R. 170 and you have this new proposed copy you'll see this
section changed more than any other section.
You almost can take the old Subpart C and
just, it would be totally red-lined because of
what's been dictated to us through MAP-21.
Yes, sir.

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

MR. SPARROW: At Department of
Transportation?

MR. MOORE: Department of the
Interior.

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

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

MR. MOORE: Governance officer.

MR. CAULUM: For the Department of
the Interior I'm not familiar. For this process in particular we don't have a tribal governance officer that has been appointed for this particular process, no.

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

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

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

MR. SPARROW: Okay. As I said before, Subpart C, if you take a look at what was in Subpart C of the original 25 C.F.R. 170 that came out of negotiated rulemaking and you take a look at what's in there now, a lot of changes. And a lot of changes is because of the statutory formula and information and laws
basically that Congress passed for this
particular program.

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

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

It talks about the inventory, the
National Tribal Transportation Facility
Inventory. If you've been around the program
awhile, I mean IRR rolls off the tongue and
the IRR inventory rolls off the tongue. And
when you have to say NTTFI and the TTP it just
doesn't roll the way it used to. And we have
to catch ourselves from saying it, which Mr. Gishi said IRR earlier today by the way.

So it talks about the National Tribal Transportation Facility Inventory. It talks about data appeals. How do you appeal the data. What is appealable data now.

Really from the formula perspective everything is pretty much set in stone. So the data appeals really, it's still there but it's not as extensive as it used to be because this stuff just really is not appealable. It just tells you this is what you've got to include.

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

That part or that takedown no longer exists. Congress has removed that
completely. What they have done though is they've established a new program that's pretty much identical to that program. But they have funded it beyond and outside of the Tribal Transportation Program. So it's still in MAP-21, it still is there, but it's not funded through the Tribal Transportation Program. And we'll get into that a little bit later this afternoon. Yes, sir.

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

MR. SPARROW: There is an appeals process, it's just -- and we'll get into that. When I get into the highlights we'll talk more about that specific area. This is just saying what's actually covered in this Subpart C. Yes, sir.
MR. MARTEL: What's the difference
-- Wes Martel, Eastern Shoshone Business Council. What's the difference between
general data and formula data?

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

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

There's three factors in the
formula. Two of them are pretty much locked
in. Year to year to year they won't change.
But one will change and that's the area where
you could potentially appeal a particular
factor within the formula. Yes, sir.
MR. MCGESHICK: Chris McGeshick
again with the Sokaogon Chippewa Community.
With your formula then I guess my question is
under Section 171.03(e) it states, "reduce the
imposition of unfunded mandates upon tribal
governments." Yet in what you're requiring
now are bridges to be inspected if we have
bridges. To me that's an unfunded mandate and
the utilization of our funds that we haven't
had.

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

MR. SPARROW: It's a good comment.
I can't answer that. Congress has told us
this is what you need to do. And it's
statutorily said this needs to be followed.
I completely understand your
statement but from a DOT perspective this part
of the funding formula and the change of the
funding formula has been dictated to us.
Congress has told us what needs to be done.
Congress has said this is how much money you
have.

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

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

MR. MOORE: Ed Moore, Fort
Belknap, Montana-Wyoming Tribal Leaders. The
funding formula that's now statutory, what
specific tribal consultation was utilized in
establishing the formula? Who developed or
submitted the funding formula to Congress?
MR. SPARROW: Congress developed the formula. The Senate EPW Committee as well as the House T&I Committee are the responsible committees within the respective houses to develop the transportation reauthorization bills. It is from those committees that the bills -- when they went into conference it is from those committees that the bill was finalized and then presented to Congress for passage and ultimate signing by the President.

Any other questions?

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

MR. SPARROW: I can't answer that question. I don't know what actions or intent
Congress or the committees had.

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

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

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

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

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

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

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

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

Nine million dollars for planning.

Two percent or $9 million for safety. This is new. This was not in SAFETEA-LU or anything earlier. What there is is a designation of $9 million is authorized for safety projects and activities for the tribes. They don't have to compete with counties, they don't have to compete with states, this is monies designated strictly for the tribes to talk about -- or to address safety issues, develop safety plans, road safety audits, carry out projects and activities.

Six percent PM&O. This is the
money that Federal Highway and BIA use to carry out the stewardship and oversight of the program. It also funds the TTAP centers. It funds a few other items. But it's primarily the funding for the staff of the 12 BIA regions, Federal Highway staff and BIA DOT staff that's used to oversee the program and do the stewardship and oversight.

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

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

There's new -- a brand new formula that we talked about, and that formula has three factors. It has a mileage factor. It has a population factor and it has a
historical share percentages factor. And again when we get into the formula I'll explain each one of those.

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

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

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

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

Then there's a section on planning. How are inventory and planning related. What kind of funds are made available for planning. That 2 percent planning funds, but you also can utilize your
tribal share funds for planning. Yes, John.

MR. HEALY: Thank you. John Healy, transportation director, Fort Belknap.

On your previous slide, Bob, on the 6 percent PM&O that's relative to the Bureau of Indian Affairs, correct?

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

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

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

So if they're not going to get out in the field and assist the tribes shouldn't
the tribes be eligible for some of the 6 percent?

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

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

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

MS. METCALF: Okay, so what I'm going to say does not really pertain to you guys because I know you guys are just doing your job. But I'm a tribal leader. How many tribal leaders are here?
(Show of hands)

MR. SPARROW: Can you identify yourself, please?

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

But I'm sitting here thinking you're talking about numbers and how you do planning and everything. Well, here's what I'm sitting here thinking about. Every year tribal leaders and a number of other people spend their time going to D.C. I figure on an average at any given meeting in Washington, D.C. that we as tribal leaders attend the tribes probably bring into Washington, D.C.,
and I'm not counting airline tickets or when you leave the reservation to the airport, but what I'm counting is actual dollars going into Washington, D.C. I figure we probably average, and this is on the low side, $3,360,000 to Washington, D.C. if you think about February's trip that everybody makes or March.

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

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

And so this is what I'm thinking
I'm starting a campaign. Let's stop going to Washington, D.C. because they're not working with the tribes. Consultation is not taking place appropriately as the President put forth in his Executive order. So maybe we need to start taking a stand.

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

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

(Applause)

MR. SPARROW: Thank you very much.

Very good comment.
The next section that you'll see after planning talks about the National Tribal Transportation Facility Inventory. It used to just be IRR inventory.

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

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

NTTFI and then it says 23 U.S.C. 202(b)(1)(B), that's where the statute of where it is in MAP-21. And now in 23 U.S.C. is a comprehensive national inventory of tribal transportation facilities eligible for
assistance under the Tribal Transportation Program. Facilities include facilities that were included in the Bureau of Indian Affairs system inventory prior to October 1, 2004. Roads that are owned by an Indian tribal government, roads that are owned by the Bureau of Indian Affairs. I'll come back to this first bullet in a minute. So you've got tribal roads, BIA roads. In addition, roads that were constructed or reconstructed with funds from the Highway Trust Fund or Highway Account since 1983. That means roads that are in there that were built after 1983 that are in the inventory. They're eligible to have funds expended on them.

Public roads or bridges within the exterior boundary of Indian reservations, Alaska Native villages, or other Indian communities, including communities in the former Indian reservations in the state of Oklahoma in which the majority of the residents are American Indians or Alaska
Natives, or are public roads within or providing access to Indian reservations or Indian trust land or restricted Indian land that's not subject to fee title alienation without the approval of the federal government, et cetera, et cetera, or are primary access routes proposed by tribal governments including roads between villages, roads to landfills, roads to drinking water sources, et cetera, et cetera.

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

But what Congress has said, and we'll expand this a little bit, is that mileage factor in the inventory for a tribal road or a BIA route has to be whatever road was in the inventory in the FY `12 inventory. Last year's inventory. BIA routes, tribal
routes in the inventory as of last year are
generated funding in the mileage factor.

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

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

For BIA and tribal it can be as of
last year. But the statute says that when we
do the FY '14 fund distribution. We've done
the FY '13, the tribal shares are posted now
so you can see what they are and the funds
should be getting out to the tribes. When we
run the formula in FY '14 we have to use the
same inventory. This doesn't say tribal or
BIA roads as of FY '13, you know, updating it,
it says FY '12.

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

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

MR. MCGESHICK: Bob?

MR. SPARROW: Yes.

MR. MCGESHICK: I have a question.
Chris McGeshick again with the Sokaogon Chippewa Community. On your next slide there, the part where you went yada yada yada.

MR. SPARROW: Oh, I'm sorry.

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

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

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

MS. PHILBIN: Vivian Philbin, Federal Highway. Sir, every year the Secretary of the Interior publishes a list of federally recognized tribes that are eligible for services. It was recently published just
a few weeks ago. And we can get you that list if you want. That's in the Federal Register.

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

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

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

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

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

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

Now because those have been updated will they still be counted as being originally added before this 2004 cutoff date?
MR. GISHI: To answer your question what it basically says is the provisions that are in there, those mileages that are identified as eligible miles, it doesn't look at those miles in terms of saying, you know what, these were functional class 1, 2, or 3. They were proposed roads or they were access roads. They didn't exist. They were four-lane paved. They were two-lane gravel. They were a trail, they were a primitive road. It basically says the roads that were in the inventory as of those dates that are in there are to be counted.

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

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

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

MS. SHERK: Dawn Sherk, White Earth Nation. So just to clarify so I'm sure I'm understanding you correctly, there's actually a snapshot from this date held somewhere. They won't go through the inventory and say query out everything
previous to 2004. That's my concern because I know that you would have that option in RFDS.

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

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

MR. SPARROW: Thank you.

MS. SHERK: Dawn Sherk, White Earth Nation again. I guess the question that
I had just asked previously about that cutoff date is because earlier in speaking with that day you had mentioned that that was primarily for Alaska and Oklahoma, is that correct?

MR. SPARROW: Yes.

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

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

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

The population factor can get updated every year and that's something that
is appealable but it's going to be appealable
to HUD because it's the NAHASDA numbers that
are used.

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

There's information in there that
pretty much carries over from the last reg
about flexible financing. This part of it did
stay in place. And describes how the tribe
can use their tribal transportation funds to
secure flexible financing and what types of
flexible financing, be it bonds, be it advance
loans, et cetera, are available to the tribe
using state infrastructure banks. It also
talks a little bit about how BIA and Federal
Highway would assist the tribes in developing
or securing some sort of flexible financing.
Timetables. HUD updates for the NAHASDA numbers, the population numbers. HUD is going through a negotiated rulemaking for NAHASDA as we speak. We're waiting to see what comes out of that negotiated rulemaking. But Congress has told us what population numbers we need to use. Inventory updates still apply.

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

But the issue with keeping the inventory updated is this. When Congress asks BIA or Federal Highway what are the needs, what's the inventory showing, right now it's $60 billion. We have the most accurate information to provide Congress if that is inventory is maintained and updated.
To me more importantly though is the fact we don't know what's coming down the road. You could have a totally different -- we could have a totally different formula in 2016 or 2015 that could take into account functional classification, that could take into account cost to construct, which could take into account surface type, et cetera, et cetera. So keeping the inventory as accurate as possible and updated, and continue to add routes in there if they're eligible, it's not going to hurt you in the long run because we don't know what is going to be thrown at us next time.

And this could say or owned by an Indian tribal government and in the inventory as of FY `14. And if you updated some tribal roads and throw roads in there between 2012 and 2014 that's to your benefit. You'd hate to be behind the eight ball because you didn't update your inventory and now you're locked in for another 2 or 3 or 4 years. So it's
critical to keep it updated as much as possible. Yes, ma'am.

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

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

We also within our tribes have other natives that live within our communities and other populations. So I really find it offensive that Congress will identify the population to be counted.
MR. SPARROW: Very good comment.

Congress has basically said in the population perspective of the funding formula to use the most current numbers that are made available to us from HUD. And that's the factor, those are the numbers that we have to use in the formula. I'll expand on that slightly when we get to another slide. Yes, sir.

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

MR. SPARROW: Thank you. From the record-keeping and reporting requirements on flexible financing it says the BIA regions and
Federal Highway both will provide necessary
documentation to a state infrastructure bank
to facilitate a tribe obtaining loans or other
forms of credit for a project. What kind of
support BIA and Federal Highway will give to
the tribes.

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

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

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

MR. SPARROW: The National Tribal
Transportation Facility Inventory is a living
document. It continues to grow as the tribes
submit roads that are eligible. So you can
get a snapshot of the inventory going online
or talking to BIA Division of Transportation.

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

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

MR. TIBBETTS: Burny Tibbetts,
White Earth Nation. With the new submission
of inventory data now that we can keep doing,
is there going to be new rules with that on
what can be submitted? Because the intent was
back with TEA-21 that we could submit county
roads, state roads for the sake of
cooperating, right? And that turned into
generating funds for tribes.

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

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

It won't generate any more funding
for you but it's there when Congress
potentially changes things next time around.
And that's why it's important to keep it as
correct as possible, to get the roads in the
inventory that meet that eligibility
requirement so that we do have a true
identification of the needs. So yes, there's
nothing to prevent it.

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

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

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

MR. SPARROW: Yes.

MR. TIBBETTS: Okay, thank you.

MR. SPARROW: Question.

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

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

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

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

MR. SPRINGER: Yes.

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

MR. GISHI: What we've put in -- and let's make sure everybody understands. What's in there right now is the basic reference to identify that proposed roads and access roads are still eligible to be put into the inventory. There is nothing in there and
there's no intent because primarily what's in the statute doesn't allow us to look at anything other than those numbers.

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

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

And it basically, again, it comes down to a number of miles. It isn't looking at whether it was accessed, proposed, four lanes, paved, gravel, primitive trail. And in
terms of proposed roads, whether it even existed or not. If it was in the inventory as a mileage associated with a tribe and it fit into those categories of non-BIA, non-tribal prior to October 1, 2004, or up through 2012 BIA and tribal, those two ownerships, then that's what's going into the formula in terms of those mileage.

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

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

MR. SPARROW: How about if we take

a break till 1:15 -- Big John.

MR. SMITH: Mr. Sparrow, when the

-- in the process of the Q-10 fix, so to

speak, you employed a consultant to look at

updating and correcting the present inventory

prior to MAP-21. Do you recall that?

MR. SPARROW: Yes, sir.

MR. SMITH: Do we have the

conclusion of the consultant and the

corrections offered?

MR. SPARROW: Yes, sir. We have

the recommendations of changing the functional

classifications of the roads. We also have a

number of routes or sections that could not be

found or were duplicative or had been re-

sectioned that had been -- are still in the

inventory but have been turned off and don't

generate any funding.

MR. SMITH: Is that to the current

2011 numbers?
MR. SPARROW: It was done to the 2012 inventory before it was final.

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

MR. SPARROW: They're still --

MR. SMITH: Numbers.

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

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

MR. SPARROW: Because it was in FY
'11 and as Mr. Gishi said earlier we can't change FY '11 tribal shares we had to use the FY '11 inventory.

MR. SMITH: So the answer is yes.

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

MR. SMITH: Okay, thank you.

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

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

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

All right, we've got a couple of slides here trying to explain how this whole funding formula works. The first one is the diagram of the funding itself.
We start with the amount authorized for MAP-21. It's $450 million. Then we talk briefly about the five set-asides, PM&O or the administrative expenses. And on this chart or on this diagram it references the statute and Title 23 code where all of these are written. So you can go in and look at those.

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

And this is the 2 percent planning that's made available to the tribes directly. So safety, bridge, they're kind of their own separate thing that the tribe applies for a
bridge project or for a bridge design
individually versus a tribal share type
approach.

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

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

That 80 percent is about $277
million. So you're working your way down from $450 and taking $9 million here and $9 million here and $27 here. This particular box here for next year is about $277 million.

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

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

This first year it's really not
much of a factor at all. And we'll talk about this when we get towards the end.

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

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

The first factor, 27 percent of the money that's made available is given to the mileage factor. Eligible miles computed based on the following facilities in the FY '12 inventory, roads -- and that's got to be corrected -- roads owned by the BIA and roads owned by the Indian tribal governments, the tribal roads. And then other roads that were in the BIA system prior to 2004. That's it, 27 percent of the money.
Thirty-nine percent is given in population. This is the same factor that was used in the population of the other formula in SAFETEA-LU that was -- or not SAFETEA-LU, that was developed through negotiated rulemaking. It's about the total population of each tribe bears of the total population of all American Indians and Alaskan Natives. And it's determined or computed using the most recent data available under the Native American Housing Assistance and Self-Determination Act. So this is the most recent data. This is FY '12. This is locked. What was in the '12 inventory and the 2004 inventory. These numbers typically come out in July if I've been told correctly. So when the ones come out in this July they'll be updated numbers that will be used to generate next year's tribal shares. The last factor is 34 percent. And what we have to do with this factor is we determine how much that 34 percent is and we
divide it equally amongst the 12 BIA regions.

So for the purposes of ease let's just say 34 percent equals $12 million. What we do is we take the $12 million and we give each BIA region or designee $1 million to each of the 12 BIA regions.

Then we have to look at the tribes within each region and determine the tribal share that each tribe got between 2005 and 2011 -- `05, `06, `07, `08, `09, `10, `11.

How much money did the tribe receive in each one of those years from the funding formula that was used during that time. And then determine the percentage that that tribe got of all the money for all the tribes within the region.

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

If you look at Navajo, they're one tribe. They would get the million dollars.
If you look at the tribes in Alaska they have to split the million dollars between 229 tribes. But that's the way this factor works.
Yes, Dave.

MR. KELLY: Dave Kelly, Oglala Sioux. You're not including any other available fundings that have come to the tribe in terms of grants or anything like that.
Like the TIGER grants or any additional supplemental money that we applied for.

MR. SPARROW: It's strictly the RNDF and the population adjustment factor. It does not include HPP money, does not include TIGER grants, does not include public lands discretionary, an earmark that maybe was in part of SAFETEA-LU, doesn't include any of that. It's just the formula and the population adjustment factor. So that's what goes into the formula this time.
Then if you remember we said there was this fifth set-aside. Congress has told us how much money goes into that each year. It equals $104,375,000.

In your mind be thinking we started with $450, we took $2 million off for planning, $2 million off for safety, $2 million off for bridge, $27 million off for PM&O, $277 million off for the 80 percent, $104 million off for supplemental funding.

What that tells you is this year when you come back to this formula mileage, population, historic shares, there's less than $14 million, or around $14 million for the whole country splits up that formula. About $3.6 million for mileage, a little over $4 million, $4 and a half million or so for population and around $4 million for the historic shares. That's all that's run in this new formula this year. That's step one of the transition.

Anyway.

We have $104 million. The purpose
of the supplemental funding is to try to
offset negative impacts that a tribe might
experience as a result of the new formula.

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

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

So if a tribe when we go through
the formula, and we go through the transition,
and we go through everything else is receiving
less money than they got in 2011 they get
first dibs at this money with the intent of at
least getting them to what they received in FY
'11. So the negatively impacted tribes are
the first ones that look at the money within
the region. I'll be right with you, Tim.
If all those tribes are brought up to their FY `11 level and there's money left then all of the tribes in the region share what's left by their respective regional percentages.

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

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

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

MR. ROSETTE: Tim Rosette, Chippewa Cree Tribe, Rocky Boy, Montana. The way I'm understanding you say it then is $14
million is really what the formula affects this year, about $14.5 it affects this year. The other dollars that you were just discussing, I'm trying to keep this straight in my head because it gets kind of complicated. But the other money then gets distributed, would be distributed based on the 11 shares. And -- not the 11 shares but it would be a combination of the -- or an average of the '05 to '11 share. Is that the way I understand it?

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

MR. ROSETTE: Yes, but if we go back a slide. See, that's what got me. You're too far. You said -- one more. Go one more. Yes, that one. Based on each tribe within the region, within our tribal region percentage of the regional total of relative
need and population adjustment factor that it received from 2005 to 2011 to be divided equally. So it would be the average of what we got in the region during that period?

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

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

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

Then within each region we look at the tribes and we determine what percent of the money that went to the region, for those tribes in the region, for that 7-year period how much did Rocky Boy get. Of the tribes in the Rocky Mountain Region what percentage of that money between `05 and `11 did you get.
Whatever percentage that is that's how much of that one-twelfth that gets credited to Rocky Boy. So when we add up all the tribes in the Rocky Mountain Region, remember I said it was $12 -- we just said it was $12 million.

MR. ROSETTE: Yes. No, no.

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

MR. ROSETTE: I don't know. You know, this is the concern I had initially with tribal consultation, you know. I mean I'm trying to put my head around how you're arriving at that and where that was written into the law and it just kind of drives me a little crazy trying to figure out how did you get there. How did we get here. You know what I mean?
MR. SPARROW: All of this is described in 202(b) is where the funds distribution is described. If you look at MAP-21, if you have a book of MAP-21, I don't know if some of you do or don't. Section 1119 talks about federal lands in here. And 202 is part of -- talks about the Tribal Transportation Program within Section 1119 of MAP-21. And it goes on and on and on. Because we have a hard time getting our arms wrapped around it.

So you've got the 80 percent this year. You've got 80 percent of the money. You've got money that comes out of the formula. And then if those two, you still are negatively impacted we've got this supplemental funding to at least get you back to FY '11. And then everybody shares what's left. So if everybody gets back to FY '11 and there's money left then all the tribes within that region will be getting at least as much as they got in FY '11. Some will be getting
more. Yes, sir. Yes, Burny.

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

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

MR. TIBBETTS: Okay.

MR. SPARROW: All right. But the intent of that supplemental is to try to get everybody to FY '11.

Now, here's one thing. And before -- well, he's going back. If you have a substantial negative impact due to the new
formula then the more and more the new formula gets more and more important every year your negative impacts are going to be more and more. Because that formula that's negatively impacting you is -- more and more money is being generated to it and less and less money is being generated to the old ways. No, you're going the other way.

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

The tribal share -- I'll be right with you sir. You've got to shake like this, not like this. The tribal shares are posted
on both the Federal Lands TTP website as well as the BIA website. So the tribal shares of the tribes and the mileage and the population and whatever are all provided for you on the website.

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

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

MR. SPARROW: Initially the tribal shares for all of the federally recognized tribes are determined regardless -- I want to say irregardless but they tell me it's not a word. It doesn't matter what your contracting mechanism is. If you're working with Federal
Highway, if you're direct service, if you're Office of Self-Governance, whatever, we still have to determine what those tribal shares are.

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

And then direct service, if it stays within the region or it goes through self-determination doesn't matter. Okay?

That's all the funding formula work. That's it. There will be a quiz in 20 minutes.

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

When we first ran the numbers, or at least were looking at running the numbers based on what Congress had given us it was
based on, first of all, there was a
significant increase in the amount of funds
that were available because two programs were
eliminated, population adjustment factor no
longer existed and the IRR HPP program which
was the high-priority which is $30 million.
So a total of about $45 to $50 million now
became available to run through the formula.

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

Then we have another provision
that Bob will talk a little bit about called
obligation limitation which is sort of
Congress's self-imposed sequestration that the
program has had to live with since 1998. And
for that reason -- and it varies on an annual
basis. Sometimes it's as high as 13 percent. This last year it was at 5.4. And this year it's 4.1.

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

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

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

MR. SPARROW: That was about --

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

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

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

It talks about transportation planning. The first couple of questions that you see on there outline the responsibilities and the requirements of the BIA and the tribes and Federal Highway in carrying out transportation planning. This really hasn't
changed from the reg that was published in 2004.

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

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

Then there's a section that talks about the National Tribal Transportation Facility Inventory. What are the components?
It's restated again pretty much right out of the statute. What part of those components generate the mileage in the funding formula? It's just a repeat of what was done in Subpart C.

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

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

So the intent was to grab what was approved and signed and put that into the regulation. It's the same minimum attachments
that we've been operating under since about 2005-2006.

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

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

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

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

The law in 2005 said tribes can
approve their own PS&E if they provide certification that -- or they have a certification from a registered engineer that the plans meet or exceed health and safety standards. And a copy of that certification in the PS&E is basically provided to either the Federal Highway Administration or BIA depending on who the tribe is working with.

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

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

Who's responsible for carrying out the final inspection? Who gets invited to the final inspection? Who writes the final report? Those are the things that you find in that particular section.

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

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

So let's go back. We talked about most of these when we went through the general. Highlights, transportation planning. What's the definition and purpose of transportation planning? What are the roles
and responsibilities of what BIA carries out, what the tribes carry out, what Federal Highway carries out with respect to planning? And what sort of funding is available to carry out planning?

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

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

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

MR. SPARROW: I'll get to that.
MR. HEALY: Okay.

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

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

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

And then what do we, Federal Highway, do in working with the states to get those regionally significant projects into the state's TIP? So that process is identified in
those Q&A's.

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

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

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

And they're pretty diligent about keeping me on there until I answered all their questions. But that's about as far as I know of any participation that our tribe has had in a state transportation improvement plan.
And if it is truly, if that's something we're going to do are we going to be able to fully participate, you know, actually put our dollars into it, actually put our people into it, our construction equipment and do whatever to help enhance these projects that are on the reservation or near the reservation, or on state highway projects that go through the reservation?

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

When it comes to the state funds or the federal aid funds that a state DOT has that you may want to work together with that's really run out of the federal aid office in each state. And we will be providing these comments to those offices because honestly this isn't the first time we've heard of this concern. So we will make sure we do, we have it captured.
And it's something that we've got to forward to Montana, or Wyoming, or North or South Dakota, or Minnesota Federal Highway Office to say the state needs to be working closer with these tribes with regards to those state funds, what's going on, et cetera, et cetera, in order for us to answer those questions.

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

Public hearings. There's a whole section about when are public hearings required. How do you carry it out? What do
you determine the need? Who pays for it or
how do you pay for it? How do you inform the
public? How do you conduct the meeting? How
do you report what happens at that meeting?
Or if a decision is made, how could you appeal
that decision? That's covered in this area
about public hearings.

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

We talked about environmental and
archaeological requirements. What are those
requirements? What are the NEPA requirements on a project?

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

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

The biggest change though -- this really hasn't changed, this really hasn't changed. The big change in this section is approving your own PS&E's.
We talked about construction and construction monitoring, who does what records, who does the closeout, who does the reporting. There's a table in there that identifies what needs to be done, what needs to be included in the report.

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

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

But it's really performance-based. It's pushing performance-based management systems out there to the point where the states and other partners are being asked if
we give you this much money what are you going
to do with it. And if you get this amount of
money what can you do with it. And if you get
this amount of money what can you do with it.
And then actually seeing the results.

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

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

There's a part of MAP-21 that's
not part of the Tribal Transportation Program
that references the minimum qualifications to be a certified bridge inspector. How do you notify folks that the inspections are coming. What are the statutory requirements? How are the reports going to be distributed?

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

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

MS. METCALF: I thought I'd talk
loud in my Army voice. Ronda Metcalf, Sauk-Suiattle Indian Tribe. So basically what I'm hearing you say, and I really need clarification, that now we are dependent -- because I along with everybody else that has said disagree with almost everything that's being said. And I really for one don't believe that this is gov-gov consultation. But since I'm here I'm listening.

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

MR. SPARROW: What Congress has directed Federal Highway to do is develop the overall standards by which bridges need to be inspected and how they are to be rated, i.e., ranked with regards to sufficiency or deficiencies. They're still working those final regulations of how that's going to be carried out.
What has happened this time which had never happened before was Congress included tribal bridges and said tribal bridges have to be inspected every 2 years and the reports provided to Federal Highway.

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

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

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

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

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

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

(Show of hands)

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

MR. SPARROW: And this is something that we're still trying to work out exactly how and when over this next 2-year period these bridges are to be inspected. There's about 400 tribal bridges across the country. There's about 900 BIA bridges. These are bridges on BIA routes. Those previously have been required to be inspected every 2
years. Not until this year were the tribal bridges ever included. Yes, Vivian. Hold on one second, Tim.

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

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

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

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

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

Appendix B outlines the various design standards. Federal standards, state standards, bridge standards, and outlines
those standards that have been approved for
the design of TTP projects.

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

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

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

Does it make sense to make sure
that this is the most current and the cost
tables are updated and we're reflecting the best cost that's out there? Yes, it is. As I said before we've got to provide Congress with the best data that we can have as well as making sure that your inventory is as accurate as possible, not knowing what's around the next bend in the road.

Yes, sir.

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

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

MR. SPARROW: We basically are ready to issue a report when MAP-21 hit where functional classification is no longer
critical. And we're trying to get -- it fell
down the list of things that we're trying to
get done. It will be forthcoming.

MR. TIBBETTS: So there is

something going to be coming out that matches
the federal?

MR. SPARROW: Looking at what we

proposed that you're aligning them with
Federal Highway.

MR. TIBBETTS: Right.

MR. SPARROW: And that crosswalk

is actually -- the crosswalk is in Appendix C

that Sheldon developed to show the functional
classifications from old going into new.

That's included in there.

MR. TIBBETTS: That would be very

helpful to us right now.

And then I have one other

question. Is this the only program, and I
don't know if it's a program, that has been
directed by Congress through statutory

regulations? Is the BIA or the -- not IRR.
What are we calling it? Tribal Transportation Program. Is this the only one that's ever been done as a statutory regulation set by Congress?

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

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

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

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

And then the regulations which are typically implemented by government agencies, not through negotiated rulemaking unless they involve Indian programs are typically not through negotiated rulemaking, they implement the statute.
But when you ask does Congress ever have any other statutory formulas they certainly do in the Federal Aid Highway Program which is an apportioned formula program. And I'm sure there's others. And that's for the federal aid on the state side of -- out of the Highway Trust Fund. I'm trying to think, you just caught me off guard, on other formula programs in Title 23.

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

MR. HARRIS: Mr. Sparrow, going
back to the crosswalk that's in the regulation. Wouldn't it make sense to streamline it even further and just kind of make the ones in this regulation and the one that Federal Land and Highway used the same so everybody's talking about the same thing and you don't have to try and guess what this means and what that means? And why do we even need the crosswalk? Why can't we just get everybody on the same page?

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

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

On the TIP, same sort of thing, working through the TIP process. How much
time the BIA region or Federal Highway has to review the information that's submitted in order to get it approved.

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

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

If we have a design exception that's requested to BIA or Federal Highway by your professional engineer what kind of time frame do we have at BIA or Federal Highway to get a response back to your professional engineer of record.
This talks about approving your PS&E. We talked about that earlier, providing copies.

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

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

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

So this section really goes from
planning to design to construction to acceptance. It goes from start to finish on the projects and activities.

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

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

MR. SPARROW: Yes.

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

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

Thank you.

MR. SPARROW: Thank you, Jim.

MR. GISHL: I want to thank my cousin, that was a good comment. No Jim, no, he's right. That's one of the things that -- if there's any of those things that we're looking at in terms of clarification or information that's what we want to be able to provide.

Okay. Subpart E and F are -- the biggest changes again that we're talking about are in C and D and how they relate because that's where Congress took the bulk of the changes for Section 1119 in MAP-21 and incorporated it into the formula.

Subpart E in the past in the
current regulation talks about service
delivery for Tribal Transportation Program,
the TTP program as a whole. It talks about
the ability for tribes to take on program
services, functions and activities. Again
related to this concept of the Subpart A and
B and that is tribes have the ability to take
on programs through self-determination and
self-governance or programs which are
available through whatever Congress has
specified.

And Congress in MAP-21 and
certainly SAFETEA-LU and definitely what's in
the statute right now in Title 23 says that
programs are to be offered up to tribes under
the Indian Self-Determination and Education
Assistance Act which is self-determination,
self-governance, but also through provisions
that are identified as direct contracting with
the Federal Highway Administration, U.S. DOT,
or other appropriate agreements based on
whatever the circumstances arise. But all of
them are obviously options that the tribe makes a decision on as to how they want to implement the program and what they want to be able to do.

And even within those different type of agreements there are aspects, various parts of what's in the law that allow tribes to be able to do certain things. Tribes can do a portion of their program under one agreement and portions of their program under another agreement. They can have a portion of their program that they do strictly through a self-determination agreement, for instance, and then have the rest of the program done under a direct service type of activity with the Bureau of Indian Affairs or even Federal Highways if they need to.

This subpart takes a look at that and talks a little bit about what those are in terms of the typical type of activities that are associated with that and how they play into this program. Again, it's important.
And I don't know of too many programs that are out there that are in Indian programs with the exception of HUD, Housing and Urban Development, and of course IHS. And even IHS is subject to the Indian Self-Determination and Education Assistance Act where those apply across the board.

But a single program where Congress has basically said yes, we do have these things out there but we also expect that in the operation of these programs that we do these things. And although we understand, I certainly do, from the standpoint of frustration of some of the things that are in the law a lot of the things that are in the law are a result of tribes commenting on and making sure that things are happening.

I mentioned that the Indian Self-Determination Act last was amended back in 1996. Since then we've had three amendments to the Highway Act and each time what it was doing was based on the tribes. Tribes really
taking control of the process basically said
we want to be able to do these things in our
agreements and that involves, for instance,
the process as I mentioned earlier and Bob did
about approval of PS&E's.

If you work through other programs
that's sometimes like pulling teeth to try and
get us as a federal agency to be able to
concur with some of those things. But in
Title 23 it specifically states what tribes
can do and are able to do. For that reason
those types of provisions are here in the law
and are specifically stated as well as how do
we treat, for instance, a common type of
provisions that occur in these other
contracts, like contract support costs and
startup costs, forced account methods, how do
we treat those in this program even though we
know that there are provisions for these
things under the Indian Self-Determination and
Education Assistance Act.

And also what functions are out
there that are not otherwise contractable, inherent federal functions that we have to perform from the standpoint of Federal Highways and BIA.

This subpart tells us a lot about how the Indian Self-Determination and Education Assistance Act as amended, the Federal Highway and other appropriate agreements that can be used as contracts and agreements.

We have examples where as we mentioned where Congress sometimes earmarks dollars and says through the state programs, through the federal aid programs and says we set aside these funds for the purpose of performing this program at this location in connection with this tribe.

They send the money to the state and the state says we really don't have a way of being able to do this because we have our state constitution bylaws or whatever, laws, that say we can't enter into agreements with
tribes. So, in those instances there are provisions within Title 23 that says listen. In those instances there are other mechanisms that are available out there again with the idea for the benefit of the tribe that we should be able to work with the federal agencies to transfer those funds back through Federal Highways, from the state, back through to BIA, the Secretary of the Interior.

And the Secretary of the Interior then has the ability to sit down with the tribe and say what agreement mechanism would you like to use to be able to implement this program if you'd like to do it at all. And that process then is what we're talking about here.

This has been something that's progressively improving, changing over the last two changes in the Highway Act. And so what we're seeing now is the ability to be able to address four specific methodologies that tribes can enter into agreements via the
FHW program agreements, other appropriate agreements, BIA G-to-G's, and of course the self-governance annual funding agreements as well as the Self-Determination Subpart J construction. Yes.

MS. RADTKE: Vicki Radtke, comptroller for Fond du Lac. When these agreements come down they include a provision in there about for advanced funding and how the money can be invested. Is that in this rule?

MR. GISHI: Yes.

MS. RADTKE: And how does that fit with self-determination if you tell us how to invest the money?

MR. GISHI: How to --

MS. RADTKE: -- what government agencies aren't generating income right now.

MR. GISHI: In terms of the advanced payment process?

MS. RADTKE: Yes. They don't earn anything in what you say it can be invested
MR. GISHI: In terms of like Treasury-insured bonds?

MS. RADTKE: Yes.

MR. GISHI: Okay. Vivian, do you want to answer that?

MS. PHILBIN: Vivian Philbin, Federal Highways. I'm not sure this answers the question on the lack of earnings. I'm sure that's of great concern. In prior years there was considerable interest paid and it was a good source of extra revenue.

This rule does not tell you how to invest the money. There is a list of eligible items in Appendix A of where the funds -- what the funds can be spent on, on eligible activities. But how you should -- and of course the transportation funds have to be separate and apart from other general tribal funds.

But in terms of savings or interest or exactly how it can be spent, not
at all. The rule contains all the eligible uses of the funds. And of course the money has to be in a secure place which is set forth.

But in terms of more direction than that on the government telling the tribe you have to invest it in X and spend it on Y, that is not in this rule at all.

It's in the agreement that the funds have to be in a secure, what's -- I don't have the agreement in front of me but there is a list of -- yes, it can't be in a non-secure -- it has to be in an insured account so to speak and it can't be commingled with other funds.

But the eligible uses of the funds are set forth. There's no specific direction Tribe X has to spend the funds on Y activity. It's within the parameters. I mean we were very careful both on advance payments and on the securing of funds to be within the parameters of the ISDEAA. But the
transportation funds, for example, could not
be spent on an ineligible non-transportation
activity. Okay.

MS. RADTKE: But how the money is
invested, it's in the agreements that it can
only be -- if you were to invest the money it
has to be in government-backed securities or
you know, it is telling tribes what they can
invest those funds in.

MS. PHILBIN: I don't have the
agreement in front of me but that sounds
correct. And when you think about it, because
it's for the benefit of the tribe, all of the
tribe, not just the individual making the
decision on the investment, that makes good
sense. It's a protection of what are
ultimately the tribal funds for
transportation. So yes, you are correct.

MR. CAULUM: Andy Caulum with the
Solicitor's Office. My understanding is that
provision is consistent with most ISDEAA
contracts is that when you're involving
restricted funds the investment of those funds
typically has to be in government-backed
securities if you're going to invest them,
like a CD or something like that, as long as
it's insured is my understanding.

MR. GISHI: Now, in terms of the
real, one of the things that when we were
going through this process with the rulemaking
with tribes was first and foremost, believe it
or not, it seems like so long ago and so
trivial but that was one of the things that we
had early on in this process was everything at
that time under Subpart J was basically
progress payments.

And many of you have seen this
before. It was the whole concept that we're
into a contract with you. And a contract,
there are two parties perform this way.

And it took us -- when I say "us"
I'm talking the whole BIA a long time to begin
to understand this concept of what self-
determination and self-governance was doing.
That was a government-to-government relationship and being able to do that.

So right after these -- as part of these regulations it really took a look at with the exception of Subpart J where it talks about semiannual or progress payments as negotiated, self-governance agreements are all advanced. And of course the Federal Highway agreements all advanced. The G-to-G's are all advanced 100 percent based on the availability of tribal shares.

Then of course at that point there are options that certainly are required that are similar to what's in 638 as to where you can put those dollars. And a lot of them are actually put into CDs or savings accounts or whatever to draw interest.

And the whole idea was for tribes being able to do that as they plan and go through that process. And that's part of it.

We also talk a little bit about savings and how 638 treats savings and what we
put in here relative to savings. But you have
to understand the relationship that the
funding has with tribes, that these are tribal
shares. If there's a savings it's a tribal
savings. It's not in the context of programs
where tribes go out and apply for those, and
if there's a savings there under the normal
638 process it comes back into the program and
it's redistributed elsewhere. This is tribal
shares. For that reason it's different.

Subpart -- talks about Indian
preference versus local preference and
contracting. A big part of what we've seen
not only in Title 23 but also in Title 25.
Contract enforcement. What is it that we're
looking at doing in terms of those provisions.
Again, those are specific to the different
types of agreements that are out there.

The application of the Buy Indian
Act as well as the Buy America Act under the
program. There's a little table there that
shows basically what it is that we can and we
cannot do relative to that.

How is the federal acquisition regulations related to the program and the use of Davis-Bacon wages. Again, another table that talks a little bit about that depending on how the agreements are developed and how they are fashioned.

Have we got a question back here?

MR. ROSETTE: Can you go through a little bit on how applicable Davis-Bacon is to say a self-governance tribe?

MR. GISHI: If you look at the table it says that if the tribe is administering the program then it has the option, it's not required to do this, but to use its own forces. Of course if it's contracting out then of course those contracting provisions apply. Basically that's what the table says.

MR. ROSETTE: You know, every year it seems like there's a fight. Well, this is kind of an internal thing I guess but it's a
fight with the auditors to explain that to them. And I keep pulling the law. You know, I put it on my -- right on my what you call it so I can pull it down every year for the auditors. And that they don't understand it. You know, because we do all of our work ourselves, you know what I mean? And we're not subject to Davis-Bacon under those provisions.

MR. GISHI: Right, right. And that's again -- that's the reason why they put it into a table to show the relationship between the different type of agreements and who's performing the work associated with the program.

Now, if we do that, the work, if it's based on BIA or Federal Highways then of course we're subject to Davis-Bacon.

Force account work. Everybody understands that when a tribe is doing the work that's considered force account. Whether you're contracting it out to somebody or
whether you're doing it in-house it's force account. You're using your own forces to perform everything.

As far as BIA and Federal Highways that's when we are doing the work and in some regions we still have designers, we still have inspectors, we still have folks that are performing that work. When it's approved, when it's based on the approval of the tribe then we go out and we do those things. And it talks about that it is an eligible activity under this program. So being able to catch that less than 33 percent of the tribes that are out there that are still requesting that the BIA perform that work on their behalf.

How waivers of regulations are performed. And it really references the Title 23 provisions on how that applies. So again, we're utilizing things that are already in place as to some of these areas that are contained in the self-determination regulations as well as other regulations.
Federal Tort Claims Act, how that applies. And we've actually implemented those very similarly for purposes of coverage for tribes under these other agreements because we see the necessity for that to be able to be out there. And since the wording is very clear it's helpful to be able to include that in for the purpose obviously of the protection of the tribes when they're performing this work.

Technical assistance. Big thing that these -- the law, the changes in the law and these regulations are trying to emphasize is that in our relationship with tribes that we should be looking toward a technical assistance relationship in terms of these agreements.

Because in fact all the authorities are fairly well established. Tribes are developing the agreements to reflect those things that are in law. Then our job from a federal agency is to provide
the technical assistance to make sure that
those things continue to be successful as we
go along.

As opposed to in the past again
when we -- in the early provisions and to a
certain extent still under Subpart J the
project by project type of agreements that are
out there, the concept or the idea was
government was there to be able to say before
I make a payment or before we continue on with
this project I need to see your 7-day, 14-day,
28-day concrete cylinder breaks to make sure
that you're complying with your specifications
because they're written in there and we've got
to make sure that happens.

That was the oversight and
monitoring aspect of those agreements. And
what these agreements under self-governance,
the Federal Highway programmatic governments,
the government-to-government G-to-G's, the
other appropriate agreements is looking at is
basically saying that's your responsibility
because that's the way the agreements are written. You have a process of how you manage that. That process describes exactly what you're going to do, who's in place to be able to do it.

And we provide technical assistance as we go along to be able to continue to support that process. So through the years this whole concept of working through these -- the program delivery of these agreements has changed and it continually evolves into this process that we hope to be able to continue to operate in that capacity.

Because obviously we're talking more and more of not just this program but programs throughout the government that are looking in that direction of having communities, local governments perform a lot of these functions that are associated with what the government normally provides or is responsible to provide.

The funding process. Talks a
little bit about notice of availability of funds. We talk about how even that has advanced to the point where at the time that these regs were written it was pretty much we didn't have access to the internet. And so for that reason there had to be other ways to think of, to get information to tribes as to how much funding is available.

We now know that now we have a funding formula that is pretty much repetitive with the exception of the population adjustment factors there's no reason why we shouldn't have the capability of producing something within fairly close to the first quarter.

The only limitation is of course if we don't know the obligation limitation or any rescissions or if we don't have a final appropriation for the year. If we're operating under continued resolutions it's still very difficult because we can only give out the amount of money that's identified
that's available. But for the most part even
that is changing in terms of while we're
looking at under this new formula as Bob
described.

How the projects are approved or
activities are approved through FHWA-approved
TIP. And what to do if you get into a
situation where you have unforeseen costs
which is related to what is identified in the
self-determination laws and regulations.

Pretty much under the
miscellaneous we talked a little bit about
force account. And contract support costs.
That's a function that's a part of self-
determination.

In terms again what is contract
support cost, what are those funds utilized
for in the programs that are offered by the
BIA. They're designed to be able to support
the tribe's effort in contracting and
performing the work administratively
associated with various activities that are
part of a contract.

These funds that we're looking at in terms of -- but when we're looking at the program funds that we're dealing with here everything is associated with a tribal share. From the very onset in Subpart C and in MAP-21 and Title 23 it tells us here's where you start. Step one. Here's the first thing you do. You set these funds aside and so forth. So those are tribal shares.

There are no other funds. One hundred percent of the funding is qualified in statute as to what it is. So certain activities that are identified in -- that are available to tribes including contract support costs, the regs basically say this comes out of the funds that are made available and you have the discretion, you have the capability to manage them from that perspective. Yes, Tim.

MR. ROSETTE: Tim Rosette with the Chippewa Cree Tribe, Rocky Boy, Montana. What
does the recent cases with the Ramah Navajo
and the other ones under contract support have
to do? I mean have they had any impact or
significant impact with the transportation
that the Secretary is supposed to provide
that?

Like for IHS and all of that it
was over and above. It had to do, you got
your contract amount. We got our contract
amount, our tribal share amount. They got
their tribal share amount. Now contract
support should be available over and above
those costs. It was for LeRoy though.

(Laughter)

MR. CAULUM: Andy Caulum, the
Solicitor's Office. One thing with this
program is that your contract support costs
effectively are coming out of the -- of your
tribal share is my understanding.

We have not addressed that in the
Tribal Transportation Program. I don't
believe the Ramah case necessarily has an
effect in TTP because we have the limited --
the PM&O. I suppose there could be an
argument that the tribes could be somehow
entitled to some part of the PM&O funding but
that has not been something that we have
addressed or looked at so far in this process.
And it's not part of the regulatory process
that we're looking at here. Because I think
that might go beyond the changes in MAP-21,
for example, that we're trying to implement
here.

MR. ROSETTE: You know, going back
to that, every tribe needs to collect their
contract support cost to make their end of the
year balance too because they have a certain
amount invested in operations of those
programs as well.

You know, I just don't see how
it's not relevant with what's going on
nationwide with the contract support.

MR. CAULUM: I didn't mean -- I
suppose I didn't mean to say that it was not
necessarily relevant here. It's just that in
the Tribal Transportation Program to this
point we have not -- in terms of the
regulations we have not looked at it in this
aspect.

MR. ROSETTE: As a formal comment
then I would like to say that we need to look
at that in that context. I believe we really
have to take a look at that because anything
that weakens the program and the day-to-day
operations of actually building facilities out
there is a hindrance to Indian Country.

MR. GISHI: Thank you. And so
when we get to that part of some of these
provisions, and that's the point I was making.
We're trying to maintain as much of those
activities that are associated with self-
determination contracting and basically say in
this regulation how do they apply to TTP
funds.

Anything that's contractable
that's identified in the regulations which
generally comes from the statute. You've seen that long list at the very beginning that talked about what was in MAP-21 that talks about eligible uses. That's expanded upon in this portion of the regulations that talk about what those are. And of course anything that is contractable is an eligible activity that the tribe can perform based on its request to do such.

Any special provisions that are in any self-determination contracts and agreements that's currently out there under self-governance or under self-determination. If those activities are identified there then basically what this reg does is it yields to those provisions.

And except for as I mentioned in those cases where it's specifically stated and established by Congress that it is different it's pretty much, you know. And so when you see a lot of the provisions that are in this regulations it will refer to 900 dot something
something something, or 1000 dot something

something something because the committee in its original process wanted to make sure that there was no confusion in tribes being able to have a contract specialist and a self-governance specialist or coordinator be able to sit down and take any agreement within social services and any other activities that are out there and have the basic knowledge to be able to not only monitor but implement those agreements. And it should be no different in this program. So for those reasons a lot of those are in and referenced in this regulation to continue that process to make sure that's intact.

Again, going back to the concept of technical assistance, that's what we're striving toward in terms of being able to provide the assistance for oversight and monitoring on behalf of the tribe. Those are activities which are contractable and as such the tribe can perform those.
The Appendix A to Subpart E is a list of activities which are not otherwise contractable. And it seems like there's a lot but a lot of them are basically sometimes just one-time functions. Distributing the money. It's an activity that the federal government has to perform. There's provisions that we have to rely upon within government to be able to do that when we receive the funds from Federal Highways.

These are basically in those areas that are the requirements of the government to assure that those things are -- including oversight of the program, including program reviews. Those things that help assist us in being able to provide technical assistance to the tribe are those things that are not otherwise contractable.

As far as timetables, time lines, we couldn't list them all but you will see in there 900 and 1000, they all have time lines associated with it. They may not even be
written in here but they're referenced in here. So when you go to 900 or 1000 there may be regulations that say the Secretary has X number of days to respond to a proposal, to changes, to an appeal, to a modification. Those continue to be a part and intact on what we're doing and those would be the time lines that are in this part of the regulation that are applicable.

The portion here talking about contract agreements under self-determination. When do BIA and FHWA determine the amount of funds needed for non-contractable project-related function.

This is again what we'll call the program. If you looked at that one first graph under the funding that talks about program management and oversight those are the non-contractable, non-project related functions.

Now, we say that and I can tell you already this needs to be edited because
under the SAFETEA-LU even the project-related non-contractable activities are subject to the what we call program management and oversight. And so from that standpoint the Secretary develops a budget on an annual basis which includes Federal Highways. So we have to sit down and develop a budget, negotiate with Federal Highways again depending on which tribes are doing what relative to that.

Have we got a comment back in the back? Thank you.

MR. KELLY: Dave Kelly, Oglala Sioux Tribe. You know, you bring up non-contractable activities. What I'd like to talk about just briefly is the recent sequester and the recent buyout of a lot of the old birds that were within the BIA system. I really foresee a problem that we're going to have when trying to acquire the right of ways to do programs. It's a real hindrance as of today but I think foreseeing we're going to have a major problem.
Because a lot of the people that actually deal with the acquisition of right of ways are now gone. And for many of us tribes we have to take on that burden to do this. And part of the problem is obtaining the actual right of way document.

So with that I know there's going to be a substantial problem that I don't think we've really, really addressed at this point. And we can't contract that department.

MR. GISHI: Very good point. Very good point. In just the recent month, month and a half most of you know that there has been the whole concept of reestablishing a budget based on provisions, not just extend the BIA but across all of the nation, across all programs. And the result of that is the impacts in terms of streamlining efforts, right-sizing organizations. And some of those activities are, as Dave said are specifically related to activities that are -- in which the Secretary, the government performs that are
inherently federal. And believe me, that's one of the big issues of discussion almost on a weekly basis in terms of the -- from a national perspective between the regional directors and leadership in Washington on that.

And of course from that standpoint there's efforts all the time afoot about how do we address that. How do we get exemptions to be able to make sure we're following up and filling those, making sure we fulfill those responsibilities.

But you are correct in that time line. And we all know it takes government awhile to respond sometimes so we're in the process of trying to do that. But your point is very well taken. Thank you.

Okay. Any questions? Subpart E, basically delivery of services under the program.

The next part of the -- yes, we've got a question there?
MR. MARTEL: Wes Martel, Wind River. You just made a point up there about saying you, the tribes, you the tribes, this is how you wanted it, the way you could get things done. And you're right, you know.

We try to work with Congress and try to work with our congressional delegations and others to try to get language and statutory authority to do things the way we want to do it. But what it looks like to us is that you as the BIA and other federal agencies through your regulations are trying to take that back away from us.

And these regulations that you have, you know, the draft, the revisions that restrict tribal flexibility, repeat tribal access to the BIA's PM&O and PRA&E funds. They do not permit the direct transfer to tribes of federal aid and state-administered highway safety funds. They do not consistently reflect the expanded role played by Federal Highway in the Tribal
Transportation Program. And deny a tribe's right to challenge important agency determinations concerning funding allocations or the addition of facilities to the inventory. So there's just, there's no support for tribes or what we're trying to do with our programs.

There's just no type of innovation or creativity to this. And like I mentioned earlier, there's been no meaningful tribal consultation. These regulations do not reflect a careful and thoughtful examination by BIA and Federal Highway concerning how best to efficiently streamline the TTP to improve transportation infrastructure and transportation systems.

And then they do not interpret federal rules and regulations to facilitate the transfer of programs to tribes under appropriate award instruments as required under current regulation.

And you know, as a tribal leader
that's been around these statutes and things are supposed to be liberally construed to the benefit of tribes. Theses regulations just seem to do the opposite of that.

About the only thing I can give you guys credit for is how you can present this kind of stuff to us without any embarrassment or shame. We've taken some steps backwards here. And then you have enough nerve to come over here and present it to us. I've pretty much had enough of this stuff. It's like you're working against us.

MR. GISHI: And that's the whole point of being able to talk about this. Because what we're looking at is what are some of those elements, again, considering where we're coming from. We're basically identifying that -- and this is where it's important for you to take a look at these regulations. Because what we have here we've identified as those things which were a part of the negotiated rulemaking and those aspects
that are specifically changing as a result of
the law. But from that perspective what are
some of the things that we need to be able to
do to initiate and enhance that kind of, that
process that you're referring to.

And certainly there are certain
things we've talked about that I think Federal
Highways made very clear that we are not privy
to be able to change, namely the funding
formula. But your point is very well taken
and that's the reason why we are trying to go
through an additional, this session, an
additional NPRM process and of course the
final review, being able to again continue to
look at and get comments on that process. So
I certainly appreciate your comments from that
standpoint. Yes.

MR. TIBBETTS: I just wanted --
Burny Tibbetts, White Earth -- just to add to
that. We can't really point fingers on the
problems we have now with this MAP-21. The
tribes couldn't come together to agree with
anything and I think Congress stepped in and this is what we get. So I don't think we can totally blame the BIA or Federal Highways. We've got to take some blame too. Because we've never come together.

The coordinating committee, well, that was what it was. We as tribes never came together to look at the issues that were important to us and that should have been done.

You know, pick and choose. We should have had a menu of issues. And we talked about this. What can we work on, what can we agree on, what can't we. That never happened. Congress saw that. I think the BIA saw that, Federal Highways. We saw it. And here we are today with this. So, I think we all have to take blame in this.

And let's figure out how do we move forward. And we have to come together. I just want to add that. It has to be done or we're never -- we're going to keep going
backwards.

   And we've lost ground here with
MAP-21. And if we don't come together and
agree to disagree or look at issues it's only
going to get worse.

   MR. GISHI: Another comment?
Thank you.

   MR. HARRIS: Aron Harris, Suak-
   Suiattle Indian Tribe. Even if we come
together it doesn't fix the fact that this
feels more like an information session than it
does a consultation or collaboration. Because
there's -- it doesn't seem like our input's
being solicited. It seems more like we're
being told this is what's coming out in the
new regulations. Yes, we're going to review
the comments but there's no guarantee that any
of these comments will make any significant
changes to what we've been shown here today.

   MR. GISHI: Thank you. Any other
comments before we go to Subpart F? One in
the back.
MR. KELLY: Dave Kelly again, Oglala Sioux Tribe. We know there's a programmatic category called exclusions now in place. But the folks that will be signing off on these documents, are they also in place? So that we have the assurances things could keep moving in an expedient manner as in the past. You know, sometimes there was a major hangup.

MR. GISHI: The comment was another area that relates to the program is processing projects particularly in those areas where we have to comply with NEPA. And there's a new process identified in MAP-21 that just doesn't apply to the Federal Lands Highway programs, meaning the Tribal Transportation Program, but across all programs making a threshold if you will on project costs in which -- that can be eligible for categorical exclusions.

And those of you who are familiar with it, it's -- categorical exclusions have
a specific process that really limit the amount of review of projects before they can become cleared if you will, receive compliance in terms of those requirements.

And that's something that the Federal Highway Administration right now is currently trying to develop regulations. They're trying to look at ways to be able to proceed with that. But a big part of that will be how does that apply in terms of the whole process.

The whole idea is accelerating projects that have certain criteria. And particularly there's a section in MAP-21 that talks about what do we need to be able to do to accelerate projects in terms of highway projects, transportation projects. That's an effort to kind of speed that process up and streamline that process also. So that's out there. That's one of the things that we're hoping will be helpful.

And the review process is still in
terms of the BIA will still go through the same procedures. Because those roles and responsibilities are identified by management at that very high level.

Now, we're seeing more and more of those functions still being handled by the region which is where they should be, but in terms of within the program that's how they continue to be handled.

But hopefully we're going to see some positive results. I'd like to see some things relative to that with these provisions that are out there about accelerating project performance which is a big part of some of the things that the folks in the inventory in terms of projects themselves want to see it move along a lot faster. Because it's just not a problem in Federal Lands but across the board in the Federal Aid Program also.

Let's take a break. Ten, twelve minutes. Thank you.
went off the record at 3:16 p.m. and went back on the record at 3:31 p.m.)

MR. GISHI: Can we get started again? Subpart F. Subpart F again talks about program oversight and accountability. And it's important to note that as we go through this a lot of these things have changed as a result of not since -- very little has changed from this last regulation to now but in terms of the program function as a result of the roles and responsibilities that the Tribal Transportation Program and prior to this the Indian Reservation Roads program has undergone in terms of operating the largest program within the Bureau of Indian Affairs.

   It used to be second until they established the Bureau of Indian Education as a separate bureau. Within the Bureau of Indian Affairs the largest single program of course is the Tribal Transportation Program.

   And so for that reason through the
years it has been a tremendous source of funding outside of the Interior appropriations process to support not only program functions and activities but also employment and supporting the development of infrastructure.

Subpart F talks about those oversight roles under the program. One of the areas is through development of a stewardship plan which is primarily what stewardship does Federal Highway have relative to the program and BIA and in terms of that process who performs what in terms of those roles and responsibilities.

It talks about the use of memorandum of understanding to develop agreements with tribes who have requested that the work for their program be performed by the BIA which I said was less than one-third of the tribes that are out there. But what this looks at is the ability for those tribes to enter into memorandums of understanding so that roles and responsibilities again are
established as to what the process is and what
the expectations are from both parties in just
agreeing to how the program is to be
implemented.

We're talking about monitoring.
Again, going back to the agreements itself.
Monitoring by the Secretary of all the Tribal
Transportation Program activities and what
that's geared to do in relative relation to
the requirements of all federal programs.

And the use of the formal program
review process in reviewing not only the
Bureau of Indian Affairs regions but also
tribes that implement the programs under the
TTP.

Stewardship plans as I said define
roles and responsibilities of the BIA and FHWA
and identifies those procedures that are out
there. We currently have a stewardship plan
that is in place that talks about specifically
how -- what roles Federal Highway plays in
terms of those projects and what roles the BIA
plays relative to those things.

And of course as we look at that more and more that is from a technical assistance perspective rather than an actual hands-on type of monitoring simply because those things are no longer -- those functions are contractable activities. And as a result of that tribes would be performing those.

The MOU that we talk about is between a direct service tribe and the BIA region. Again used to help define roles and responsibilities. Describes the consultation process and how to establish a TIP, how to look at project priorities. How to plan for the future in terms of what projects are coming down so that there's an ongoing process there available to tribes who say that we know what's going on. We may not be performing the work but we know what's going on and we have -- we definitely have a process that we can go through to identify and prioritize projects.

As part of this oversight and
accountability process again it's a very short section as we start to see more and more of the programs being transferred. We have a timetable primarily is when we do have the review, if there is a review of the region office or the tribe under the formal monitoring or review process that's built into all the agreements then the -- if there are areas that need to be improved then a corrective action plan will be developed within 60 days and submitted.

I was just talking to one of the tribes here that has gone through that process. And it was real good to see that because what the tribe was really doing was saying you've come forward and you've done a review on our program. And here's where we agree with you and here's where we disagree with you. And part of that process was being able to establish that relationship.

And that goes a long ways in providing the ability for the federal agency
to provide the technical assistance to help to improve that process or to acknowledge what the tribe is doing. And so from that process of what we're looking at the direction is try to become more of a partner in the technical assistance aspects rather than an oversight agency that says, as I mentioned, I need to see your cylinder breaks. And you know, it looks like you're a little shy here. You need to take care of that.

It's more of managing the program and the process for developing the program level changes or initiatives in areas of improvement are coordinated for that purpose also.

What happens with the review process, another record-keeping or reporting requirement as part of this accountability section is when the review process identifies an area for improvement, same thing as the review tribe or BIA region.

And again, this is not just the
tribe, it's also for BIA when they're performing certain responsibilities or for the program at a region level. And it is -- the reviews are performed by the headquarters, the BIA transportation and Federal Highway Administration, Federal Lands. And that each year as a part of that process is to update on the progress for those corrective action plans.

And that was part of our discussion we've had with one of the tribes here was that they did submit something and it was good to see what it was. And in most of those cases there was a plan of action that was in place. And really that's what we're looking in order for continuous improvement. Not necessarily -- the objectives are different. Support the program to succeed rather than find out what's wrong with the program to hinder it.

Any questions on program oversight? Like I said some of these sections
as you start getting into the areas of the
general program procedures become very short.
The only thing that really makes them long
like the next section is when we start getting
lists. And that makes the reg somewhat
longer. Okay.

MR. MOORE: Hi, Ed "Buster" Moore,
Fort Belknap Tribal Council. With this review
process and sequestration and mandates of no
currently for BIA employees how are they going to
do that if they can't come onsite and do the
review? Or is all these reviews mission
critical so that they can travel?

At the same time is once a
corrective action is in place is the technical
assistance that most tribes will probably
request after review if there is corrective
actions in place that -- will the BIA or
Federal Highways be able to provide that also?

MR. GISHI: The question, first
part of that is how is this impacted by the
sequestration. In terms of the travel
restrictions and part of the travel policy right now is if it's mission critical those are elements that are available. And for the most part these are mission critical activities associated specifically with a regulation and a statute in terms of that. And then of course a lot of the decision-making relative to that is really handled at the region level within the region director's purview. So for that reason within region, it's within region which is one of the elements that are reflected in the travel policy right now and if it's mission critical. So those are areas that certainly fit into that category. So we would expect that from that standpoint that you would continue to get the follow-up reviews that you needed to on any corrective action plan that you have. The second part was yes, in terms of the Federal Highways or BIA being able to follow up with support of that on how to
correct or how to help to support through technical assistance accomplishing those things.

And one of the things that's been very clear as part of where particularly in terms of the policies that are out there is to be able to support tribes to become successful in that manner. And obviously there's a process for everything that we look at, everything from if you're complying with the regulations then part of that process is to make sure that we continue to support that process. But if there's things that might be problematic then of course part of that is the corrective action and what do we need to do to improve that. But that's all built into the process of being able to do that.

The idea again is to keep moving projects in that direction. Because the bottom line is the success of the program is not just the tribes, it's us being able to also help the tribes be able to get to that
point. So that's why it's important. And it
takes on that new direction we're talking
about in being able to say how do we work with
tribes from a government-to-government in
terms of the program as opposed to a
contractor-government type of concept which is
the old process or things that certainly we've
learned from that we need to be able to go
toward a government-to-government type of
relationship. Any other questions on Subpart
F?

The next subpart, Subpart G. In
the regulations that were implemented as part
of 25 C.F.R. 170 this was titled "BIA Road
Maintenance Program." And that was in 2004.

In 2004 we still had the old
program which basically said if you look at --
first of all, Title 23 established the program
under the IRR as a construction program. And
if you recall those of you who are from -- my
good brother Jim knows, back in the early days
of self-determination when you went to
describe the definition under self-
determination for construction road
maintenance was not considered a construction
activity. So for that reason it was not part
of the program, it was not part of the
eligibility process. This was again 2004 and
prior.

Since then with the passage of
SAFETEA-LU came the first provision that said
up to 25 percent of the funds can be made
available for maintaining Indian reservation
roads. Not just BIA but tribal, any other
roads that qualify or that are eligible under
the program were eligible for that. So
immediately with SAFETEA-LU coming about in
2005 this section had to be changed to reflect
that.

Initially it was provided again as
the tribes had indicated in the rulemaking
process they wanted to be able to define road
maintenance activities, the relationship with
the Highway Trust Fund program at that time.
And so it was put in there as BIA Road Maintenance Program.

The title for this part in order to reflect changes in SAFETEA-LU and MAP-21 has changed to "Maintenance Programs." So from that standpoint as you begin to look at that -- this particular subpart goes and tries to distinguish between the DOI annual appropriated road maintenance program and the program that is eligible under the tribal transportation road maintenance provisions within SAFETEA-LU, MAP-21 and really Title 23 at this point.

One of the first things it starts off is it talks about who has the authority and responsibility to perform road maintenance. And Title 23 describes in definition that public authorities, and there's a definition in there, have the responsibility for not only maintaining, improving and being able to finance roads, toll and non-toll roads and other
transportation facilities. That's a public authority.

And then it goes through and it lists public authorities. And public authorities are the federal government, tribal governments, state and local governments. So in that list of the definition of a public authority is tribal governments.

So the result of that is public authorities are -- have the responsibility and the authority to be able to maintain roads which are under their responsibility. So right out of this process we begin to identify who does this apply to. This applies to public authorities and this applies specifically to in terms of what we're looking at is the tribes implementing a program and the BIA's responsibility under the DOI-funded programs and their responsibility under the TTP program for road maintenance activities.

Talks about the BIA Transportation Facility Maintenance Program which is again
the DOI-funded program that's available on an
annual basis, what's eligible under that and
what facilities are eligible for those
improvements.

It makes a distinction between TTP
funding and DOI appropriations as I indicated
earlier. Talks about the eligible uses of
funding for tribes through contracts and
agreements. And the bulk of this section
actually is the list in the back that says
what's eligible for road maintenance
activities. And from that standpoint it's
talking about road maintenance in general
because whatever is eligible under the TTP
program in terms of activities should also be
eligible under the DOI-funded road maintenance
program simply because you're performing the
same things and the same kind of requirements
are associated with that.

How maintenance standards,
management system requirements and the
responsibility that we have to the traveling
public in maintaining roads. And really it refers to provisions that are within, or at least that are referenced in Title 23. It says that any public authority who has responsibility for roads that uses funds to construct roads is responsible to make sure that the public investment is protected by doing something to maintain those roads. And we all know that particularly in Indian Affairs that difference is quite significant in terms of what's available under the DOI program and what's available under the TTP for construction.

Well, supplementing that now is funds made available under the TTP program to maintain roads also that may be BIA facilities or tribal transportation facilities.

It talks a little bit about emergency maintenance and also of course along with that we talked earlier about -- in Subpart H we'll talk a little bit about the Emergency Relief Program and how that enters
into -- I think that'll answer some of the questions that were brought up earlier about emergency disasters.

The BIA Road Maintenance Program which is again appropriated on an annual basis under the OIP program and what its uses are and eligible activities. Yes.

MR. ROSETTE: Under emergency relief are we still bound by the -- you know, some of us, a lot of tribes are small, you know. And those thresholds that ERFO has on that $750,000 per major incident and all of that. Are we still bound by that? Or was there any rule changes in how the tribes are going to be able to be more eligible for ERFO-related type of projects without having that threshold, those high of thresholds, you know. And we're limited to such small areas and a lot of times sometimes we can meet the threshold. You know, I know it's a regional thing sometimes. But then that gets convoluted a little bit. But I just wanted to
know if any of that was addressed.

MR. GISHI: The procedures that we have identified in the regulations as for information purposes only really are a reflection of currently what's in the ERFO manuals and the ERFO program as established in Section 125 of Title 23. So, having said that it doesn't change any of those things that are in there. Those changes would have to occur as part of that program through that process, either through the emergency relief or what we refer to as ERFO, the Emergency Relief for Federally Owned Roads which includes the tribal program. So at this point those haven't changed. And I just wanted to check with Bob. He shook his head no so those are still in place.

Now, there are some flexibilities obviously that we were seeing in terms of one of the other problems besides the threshold was the ability for a tribe to declare and to wait on somebody else. Well, you know that
part of those procedures, that has changed as a result of that. So there's some things that have an impact on it that obviously need to be addressed also.

The BIA Road Maintenance Program.

Again, talked about eligible activities, the roles of local governments in maintaining roads. And of course there's always instances out there where people can cooperate in being able to maintain roads for others through agreements. Those are all eligible activities.

You develop your own solutions. Sometimes it requires a little bit of innovative financing to do that but those are all eligible activities in terms of this program.

We have a facility maintenance management system which is related to if you will the road inventory update process in terms of data that's out there. We utilize that system to help support us in being able
to do -- but the requirements for that of what we need to expect and what are to be performed are listed in there, what we should be doing in terms of this maintenance management system.

And if you look through that section it describes what those are, that standards need to reflect some standard. They can always have tribal standards as long as it's documented that either meet or exceed the standards that are out there.

And we have the National Association of County Engineers, county governments has standards that are out there as well as AASHTO has a number of standards and procedures that are out there also. All of those are eligible ways of being able to say I've got a system in place on how I'm going to maintain my roads, how I'm going to develop a plan to do these things within the funds that are available. And certainly within the programs that are eligible unto me
including the TTP program.

The big part of this whole regulation subpart is of course that list, the list of eligible activities for funding under the BIA facility maintenance program and -- we made sure that we put in there -- under the Tribal Transportation Facility Maintenance Program.

Because they're so closely related and they're both utilizing you can actually use funds from one program to support other activities in the other program. That's why it's there, because you want to make sure that those eligible activities are a reflection of that.

One of the qualifiers as part of the process that's been in the Road Maintenance Program from the onset was the ability for tribes, for that road sealing. You know, chip-seal type projects are not to be subject to the limitations of 25 percent or the $500,000. Those actually can be handled
as part of the regular construction program activities. And of course they're handled differently. And the result of that is it's a preventive maintenance activity but it also can count in terms of a construction activity and not against the road maintenance activity. And that's been written into the law since 1991, maybe '98. I would go as far as back to say '91.

There are no timetables associated with this subpart. In terms of record-keeping and reporting the one area we have is that the BIA in terms of -- again, this is applicable to the inadequate maintenance of roads that are out there.

If the BIA through the Secretary of the Interior finds out that roads are not being maintained under this program, again under the TTP program, under these standards due to insufficient funding the Secretary will notify the facility owner.

And this is -- when we're talking
about facility owner here it is entities which
are counties, states, other local governments
that the facility is not being maintained or
there's not an annual funding request for --
to maintain that facility. Then the Secretary
will report these findings to the Secretary of
Transportation under 201(a) and the Secretary
will provide a draft of this report.

And basically notifying folks
again that if -- our program, if we are
subject to having to make sure that we protect
the public investment then if those other
roads of other owners are out there and
they're not being maintained, they're
utilizing these same funds which most
everybody does then it's the responsibility to
be able to notify them and let them know that
they need to maintain those roads.

This is something that we've
talked about as in terms of it's in statute as
referred to. And 201. It's in there. It has
been in there since probably `91 or prior to
that, '86. But it continues to be there for that reason, to make sure that there's -- that the Secretary has a mechanism to be able to reach out to people and let them know particularly it was designed for -- under the use of federal aid program funds for the program in which roads are not being maintained.

And of course the sensitivity we have is under the TTP program we know of a lot of occasions where roads are neglected simply because they're associated with tribal lands, Indian lands, Indian communities and the result of that is we need to make sure we notify those folks of that. So that's under record-keeping.

That's Subpart G. Again, the big part of Subpart G is the list. So take a look at that list. If there's things that you feel need to be added to it or things that are not clear certainly provide those comments in terms of road maintenance.
We've talked in the past about airport access roads but limited to that. I don't know that that's going to change in terms of the maintaining actual runways from the standpoint of -- certainly from the liability standpoint it has not only for the Secretary but also for the tribe in terms of doing that. But those are all identified in here as to what we can and what we can't do, what we shouldn't do. But certainly the emphasis is what we can do and that is to maintain our roads now that we have a little more of the eligible funds available to us to do that.

Questions on road maintenance or maintenance of roads? Maintenance program as a whole. Bob, H and I.

MR. SPARROW: All right, so I'll spend a couple of quick minutes here going over H and I.

H is really just miscellaneous.

Most of H in the old reg was put in there for
reference purposes only because it wasn't part of the IRR program. We've kept pretty much all of that intact in this particular subsection. It provides information on the transport of hazardous and nuclear waste through the reservation or on tribal lands. Utilization of Indian preference in tribal employment rights. Applicability of tribal taxes and fees for the Tribal Transportation Program projects. A few Q&A's on the Emergency Relief Program. How do you establish and operate a tribal transportation department itself. And what eligible activities or functions that the organizations of the department can contract.

There's also some Q&A's with regard to tribal regulations or the establishment of tribal regulations of oversize and overweight vehicles. Reporting requirements, employment rights, alternative dispute resolution processes to resolve the Tribal Transportation Program issues. And
then other research activities that are available.

So again, most of these don't necessarily tie directly into TTP but they're put in here for reference purposes only to assist the tribe if they're working with hazardous material or wanting to do research just to provide some information and direction on where to go for additional information.

So hazardous and nuclear waste transportation. Again, discusses the transport of hazardous and nuclear waste. What are the roles of the state, the state DOT, the tribal, local government with regards to the transfer of this waste. Accident response. Training. And if you have an accident response team where can you go to get training, what type of training, dollars, cleanup, et cetera with regards to transferring the waste through the tribal land.

Reporting requirements. Again,
informational purposes only. What information does the -- on the Tribal Transportation Program does BIA and Federal Highway have to make available upon request of a tribe. How would you go about requesting that information.

Additional Q&A's on Indian employment and training and contract preferences on carrying out the projects. And then TERO, tribal employment taxes and fees on projects. Again, just some basic Q&A's to provide information and direction for the tribes.

Emergency relief. Several questions on ER. Now, this was done before that Stafford Act went into effect so this is something we've got to go back and take a look at anything we need to change in reference to that before it goes out for the NPRM.

But it provides some information to you on how the Emergency Relief Program works, what the thresholds are. It references
23 C.F.R. 668 which is where the regulations for the Emergency Relief Program are.

It talks about ERFO as LeRoy said earlier. That's Emergency Relief for Federally Owned Property. That's part of the ER program but those funds are run through the Office of Federal Lands which is my office. They're not run through the Emergency Relief Office of Federal Highway.

You want to establish a tribal transportation department. Some Q&A's on establishing that, what the requirements are, what you should be able to carry out, what you can regulate, what you can't, et cetera, et cetera, just to give you some insight if you're interested in establishing a tribal transportation department itself.

Alternative dispute resolution. Resolving disputes between the government and the tribes on tribal transportation program issues is discussed in this section as well.

And then as I said eligibility for
transportation research and funding
opportunities are some references of grants
and other things, other funding sources that
the tribe can look into if it's interested in
doing research or funding that particular
research.

There's no key dates in this
section. This is pretty much just referencing
other programs. But with record-keeping as it
said earlier, you know, what type of
information the tribes can ask the BIA and how
we've got to keep records of what information
is provided to the tribes themselves. So how
you request it and what information can be
made available to the tribes.

So again this is just kind of the
catch-all at the very, very end of things that
were critical and important to the tribes
during negotiated rulemaking and were kept in
the reg even though they didn't pertain
directly in some cases to the IRR program
itself. Or the TTP program now. Yes, Tim.
MR. ROSETTE: Tom Rosette with the Chippewa Cree Tribe in Rocky Boy. I guess a question, you know, that's always been on my mind and I get a little -- I never ask it because it seems so simple but I never know what the answer is is who's the boss, Federal Highways or the BIA? You've got two Secretaries. Where does the buck stop here? I mean who's -- which one of you guys is the boss?

MR. SPARROW: We're partners. It's co-administered between the Secretaries. I don't think there is one Secretary over the other.

MR. ROSETTE: Do the Secretaries fight over us?

MR. SPARROW: Yes, and LaHood was a really good arm wrestler too I'll tell you. (Laughter)

MR. SPARROW: It's discussion and carried out in cooperation between the two agencies.
MR. ROSETTE: When I looked at the regulations that are being set forth I'd like to comment that I think it's more weighted toward Federal Highways and Federal Highways taking more jurisdiction over tribal programs. And I don't think that's the intent of Congress. I hope it wasn't the intent of Congress. And you know, dealing with one federal agency is basically hard enough.

MR. SPARROW: You've got a unique case, Tim. I mean I agree. You've got a unique case where in TEA-21 in 1998 although -- this is Title 23 money. This comes from the highway bill. It's overseen by Department of Transportation. But in 1998 when TEA-21 was passed, the highway bill back then, it directed the Secretary of the Interior to develop regulation. It said Secretary of the Interior in cooperation I think with the Secretary of the Department of Transportation. But it directed Interior to develop Title 25 regs even though it's Title 23 money.
And there's discussion between the two agencies like that. So. It's not a simple -- I mean it's co-administered is the answer.

MR. ROSETTE: No, I don't see it as simple. That's why I keep forgetting to ask it. I really don't honestly know if there's an answer to it. But it just seems that over the years Federal Highway has taken more of a leadership role in what should have been a DOI program. I mean after the money is transferred it becomes DOI money. You guys should deal directly with DOI on any concerns that you have just like we have to deal with the Bureau on any concerns that they have. It's just regular tier management.

MR. SPARROW: Well, you've got that and you also have the fact that when SAFETEA-LU started and was passed it provided tribes an option to work directly with Federal Highway. All I'm saying is it was -- so our involvement, the IRR team at Federal Highway
used to be three people. I mean they worked
looking at the TIPs and getting the money out
and a bridge program. And that was it.

MR. ROSETTE: And now it's what?
MR. SPARROW: A number. Higher

than --

MR. ROSETTE: And now it is what?
MR. SPARROW: Eighteen, nineteen.
MR. ROSETTE: That's what I'm
talking about.

MR. SPARROW: Right.

MR. ROSETTE: I mean I guess I'm
getting down to that point.

MR. SPARROW: Right.

MR. ROSETTE: Dealing with one
agency is difficult enough. To have another
agency put rules and regulations together
without knowing how to approach tribes and
going through the process.

I mean you guys have been around
long enough, I know you have, Bob, been around
long enough that you can go through, you
should understand how to consult with tribes. I mean hands down you should be able to do it.

And then dealing with these issues. We have this co-leadership roles here where it gets confusing from a tribal standpoint as who's the dog and who's the tail I guess.

MR. CAULUM: Andy Caulum for the Solicitor's Office Division of Indian Affairs. Your point is very well taken definitely. I mean even within the government, for example, there was a GAO report that came down awhile back and with all due respect to my colleagues at GAO the initial view was well, this particular thing, the Secretary would never do it. This is not a contract the Secretary would enter into.

Then as we were working with GAO and answering their questions we had to explain to them well, actually, this is authorized because the law of the transportation money which is the first thing
we look to says that this is an activity that can be done, for example.

Additionally, you know, there are pluses and minuses I would agree so the co-administration of the program. But the reality is is that it's what Congress has said you're going to do. And until they change it in the law there's really not a lot we can do about it on our end from the regulatory standpoint. But I agree sometimes it does create confusion.

Fortunately Mr. Gishi and Mr. Sparrow for the most part as the program leads get along fairly well. And at the legal end we also do. And so I think that we do pretty well in terms of the coordination. But there is no question that at times it can lead to confusion I think for tribes.

MR. ROSETTE: It goes back to one more deal that, you know, the whole Rocky Mountain Region got up and said about consultation. That in order to have true
consultation we can't be read at and talked to like and then put into this short of a time frame. I think I made that clear at our last meeting that this was too big of an issue to be put out at one consultation.

I know there's other consultations that will go on, but still when you roll it out it should be a full rollout. People should be able to digest the whole thing and get a true understanding of what's going to happen now and in months to come with this process. And how they could actively be a part of it to make it a better program.

MR. SPARROW: Thank you, Tim.
Subpart I is the last subpart. It's brand new to this particular regulation. And it reflects the changes that Congress made to the IRRHPP program. There's no real oversight in different sections because all it is, it's totally dedicated to that one particular program. So that is a standalone program separate from TTP.
But what Congress did was it in essence pulled out the Q&A's that were in 25 C.F.R. 170 and put them into statute, including the ranking criteria. If any of you have applied for an HPP project in the past you'll see in the very back there's a scoring matrix. The very last page.

And that scoring matrix is verbatim out of the old reg. It's the very last page of the reg on the very back maybe. So that's the scoring matrix that if you have a copy of the old regulation was in the old regulation.

And what we did was took the language out of the statute and plugged it into Q&A's to reflect pretty much exactly what was taken out of 25 C.F.R. 170.

There are two changes though. One change is the fact that it is now funded at $30 million a year but it's out of the general fund. Which means even though we've got a highway bill Congress has to pass a totally
separate piece of legislation in order to have this program funded. So for this year the program is not funded. We have a highway bill but Congress did not pass or provide funding for the Tribal High-Priority Program.

Because of that if any of you have applied in the past you always had to have applications in by December 31. And then BIA or Federal Highway would respond back to you by January 31. The projects would be evaluated by February 31. And funds would be made available by April 15 or whatever.

Because there's no time frame and we don't know whether the program is going to get funded what there will be if it gets funded is no sooner than 60 days after it gets funded we will have a call for projects and it'll work that way.

It could be August. It could be October. It could be January. We don't know. It's whenever Congress passes general funding. And it could come at any time. So if that
program does get funded we'll work with BIA, the TTAP centers, Federal Highway, the coordinating committee, et cetera, to get the word out and get notifications out to the tribal leaders saying, okay, this program is provided funding and there's a call for projects that's due X date. And that's the way it'll work.

And then the evaluations will occur, will happen and be carried out exactly like they've been carried out since 2005. But for this year no money, at least no money yet so there's no call for projects. And there's no sense of doing work not knowing what's going to happen. Yes, Tim.

MR. ROSETTE: Just one question on -- is it still limited to $1 million and under before you can apply?

MR. SPARROW: It's limited to $1 million per project.

MR. ROSETTE: I mean you know, before it was if you got under $1 million you
were the only ones that could apply.

MR. SPARROW: Right.

MR. ROSETTE: So now it's limited
to you can only apply for $1 million.

MR. SPARROW: It's apply up to $1
million but it has to be the highest -- you
have to prove that you don't have enough money
to fund your highest priority project. It
can't be that you do a bunch of other projects
and then you've got $300,000 left over so you
ask for $700,000 to do a project. This has to
be the only project that you would do, the
highest priority project of the tribe.

So we'll wait and see what happens
with that. But because it affects the tribes
themselves we've included it in this reg,
quote unquote, "for reference purposes only"
as opposed to developing a whole new
regulation just for this particular set of
Q&A's.

MR. ROSETTE: And you could only
apply it for 1 year or what?
MR. SPARROW: You can only have one project in at a time.

MR. ROSETTE: And if you phase the project, you couldn't do something like that?

MR. SPARROW: We'd have to take a look at it on a case-by-case basis of what the phases are. You'd have to have that phase completed before you applied for the next part.

You've got to take a look at what Congress now has for this program in law. It doesn't say like $9 million will be provided for safety funding. It goes into a full -- there's a complete section in MAP-21 that is found, Section 1123 of MAP-21. And it goes on for several pages and actually references the ranking criteria table that was in 25 C.F.R. Part 170 will be used to rank the projects. So.

And that was added on. If you remember correctly when the bill came out of the EPW Committee and when they went into
conference there was no HPP program at all. It wasn't separate, it wasn't included, it was gone. But this is what came out of conference. Any other questions? Yes, sir.

MR. KELLY: Dave Kelly, Oglala Sioux Tribe. Bob, this question really don't tie to the HPP portion of it, it's just a generalized question. In the past several years I'm going to say we've been lucky enough to go through a couple of audits. The first time with OIG and 2 years later again with OIG. The third time was just recently here in January I believe, January or December, that area.

And this audit was more entailed. It was real entailed where I think, I'm pretty sure it was OIG again along with some Federal Highway. Yes, that came and selected the Oglala Sioux Tribe for the third time. Or we volunteered.

But it was a report that was supposed to be done on the Federal Highways.
And to this date we haven't had any correspondence or response from them individuals that came and took the detailed look at all of our documents and gave us some sort of information or reprise back to what's going on within Federal Highways. Any chance of getting an update?

MR. SPARROW: Yes. The draft report is due to Federal Highway sometime in June. I talked to the IG actually yesterday to see how they were doing with their schedule and they said that we would see a draft sometime in early to mid June, that there was something being circulated through their department now with the hopes of having a final report out by sometime in July.

There were 10 tribes that were visited by the IG. Thank you for volunteering. Oh yes, call Dave, he'll go along with it, no problem.

This particular review is an OIG review of Federal Highway. And how we're
working with the tribes and working with the Bureau of Indian Affairs in delivering of the TTP program. That's what Dave is referencing. It wasn't an audit of Oglala Sioux, it was more an audit of Oglala Sioux and how they're working with Federal Highway. Even though at times I'm sure it felt like it was an audit of the Oglala Sioux Tribe. But that was the intent.

And that report will be made available as soon as it's final. It'll be made available to the public. We'll probably post it on our website. LeRoy will do the same. Yes, sir.

MR. DAVIS: Monte Davis with the Match-e-be-nash-she-wish Band of Pottawatomis. I've been sitting here all afternoon listening. Kind of a unique situation for a.k.a. Gun Lake Tribe. We were re-recognized in 1999. They started a roads program to 2006 right there should tell you where I'm at. I'm concerned we'll be paying you back money by
the time Fiscal Year 2016 comes around. I'm a little nervous what's going to happen in our situation.

MR. SPARROW: You can make the check payable to -- no. Unfortunately in your case, and there's a number of tribes. Do you want to talk about this? There are a number of tribes that really are just onboard in the last couple of years. Because the inventory is frozen to be FY '12 or prior to 2004 if it's not BIA or tribal you don't have a real long history of FY '05 to FY '11 tribal shares. You're hindered by those aspects of the funding formula. But Congress has told us this is what we have to use. And LeRoy can go into more. Population is the same issue.

MR. GISHI: If you look at the -- if you pull down the download from either the FHW website or bia.gov the tribal shares for FY 2013 it's written up in a format. It's like 8.5 by 14 size pages with the columns that have headers and which I'd include in
there all of the different factors that Bob
described today on the different subparts, the
supplemental of course, the amount for 2
percent planning, how the supplemental is
identified, the 80 percent of the RNDF, all
the way down to the end. And the last column
is actually what was provided to each tribe in
FY 2011.

But when you look in there one of
the columns is population. And if you just
happen to look at that and just go down the
list, look for zeroes. There's actually
tribes that exist but in the population
database in NAHASDA it's zero. I think we had
26, 25 tribes that fit in that category.

Some of these tribes do not have a
program which they basically do not apply for
or do not interact with HUD in terms of
housing activities and pretty much sponsor
support their activities in the program
primarily through the tribe. So the result of
that is there's a zero.
Others, they haven't been recognized long enough to be able to get a database, a number in there, and it's zero.

Likewise when you see new tribes coming into the mix. We had Tejon Tribe in California that just got recognized in the last 2 years. When you look at those three elements in terms of what they were receiving in FY 2011 80 percent of nothing is really nothing. When you look at miles of road they don't have in inventory and enough time to establish it in 2012 they have zero. Population is zero. They have no historical percentages to reflect from 2005 to 2011. That's zero. So when you look at that one tribe the number is zero.

And this is obviously from our standpoint a concern. And we've communicated this internally to our folks also is that there are some things out there.

Of course, the idea is we want to be able to communicate that to you if you
haven't seen it. If you were any of those zeroes you would know that you obviously would probably have comments relative to that. Obviously that comment process as Vivian has indicated is through a different avenue. Here it's talking about writing up the regulations that reflect what's in the law. So from that standpoint anything that you have is built into it.

So I would encourage you to download those numbers from those locations. If you can't find it or you need some -- if you need I can send it to you via email also. I do have it on my laptop. Once I get back to the hotel I can email that to you.

So from that standpoint you wouldn't be paying anything back, you just would be -- it would be a smaller percentage overall.

Any other questions on that aspect of things? If not I want to thank everybody for their time today, being able to come here.
and at least to begin the process of dialogue
of and discussion of as we indicated an
advanced look at what's in the regulations in
terms of what's out there.

MR. ROBINSON: Tracy Robinson with
the Northern Cheyenne Tribe. You know,
sitting here today and going to Albuquerque
this winter our tribal council along with the
Rocky Mountain Region passed resolutions that
direct these as not being -- we don't consider
these as true consultations with tribes.

And with that and sequestration if
-- when you do come out for the true
consultation with tribes to come to the Rocky
Mountain Regions where tribes that are dealing
with funding can attend.

And one of the other things that
I'd like to see with this is when you come out
with your red-line version of these changes if
you could put on there where the changes are
coming from. Because we sat here and listened
to you and Bob today talk about that these are
your guys' changes. When you start getting
comments from tribes and tribal leaders to put
it in there that who's making them comments,
showing that they're truly coming from tribes,
not the Federal Highways or not BIA. Thank
you.

MR. GISHI: Thank you.

(Applause)

MR. MOORE: Ed "Buster" Moore,
Fort Belknap Tribal Council as well as a
tribal transportation delegate for Montana-
Wyoming Tribal Leaders.

At this time I have a resolution
from the Montana-Wyoming Tribal Leaders that
alludes to what Terry was sharing with you.
I'd like to read this into the record if I
may, please. Most of the tribes, all of the
tribes within our region, Rocky Mountain
Region, are generating or have already
generated supporting resolutions to this
resolution.

So a resolution calling for the
BIA and FHWA to convene meaningful consultation with Indian tribes regarding Part 170 regulations and to honor the government-to-government relationship and to promote the rights of tribal governments to receive direct transportation services from the federal government.

Whereas the Montana-Wyoming Tribal Leaders Council has been created for the express purpose of providing Indian tribes of Montana and Wyoming with a unified voice and a collective organization to address issues of concern to the tribes and Indian people.

And whereas the tribal governments of Montana and Wyoming and Idaho recognize the importance of actively engaging in policy formation on any matters that may affect the tribes and reservations.

And whereas the board of directors of the Montana-Wyoming Tribal Leaders Council consists of duly elected tribal chairs, presidents and council members who are fully
authorized to represent their respective tribes.

And whereas the Montana-Wyoming Tribal Leaders Council recognizes the importance of planning, design, construction and maintenance of transportation facilities throughout the Rocky Mountain Region to improve public safety and promote jobs and economic development on our reservations.

And whereas the regulations for the Indian Reservation Roads (IRR) program 25 C.F.R. Part 170 were published by the Bureau of Indian Affairs (BIA) and became effective in Fiscal Year 2005 which converted the IRR program from a regional roads program into a formula-based, inventory-driven tribal shares program highly dependent upon an accurate transportation inventory.

And whereas SAFETEA-LU was enacted in August 2005 increased funding for the Indian Reservation Roads program from $275 million annually to $450 million annually,
streamlined the IRR program and directed the Secretary of Transportation and Secretary of the Interior to complete a comprehensive national inventory of transportation facilities eligible for assistance under the IRR program.

And whereas with implementation of the Part 170 regulations and increased funding Indian tribes soon realized that the BIA and Federal Highway Administration which jointly administers the IRR program were not ensuring that BIA regions uniformly and consistently updated tribal IRR programs.

Inventories for inclusion in the National Tribal Transportation Facility Inventory resulting in additions to the inventory (NTTFI) of tens of thousands of miles of IRR program routes which greatly altered the distribution of tribal shares of IRR program funds among BIA region and tribes.

Whereas despite increased funding under SAFETEA-LU Indian tribes in the Rocky

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Mountain Region witnessed a significant decrease in our IRR program tribal shares.

And whereas despite a 6-year effort by Indian tribes in the IRR program coordinating committee to convince the BIA and Federal Highways to establish uniform federal policy and procedures for the inclusion of the inventory (NTTFI) of eligible transportation facilities including clear criteria for adding proposed roads, primarily access routes and other eligible roads the Agency did not amend the Part 170 regulations or establish interim guidelines or policies for use by all BIA regional offices and Indian tribes.

And whereas at the request of Indian tribes Congress amended the IRR program with the enactment of MAP-21 in July 2012 which replaced the regulatory funding formula with the statutory-based formula to distribute TTP funds to Indian tribes, renaming the IRR program the Tribal Transportation Program and made other changes to the IRR program.
And whereas the BIA and Federal Highways developed draft changes to the Part 170 regulations to implement the statutory changes required by MAP-21, making other changes to the Part 170 regulations sought by the agencies.

And whereas the BIA has scheduled three consultation meetings with Indian tribes over a 1-week period in May including meetings in Phoenix, Arizona May 16, Minneapolis, Minnesota May 21, and Alaska on May 14 to discuss the draft changes with Indian tribes.

Whereas the Montana-Wyoming Tribal Leaders is concerned that the draft changes proposed by BIA and Federal Highways have not had the benefit of meaningful consultation with Indian tribes concerning how to best improve the delivery of transportation programs, projects and services to Indian tribes, to promote the right of tribal government to govern their own affairs and to ensure that consultation of the trust
responsibilities of the United States to tribes and to individual Indians to encourage flexibility and innovation and to reduce, streamline and eliminate unnecessary and restrictive federal policies and procedures.

And whereas a review of the draft changes of the Part 170 regulations suggest that BIA and Federal Highways would limit tribal flexibility and innovation, curtail tribal appeal rights, unreasonably restrict tribal access to TIP -- TTP, sorry, federal aid and state-administered highway safety funds at a time of funding shortages in Indian Country and not fully implement MAP-21 streamlining provision.

And whereas the Montana-Wyoming Tribal Leaders Council calls upon its member tribes to demand that BIA and Federal Highways meaningfully consult with Indian tribes before new regulations are issued for the TTP.

Now, therefore be it resolved that the Montana-Wyoming Tribal Leaders Council
calls upon the BIA and FHWA to convene meaningful consultation with Indian tribes beyond the three limited consultation sessions announced in the April 12, 2003 Federal Register concerning the overhaul of Part 170 regulations and before the agencies issue a Notice of Proposed Rulemaking for public comment as required in Executive Order 1375 and the Department's respective tribal consultation policy.

And be it further resolved that the Montana-Wyoming Tribal Leaders Council asks its member tribes to authorize their elected tribal officials and tribal personnel to travel to the upcoming tribal consultation meetings to share directly with BIA and Federal Highway officials their concerns with the draft changes to the Part 170 regulations which do not appear to reduce, streamline or eliminate unnecessarily restrictive federal transportation policies or procedures, honor the government-to-government relationship or
promote the rights of tribal governments to receive direct transportation services from the federal government.


MR. GISHI: Thank you. Can we get a copy?

MR. PALMER: Jason Palmer, Colville Confederated Tribes. And similar to the Wyoming Montana Tribal Leaders, what they just read into the record, and echoing some of the concerns by other tribes in the Rocky Mountains and others here regarding consultation.

First, you know, we welcome and appreciate the dialogue that we've had here today. I mean, I took a lot of notes. There's a lot of good information here. But there's a number of real substantive issues here regarding these
proposed revisions that you guys put out under this notice. And the process of consultation, it's -- the process is just as important as the substance of the consultation. And I think that's, you know, it's really important to get that out there.

You know, these existing regulations, they were developed through a very extensive rulemaking process. And I appreciate you guys' comments earlier to help clarify what the proposed rulemaking process is because when I read the notice the process described in that notice, it wasn't very clear to me.

Because the way I understood it was the tribes had an opportunity to review the revised versions of the regulations. You could attend one of the three consultations and submit comments. That process, it's markedly different than the negotiated rulemaking process that the previous regulations went through. And it definitely
falls well short of the 13 consultations that were held that addressed just one aspect of the Part 170 regulations.

There's nothing provided in here that indicates that the BIA or the Federal Highway explored or even considered the use of negotiated rulemaking, and nothing in here articulated the basis for declining the use of such a process.

And anyway, so last week the Affiliated Tribes of Northwest Indians held their midyear convention. And there was two resolutions that were passed out of the transportation committee. One very similar to the one that was just read in.

And I'll actually cut through and get down to the meat of what it is. And it just said therefore, be it resolved that the Affiliated Tribes of Northwest Indians does hereby request that the Bureau of Indian Affairs and the Federal Highway Administration reconsider and revise the regulatory process
set forth in the April 12, 2013 notice to
either provide a negotiated rulemaking process
or some other collaborative consultation
process that offers tribes the opportunity to
develop a consensus rule or an interim rule.

And be it further resolved if the
departments are not willing to use a
negotiated rulemaking process at the bare
minimum the tribal consultation process should
not only offer tribes the opportunity to
provide comments to draft revisions, it should
ensure that the BIA and the Federal Highway
Administration will make all tribal comments
available to the tribes and provide a written
response to those comments before publishing
a Notice of Proposed Rulemaking.

And that's all the comments I had
today.

MR. GISHI: Thank you.

MR. CROW BELT: Thank you.

Leonard Crow Belt, Fort Peck Assiniboiné &
Sioux Tribes, northeastern Montana.
I would like to read into the record, and I'll make it brief, just the resolution number and that we support the Montana-Wyoming Tribal Leaders' resolution.

And Fort Peck Resolution No. 26-2368-2013-05. And I'll read it. Therefore, be it resolved the Fort Peck Tribal Executive Board hereby approves its support of the Montana-Wyoming Tribal Leaders resolution pertaining to the 25 C.F.R. Part 170 tribal consultation process.

I'd like to read that into the record and I'll give a copy for the minutes.

Thank you.

MR. GISHI: Thank you.

MR. RUSETTE: Ted Rusette from the Chippewa Cree Tribe, Rocky Boy Reservation in Montana.

I'd like to submit a resolution into the record supporting the Rocky Mountain Region tribes, Resolution No. 7113. A resolution calling for the BIA and FHWA to
convene meaningful consultation of Indian tribes regarding Part 170 regulations and to honor the government-to-government relationship and promote the rights of tribal governments to receive direct transportation services from the federal government. Thank you.

MR. GISHI: Thank you.

MR. HEALY: Good afternoon. John Healy, transportation director, Fort Belknap.

We support the comments made by the Councilman Moore, Mr. Palmer, Mr. Crow Belt and the gentleman from Chippewa Cree Tribe.

The Fort Belknap Indian Community Council has also passed a resolution in support of the Montana-Wyoming Tribal Leaders resolution. However, it hasn't been signed yet. As soon as it gets signed I'll email LeRoy a signed copy. Thank you.

MR. GISHI: Thank you.

MR. ROBINSON: Trace Robinson,
Northern Cheyenne Tribe. I also have a tribal resolution, DOI-103-2013. And it also echoes the resolution read by Montana-Wyoming Tribal Leaders. And I'll submit it for the minutes.

MR. GISHI: Thank you. Okay. Any other resolutions you want to hand in or submit for the comment?

MR. ROSETTE: Just one last comment. You know, on your April 12 correspondence, LeRoy, Bob, on the one, two, three, fourth paragraph down although MAP-21 replaces the relative need distribution fund that's discussed above BIA needs to codify the requirements that proposed roads or access roads must meet in order to be added to or remain in the NTTFI.

What exactly did the BIA and Federal Highways do to codify and how was that presented today?

MR. SPARROW: The writeup on -- this is Bob Sparrow. The writeup on proposed roads and access roads I believe is in Subpart
D. It talks about the attachments and the information that's required to be submitted for proposed and access roads. So it's in that subpart. Yes.

MR. MYERS: This is Barak Myers with the Eastern Band of Cherokee. We also have a resolution that was passed last week at the United South and Eastern Tribes regarding the same issue that Jason had brought up from AT&I and some of the folks from the Montana-Wyoming Tribal Leaders Council.

Once I get a signed copy of that resolution I'll forward that over to LeRoy and Bob so that they'll have that as well.

MR. SPARROW: Anything else? Yes, sir.

MR. SMITH: John Smith, Shoshone Arapahoe Tribes, transportation director.

Our joint business council has also a resolution under consideration and has to await its authorization due to the fact that the council has not met since the second
week of May. And the time line on this
particular issue seemed to be a rather short,
quick action although we did work with Ivan
Posey as a council member with the Montana-
Wyoming Tribal Leaders. But we will also
submit a resolution supporting that along with
the Northern Cheyenne, and Fort Belknap, and
Rocky Boy, and Jason, and Barak.

We agree with the comments that
were generally stated today. And we'll be
forwarding a final edition of our corrective
measures for the record by the due date.
Thank you very much.

MR. SPARROW: Thank you, sir. Mr.
Caulum?

MR. CAULUM: Seeing no more
comments on the consultation part of our
meeting we'll go ahead and close the
consultations formally and close the record
for today's meeting.

(Whereupon, the foregoing matter
went off the record at 4:47 p.m.)
A
AASHTO 276:15
ability 31:19,20
40:6 41:5 43:6,11
52:8,11,13 53:2
55:19 57:8 72:2
97:18 98:2 101:10
102:13 136:19
216:4,7 221:11,20
258:20 261:22
274:21 277:19
able 32:3 33:9
35:21 39:18 40:6
41:17,19 42:9,16
43:9 49:13 55:20
56:6 61:8 63:5,11
72:2,19 73:10,11
75:15,16,18 78:3
78:12,15 82:2
84:20 85:7 86:2
87:22 93:1,14
94:4,4 97:18 98:4
98:11,21 101:13
101:14 102:9,17
102:19,20 108:16
109:6,12 113:9
147:8 157:5 194:3
215:14 217:4,8
219:2,8,11 220:20
221:6,13,21 227:2
227:19 231:12
232:5,7 233:9
234:4,7,13 236:19
242:4,6,10,18
243:8,16 247:10
250:14 251:3,9,14
255:8,15 261:20
264:19 265:21
266:7,17,21,22
267:3,8 268:20
269:21 270:11
273:15 275:10,22
276:17 279:17
280:3 285:13
291:2 293:9 304:2
304:22 305:22
absolve 102:22
accelerate 255:16
accelerating 255:12 256:13
acceptance 214:2
access 6:1 35:14
72:20 73:17,17
75:2 81:17 82:11
84:18 85:14 89:7
91:19 93:5 140:2
140:7 144:7 146:8
157:7 158:3,17
159:7,21 235:5
248:17 281:2
311:20 313:11
321:4,22 322:3
accessed 160:21
accessing 91:13
accident 283:15,17
accomplished 199:13,15
accomplishing 266:2
accomplishment 199:12
account 41:3,4,8
78:16 104:22
139:12 152:5,7,8
219:17 224:14
230:19,21 231:2
236:13
accountability 42:12 257:5 261:1
262:18
accounted 42:15
43:1
accounts 227:16
accurate 151:20
152:9 207:5
309:17
acknowledge 262:2
acquire 245:19
acquisition 229:2
246:2
act 11:15 12:12
29:15 40:22 46:17
46:21 50:2 56:12
56:16 57:13,19
101:9 169:11
216:17 218:6,19
218:21 219:21
220:7 221:19
228:20,20 232:1
284:16
acted 43:2
acting 16:5 17:18
action 261:10
263:8,14 264:15
265:18 266:15
323:3
actions 126:22
264:18
actively 293:12
308:16
activities 28:8,19
33:14,16,17 34:17
39:19 40:22 59:21
60:8,10 67:13,16
67:20 68:4 69:17
70:7 72:1,5,9,14
73:9,14 74:9 75:5
75:20 80:20 83:1
87:14 90:15 112:2
112:12 129:15,21
145:13 192:18
214:3 216:5
217:20 223:17
236:6,22 237:14
240:17 241:14
242:8,21 243:2
245:2,14 246:20
246:21 258:4
259:8 260:7 265:5
268:21 270:20
271:12 259:23
275:6,12,16 277:4
277:12,14 278:2
282:14 283:1
303:19,20
activity 60:14
80:22 85:21 86:9
191:10 192:8
212:5 217:15
224:18 225:3
231:11 241:7
243:6 268:4 278:4
278:5,6 292:1
acts 47:1
actual 29:10 95:12
130:12 136:3
246:6 260:4 281:4
adament 7:14
add 77:5 148:9,13
148:19 151:13
152:10 163:13
170:18 177:3,7,11
184:22 185:2
251:19 252:21
added 37:22 61:12
81:3 88:14 90:4
90:13 145:22
280:20 298:20
321:15
adding 196:18
311:9
addition 124:13
139:9 249:4
additional 33:4
157:12 171:12
200:7 251:12,13
283:9 284:7
Additionally 292:3
additions 310:16
address 56:6 82:8
93:1 129:19 158:3
221:21 247:9
308:12
addressed 81:20
195:19 197:18
238:20 239:6
246:9 274:1 275:4
317:2
adequate 71:3,7
adequately 47:12
82:8
adhering 79:1
adjective 196:16
adjectives 206:17
adjustment 166:11
171:15,21 176:1
183:4 235:12
adjustments 69:14
administrator 39:18
administered 38:21
46:12 75:17
administering 229:14
administrants 310:11
administration 11:2 25:1 76:21
79:13 113:3
127:18,22 186:10
189:7 216:20
255:6 263:6 292:5
310:10 317:21
318:13
administration's 79:18
administrative 154:15 165:4
administratively 236:21
administrator 19:14 96:15
ADT 71:6
advance 59:8
150:17 211:18
224:20
advanced 212:12
222:9,20 227:8,9
227:10 235:3
306:3
advancing 49:20
advantageous 69:5
adverse 79:2 156:7
advertise 211:18
advocate 135:7,11
affairs 1:1,19 4:8
6:20 17:15 45:22
50:9 78:18 117:18
119:7 127:6 133:6
133:8 139:3,7
148:11 149:10
217:16 257:16,20
259:13 272:10
291:9 301:2
309:13 312:21
317:21
affect 7:20 158:19
| Page 345 | Neal R. Gross & Co., Inc. | 202-234-4433 |
| prioritize | 101:10 |
| priority   | 11:12 48:8 |
| probably   | 8:10   |
| probably   | 105:4 108:6,15 |
| problem    | 88:13  99:17 197:17 |
| problems   | 251:21 274:20 |
| procedural | 66:10  46:8 |
| procedures | 50:3  58:1 66:12  74:15 111:21 |
| processes  | 119:9  282:21 |
| producing  | 254:12  207:22 |
| producing  | 235:13  7:13  8:1 |
| productive | 10:21  217:39,10,12,14 217:22 219:8 |
| professional | 197:16 203:2,3 212:19,21 |
| program    | 1:7  4:14 |
| progress   | 45:14  226:14 227:6  263:8 |
| progressively | 221:18 |
| project    | 22:4  38:5 |
| programs   | 34:3  35:21 |
| programs   | 7:20  27:13 28:18 |
| projects   | 34:3  35:21 |

Neal R. Gross & Co., Inc. 202-234-4433
<table>
<thead>
<tr>
<th>Page 365</th>
</tr>
</thead>
<tbody>
<tr>
<td>668 285:1</td>
</tr>
<tr>
<td>7 29:21 118:9 150:5 150:6</td>
</tr>
<tr>
<td>7-day 233:11</td>
</tr>
<tr>
<td>7-year 170:20 176:19</td>
</tr>
<tr>
<td>7113 319:21</td>
</tr>
<tr>
<td>8 29:20,21 30:3 8.5 302:21 8.7 170:21 8.9 170:18</td>
</tr>
</tbody>
</table>
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: 05-21-13

Place: Bloomington, MN

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