

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

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OFFICE OF INDIAN SERVICES  
TRANSPORTATION DIVISION (WEST)

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TRIBAL CONSULTATION ON DRAFT REGULATIONS OF  
THE TRIBAL TRANSPORTATION PROGRAM

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TUESDAY  
MAY 14, 2013

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

PRESENT

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

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P R O C E E D I N G S

9:00 a.m.

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

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

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

We're delighted to have several folks from Washington, D.C. with us today. And starting off is going to be Mr. Andrew

1 Caluum who's going to give the first  
2 presentation. And, Andrew, will you be  
3 introducing the follow-on speakers after that?  
4 Okay.

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

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

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

18 I want to just do a basic  
19 introduction on the consultation aspect of  
20 this, and then Vivian Philbin, who's been with  
21 Federal Highway for a lot longer than I've  
22 been Interior, will go ahead and do the sort

1 of historical background on how we got to  
2 where we are now, and then turn it over to Mr.  
3 Gishi and Mr. Sparrow.

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

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

22 You are at this session -- this is

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

20 To date we have -- internally we  
21 have done the initial draft rewrite. That was  
22 presented to the Tribal Transportation Program

1 Coordinating Committee. That was formerly  
2 known as the Indian Reservation Roads Program  
3 Coordinating Committee. That committee was  
4 established in 25 CFR 170, and it's a  
5 committee the assistant -- or the Secretary of  
6 the Interior that's appointed by, well, now  
7 her just recently. We have a new Secretary of  
8 the Interior, Sally Jewel, who replaced Ken  
9 Salazar.

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

18 For many of you who don't know,  
19 there are representatives from each of the BIA  
20 regions on the Coordinating Committee, and  
21 then one alternate. And the meetings are open  
22 to the public, so sometimes we get people who

1 are not on the committee itself, but attend,  
2 who have been very interested and have been  
3 heavily involved with the Tribal  
4 Transportation Program for many years, and so  
5 they also may have made some inputs through  
6 their regional representative as well at that  
7 point.

8 Just basic rules for the  
9 consultation here. Mr. Gishi and Mr. Sparrow  
10 will be going ahead and doing their  
11 presentation. We welcome questions, we  
12 welcome comments. There's a court reporter  
13 here today, and she will be taking down the  
14 comments that are made and what we're saying  
15 here today. So when you rise to speak, or  
16 when you're recognized to speak, please give  
17 us your name, and if you're representing a  
18 particular tribe or village, let us know who  
19 that is. You're not required to be  
20 representing anybody, of course, as well, but  
21 if you are here on behalf of a tribe or  
22 village, please let us know that as well.



1                   And one thing that's really  
2                   important is that the court reporter can only  
3                   take down one person speaking at a time;  
4                   otherwise it gets confusing and she can't do  
5                   her job very well.

6                   And then what we will do at the  
7                   end is we will take the transcripts from the  
8                   three consultation sessions as well as  
9                   comments that people are welcome to make  
10                  through the BIA website, and it's in your  
11                  packets that are available. There's the email  
12                  addresses where you can send your comments as  
13                  well until June 14th of 2013. At that point,  
14                  the comments on the draft revisions to 25 CFR  
15                  70 will close, and we will then gather and  
16                  work through those comments and make changes.  
17                  And hopefully somewhat soon thereafter we'll  
18                  be ready to go to a notice of proposed  
19                  rulemaking and then move forward with further  
20                  consultation sessions on the NPRM.

21                   So with that, if you have any  
22                   questions briefly for me, or -- do you have

1 one for me?

2 MR. THOMAS: Yes, I do.

3 MR. CALUUM: Go ahead.

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

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

20 MR. CALUUM: I don't think -  
21 respectfully, I don't think there's been any  
22 federal action that's taken place. We haven't

1 published the rule in a final form. We  
2 haven't published it in a notice of proposed  
3 rule. We have --

4 MR. THOMAS: So how are comments -  
5 -

6 MR. CALUUM: -- made the rule  
7 available to the Tribal Transportation Program  
8 Coordinating Committee for their input. the  
9 rule -- you know, we now are having a public  
10 session on this. I believe that this is  
11 consistent with the department's consultation  
12 policy. This is not a final product as yet.

13 Having said that, if there's --  
14 but I respect your view on it, but I don't  
15 believe that this is anywhere close to being  
16 a final rule.

17 MR. THOMAS: How are public  
18 comments being weighed out then for their  
19 integrity or their weighing? I mean, we're  
20 commenting on something within this document  
21 -- I'm reading this 170.443 that we consulted  
22 on a year ago in June on proposed roads and

1 primary access roads. We never really heard  
2 an outcome of that, and now we're seeing a  
3 document that has those proposed actions  
4 incorporated into the 170 -- 25 CFR Part 170.

5 MR. CALUUM: Yeah.

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

10 MR. GISHI: We will cover that  
11 when we get to that subpart. And if you  
12 notice, just sort of as a refresher, that  
13 portion was actually in (c) before, subpart  
14 (c), which is the formula portion Now it's in  
15 (d). It's still part of the rulemaking, it's  
16 still part of the process. The consultations  
17 that were done last year were in response to  
18 a way to include data for the formula, and  
19 that has changed. And that's what we want --  
20 we're going to make sure we make that very  
21 clear, because we want to be able to get input  
22 and feedback relative to that, because we did

1 make some of those -- comments were made last  
2 year as we were heading toward a process of  
3 updating regulations and policies affecting  
4 the funding formula. And so that .443 is now  
5 in the .500 areas also. So to give you some  
6 indication, that's kind of where we're going  
7 with this. And obviously we welcome those  
8 comments through that process.

9 MR. THOMAS: Okay. Thanks.

10 MR. CALJUM: Okay.

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

13 What I was wondering is, I know  
14 that the new Tribal Transportation Program  
15 Coordinating Committee met to review an  
16 initial draft back in January. Were most of  
17 their comments and recommendations for changes  
18 included in this? Because I've noticed at  
19 least a few that were recommended for change  
20 that don't show the change now. So I'm just  
21 wondering how much of this document includes  
22 input from that last TTPCC meeting.

1                   MR. CALUUM: I will say that -- I  
2 think that that's something that should be  
3 addressed when Bob and LeRoy are doing their  
4 presentations as we get into those particular  
5 aspects of it. And if people are -- have  
6 comments as we get to those particular  
7 sections, they should definitely raise those  
8 both here, and they're also again welcome to  
9 raise them in written form through the process  
10 that's been described on the BIA and Federal  
11 Highway website.

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

15                   Since we're talking about the  
16 consultation process, I think I have kind of  
17 one very, very important point to make. And  
18 that's that the language of MAP-21 doesn't  
19 prohibit the Secretaries from using negotiated  
20 rulemaking, which is the most meaningful way  
21 for us to set rules in place for an Indian  
22 program, and clearly this is an Indian

1 program.

2 But even though MAP-21 doesn't  
3 mandate it, what is mandated is that the  
4 Secretaries under the general negotiated  
5 rulemaking statute assess whether there are a  
6 limited number of identifiable interests that  
7 will be significantly affected by the rule,  
8 and that means the tribes. And I think we  
9 have this situation here.

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

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

21 I'm going to give you a brief  
22 overview of why are we here. But first off,

1 please make sure everyone signs in on the  
2 sign-in sheet. This is a consultation  
3 session. We have a court reporter as Mr.  
4 Caluum indicated. It's very important that  
5 you identify your village, tribe, village  
6 corporation, regional corporation, or if  
7 you're here speaking as an individual. but  
8 sometimes it's difficult for the court  
9 reporter to get down exactly who's speaking  
10 and the spelling of your name, so make sure  
11 you sign in and make sure that we don't have  
12 a dialogue going on because they can only --  
13 we can only get one person's comments down at  
14 one time.

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

20 In 1982 the FLIP program was  
21 established with the STAA off of 1982. And  
22 that was a Federal Lands Highway Program. In



1 1987, which was our next re-authorization  
2 after that star, there were very few changes  
3 to what was then the IRR program. Previously  
4 it was funded in 1982 at \$100 million a year.  
5 It went down in '87 to \$80 million. In 1991  
6 we had a next re-authorization. That's when  
7 some of the people in this room may have  
8 started working with ICE-T, which was a heavy  
9 emphasis on planning, and the IRR funding, and  
10 this is for all of the federally-recognized  
11 tribes throughout the United States, went up  
12 to \$191 million a year.

13 So then we come to why we really  
14 are here, which was T-21 in 1996 which  
15 mandated a negotiated a rulemaking for what  
16 was then the IRR program. There are some  
17 people in this room, I don't want to identify  
18 all of you, that have been involved with this  
19 negotiated rulemaking. I'm one of them. Mr.  
20 Gishi was as well. Mr. Sparrow later. And  
21 that was a multi-year effort. And finally we  
22 had a final rule published for 25 CFR Part

1 170, which are the rules and policies for the  
2 Indian Reservation Roads Program, in 2004,  
3 which is effective in 2005.

4 Let me backtrack so I get to this  
5 slide here and go through all the information.

6 So we have the first published  
7 regulation in 1974 as a roads to the Bureau of  
8 Indian Affairs. And the reason that it became  
9 important as I started with the STAA of 1982  
10 was prior to 1982 the Indian Reservation Roads  
11 Program was funded under annual  
12 appropriations. So you never knew, the  
13 department new knew, let alone the tribes, how  
14 much money was going to be available, because  
15 they were not part of any multi-year re-  
16 authorization with any -- so you could do any  
17 type of transportation planning. So with the  
18 STAA the IRR program became part of the multi-  
19 year re-authorization for surface  
20 transportation.

21 Okay. We have the regulations  
22 were updated in July of 2004. They became a

1 final rule effective for FY 2005 pursuant to  
2 T-21. So what happened in FY 2005 is we had  
3 a new surface bill, we had SAFETEA-LU. Next  
4 slide, please. And, of course, immediately  
5 with SAFETEA-LU there were some changes to the  
6 IRR program. And so this update to 25 CFR has  
7 really been ongoing since 2005. While there  
8 hasn't been any official publications in the  
9 Federal Register, there have been notations  
10 made that because of changes in the law,  
11 certain changes had to be made to 25 CFR Part  
12 170.

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

20 First, it's now the TTP program,  
21 the Tribal Transportation Program. Second,  
22 there is a statutory formula for the

1 distribution of the TTP funds. So that in and  
2 of itself is the impetus, along with the other  
3 changes that have occurred and that we've  
4 noticed that needed some correction since the  
5 original publication of the final rule in 2004  
6 for what's happening today.

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

19           Now, this today is not a formal  
20 rulemaking process. This is in advance of the  
21 NPRM, because during the 25 CFR Part 170  
22 process, when Mr. Gover was then the assistant

1 secretary of Indian affairs, many of the  
2 tribes requested the opportunity to make  
3 comments, which is what we're doing today and  
4 in Phoenix and in Minneapolis, and by the  
5 prepublication of this in advance of the NPRM.

6 Now all the comments that are made  
7 today are going to be taken down by the court  
8 reporter, and in addition any written comments  
9 will be accepted until June 14th.

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

17 Do you have another slide? That's  
18 it.

19 Please, if you have any questions,  
20 ask them. Please make sure you sign in. And  
21 with that we look forward to a very productive  
22 day

1                   Sir. Mr. Thomas.

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

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

1       become terribly confusing.

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

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

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

21                  Thank you very much.

22                  MR. GISHI: Thank you, everybody.

1 I want to continue on -- you don't have a copy  
2 of this. Excuse me, you had a comment?

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

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

17 MS. KLEIN: Christine Klein with  
18 Calista Corporation.

19 MS. CHAVEZ: Minerva Chavez,  
20 Alaska Region BIA.

21 MS. PHILBIN: Let's speak up.

22 MR. CHARLIE: Keith Charlie,



1 Minto, tribal transportation coordinator.

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

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

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

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

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

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

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

22 MR. PETERSON: Hi. Frank

1 Peterson, Chinook Tribe of Kodiak.

2 MS. BORROMEO: Good morning.

3 Nicole Borromeo, Sonosky, Chambers.

4 MR. SMITH: Luke Smith, ONC,  
5 Bethel, transportation director.

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

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

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

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

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

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

20 MS. MANN: Tina Mann, Kokhanok  
21 Village Council.

22 MR. ISAACSON: Todd Isaacson with

1 Bristol Engineering.

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

4 MR. SAGE: Good morning. Richard  
5 Sage, Kivalina Council.

6 MS. NORTON: Good morning. Becky  
7 Norton, Native Village of Kivalina.

8 MS. WARNER: Esther Warner, Galena  
9 Village Council.

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

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

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

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

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

20 MS. HILL: Good morning. Jackie  
21 Hill, Maniilaq Association.

22 MS. JANITSCHKE: Good morning.

1 Barb Janitscheck, Maniilaq.

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

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

6 MR. DANIEL: Clarence Daniel, AVCP  
7 transportation.

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

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

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

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

18 MR. SMITH: Greg Smith, BIA.

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

21 MS. GRAY: Barb Gray, Native  
22 Village of Council.

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

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

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

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

15 MR. SKAN: Thank you. Good  
16 morning. John Skan, Klawock IRA Council,  
17 tribal administrator.

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

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

22 MR. LEWIS: Good morning. Dale

1 Lewis with Red Plains Professional.

2 MR. BALTAR: Good morning. Bruce  
3 Baltar. I'm general council with the Bristol  
4 Bay Native Association.

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

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

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

14 MR. WILLARD: Good morning. Bill  
15 Willard, Wrangell Cooperative Association,  
16 transportation director.

17 MS. COLLINS: Autumn Collins with  
18 Rodney P. Kinney Associates.

19 MS. FEYREISEN: Good morning.  
20 Lisa Feyreisen, tribal administrator, Native  
21 Village of Chuathbaluk.

22 MR. GOLLEY: Robert Golley,

1 Chuathbaluk Traditional Council, chairman and  
2 transportation planner.

3 MS. LARSON: Good morning.  
4 Dorothy B. Larson. I'm the tribal  
5 administrator for the Choggiung Tribal Council  
6 in Dillingham.

7 MR. WINNESTAFFER: Good morning.  
8 Brian Winnestaffer with Chickaloon Village,  
9 department director for transportation.

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

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

15 MR. WASSILY: Good morning.  
16 Joseph Wassily, Clark's Point Village Council.

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

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

22 MS. BAHNKE: Good morning. I am

1 (speaking Native language) Melanie Bahnke. I  
2 am the president of Kawerak.

3 MS. MICHAELS: Good morning.  
4 Denise Michaels, transportation director at  
5 Kawerak.

6 MR. WILLIS: Good morning.  
7 Michael Willis, the Law Firm of Hobbs Straus  
8 Dean & Walker.

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

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

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

15 MR. MCKINNON: Good morning. Mike  
16 McKinnon, Denali Commission.

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

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

22 MR. GISHI: Thank you, everybody.



1 Did we get everybody? Thanks for taking the  
2 time. I know it takes a little time, but it's  
3 always good to kind of get an idea of where  
4 everybody's from, and everybody's given the  
5 chance to introduce themselves.

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

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

21 For the most part, we want to be  
22 able to cover the first parts of this and then

1 go through the actual portions of it where we  
2 start talking about the discussion and updates  
3 of 25 CFR, we will -- that's when we'll start  
4 the discussion on the subparts themselves.  
5 You should have a copy of the handouts that  
6 are associated with these presentations.

7           This one is not in your handout.  
8 It's something we tried to put to put together  
9 as the intro portion to make it a little more  
10 -- provide a little more information from a  
11 visual perspective. But we will have all of  
12 these, we will have all of these also posted  
13 on the website that's identified in the  
14 Federal Register notice. If you go there  
15 right now, you'll find a number of things,  
16 including the Federal Register notice, the  
17 copy of the proposed reg that you have, the  
18 draft reg that you have right now, as well as  
19 the Federal Register notice, the dear tribal  
20 leader letter, and a number of things. And  
21 then we'll also post these on there, the  
22 different subparts so you'll have those

1 available in addition to the hard copies that  
2 you have.

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

13 The TTP replaced the IRR. So one  
14 of the things that -- for a long time, since  
15 1982 and prior that, the program was referred  
16 to the Indian Reservation Roads Program. The  
17 roads was a major part of the program back  
18 then. As the program has evolved, as Congress  
19 has found funding to be able to include other  
20 activities, including a transit program,  
21 including, of course, a lot of the programs  
22 that are non-road related. The eligibility of

1 things that tribes do became more and more  
2 evident, just like 25, 30 years ago a lot of  
3 the state DOTs were called state highway  
4 departments, because they dealt with highways.  
5 As they evolved, they became state DOTs,  
6 departments of transportation, to include a  
7 lot of the elements that are associated with  
8 transportation as a whole. And, of course,  
9 we've seen that evolve also in the tribal  
10 programs through the years since 1982.

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

16 A little bit -- everybody is  
17 familiar that in this environment of  
18 constrained budgets, we were very fortunate to  
19 maintain our numbers from last year of \$450  
20 million. I think that's one of the things  
21 that the tribal attorneys have been -- and the  
22 tribal advocates have been very helpful in

1 that whenever they develop or make  
2 recommendations for an authorization, they  
3 always try to make that last year as big as  
4 they can, because what usually happens is that  
5 that number, because Congress doesn't usually  
6 act immediately, carries over in extension  
7 years, and we can continue to maintain that  
8 high number at least for a couple years.

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

16           The impacts. One of the big  
17 impacts, of course, is the formula. The  
18 formula is statutory. What that means is  
19 Congress wrote the formula. And the formula  
20 is basically -- has changed in a number of  
21 ways, but also has not changed, because it  
22 continues to use elements or portions of or

1 things that look like, even words that kind of  
2 sound familiar with the previous formula.

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

17 There are set-asides that are  
18 within the \$450 million. And those are six  
19 percent for program for program admin; two  
20 percent for transportation planning; two  
21 percent for improving eligible deficient  
22 bridges; two percent for safety projects. And

1 then, of course, there's a supplemental  
2 funding that's available, and we'll talk a  
3 little bit more about how that works in the  
4 supplemental area, and how that's determined  
5 as a whole.

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

20           This is something that really the  
21 rulemaking group of tribal members that put  
22 this together back in 2004 basically just went

1 through the whole Title 23 and anything that  
2 -- any program that was there in Chapter 1,  
3 brought it over and found a way to write it  
4 into it. And that's very beneficial, because  
5 now we're seeing a lot of that now in statute,  
6 sort of following up on things that were done  
7 by the rulemaking committee.

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

16           I'll talk a little bit about the  
17 set-asides we have prior to the distribution  
18 of the funds. These are the amounts as we  
19 talk about how these are impacted, and you --  
20 Bob will show you a little bit of a graph on  
21 how all of these are interrelated. You'll get  
22 a chance to see just really what the impact is



1 from these amounts as it pertains to the total  
2 funding scenario as a whole.

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

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

1 or sufficiency rating.

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

17 And in addition they've had some  
18 webinars and some training. I think they had  
19 a couple of them the last week or so that  
20 people could have access to, and I noticed  
21 there were a number of people called in from  
22 different places on the program itself.

1           In addition, any projects that  
2           would be eligible for federal aid funds under  
3           section 104, which is a huge part of the  
4           program, is also eligible under the TTP  
5           program either as a matching funds or as  
6           activities that can be performed utilizing  
7           these funds, which really broadens the ability  
8           for you to be able to work on projects that  
9           have impacts across a lot of your  
10          transportation areas and a lot of the public  
11          authorities that have impacts on you as either  
12          a village, a community, and so forth.

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

22                 Mechanisms and agreements that are

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

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

1                   Of course, the planning portion  
2                   that's in there, I mentioned that.

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

16                  Data collection. Bridges is a big  
17                  part of that. This is the first time where  
18                  tribal public bridges have to be inventoried.  
19                  So we currently have about 450 to 500 bridges  
20                  that are out there. We know there's more.  
21                  Part of what we'll be doing through the fall  
22                  of the year with Federal Highways is going out

1 and identifying those bridges, have you  
2 submit, give us indication of what those are  
3 so that they can get onto the inventory, and  
4 they can also be inspected, which also means  
5 that they're also eligible for replacement  
6 with a number of programs, not only within the  
7 TTP program, but also through the federal aid  
8 program, through the states, a number of  
9 bridge programs that are out there.

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

21 So I wanted to give you a little  
22 bit of an overview of what that was. It kind

1 of gives you a real broad -- I mean, it's a  
2 lot of information, but we'll go through each  
3 one of these as we go through the subparts.

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

20 You've got a question over here?

21 PARTICIPANT: I was just  
22 wondering, can we get a copy of these slides

1 today?

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

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

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

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

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

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

22 MR. GISHI: Oh, certainly. The



1 question is, is a little more explanation on  
2 point of obligation.

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

13 As a federal agency, one of the  
14 problems we ran into is we didn't have the  
15 ability to carry funds over. When you look at  
16 other programs within the Bureau of Indian  
17 Affairs and Interior, you always hear about  
18 carry-over funds. If -- when the books close  
19 on September 30th, midnight, those funds can  
20 actually -- all they do is hit a switch on the  
21 computer, those funds roll over, and they're  
22 available in the new year. Because federal

1 aid funds, which is basically what we operate  
2 off of in the Tribal Transportation Program,  
3 carries with it not only contract authority,  
4 and this is -- and we're starting to get way  
5 in the weeds here with -- and there's some  
6 good publications if you go out there and want  
7 a little more information about it. In fact,  
8 I have a file that I can send you if you're  
9 interested in leaving a card. I can -- it's  
10 a matter of just emailing it to you. Not only  
11 deals with contract authority, but also what's  
12 called obligation limitation.

13 And it's like -- the best way to  
14 identify it is those of you've been in the  
15 military, were in situations where they would  
16 -- at a certain day they would change out the  
17 money. New script, because if it got in the  
18 wrong hands, and, of course, everybody have  
19 it, and so people were told to bring in their  
20 new -- old money, and they changed it out.  
21 Blue dollars to green dollars, and the blue  
22 dollars were no longer accepted and they

1        expire. So the green dollars are what  
2        everybody's using until a certain period of  
3        time, and then the green dollars are collected  
4        and red dollars are put out there. So the  
5        currency is always up to date.

6                        Well, obligation limitation is  
7        kind of like that. It expires at midnight on  
8        September 30th. So what happens is, is our  
9        books may say we left -- a region may have  
10       left 200,000 on the table, because they  
11       couldn't get it obligated. At midnight or  
12       thereafter we report back to Federal Highways  
13       that we left an amount that was unobligated.  
14       Well, in prior years, prior to 1998, what  
15       would happen was, is we would run into a  
16       situation where we might get that back on  
17       October 1, or we might get it back four or  
18       five years later at 50 cents on the dollar.  
19       But we had to prove it -- what it amounted to  
20       was, is we didn't fully obligate the funds  
21       that were given to us, so by leaving money out  
22       there is like bad carry-over.

1                   So the point of obligation was --  
2                   Congress put that in in 1998 for us to be able  
3                   to say, if we commit these dollars in a point  
4                   of obligation in the name of a tribe into our  
5                   finance system, then the system doesn't report  
6                   back to Federal Highways that there was any  
7                   money left on the table. So that's one of the  
8                   advantages of having that. And that's not  
9                   just us. That's Park Service, that's BLM, and  
10                  others.

11                  And the idea was, that's a good  
12                  provision, because it allowed us to be able to  
13                  -- because sometimes you're thinking, we're  
14                  going to negotiate this contract. Two days  
15                  before the end of the year we're pretty close  
16                  to it. Something happens, and you can't get  
17                  it obligated. So it rolls over. This way, if  
18                  we know that it's not going to happen, we can  
19                  actually get it committed on the day before or  
20                  the day of the last day, and it allows us to  
21                  be able to recover it the next year on behalf  
22                  of the tribe.

1                   So a little bit of explanation on  
2                   -- Bob, do you want to add anything else to  
3                   that? Okay.

4                   Subpart A -- any other questions?

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

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

18                  MR. GISHI: Thank you. That's  
19                  absolutely correct. There's a number of  
20                  programs you'll see out there that we'll talk  
21                  about where there's going to have to be some  
22                  extra effort in terms of developing

1 applications, submissions, and a number of  
2 things that are out there. So it's not a  
3 program where it was -- it's just made  
4 available as part of the other funds. That's  
5 a little different in SAFE -- excuse me, in  
6 MAP-21.

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

14 Much of what's in Subpart A, if  
15 you were going to take the old rule and this  
16 rule, are pretty straight forward and the  
17 same. The major changes that we did was when  
18 it started to speak in terms of the available  
19 agreements, we included reference to not only  
20 the Self-Determination Act agreements and  
21 contracts if you will, the self-governance  
22 agreements, the direct agreements with Federal

1 Highways in terms of the programmatic  
2 agreements that are there, and then other  
3 appropriate agreements, trying to make sure  
4 that it encompasses all the availability of  
5 agreements that are available to tribes  
6 depending on what they chose -- choose to do  
7 in administering or participating and  
8 performing the work on behalf of the  
9 Secretary. So the authority's in there.

10 The purpose and the scope of the  
11 final rule is in there, and the policies with  
12 respect to the Tribal Transportation Program,  
13 and the BIA road maintenance program. This is  
14 something that prior to this -- and I think I  
15 have two programs in there. One of the  
16 problems of having -- retying everything as  
17 you go -- is that the rulemaking committee  
18 wanted to make sure they had -- we had  
19 something that referenced or talked about the  
20 eligible activities for the BIA road  
21 maintenance program. So during the rulemaking  
22 process, Subpart G, when we get to it, was

1 included in there, and that has also been  
2 revised to now reflect the changes of MAP-21.  
3 But it was important to be able to include  
4 that in there as part of that process, and, of  
5 course, it continues to be there today.

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

19           The highlights is, first of all,  
20 the authority for the rule itself is MAP-21 as  
21 well as 23 USC and 25 USC, and any of the  
22 applicable and accompanying regulations that



1 are associated with those, whether it's  
2 bridge, whether it's management systems, and,  
3 of course, the TTP program also.

4 The purpose of the rule is that  
5 the -- to provide rules and a funding formula.  
6 This is what initially -- the big change from  
7 1979, the regulations when they were updated  
8 in 1979 to 2004, was the incorporation of  
9 program rules and a formula. And it continues  
10 with that theme. We have program rules as  
11 they have been changed by SAFETEA-LU and MAP-  
12 21.

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

19 And including in this is when we  
20 reference that it applies to -- in terms of  
21 the programs which are introduced as part of  
22 Title 23, we have a number of programs that

1 are in Chapter 1 of Title 23 that provide  
2 funding, that -- fundings availability through  
3 availability to tribes through separate  
4 programs, but they're there, and this tries to  
5 make sure that we bridge that gap and  
6 definitely identify that those are eligible  
7 activities under this program also to  
8 participate through those agreements under  
9 Indian self-determination contracts and  
10 agreements.

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

20 A lot of -- some -- there's about  
21 three or four sections or portions of sections  
22 of the rule, if you -- when you first turn to

1 that, you'll note that it says, this is for  
2 information purposes only. We did not have  
3 the ability on some of these programs, because  
4 they were actually the responsibility of and  
5 administered by other agencies outside of the  
6 Bureau of Indian Affairs. Again the  
7 rulemaking committee felt it was very  
8 important to at least put informational  
9 references in there on those programs so the  
10 tribes had at least a location they can go --  
11 come to in the regulations where they could  
12 read up on like the procedures for  
13 establishing the tribal technical assistance  
14 centers out there, as well as how hazardous  
15 waste can and should probably be handled in  
16 terms of the program itself. So those are  
17 things that are there.

18 So in addition to being rules for  
19 the program, there were provisions that were  
20 put in there for information purposes in terms  
21 of knowledge and education. And those are  
22 areas again that we don't have a real

1        tremendous grasp on as we started putting  
2        together, certainly from a federal  
3        perspective, and even in the coordinating  
4        committee, and limit -- as limited as they  
5        are, and we were looking -- as people -- as  
6        you look at those, we need to make sure that  
7        those are still applicable.

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

21                    The concept that the -- in terms  
22       of what we're looking at under Subpart A is,

1 in terms of policies, procedures, guidance,  
2 one of the things that we -- that the tribal  
3 committee members wanted to make sure was that  
4 there was an effort to work with and consider  
5 the comments, consider the concerns of tribes  
6 in terms of implementation of the program, and  
7 also to construe any type of activities that  
8 are associated with the program in favor of  
9 the tribes. And so there's a lot of areas  
10 when we go through the program itself, this is  
11 where it notifies not only our Interior  
12 people, our BIA people, but everybody else  
13 that's out there, that these regs are written  
14 with the purpose of advancing tribal  
15 sovereignty, tribal -- in terms of capacity-  
16 building, those areas that are associated with  
17 the program. And this is all covered as part  
18 of the Subpart A portion.

19                   Again, that's -- we're liberally  
20 construing the rule for the benefit of tribes,  
21 and particularly in terms of implementing  
22 self-determination and self-governance. When

1 we use that word, a lot of times it doesn't --  
2 people might associate it and say, this is a  
3 -- this is only for self-determination and  
4 this is only for self-governance. In some of  
5 these cases the term refers to just the tribe  
6 being able to self-govern, self-determine  
7 themselves whether -- it doesn't matter what  
8 mechanism of agreements they're using or if  
9 it's even through the process of a direct  
10 service where the Bureau is providing that  
11 service for -- on behalf of the tribe, there's  
12 still an element of self-determination, self-  
13 governance in the planning process, a lot of  
14 other areas, and Subpart A tries to clarify  
15 that and reinforce that, that this is the  
16 intent of the program going forward.

17 And allowing the tribes to  
18 participate in the contractible contracting --  
19 oh, my goodness, there's -- I left -- there's  
20 an IRR in there. I thought I got -- I was  
21 doing a search and I was trying to check all  
22 these to make sure.

1           To participate in the programs in  
2 terms of everything that's available,  
3 including one of the big areas that we're  
4 seeing a lot of is, for instance, we have the  
5 Tiger Grants that came through which --  
6 occasionally on an annual basis those are made  
7 available. Tribes have applied, tribes have  
8 received funds. Recognizing that funds that  
9 are made available through those type of  
10 programs can at the request of the tribe be  
11 included in these type of agreements, and  
12 whether it's the self-determination, Title 1,  
13 or Title 4, or other agreements that are  
14 appropriate are also included in there. And  
15 the whole idea is to make sure that there's  
16 the ability to tribes to be able to  
17 participate to the extent that the law will  
18 allow, which is -- which has been very clear,  
19 that the law will allow the tribes to be able  
20 to do that.

21           It also defines when the TTP  
22 policy and guidance and directives apply to

1 the program. And particularly when you start  
2 looking at what the original process of making  
3 sure that provisions that apply to contracting  
4 or implementing the program in terms of  
5 programs, services, functions, and activities,  
6 that we made sure that we didn't rewrite  
7 provisions of the law unless it's specifically  
8 stated as part of Title 23. And as an  
9 example, the provisions that are associated  
10 with the contracting under Subpart J for  
11 construction are referenced throughout the  
12 regulation as part of 900. There is a  
13 procedure that's there that's already been  
14 negotiated with tribes regarding construction,  
15 which is in 900. Likewise for self-  
16 governance, tribes under Subpart K, 1000. And  
17 so those are referenced throughout the  
18 regulations.

19 And the idea was not to come up  
20 with -- unless it was different. One of the  
21 areas that is different is there are no  
22 provisions in 900 and 1000 that hold



1 construction regulations as whole to allow  
2 tribes to take on the role of assuring that  
3 health and safety elements are complied with  
4 and that they in fact can perform that.

5 That's one of the things that's very unique to  
6 Title 23 is it says in there that tribes,  
7 based on providing a certification of  
8 compliance with health and safety  
9 requirements, you can approve your own plans  
10 and specification and engineer's estimate.  
11 That's not available under the facilities  
12 program and other programs within DOI. Well,  
13 in that case, Title 23 has precedence there,  
14 and so we include those in there.

15 So from that standpoint, we tried  
16 to stay away from doing any changes in those  
17 areas that pertained to 900 and 1000, or if  
18 there was things that weren't very clear in  
19 terms of what we need to provide under Title  
20 23, we made sure we include that in, not only  
21 from the standpoint of the rulemaking, but as  
22 you'll see in some of these areas where things

1 have changed even under MAP-21, like with the  
2 road maintenance provisions. Road maintenance  
3 has not been considered a construction  
4 activity under the regulations and the law  
5 under self-determination, but it is considered  
6 a construction activity under Title 23. And  
7 so for that reason, we have to be able to  
8 develop those regulations to address that.

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

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

20 Now, the different agreements has  
21 specific rules. Like when you get to the  
22 direct service agreements or the direct

1 agreements with Federal Highways, those are  
2 provisions that are identified in statute  
3 itself. We tried to expound upon those to the  
4 extent we could here, as well as the other  
5 agreements which are identified under Title 23  
6 where the government-to-government agreements  
7 that BIA has also. But the idea is, is all of  
8 those pretty much fall in line with the  
9 concept of self-determination and self-  
10 governance by addressing issues like advanced  
11 pay. And more and more in terms of the  
12 government-to-government aspects, because  
13 looking at tribes being able to manage their  
14 programs as opposed to us asking you for your  
15 cut sheets on you steel beams or something  
16 like that. That's something that MAP-21 and  
17 Title 23 has empowered tribes to be able to  
18 do. And so for that reason, we just do the  
19 oversight and compliance process, and  
20 everything else is performed by the tribes  
21 themselves.

22 As part of these presentations,

1 we've put in there timetables or key dates if  
2 they're applicable in that subpart. And in  
3 that particular -- in this particular case  
4 there are none for Subpart A. There are no  
5 key dates or -- included this subpart itself.

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

22 So as we mentioned before, we're

1 looking at this from the standpoint of what  
2 are some of the things you want to see  
3 changed, what are we -- some of the things you  
4 want to see in terms of improvements to the  
5 program as a whole.

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

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

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

1 the nation when it comes to Indian Country.

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

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

22 That's my comments. Thank you.

1 MR. GISHI: Bob, do you have any -  
2 -

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

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

17 Is there another question?

18 MR. WILLIS: Good morning.  
19 Michael Willis from Hobbs Straus Dean &  
20 Walker.

21 I just want to say in terms of  
22 looking at Part -- Subpart A, the themes and

1 policy initiatives that you guys have outlined  
2 and are in the regulations are, you know,  
3 outstanding ones and principles to recognize  
4 as this drafting process goes forward  
5 throughout each of the subsections. I think  
6 the -- you know, the recognition of deference  
7 to the tribes and tribal autonomy and tribal  
8 authority, the whole issues associated with,  
9 you know, the consistency with the Self-  
10 determination Act, when there are  
11 inconsistencies, the Self-determination Act  
12 favors.

13           And now that there are all these  
14 new forms of agreements, you've got, you know,  
15 not only Indian Self-determination Act  
16 agreements under Title 1 and Title 4, you've  
17 got the Indian Self-determination Act  
18 agreements in the Federal Highway  
19 Administration. And then you have a whole new  
20 category which are not Indian Self-  
21 Determination Act agreements with these  
22 government-to-government agreements that are



1 interested in you're stating that you apply  
2 self-determination principles to those  
3 agreements.

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

19 So I think these are just things I  
20 think are the challenges of kind of putting  
21 these various pieces that you all are working  
22 with together in a way that respects tribal

1 sovereignty and tribal government-to-  
2 government dialogue and activity.

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

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

1       there.

2                       Thanks.

3                       MR. GISHI: Thank you.

4                       MR. DELGADO: Joseph Delgado, the  
5 Native Village of Ouzinkie.

6                       I, too, wonder about how is this  
7 MAP-21 and stuff, can -- we can compare Alaska  
8 to the Lower 48. I mean, the American Indian  
9 tribes, even on your federal papers, you have  
10 a box where you mark whether you're an  
11 American Indian or Alaska Native. The federal  
12 government recognizes that we are different,  
13 and yet we are lumped together in this program  
14 here. So we're fighting over different -- or  
15 the same monies whereas -- but the  
16 transportation deals are different in that, at  
17 least in my experience, the reservations down  
18 there are probably more advanced than much of  
19 our tribes up here. So how is it that we can  
20 compete for the same monies when we're not  
21 even at the same zip code as them in our  
22 transportation deals here?

1                   MR. GISHI: That's a great point.  
2                   And if you'll look at, for instance, the  
3                   Tribal High Priority Projects Program under  
4                   Subpart I, is a new program that was  
5                   established in statute which actually gets its  
6                   origin from the rulemaking process. The  
7                   rulemaking process meaning when the tribes sat  
8                   down, they developed a process. And a lot of  
9                   the diversity of tribe size, tribe status  
10                  relative to land, non-land base type tribes,  
11                  and Alaska, Lower 48, all of those areas is  
12                  part of that rulemaking. Those provisions  
13                  were identified as a way to make sure those  
14                  things were addressed.

15                  One of them I just bring up is  
16                  geographic isolation. And so when the process  
17                  of ranking projects came up through that  
18                  period of time under the regs -- by the way,  
19                  that portion of the regulations has been  
20                  deleted for the old rulemaking process, but  
21                  Congress, of course, implemented a new program  
22                  called the Tribal High Priority Projects

1 Program, which follows fairly closely the --  
2 and it says in the statute that you'll make  
3 this thing as close as what it was before.  
4 And so there are things in there that were as  
5 a result of really get people in there in  
6 terms of sitting down and saying, this is what  
7 we think we need to do in those areas that  
8 make the program unique in certain locations,  
9 certain environments, and that's what was  
10 done.

11 Another part of what's happened in  
12 the past was it all happened in the rulemaking  
13 process. So that's important to note, because  
14 as you begin to look at these things, what are  
15 some of these programs that you're looking at?  
16 You have the ability right now to be able to  
17 make those kind of recommendations. And maybe  
18 you do provide something that says that one of  
19 the factors that needs to be considered in  
20 terms of any problems that are implemented is  
21 geographic isolation, because from that  
22 standpoint, it identifies that there isn't six

1 roads coming into a community; there's usually  
2 just one road as opposed to communities that  
3 are in the Lower 48 where there's 10, 20 roads  
4 all coming in, and the ability to access any  
5 of those to get out is there. So that's  
6 unique.

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

16           So good point.

17           MR. DELGADO: Also as you're  
18 talking about one road going in, I live on an  
19 island, that we have no roads coming into our  
20 place. As -- I know this subject has been  
21 brought up before as to whether a ferry  
22 service can be added to our inventory as well.

1 MR. GISHI: As you can see from  
2 some of the -- when we get to the eligible  
3 activities that -- under one -- the subparts  
4 that talk about it, that's one of the elements  
5 that's in there. Again, that's been  
6 identified. We have been utilizing previous  
7 to this IRR program funds for portions of and  
8 working with and making the funds eligible to  
9 participate with projects that are associated  
10 with ferries as a whole. So that's something  
11 that's there.

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

20 Shall we take a break then?  
21 Fifteen minutes? Thank you.

22 (Whereupon, the above-entitled

1 matter briefly went off the record.)

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

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

17 So Subpart B, basically a general  
18 overview, explains the three C's in terms of  
19 what coordination, collaboration, and  
20 consultation responsibilities there are, and  
21 how through this process that the different  
22 governmental agencies can help these efforts



1 and assist tribes in meeting their  
2 transportation needs.

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

21 And so part of that process is, is  
22 it's been the role, and not only has been, but

1 should be, and continue to be the role of the  
2 federal agencies, certainly BIA and FHWA, to  
3 be able to step in and provide that capability  
4 so that projects that fall into that category  
5 that we can collaborate, we can coordinate  
6 with these other agencies to make sure that we  
7 get funds to the tribes, and that in doing so  
8 that they carry with them the ability to  
9 comply with self-determination and self-  
10 governance. And that process has been an  
11 ongoing thing. I know Vivian was really  
12 involved in that early on in the process of  
13 the program, and continues to be. So this  
14 part of what we're looking at is continuation  
15 of that. This was really an area that I  
16 thought was really inspired by the tribal  
17 membership representatives in the rulemaking  
18 process in 2004.

19 It also lists the eligible and  
20 non-eligible activities under the Tribal  
21 Transportation Program. And you'll notice  
22 there's a few of those that were in the regs

1 prior to 2005 when SAFETEA-LU was passed that  
2 have changed and have now been included in  
3 there, or either have been enhanced in terms  
4 of really what we have experienced since then.

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

14 Someone mentioned in terms of  
15 eligibility, it also lists the eligible  
16 activities that are out there. And we've had  
17 more and more in the last few years, certainly  
18 since SAFETEA-LU was passed, of areas where we  
19 not only consider specifically things that are  
20 applicable to tribes, like cultural access  
21 roads, housing access roads, things that just  
22 don't normally occur out there in the other

1 part of America, but only occur and are unique  
2 to the villages, the communities, Indian  
3 reservation lands and so forth.

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

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

16 Airport access roads. We still  
17 don't build runways. we still don't do the  
18 airports themselves, but we can do the access  
19 roads. And in some unique situations we can  
20 support the whole process of mass transit when  
21 you're looking at that in terms of eligible  
22 activities also. If we need to clarify that,

1 if we need to build on it, if there's  
2 something unique that we can do that's  
3 eligible, then certainly this is the place to  
4 do it. Seasonal transportation routes, a big  
5 part of -- something that's very unique in  
6 terms of boardwalks or -- winter trails, you  
7 know. And even to the extent that we're  
8 looking at and people have utilized for ice  
9 roads where you're participating in being able  
10 to do some things and marking them, and work  
11 in those areas. That's a big eligible  
12 activity under the regulations. So take a  
13 look at those. When you see those things,  
14 there may be some unique instances where we  
15 can build on that.

16 Yes.

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

20 Just a quick question on one of  
21 the allowed activities, because I know force  
22 account is allowed, but you force account

1 definition that's in front of the document  
2 only talks about BIA force account procedures,  
3 but the tribes also can do that, right? So is  
4 it appropriate then to expand that definition  
5 on the lead-off, or just to list it as an  
6 eligible activity?

7 MR. GISHI: A good question. In  
8 fact I'm glad you brought that up. If you  
9 could note that, Andy, on the definition of  
10 force account, because when we get to the  
11 actual portion where we start with force  
12 account, we added federal highways in there.  
13 And we can work with that. It's always been  
14 and understood that when it becomes a tribal  
15 program, the flexibility is there. You can do  
16 it force account, or you can actually contract  
17 it out. And the flexibility in the law is  
18 that you're performing the functions program,  
19 functions, services, and activities that are  
20 associated, which means you can contract it  
21 out, do it in-house, whatever. And that's all  
22 there.

1                   But we did make that change in  
2 referring to force account in terms of as one  
3 of the eligible activities, but based on  
4 concurrence of the tribe that BIA can do that.  
5 And if that isn't strong enough, we need to  
6 make sure that that's understood.

7                   Thank you.

8                   Another thing we talk about in  
9 Subpart B is the terms of the general highway  
10 safety functions of the tribal transportation  
11 program, safety funds, we do actually have and  
12 talk a little bit about how those funds and  
13 referencing what's available under the  
14 program. We discuss what activities and  
15 functions and equipments may be eligible for  
16 funding. When we first started this in -- the  
17 rule in 2004 we were on that fringe. I think  
18 everybody -- many of you who are here were  
19 told that -- at some point prior to that, that  
20 you couldn't buy equipment, you couldn't buy  
21 -- I mean, it was a very clear distinction as  
22 to what you couldn't do, that this is for the

1 purpose of performing work like the federal  
2 aid program, but yet, you know, it became very  
3 clear that this program is identified for  
4 promoting.

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

18 And even now as you begin to take  
19 a look at some of that, this is s good place  
20 to again, what is it that we're talking about?  
21 What is it that we can anticipate in terms of  
22 being able to expand this eligibility



1 associated with that that is still within the  
2 law, but certainly is a need out there.

3 MR. STEVIG: Thank you, LeRoy.  
4 Gary Stevig, Chickaloon Village,  
5 transportation planner.

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

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

10 (Laughter)

11 MR. GISHI: Thanks, Gary.

12 And so it also talks about -- this  
13 is again we're talking about sort of the  
14 coordination, the policy aspect of it. One of  
15 the few programs in certainly the BIA, but  
16 across government that actually has a  
17 regulatory committee that's been established  
18 for the purpose of providing input and  
19 recommendation. That is the Tribal  
20 Transportation Program coordinating committee,  
21 better known as the TTPCC. And now has been  
22 in operation since 2005, the fall of 2005, and

1 continues to function. This part of the  
2 regulations starts off and talks about the --  
3 the roles and responsibilities of that. This  
4 is an opportunity for you to be able to  
5 identify what it is that you think this group  
6 needs to be doing.

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

1 of these things. So that's what the TTPCC is  
2 developed and functions as.

3 MR. STEVIG: Thank you, Leroy.  
4 Gary Stevig, Chickaloon Village.

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

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

14 Yes.

15 MR. THOMAS: Sam Thomas.  
16 Organized Village of Kasaan.

17 You talked about the coordinating  
18 committee. I guess my question is, is it  
19 going to be spelled out in here under the  
20 quality control/quality assurance team on what  
21 their roles and responsibilities are? I mean,  
22 it's been talked about at the coordinating

1 committee level, and it's one of the things  
2 that's been brought up the food chain to the  
3 assistant secretary at the Federal Highways,  
4 and the establishment of the QA/QC team, so I  
5 think that's going to be a definitive factor  
6 on my comments on what the roles and  
7 responsibilities I thought would be the  
8 coordinating committee.

9 MR. GISHI: Exactly. That is --  
10 that's what we're looking for. Those are the  
11 comments. And it would be up to not just  
12 here, but as we go throughout all the  
13 different consultation sessions is, what are  
14 some of the things that should be identified  
15 as the role of the coordinating committee. I  
16 know that when we met with the coordinating  
17 committee, there was a number of things they  
18 put out there that they discussed, and they  
19 kind of backed off. But individually  
20 certainly you have your comments. There were  
21 a number of comments that came through the  
22 process, but that would be a place that you

1 could identify. It could be one of the list  
2 that's described as part of the roles and  
3 responsibilities.

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

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

21 MR. GISHI: Is it a general across  
22 all subparts, is that what you're looking at?

1 MR. THOMAS: It's each subpart was  
2 regarded entirely by our -- by --

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

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

8 MR. GISHI: Okay.

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

16 MR. GISHI: Certainly.

17 MR. THOMAS: Okay.

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

20 MR. THOMAS: Okay.

21 MR. GISHI: As we go through,  
22 another section that's in here is the -- again

1 for information purposes is the tribal  
2 technical assistance centers. We have  
3 currently seven centers that are located  
4 throughout the country, that the primary  
5 purpose of them is to provide technical  
6 assistance and training and education, and  
7 also to promote in terms of technology  
8 exchange for tribes in terms of those areas  
9 associated with transportation. Sort of a  
10 capacity-building arm that's out there. We  
11 have seven of those centers that are located  
12 nationally. Again, one of the few programs  
13 that are out there that apply to tribes that  
14 is in regulation. And this is really a  
15 contract or a cooperative agreement that's  
16 developed between Federal Highways and those  
17 particular centers, but we put information  
18 here so you have an idea of how they operate  
19 and how they perform their business and do  
20 those parts of providing that training and  
21 education.

22 The three C's again. There's a

1 definition there. And the idea is that the  
2 TTP provides government-to-government  
3 consultation and coordination policies  
4 developed is identified there.

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



1 review of the Secretary's Office, and the  
2 Office of the President and OMB.

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

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

8 This one -- this question is  
9 addressing the bottom bullet, how does the  
10 Secretary prevent discrimination or adverse  
11 impacts. My question to that statement is,  
12 under statutory funding methodology under MAP-  
13 21, it has a discriminatory and/or adverse  
14 impacts to the tribes in Alaska. And that's  
15 something that I've pointed out. Can the  
16 Secretaries prevent a statutory formula that  
17 is discriminatory in nature and also has  
18 adverse impacts? Do they have the authority  
19 and/or -- what do I -- who do I need to talk  
20 to to change MAP-21 statutory funding formula,  
21 because I don't -- I don't have a problem with  
22 the supplemental tribal shares regional, but

1 when they start talking about the strategic  
2 supplemental funding where they distribute  
3 \$109 million to the regions, that is not  
4 reflective of the tribal shares within that  
5 region. And so each region has a different  
6 number of tribes within that. That is not  
7 fair, uniform, and inconsistent in  
8 application. So I just wanted to know with  
9 the statutory funding that's discriminatory  
10 and it's going to create adverse effects, what  
11 -- who do I need to talk to, and what  
12 provisions do I need to enact in order to have  
13 that addressed?

14 MS. PHILBIN: Thank you, Mr.  
15 Stevig. Your comment is noted. You know, I  
16 can't urge you, because we're subject to the  
17 anti-lobbying provisions. You can do what you  
18 want as a tribal member or as an individual to  
19 contact Congress, your local rep -- your  
20 senators or the congressman, Congressman  
21 Young, which most of -- I'm sure you're very  
22 familiar with all of those individuals.

1                   We can't urge that you do so, but  
2 obviously we -- we have to implement MAP-21  
3 which was passed by the House and Senate, and  
4 signed by the President. In terms of lobbying  
5 Congress or things like that, we're prohibited  
6 from doing so. But if there's measures that  
7 you're unhappy with, I urge that you could  
8 communicate that. This obviously is not the  
9 first time we've heard this, the different,  
10 disparate impacts on the tribes in Alaska, but  
11 your comments are duly noted.

12                   Thank you.

13                   MR. GISHI: We had a comment over  
14 here.

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

17                   Shouldn't communication be part of  
18 the C's up there? I think you go through and  
19 look at Tribal Transportation Program,  
20 government-to-government consultation and  
21 coordination policy. Communication I think is  
22 probably the most important component of that,

1 because when a tribe identifies to the  
2 government it wants to have consultation or to  
3 coordinate or to collaborate, communication is  
4 the lead role in that. And it also spells out  
5 farther in the law, if the government doesn't  
6 communicate or get back to the tribal  
7 government in regards to their request for  
8 consultation, or their request for  
9 modification to an action such as maybe  
10 requesting additional funding for a project,  
11 then that action is so much deemed in favor of  
12 the tribe. So I think communication should be  
13 part of that philosophy up there from my point  
14 of view.

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

18 MS. DILTS JACKSON: Sorry. Arlene  
19 Dilts Jackson with Ketchikan Indian Community.  
20 I also want to point out you have kind of a  
21 limited definition on collaboration which kind  
22 of focuses only on carrying out planning and

1 project development work together. And I  
2 think that it needs some strengthening by  
3 saying that collaboration means the  
4 involvement of the tribes and the federal  
5 decisionmaking process and then carrying out  
6 planning and project development, because  
7 collaboration can occur at all levels and  
8 should occur at all levels and be part of the  
9 whole consultation, you know, coordinated, you  
10 know, collaborative philosophy of the agency,  
11 because we're basically partners, you know,  
12 which to me means that, you know, the  
13 meaningful involvement is we're involved in  
14 the decisions, so I think that would  
15 strengthen it.

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

18 On your third red bullet, when the  
19 Secretary and state governments must consult  
20 with tribal governments, at what point in the  
21 Alaska does that occur, because in the Arctic  
22 Slope the state is forging ahead with a road

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

16 MR. GISHI: Not being familiar  
17 with that process, the whole idea that we were  
18 looking at with -- here was to be able to  
19 strengthen, find as best we could a way to be  
20 able to include that. And this is what the  
21 tribal leadership was looking at as part of  
22 the rulemaking process.

1                   There are avenues that are out  
2                   there. Obviously the -- we're seeing more and  
3                   more of the participation of funding in terms  
4                   of how the TTP program funds can be utilized  
5                   to leverage projects to get -- to be a  
6                   participant in the project process. And so  
7                   those things that are out there.

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

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

14                 MR. GISHI: Well, that's the  
15                 point. In some places we're seeing that it  
16                 doesn't happen. And that's an on-going  
17                 process that I think part of what we talked  
18                 about with Federal Highways, BIA and certainly  
19                 from the region perspective, those are areas  
20                 that we can do what we can to promote that,  
21                 but in the end, in terms of what they have to  
22                 do to comply with those, in some cases that's

1 something that is not available. And we've  
2 seen it.

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

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

18 And it's ironic, because at the  
19 break we had just discussed this. I had  
20 brought up the statewide planning process and  
21 the tribes in Alaska, and even though this is  
22 not part of this rulemaking, Ms. Garcia is



1 enormously interested in this area. So if you  
2 have any comments, complaints, matters about  
3 the statewide planning process and the Federal  
4 Aid Highway Program, please see Ms. Garcia.  
5 She's going to be here all day.

6 Thank you.

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

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

15 MS. CALCOTE: Delice. Right here.  
16 Yes. My name's Delice Calcote with Alaska  
17 Intertribal Council.

18 You know, is there -- you know,  
19 this not consulting with the tribal  
20 governments is -- with the state and the  
21 tribes, this is an issue that rolls over into  
22 many programs. And it affects tribes in a

1 significant way. And what is the federal  
2 government going to do, you know? There is  
3 all these -- you know, the Statehood Act, the  
4 Constitution. I don't know what all that they  
5 need to have in front of them as their  
6 guidelines and their obligation and duty. And  
7 if they can't deal with us, well, then maybe  
8 the feds need to sanction them. If you're not  
9 going to consult with tribes, sanction them.  
10 Something more positive needs to happen for  
11 tribes. You know, you either -- I feel like  
12 the federal government is not standing up to  
13 their ability, their full power, and  
14 exercising their full muscle with the State of  
15 Alaska. You know, we have children that have  
16 completely grown up, and we're still dealing  
17 with this not consulting with tribes.

18 And I really like the definition  
19 that it's not just a mere consultation; it's  
20 fully informed prior, prior fully informed  
21 consent, you know, at all levels. It affects  
22 everything. And I just feel like the federal

1 government is being slack in their  
2 responsibilities and obligations.

3 MR. GISHI: Thank you.

4 MR. STEVIG: Gary Stevig,  
5 Chickaloon Village. A quick note. When I'm  
6 hearing concerns that are falling through the  
7 cracks, originally a number of years ago I  
8 started -- I helped start a  
9 tribal/state/federal task force, and that  
10 historically met like the first day of the  
11 providers. And that was forum that we created  
12 to talk about any issues for transportation  
13 that was falling through the cracks and that  
14 we were having issues with. So originally  
15 there was the Alaska tribal/state/federal task  
16 force, and that brought all the parties  
17 together, and we have a number of people that  
18 were here on the working group-slash-  
19 attorneys. And that's one mechanism.

20 There's a second mechanism of  
21 Alaska Coalition through Synowski that seven  
22 of the tribes also pick up the legal bills to

1 fight legal causes. Potentially that's  
2 another mechanism.

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

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

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

14 We've got a question over here.

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

18 We work with the state off and on  
19 in different projects in our tribal  
20 communities, and when -- the state doesn't  
21 work with tribes on a government-to-government  
22 relationship. It's government-to-citizen.

1 They treat tribes like any citizen in the  
2 state, and you have the ability to make  
3 comments as a citizen, so it is very  
4 detrimental to the process. And if anything  
5 does come of an agreement, the first thing the  
6 state says is, well, now you have to waive  
7 your sovereignty. And if you don't waive your  
8 sovereignty, then discussion's over.

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

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

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

7 Thank you.

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

17 Another one of the highlights is  
18 eligible uses of the tribal transportation  
19 funds, both eligible as well as ineligible.  
20 And it's important to note those that are  
21 there. Take a look at the list, identify  
22 those things, what are -- and also what are --

1       how do we go about determining new eligible  
2       uses for the funds.  And we have a section  
3       there that talks a little bit about that also.

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

18                And that's the whole basis for the  
19      program as a whole, and that's why we put in  
20      there some of these other areas of seasonal  
21      transportation routes, routes that you can  
22      look at bring able to restrict access to

1 certain periods of time, but the whole idea  
2 is, is when you do that, it's restricted to  
3 everybody, not just, you know, let a few  
4 people come in and others not. It's really a  
5 process of planning and developing procedures  
6 associated with that.

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

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

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

15 The two appendices that are  
16 associated with this subpart are the allowable  
17 uses and sources of funding. In areas where  
18 we could in the rule as it exists, part of the  
19 rulemaking process was to be able to identify  
20 locations or available funding sources for  
21 projects in terms of not only training, but  
22 also education. I know a lot of -- and we've



1 gone -- we've really progressed in a lot of  
2 areas in terms of when we first wrote this  
3 regulation. I think we have a little better  
4 background, a little better knowledge of some  
5 of the things we can do, developing our own  
6 teams, developing our own capabilities,  
7 capacity building. All these things are  
8 things -- areas that tribes have shown through  
9 the years, the last four of five years that  
10 they've been doing, and are a critical part of  
11 not only stretching the funds, but also  
12 keeping funds within the community in terms of  
13 economic development.

14 Yes.

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

18 Under TTPCC, under Section 170,  
19 Part 155, under (b), the committee consists of  
20 24 tribal regional representatives, two from  
21 each BIA region. The State of Alaska alone  
22 has 229 tribes. There's not one other state

1 close to that many tribes in the state. And  
2 that two per region for Alaska is  
3 discriminating against our tribes here in  
4 Alaska. To have two representatives for 229  
5 federally-recognized tribes is a gross very  
6 under-representation of the Alaska tribes.

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

10 The committee did have a chance to  
11 take a look at that in terms of what they  
12 would recommend, and there was no consensus on  
13 changing it. And obviously when you get into  
14 consensus mode, that really runs a lot of how  
15 things, how business is completed. That's how  
16 currently the regs are written, for business  
17 to be done as part of the committee. Those  
18 are things that you need to take a look at,  
19 because in terms of the protocols, the  
20 committee develops their own protocols. And  
21 in terms -- but they don't develop the regs,  
22 but this is the opportunity for us to be able

1 to get comments in that area.

2 So thank you.

3 MS. DILTS JACKSON: Excuse me. I  
4 have the mic. Arlene Dilts Jackson.

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

12 The consultation, you know, the  
13 state consulting with the tribes, as far as I  
14 know, most of the money that comes into the  
15 state is from the feds for transportation, you  
16 know, whether it's managed by the state or the  
17 tribes, or, you know, municipality. You know,  
18 even though you're funding that and it comes  
19 down to the state, it doesn't relieve you of  
20 the responsibility for making sure that  
21 consultation is occurring properly. If we  
22 think that's not occurring, is there a process

1 that we can kick off that -- you know, in  
2 which you will be forced to come in and review  
3 that or give them a hand in conducting that  
4 consultation. You know, like Kasaan, I don't  
5 want it just noted there, I want to know if  
6 there's a process, you know, that we can use.

7 As far as the discrimination, I  
8 understand that, you know, the law itself, you  
9 know, had a real, you know, strong impact on  
10 Alaskans, Alaska tribes, and rural tribes in  
11 particular wherever they are. And the  
12 Secretary has the responsibility for reviewing  
13 that. Even if you have to implement the law,  
14 it would appear to me that the Secretary has  
15 the responsibility to review that situation  
16 and report that back to Congress that this is  
17 the impact that this legislation had. You  
18 know, is there an internal process to kick  
19 that -- you know, some sort of mechanism in  
20 place that we can kick that off, because, you  
21 know, simply telling us to go back and get a  
22 legislative fix for me, which we all realize

1 has to be done, there has to be more than  
2 that. There has to be I think as part of the  
3 agency's trust responsibility to protect us in  
4 this process.

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

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

19 My statement's going back to the  
20 lady's previous question on what more could  
21 she do. I was put in that position five years  
22 ago, and that's where I learned the peer-to-

1 peer program with Federal Highways, and so  
2 that's why -- that was my only mechanism  
3 dealing with the state. When I brought in the  
4 Federal Highway agreements, we were having  
5 issues, and the commissioner didn't talk to me  
6 for one year and I couldn't build a road.

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

18 So I had problems with  
19 consultation. Also I had a book developed  
20 through the Transportation Research Board  
21 outlining Executive Order 13175. And they  
22 interchanged the word communication,

1 coordination, which Sam was alluding to. But  
2 anyway the essence was there, but there's no  
3 teeth in it, and ultimately my sense was we  
4 needed Federal Highways to come in to drag the  
5 state to the table, to sit down and to hear  
6 our concerns, and provide a forum for  
7 consultation.

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

1 MS. CALCOTE: Thank you. Delice  
2 with Alaska Intertribal Council.

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



1 the ARRT for the tribal communities.

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

17 MR. GISHI: Is there --

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

21 MR. GISHI: I know that there's a  
22 number of tribes within states who've

1 developed or are participating on a tribal  
2 transportation level at the state level that  
3 participates, like CALTRANS. CALTRANS has a  
4 Native American advisory group. I assume that  
5 doesn't exist here. The closest thing was  
6 your federal, state and tribal group that's  
7 there, and you're saying it's defunct now, or  
8 at least aren't meeting.

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

20           MS. DILTS JACKSON: Plus you  
21 didn't have the tribal fees, the full --  
22 inventory.

1                   MR. KEITH: The general direction  
2 the state's been going in is somewhat anti-  
3 tribal. This administration.

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

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

9                   MS. PHILBIN: Thank you.

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

21                   And I think -- I'm not sure what  
22 the public process is within Federal Highways,

1 and how we can -- I think that needs to be  
2 included, a little bit more information about  
3 that public process, because a lot of rural  
4 communities, 90 plus percent, are Native.  
5 Even though they don't have tribal  
6 recognition, we are still citizens of the  
7 state, and I think we need to exercise that  
8 public process a little bit better, but I  
9 don't -- I'm not sure how we go about doing  
10 that. I'm sure there are -- we could figure  
11 that out.

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

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

18 Is there anywhere in the  
19 regulations beside the two different clauses  
20 that we went over for adverse discriminatory  
21 effects? What I'm alluding to is originally  
22 going in, I'd come across some information

1 about this peer-to-peer program through  
2 Federal Highways that I made a request. Where  
3 is that information in this current  
4 reauthorization? Is that information  
5 available? Am I just making this up as we go  
6 along?

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

18 However, by no means are we  
19 discouraging you from submitting written  
20 comments online. Also, at the end of the day  
21 hopefully we will have additional time,  
22 there's time in the agenda for additional

1       comments I believe between about 4:00 and  
2       4:30, and so if this is something you'd like  
3       to raise then as well, please feel free to do  
4       so, but at this point we need to move forward  
5       with the agenda to get to the next portion.

6                       Thanks.

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

10                      MR. CALJUM:  I'm not quite sure I  
11       understand.  In terms of the regulations or  
12       the law?

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

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

20                      MR. DELGADO:  -- process to --

21                      MS. PHILBIN:  Sir, you need to  
22       identify yourself and speak into the

1 microphone, because the court reporter cannot  
2 take it down, and your comments are important.

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

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

21 MR. CALUUM: Well, one thing that  
22 obviously working for the agencies, we are

1 beholden, and everybody is beholden  
2 ultimately, to what Congress legislates and  
3 the President is willing to sign. And here  
4 they were able to forge a compromise, whatever  
5 you want to call it, on MAP-21. And, yes, it  
6 does have, you know, positives and negatives  
7 for many different people that deal with not  
8 only the Tribal Transportation Program, but  
9 also the transportation program overall during  
10 the two-year course of the bill.

11 With respect to the regulations,  
12 we're in a position where we have to -- the  
13 regulations cannot in effect trump the  
14 statute, right, because the statute controls.  
15 So the regulations have to be consistent.  
16 They cannot be inconsistent with the statute.  
17 So we are in a position then where to the  
18 extent that, you know, we -- where we have to  
19 rewrite the regulations so that they're  
20 consistent with the statute.

21 MR. GISHI: Question? We've got  
22 two more slides here.



1                   Again going back to the Subpart B,  
2                   what are some of the timetables or key dates.  
3                   There's one, Section 170.104 talks about the  
4                   Secretary consulting with tribal governments  
5                   before obligating funds. This is a -- the  
6                   only changes that are here from existing regs  
7                   is, of course, the name, TTP as opposed to  
8                   IRR. And in there, of course, it talks about  
9                   170.600 is the self-determination contracting  
10                  or other contracts, the mechanisms in terms of  
11                  what's available for tribes to perform those  
12                  program services, functions and activities.

13                               And there needs to be a  
14                   notification of -- notice of availability of  
15                   funds. That's part of the formula allocation  
16                   process, which under SAFETEA-LU was a much  
17                   different formula process in terms of  
18                   gathering data and running formula. It has  
19                   been changed significantly relative to that.  
20                   But this is one in which there is a timeline  
21                   relative to that in terms of notification of  
22                   funds availability based on the whole process

1 of right of first of refusal associated with  
2 the self-determination contracts also.

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

15 As far as record keeping, the  
16 coordinating committee in terms of their  
17 reporting requirements, within 90 days  
18 provides an accomplishment report in terms of  
19 the things that they've done. And generally  
20 what they do is they -- on January of every  
21 year, and it's been posted on a number of  
22 websites, is a letter to the assistant

1 secretary and the associate administrator of  
2 Federal Lands talking about accomplishments  
3 and also concerns. So in addition to the  
4 accomplishments, they also added a portion  
5 about concerns that they have regarding  
6 certain issues. But this is in there as  
7 another requirement of the coordinating  
8 committee to respond to in terms of reporting  
9 requirements within this portion of the  
10 regulations.

11 And that completes Subpart B.  
12 Questions.

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

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

19 MR. GISHI: The representatives,  
20 as Sam introduced himself, Mr. Sam Thomas from  
21 Kasaan, and the other one is Joan Poulson from  
22 the Healy Lake Traditional Council, up past

1 Fairbanks I think is where she's at. And  
2 those are the two representatives that are on  
3 the committee. And I think -- is the last  
4 year or - I believe -- we have four regions  
5 that are renominated on an annual basis. And  
6 they rotate four each year. That's what --  
7 that's written in the regulations that way so  
8 that each year we have four new regions that  
9 are selected, so this coming fall, beginning  
10 in September, we will have -- four of the  
11 regions will be -- opportunity for tribes to  
12 nominate for representatives to be on that  
13 committee, will be sent -- are sent into the  
14 assistant secretary and, of course, they're  
15 reviewed and then appointments are made for  
16 three years. So that is described in the  
17 regulations also, and that process again. So  
18 every year we have four basically --  
19 potentially four new members, and eight  
20 members who are -- will continue on the  
21 following year.

22 Yes.

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

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

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

17 Yes.

18 MR. STEVIG: Gary Stevig,  
19 Chickaloon Village.

20 Again a needs-based program versus  
21 population-based program is what we're  
22 basically hearing and talking about. And in

1 that funding formula, the relocation of the  
2 population adjustment factor of 10 percent  
3 basically went from needs to population, and  
4 it switched from the needs, 10 percent, over  
5 to the population. Again, Alaska tribes are  
6 huge geography, limited population. And it's  
7 Lower 48 competing against Alaska, and again  
8 it's population. And that's something that  
9 we're dealing with. A hardship.

10 MS. DILTS JACKSON: Excuse me.

11 MR. GISHI: Yes. Go ahead.

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

19 MR. GISHI: Primary access in  
20 terms of this reg is in Subpart D, because  
21 it's a function of a road as opposed to these  
22 are the physical characteristics of a road, a

1 type of road, housing access, cultural access  
2 roads, seasonal roads, for the purposes of  
3 identifying those. So when we get to that  
4 Subpart D.....

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

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

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

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

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

17 MR. GISHI: We probably -- it  
18 might be a good idea to take a lunch break  
19 now, and then come back. What time is it?  
20 11:30. Can we come back at a quarter to one,  
21 and then we'll talk about Subpart C. Thank  
22 you.

1                   (Whereupon, the above-entitled  
2 matter went off the record at 11:30 a.m. and  
3 resumed at 12:45 p.m.)

4                   MR. SPARROW: All right.  
5 Everybody have a good lunch? Okay. Welcome  
6 back. My name is Bob Sparrow. I'm the  
7 director of the Tribal Transportation Program  
8 for Federal Highway Administration in  
9 Washington, D.C., and I'm going to cover the  
10 next two subparts in the regulation.

11                   But I just want to take a minute  
12 to again remind you, because we are behind  
13 schedule. You heard Mr. Caluum say that.  
14 We're trying to go over each one of these  
15 subparts that's in the regulation to at least  
16 give you an opportunity to hear what's in  
17 them. And this is a draft still. We haven't  
18 started the NPRM process. We're looking for  
19 your comments. We're looking for  
20 recommendations. We're looking for  
21 suggestions on how to make things more clear.  
22 For instance, Mr. Stevig and I talked about



1 something at break where there was an  
2 ambiguity which I've noted that I need to go  
3 back and address to make sure that it's clear  
4 what the intent of those rules, or the intent  
5 of that regulation is. That's the kind of  
6 stuff that we're looking for at this point.

7 But again you've got to remember  
8 that when it comes to -- you know, I've heard  
9 comments about Alaska and it being different  
10 from the Lower 48, which I fully agree with,  
11 it is. But when it comes to this funding  
12 formula, the funding formula was developed  
13 through negotiated rulemaking back in 2004 and  
14 5 and 3 and whatever, Congress has thrown that  
15 out. And Congress has mandated Federal  
16 Highway and BIA to say this is your new  
17 funding formula, and this is how it will be  
18 carried out. And we'll go over that here in  
19 a few minutes. We don't have any say any  
20 more. They've told us, this is the way it's  
21 going to be.

22 Now, MAP-21 -- in saying that,

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

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

20 But because Congress has told us  
21 this is the formula, we can't change it. Only  
22 Congress can change it.

1                   So we understand and fully  
2                   appreciate the comments that a lot of you are  
3                   giving, but again you have to understand that  
4                   we can't lobby Congress. All we can do is go  
5                   to the Hill and say, here's MAP-21, here's the  
6                   formula you gave us, here's where the funds  
7                   are being distributed. And we've done that.  
8                   One of the head committee people from the  
9                   House T&I Committee, which is the House side  
10                  of where these rules come from, has asked for,  
11                  going out through 2016, what the tribal shares  
12                  look like. So they're aware of what the  
13                  tribal shares look like up on the Hill.

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

22                  Yes, Mr. Stevig.

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

11                   MR. SPARROW: It.....

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

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

1 Highway Administration.

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

14           So anyway I just want to make that  
15 point before we got -- but you've all --  
16 you've had very good comments. We've captured  
17 the comments. Some of them, you have to  
18 understand though we can't do anything about.  
19 So I just wanted to make sure that that was  
20 clear. We're looking at the regulation. The  
21 intent of this whole update was to get the  
22 regulation up to date, because it was

1 published actually before SAFETEA-LU. So to  
2 incorporate the changes of SAFETEA-LU and  
3 incorporate the changes of MAP-21 into this  
4 regulation.

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

18 Federal Highway, when the rule was  
19 made, or published, again before SAFETEA-LU,  
20 there was not an option for tribes to work  
21 directly with the Federal Highway  
22 Administration. Now there is. So a lot of

1 cases, when you go in here, not only like Mr.  
2 Gishi says, instead of IRR you see TTP, but in  
3 a lot of cases where it used to say the BIA  
4 shall do this, it now says BIA or Federal  
5 Highways shall do this. And that's what we've  
6 been trying to do with this update, not change  
7 the regulation that was developed through  
8 negotiated rulemaking, except where  
9 statutorily required, or to get a process that  
10 may have been up -- that may have been  
11 included updated to how it's working now.

12 Mr. Thomas.

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

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

1 update.

2 MR. SPARROW: Okay.

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

15 Thanks.

16 MR. SPARROW: Okay. Understand.  
17 Yes, ma'am.

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

21 I would like to thank you for your  
22 clarification that this is an update. This is



1 not a government-to-government consultation  
2 with 229 tribes. And like Mr. Thomas said, we  
3 don't have anything that happened from June of  
4 last year.

5 MR. SPARROW: Thank you. Any  
6 other comments.

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

9 MR. SPARROW: Yeah. Where were  
10 you?

11 (Laughter)

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

14 MR. SPARROW: It was amazing, I  
15 went through it in 30 seconds.

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

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

20 MS. DILTS JACKSON: Well, see, the  
21 point I'd like to make is one of the most  
22 difficult things for me to figure out is what

1 the actual impacts are. And it's not just by  
2 looking -- I'm going to talk about your  
3 spreadsheets again. It's not just by looking  
4 at bottom line for the tribe, because you have  
5 to know what went into that bottom line. You  
6 have to -- I have to know what it looks like  
7 when it's fully implemented, because the way  
8 the act came down, it has a supplement which  
9 brings you back to the 2000 level before you  
10 see the -- get the bad, because that's coming,  
11 guys.

12 So in order for me to figure that  
13 out, I need those spreadsheets that you've  
14 been making available to the PCC, but haven't  
15 just been made generally available to the  
16 public here, because then in that way I can  
17 look at the impacts to my tribe, what went  
18 into it, what portion of the old funding is  
19 there compared to, you know, what are being  
20 paid -- you know, paid for now, and compare it  
21 to what I used to have in terms of inventory,  
22 and what like tribes are getting paid for and

1 what it's looking like for them, small, large,  
2 by state, by that. A very, very huge task,  
3 trying to really, you know, articulate what  
4 the impacts are without that. So I'm hoping  
5 that some of that is going to be made  
6 available, because I tried to calculate -- you  
7 know, pull out the figures for just my region,  
8 and I had to use a spreadsheet that we got  
9 from our Congressional Delegation. And I know  
10 that you probably have more refined figures,  
11 and I'd really like that to be made available  
12 in order for us to have meaningful input on  
13 that whole formula and how it's going to be  
14 applied over the next few years.

15 MR. SPARROW: There is a  
16 spreadsheet on the Federal Highway web --  
17 federal lands, TTP website that was posted I  
18 believe last Friday, a similar spreadsheet on  
19 the BIA website, which identifies the miles,  
20 the population, the various factors, the  
21 supplemental, et cetera, et cetera for the  
22 tribal share distribution for this year. That

1 was just posted, because we had to wait until  
2 some numbers were clarified by OS -- the  
3 Office of Secretary before we could post those  
4 numbers.

5 Yes, sir.

6 MR. HANSON: Scott Hanson,  
7 Chilkoot Indian Association.

8 I want to go back to the dates Sam  
9 was referring to, October of 2004. Our  
10 experience with adding inventory at that time  
11 in history was arduous and slow and  
12 unreliable. We had significant difficulty  
13 doing -- adding to our inventory. And in the  
14 several years following that, everything  
15 opened wide up for us, and the process became  
16 so much easier. And what we had, we -- what  
17 we have now we had then, but the difficulty in  
18 getting it there was significant, and it --  
19 and the date going back as far as 2004 really,  
20 I think not just for us, but for a lot of  
21 different tribes, too, kind of pulls the rug  
22 out from under all the hard work that we've

1 done, you know, to get that inventory to this  
2 point in time. We would hope it would be a  
3 later date than 2004.

4 MR. SPARROW: Okay. Thank you.

5 MS. DILTS JACKSON: Arlene Dilts  
6 Jackson again.

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

22 MR. SPARROW: I don't have the --

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

4 170.226 says what facilities are  
5 included in the National Tribal Transportation  
6 Facility Inventory, and under (a) it says were  
7 included in the Bureau of Indian Affairs  
8 system inventory prior to October 1, 2004.  
9 And then it goes into tribal roads; it goes in  
10 to BIA roads; and then it goes into other  
11 roads, public roads, and bridges within an  
12 exterior boundary of Indian reservations,  
13 Alaska Native villages, et cetera, et cetera,  
14 are public roads within, providing access to  
15 Indian reservations or Indian trust lands, et  
16 cetera, et cetera, or are primary access  
17 routes proposed by tribal governments. So  
18 that's pretty much verbatim right out of MAP-  
19 21.

20 We'll go into this a little bit  
21 more right -- as we go through these slides,  
22 because again we're trying to get through

1 these slides. All of your comments are good.  
2 If you don't make them here, please write them  
3 in, get them into the docket so that  
4 everything can be considered. Okay.

5 Okay. What did I do with it?

6 REPORTER: Over there.

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

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

1 management and oversight set-aside.

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

12 It's now mileage, population, and  
13 then a historical share percentage. It is  
14 population driven; we heard that this morning.  
15 It's gone from a needs-based formula to pretty  
16 much a non-transportation population type  
17 formula where it plays -- population plays a  
18 lot more -- or a more important part.

19 And then also as I said before,  
20 how the tribal supplemental allocation works.

21 This particular subpart talks  
22 about transportation planning just a little



1 bit. Planning really gets fully described in  
2 Subpart D.

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

8 General or formula data appeals.  
9 And then a little bit about flexible  
10 financing, because that's -- you know, and  
11 you're going to see there's really no change  
12 there. That language is exactly what the old  
13 language says, if you take the old rule that  
14 was published in 2004, and you compare it to  
15 what this rule has, or is contained in this  
16 rule.

17 In this particular subpart you'll  
18 see one big change. Well, another big change,  
19 on top of the funding formula. The high  
20 priority program used to be part of this.  
21 That high priority program was a take-down of  
22 the RNDF. That program is gone as a take-down

1 from TTP and is now a stand-alone program.  
2 But because it is tribal, it's got interest  
3 all over the country, especially in Alaska and  
4 California, we have included it for reference  
5 purposes only in a new subpart. That's  
6 Subpart I. There wasn't Subpart I before.  
7 But if you take the questions that were in the  
8 HPP section of the old reg in Subpart C and  
9 you look at Subpart I, 95 percent plus of that  
10 -- those questions are now just simply put in  
11 Subpart I. We'll talk about that again this  
12 afternoon real quick of what the differences  
13 are, but for the most part that program was  
14 taken lock, stock and barrel out of Subpart C  
15 and put in Subpart I.

16 Mr. Stevig.

17 MR. STEVIG: A quick comment on  
18 the high priority project funding, MAP,  
19 Section 1123, I believe it was \$30 million  
20 that was supposed to be appropriated, yet has  
21 yet to be appropriated. I urge Congress to  
22 appropriate \$30 million, or the money that was

1 identified for that program.

2 The other part that I'd like to  
3 talk about now is the amount. We've been at  
4 \$1 million for how many -- over a decade. And  
5 within that decade, the price of road building  
6 has doubled. Right now I would challenge  
7 anyone to build a road in Alaska for a million  
8 dollars. One mile. So to me that \$1 million  
9 has not been addressed or even looked at, and  
10 it's very concerning when we're tying FEMA and  
11 ERFO terminology in with the high priority  
12 project funding due to the changes in the  
13 Stanford Act and the tribes' ability to  
14 declare disasters. That's something in the  
15 comments that I want to later allude to as the  
16 mitigation plans that are going to be  
17 critically needed for funding. And that's a  
18 planning activity. We'll get into that later.

19 But again the HPP program is  
20 severely under-funded, and I just want a  
21 confirmation that it is no longer required  
22 that we need to indicate that in our long-

1 range transportation plan, because  
2 historically the applications were identified  
3 in your LRTP, and that has changed now to an  
4 application process through the Department of  
5 Interior, correct?

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

10 When you're looking at your long-  
11 range transportation plan and putting your TIP  
12 together, one of the things you always want to  
13 do though is look at how you think you're  
14 going to get these projects funded. A lot of  
15 the tribes in Alaska don't have -- well, a lot  
16 of tribes everywhere, but you all don't have  
17 enough money to do a construction project,  
18 exactly what Mr. Stevig just said. You might  
19 get tribal shares from this program that are  
20 adequate enough to do a design. And you may  
21 have this design and this design and this  
22 design and this design ready, waiting for

1 construction dollars. Those construction  
2 dollars you could identify to say, we  
3 anticipate applying for HBP or Tiger or  
4 whatever for these construction dollars. So  
5 you still need -- you should still identify  
6 them on your TIP and your long-range plan.

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

18           The funding diagram. If you take  
19 a look at it real quick, this replaces the old  
20 RNDF funding diagram that was in the old reg.  
21 It starts off with the amount authorized for  
22 the program. There's five statutory set-

1 asides: six percent PMNO for BIA and Federal  
2 Highway for administration of the program; two  
3 percent for tribal transportation planning;  
4 two percent for safety; two percent for  
5 bridge; and a formula that says how much money  
6 goes into supplemental funding.

7 From the authority level, because  
8 this is now a -- because it's a statutory  
9 formula, it's now an apportioned program, so  
10 it's much like the federal aid program that  
11 Sandra has to work with, or Federal Highway  
12 works with the states. We have to keep track  
13 of how much authority the program gets and how  
14 much actual cash the program gets. And there  
15 is a difference. But we have to keep track of  
16 that every year. So even though this is \$450  
17 million, and this is six percent, which is \$27  
18 million. This is two percent planning, which  
19 is \$9 million. This is \$9 million. This is  
20 \$9 million.

21 That's not how much money is  
22 actually going to be made available. We get

1 authority and then we get actual dollars. And  
2 the actual dollars for this year, there's an  
3 across the board recision that hit every  
4 program at Federal Highway, or just about  
5 every program at Federal Highway. And then  
6 there's obligation limitation of about 4.1  
7 percent. So instead of being \$9 million for  
8 planning, and \$9 million for safety, and \$9  
9 million for bridge, it's actually only about  
10 \$8.6 million of actual cash. And that's  
11 what's made available. The \$27 million for  
12 PMNO is also subject to that obligation  
13 limitation, so it's down about 26.1 or  
14 whatever. So it's not just the program that's  
15 subject to obligation limitation. All of the  
16 take-downs and all the set-asides are also  
17 subject to obligation limitation.

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

21 But after you take these set-  
22 asides down, we have these tribal shares, and

1 we have some shares based on prior year  
2 funding. This is what's run under the  
3 formula. This is prior year, this is  
4 supplemental. The whole thing comes together  
5 to give us a tribal transportation program,  
6 tribal shares. I'll get into each one of  
7 these a little bit more.

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

14           Twenty-seven percent of the money  
15 that's made available, by the time we get down  
16 to that formula is set aside for mileage. How  
17 many miles does a tribe have in the National  
18 Tribal Transportation Facility Inventory  
19 that's eligible for this particular factor?  
20 We said if you look at 170.226, it identifies  
21 six or seven different categories of roads  
22 let's say that are eligible to be in the



1 National Tribal Transportation Facility  
2 Inventory, but only a certain part of that --  
3 Congress has told us we can only use a certain  
4 part of that mileage to actually generate the  
5 funding for this particular factor. It's  
6 roads included in the BIA system inventory  
7 prior to 2004. It's the roads owned by tribal  
8 governments, the tribal roads as of 2011 -- or  
9 2012. And roads owned by the BIA as of 2012.  
10 So this particular factor is frozen. It won't  
11 change from this year to next year, or the  
12 year after that, or the year after that until  
13 Congress says to change it. All those other  
14 roads that are in there that are not BIA or  
15 tribal that were added to the system after  
16 2004, they're in the system, but they're not  
17 used to generate mileage.

18 There's about 150,000 miles of  
19 inventory. BIA, tribal, state, county,  
20 borough, et cetera, et cetera. Of that  
21 150,000 miles -- Mr. Gishi walked out the door  
22 -- I believe about 65,000 miles are all that's

1 used to generate for this factor. The others  
2 are in the inventory. You can expend funds on  
3 them, but they do not themselves generate  
4 funding for the tribes.

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

16 There's a second factor in the  
17 funding formula. Thirty-nine percent of the  
18 money is distributed by the ratio that the  
19 total population of each tribe has or the  
20 population of each tribe to the total  
21 population of American Indians and Alaskan  
22 Natives. And the statute says, the population

1 is computed using, quote, the most recent  
2 data, unquote, available under NAHASDA Act of  
3 1996. So whatever your NAHASDA numbers are  
4 for the American Indians and Alaska Natives,  
5 and those get updated by HUD every year,  
6 whatever numbers HUD sends to us by law we  
7 have to use.

8 Mr. Stevig.

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

22 MR. SPARROW: Thank you.

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

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

15 MR. SPARROW: Yes, sir.

16 MR. STEVIG: Gary Stevig,  
17 Chickaloon Village.

18 I talked to the state demographer  
19 about the subject, and there was two  
20 methodologies that they could use to actually  
21 do a population count and that is something  
22 the gentleman before me was somewhat alluding

1 to, is in the two methodologies, one was full  
2 blood and other ones were mixed. So -- and  
3 the state's demographer needs to actually --  
4 I need to talk to him and find out the two  
5 methodologies and what's being implemented and  
6 what isn't being implemented just for that  
7 clarification within Alaska.

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

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

1 so you're aware of what we can and cannot do.

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

7 The third factor is 34 percent,  
8 and that 34 percent, initially what we do is  
9 we divide it equally amongst the 12 BIA  
10 regions. So if we work down through this  
11 formula, and this particular factor at 34  
12 percent, let's say, is \$12 million. the first  
13 thing we do is we take the \$12 million and we  
14 give \$1 million to each region. Then within  
15 that region, what we have to do is we have to  
16 go and look at the tribal shares from 2005, 6,  
17 7, 8, 9, 10, 11, and determine what percentage  
18 of that region's shares did each tribe get.  
19 And if the tribe got 2.16145 percent of the  
20 region's money within that seven years, then  
21 it gets 2.1465 percent of the \$1 million.

22 So this factor, when the funds all

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

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

16               If you go back to that chart, over  
17       on the right-hand side, I need like five more  
18       hands, we had tribal supplemental funding.  
19       Now here's an amount of money that Congress  
20       has told us, okay, before you do all this  
21       stuff and you get down to that funding  
22       formula, we've got to have this tribal

1 supplemental funding. And Congress says,  
2 okay, if the program is less than \$275  
3 million, this is how much goes in. If it's  
4 more than 275, this is how much goes in. The  
5 bottom line.....

6 I don't know why that says for FY  
7 12 and 13. It should say FY 13 and 14. And  
8 again, you all are the first ones, so we're  
9 catching all sorts of errors that we see.

10 This equals \$104,375,000 that's  
11 taken out of the \$450 million and set aside  
12 for supplemental funding.

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

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

17 MR. SPARROW: Bring it on.

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

20 I wanted to back up just a little  
21 bit on the first factor having to do with road  
22 miles, and ask if proposed roads are in there



1 or not if they otherwise meet the three  
2 criteria. The regulations and the statute  
3 actually say are owned by an Indian tribal  
4 government or are owned by the Bureau of  
5 Indian Affairs. So I'm wondering. It doesn't  
6 say will be, it says are. So I'm wondering if  
7 proposed roads are in that road inventory that  
8 play into the 27 percent.

9 MR. SPARROW: Do you want to  
10 answer that?

11 MR. GISHI: Yes. The answer to  
12 your question is, yes. The way that the MAP-  
13 21 is written is it doesn't say 27 percent  
14 will apply to proposed roads, to access roads,  
15 to roads which are gravel, paved, five lane,  
16 two lane, one lane. It just says the mileage,  
17 the eligible roads that are in the inventory  
18 as of October 1, 2004 for non-BIA and non-  
19 tribal, and then for tribal and BIA, all the  
20 way up through to the 2012, which looks at  
21 every one of the roads that are in there. And  
22 in order for it to be in the inventory, it has

1 to have an associated ownership code with it.  
2 So if it's a proposed road and it's ownership  
3 of BIA, it would be included in the BIA  
4 portion. And if it was a road that was prior  
5 to 2004 that was a state, borough, county,  
6 other roads, but it was a proposed road, it's  
7 identified as an eligible road, because it was  
8 eligible in the program based on the -- what's  
9 identified in there. So when you're looking  
10 at this formula, you've got to completely  
11 erase from your mind anything that's  
12 associated with functional classification,  
13 whether it was a maintenance only road,  
14 whether it was a proposed road, whether it was  
15 a construction in need of others. All those  
16 things that were in the previous formula, it  
17 now is only looking at a database, a mileage  
18 associated with a tribe that fits into a  
19 category of 2004 and prior for non-BIA and  
20 non-tribal, and then for BIA and tribal, all  
21 of the roads that were up through 2012 that  
22 are in the inventory regardless again whether

1 they were four lanes, three lanes, two lanes,  
2 one lane, primitive or paved. It is looking  
3 at eligible miles, and that's what it's going  
4 off of.

5 So does that answer your question,  
6 Bruce?

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

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

20 MR. SPARROW: Mr. Stevig.

21 MR. STEVIG: I was going to  
22 comment on the slide that you were on actually

1 to keep this thing moving. I had lost --  
2 since our last consultation on the subject,  
3 apparently I've -- somewhere we lost \$5  
4 million. I was under the impression that the  
5 supplemental funding would be \$109 million,  
6 and now I'm seeing 104.375. So just  
7 clarification. I thought it was \$109 million  
8 on our last consult -- okay.

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

12 Now, when it comes to distributing  
13 that to the tribes, what we have to do is go  
14 back to the formula, look at how the formula  
15 distributes funds within the region and then  
16 the percent -- that percentage -- if the  
17 Alaska region and all the tribes in the Alaska  
18 region in the new formula generate 20 percent  
19 let's say of the new funding formula, then 20  
20 percent of that \$104 million gets designated  
21 to Alaska. So we have to go back, look at the  
22 formula, determine the percentages of the

1 tribes within that region, and then apply that  
2 percentage or divide up the \$104 million by  
3 that percentage. So if Navajo gets 24 percent  
4 of the money, they get 24 percent of the \$104  
5 million. If the tribes in the eastern region  
6 generate seven percent, they get seven percent  
7 of that money.

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

14 Then what you've got to do is you  
15 take a look at the tribes within a region and  
16 compare how much money they're getting to what  
17 they got or received under the old formula in  
18 2011. And if they're receiving less money now  
19 than they were in 2011, that tribe or the  
20 tribes within that region are the first -- get  
21 first dibs at this money in order to get them  
22 back up to their FY 11 level. The intent is

1 to offset any negative impact back to what the  
2 tribe -- of the new formula to what they  
3 received in FY 11.

4 Let me just -- give me one second.

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

10 Mr. Thomas.

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

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

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

21 MR. THOMAS: Uh-huh.

22 MR. SPARROW: Add up the total

1 amount of money that they're negatively  
2 impacted by, again back -- using 2011 as the  
3 baseline. And hopefully there's enough money  
4 to get all those tribes back to their 2011  
5 level.

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

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

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

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

15 MR. THOMAS: Okay.

16 MR. SPARROW: Then -- and if  
17 there's not enough money, which may happen  
18 down the road, because of something we haven't  
19 talked about yet, then all those negative  
20 tribes get a percentage of that money to get  
21 them back to 88 percent of their FY 11 level.  
22 So it wouldn't matter if you're at \$2 million

1 or at \$1 million. If you were negatively  
2 impacted, you'd be back to 88 percent of what  
3 you received. All those negative tribes would  
4 be at the same relative percentage.

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

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

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

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

16 MR. SPARROW: Well, there's an  
17 Excel spreadsheet, and one of your  
18 recommendations could be to put an Excel  
19 spreadsheet on the internet. We have the FY  
20 13 shares on the Federal Lands and BIA  
21 websites right now. You're not going to put  
22 spreadsheets with numbers in a regulation,



1 because we don't know what it's going to be.  
2 It changes every year. It comes down -- there  
3 are so many different factors before we ever  
4 can pop -- before we can ever get started that  
5 you'd never be able to get the exact numbers  
6 in the regulation, but you can get them on --  
7 you could easily get them on a website.

8 MR. THOMAS: Could I ask another  
9 thing?

10 MR. SPARROW: Yes.

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

16 MR. SPARROW: This program was  
17 held harmless to obligation limitation until  
18 1998.

19 MR. THOMAS: Okay.

20 MR. SPARROW: When TEA-21 was  
21 passed -- and it was not only this program, it  
22 was all of the programs of federal lands. So

1 the park road program, the forest highway  
2 program, Bureau of Indian Affairs -- or the  
3 IRR program, they were not subject to  
4 obligation limitation until 1998. When TEA-21  
5 was passed, that was taken away, and the  
6 program became subject to ob limit.

7 MR. THOMAS: Okay.

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

20 MR. THOMAS: Uh-huh.

21 MR. SPARROW: We only have so  
22 much. But since '98, Sam, the program's been

1 subject to it.

2 MR. THOMAS: Okay.

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

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

21 MR. CALUUM: Bob.

22 MS. PHILBIN: Let Andy speak.

1 MR. CALUUM: We do have some  
2 flexibility with the timing, but the court  
3 reporter is here. I mean, she has obligations  
4 herself as well, and I think the point is well  
5 taken. It is a very frustrating situation I  
6 suspect for some of the people here with  
7 respect to how the formula has changed and  
8 things of that nature.

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

1 Congress for the next bill, that's the time to  
2 deal with that.

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

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

18 MS. BAHNKE: And then one final  
19 comment is that either in the future a two-day  
20 consultation or a facilitator or something to  
21 help us kind of keep on track. This is a lot,  
22 and a lot of people are frustrated. So either

1 a neutral facilitator to help move us along,  
2 or give us two days of consultation so that we  
3 can have time to discuss all of these things.

4 Thank you.

5 MR. SPARROW: Thank you.

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

13 MR. CALUUM: We do view this as  
14 tribal -- as consultation. This rule is not  
15 set in stone. This is a draft. There will be  
16 -- after we finish the consultations here and  
17 the comment period closes on June 14th, which  
18 we've talked about earlier, we'll gather all  
19 the comments, both the oral comments here at  
20 the meetings, the written comments, and we  
21 will go through those, and we will develop  
22 what is called a notice of proposed -- a

1 proposed rule, and there will be a notice of  
2 proposed rulemaking, and we will go out and  
3 we'll consult on the proposed rule as well.  
4 This is by no means set in stone. This is by  
5 no means final right now. This is an  
6 opportunity for tribal leadership and people  
7 interested in this issue to have their say now  
8 before we get to the NPRM process where we do  
9 lose quite a bit of control, because it's a  
10 very structured process once you get to that  
11 point.

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

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

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

18 Yes, ma'am.

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

21 I guess my first and main comment  
22 would be that instead of going forward with

1 the notice for proposed rulemaking that you're  
2 planning to do after this initial comment  
3 period, would be to go forward as a negotiated  
4 rulemaking. The reason I state that is  
5 because I think that would get a lot more  
6 tribal involvement in the process, and it  
7 would increase the comfort level. In reality,  
8 you could go off this draft and ask a proposed  
9 rulemaking committee to go from that, compare  
10 it to the regulation, and take into  
11 consideration consultation meetings such as  
12 the one that took place last year on proposed  
13 and access roads.

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

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

22 The second thing is that under the



1 process of this meeting, what would have  
2 helped me, and I suspect the audience, would  
3 be if you had focused on the substantive  
4 changes between the regulation and the  
5 proposed regulation, and just tell us what the  
6 rationale is for the change, because this is  
7 a substantive change, because MAP-21 requires  
8 it, or is there some other reason, you know,  
9 this -- was this from consultation or some  
10 other reason. But we're sort of -- we're not  
11 getting into the substance of the changes.  
12 We're really sort of glossing through it  
13 pretty well.

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

22 I also noticed it when it had to

1 do with the BIA system versus the tribal  
2 system. There are some, you know -- there's  
3 some changes between the two definitions. And  
4 the tribal transportation system wasn't in the  
5 prior reg.

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

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

13 Thank you.

14 MR. SPARROW: Thanks, Julie.

15 Highlights, just really quickly  
16 then going through this. This last factor  
17 that hits the funding formula that's  
18 identified in the reg, again was statutorily  
19 put on the program, and that is that it  
20 transitions over a four-year period to where  
21 this first year, in FY 13, 80 percent of the  
22 money actually gets distributed based on how

1 the tribal share percentages in FY 11, and  
2 then those shares go down. The new funding  
3 formula becomes more and more important as the  
4 years go by.

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

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

20 Yes.

21 MR. STEVIG: A quick comment on  
22 owned, on the facilities that are in the

1 inventory for ownership, the coding guide  
2 historically tied right away maintenance and  
3 ownership all within one question. And what  
4 I'm seeing is Q 10 trying to address the  
5 ownership issue, but in fact also what needs  
6 to be considered and talked about is the  
7 coding guide to implement those facilities  
8 into the Federal inventory. The coding guide  
9 created some of the error and confusion,  
10 because they snowballed three questions into  
11 one, and ultimately what trumped all three of  
12 them was who maintained that facility. So it  
13 became point mute of ownership. If you  
14 maintain that facility, then you owned it. So  
15 just FYI, we need to comment on the coding  
16 guide.

17 MR. SPARROW: Alrighty. Thank  
18 you.

19 Inventory still requires the BIA  
20 regional offices to maintain, certify, and  
21 enter the data for the regions. That really  
22 hasn't changed from before. The process goes

1 through the BIA regions before it gets final  
2 approval.

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

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

21 Flexible financing really hasn't  
22 changed. It describes how the tribe can use

1 the funds to issue bonds and enter into  
2 agreements and use it as collateral for loans.  
3 That hasn't changed from what was in the  
4 regulation from 2004.

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

8 Inventory updates, they still  
9 apply. We're still trying to update the  
10 inventory on an annual basis following the  
11 same dates that were in there before.  
12 Internally, but it's not in regulation. It's  
13 not in statute. It doesn't change your tribal  
14 shares, because it's the FY 12 inventory is  
15 what's being used, but we're still running  
16 through the inventory update process.

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

22 The regions and the tribes should

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

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

16 All of those costs to construct  
17 tables and information and functional classes  
18 and things like that that were appendices to  
19 this part have now been put into Subpart D.  
20 There's an appendix at the end of Subpart D  
21 that still has that information to help with  
22 inventory submittals.

1           But all the other stuff that had  
2           to do with the funding formula through  
3           negotiated rulemaking, RNDF, all of that stuff  
4           has gone, and pretty much replaced with the  
5           statutory language.

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

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

16           What's in this particular section.  
17           Transportation planning, responsibilities and  
18           requirements under the planning regs of Title  
19           23, which is the federal highway planning  
20           regs. What does the tribe have to do? What  
21           does BIA or Federal Highway do? What are the  
22           potential funding sources for planning



1 purposes are identified in this particular  
2 section.

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

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

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

21 You want to say something?

22 What came out of the coordinating

1 committee was added to the reg to show what  
2 minimum attachments have to be supplied in  
3 order to get the inventory -- or a road into  
4 the inventory.

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

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

1 design exceptions approved?

2 PS&E approvals. The tribes can  
3 approve their own PS&Es. How do you do that?  
4 How do you do construction monitoring,  
5 inspection, close-out procedures for your  
6 projects? What kind of reports are required?  
7 What's the roles and responsibilities of those  
8 particular projects when it comes to Federal  
9 Highway, when it comes to the tribes, when it  
10 comes to BIA.

11 Yes, sir.

12 MR. STEVIG: Gary Stevig,  
13 Chickaloon Village.

14 A quick note in the regulations, I  
15 didn't see the terms for Federal highway  
16 agreements that -- for the purposes of  
17 carrying out the federal contract, that they  
18 will be deemed federal employees for the  
19 purposes of carrying out that contract, and  
20 also in regards to for maintenance, the  
21 reference that tribes come with -- Federal  
22 highway agreement tribes come with anyway may

1 I clarify, Federal Coverage Act. And that was  
2 something that I didn't see in the  
3 regulations. Just a comment.

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

9 And then some additional  
10 information on bridge inspection. Bridge  
11 inspections -- or inspections of tribal  
12 bridges are now required by law. They weren't  
13 required previous, prior to MAP-21, but MAP-21  
14 specifically goes into detail to include  
15 tribal bridges have to be inspected every  
16 other year. So there's discussion in the  
17 regulation on how that's going to be followed.  
18 There's not much in there, because it's still  
19 kind of being developed at Federal Highway.  
20 But it referenced -- goes back and it  
21 references that part of the law which the  
22 other part of Federal Highway is fulfilling,

1 so we're just referencing that. Whatever the  
2 bridge office of Federal Highway comes up with  
3 of what's required for bridge inspections,  
4 that's what we're going to have to follow.

5 Yes.

6 MS. LAMPE: Is that a funded  
7 mandate?

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

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

19 Funding sources. Another one.  
20 God. IRR Program construction funds. I'm  
21 sorry. I worked with IRR Program for 12  
22 years. I cannot get it out of my head.

1                   The Tribal Transportation Program  
2 funds and the planning funds, and how they can  
3 be used for transportation planning.

4                   Long-range transportation  
5 planning.

6                   Yes, Julie.

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

8                   MR. SPARROW: And I know it's you.  
9 We have an issue with LRTP being used for plan  
10 or being used for planning. We'll have to  
11 clarify that.

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

14                   MS. PHILBIN: Excuse, Mrs. Baltar.

15                   MS. BALTAR: I'll wait.

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

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

20                   Actually my comment is to 170.411  
21 which is under content, and it says what  
22 should a long-range transportation plan

1 include. And though it's a one-word change,  
2 it's a change from may in the previous  
3 regulation to should in the rewrite. And I'm  
4 just wondering, was there something in MAP-21  
5 that required this change? Because if it's  
6 not in MAP-21, I'm not sure why you would be  
7 changing that language, because there's a big  
8 difference between may, that these things may  
9 be included in the plan versus what shall be  
10 included in the plan.

11 MR. SPARROW: Okay. Thank you.

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

21 Further discussion on the  
22 Transportation Improvement Program, or the

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

11 Public hearings and public  
12 involvement in your planning process. How do  
13 you go about determining whether or not you  
14 need a public hearing? What kind of funding  
15 is made available, or what kind of funding can  
16 be used for those public hearings. It goes  
17 into processes. How do you inform the public  
18 that you're going to hold a meeting? How do  
19 you conduct the meeting? And then how do you  
20 appeal a public hearing decision. If a  
21 decision comes out of that public hearing, how  
22 could that decision be appealed. So that's



1 described in this particular section.

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

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

22 Yes, sir.

1 MR. STEVIG: Gary Stevig,  
2 Chickaloon Village.

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

15 MR. SPARROW: Okay. Thank you.

16 Designing a project. Again, what  
17 kind of design standards. It lists the  
18 various standards that you can -- that are  
19 approved for designing your projects. Asking  
20 for a design exception. The process of how  
21 you ask for that design exception. How to  
22 appeal that design exception if your exception

1 is denied. So that process is included.

2 Review and approval of PS&Es.

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

21 What's the Secretary's role in  
22 reviewing the PS&E package, and actions if we

1 see a design deficiency. That pretty much is  
2 the same as what it was before. If you see a  
3 design deficiency, you have to bring it  
4 forward.

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

13 Yes, ma'am.

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

16 Under plans, specifications, and  
17 estimates, when you're doing collaboration  
18 with your local governments in your region and  
19 they provide you gravel stockpile, but you  
20 don't have an inspector in your region to  
21 determine the quality of gravel is acceptable  
22 of not, and then you have the BIA officials

1       come in and put their two cents on that gravel  
2       is not suitable for road construction, what's  
3       your -- what choices do you have? What do you  
4       do then? You're already building it.

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

20                   MS. LAMPE: We don't have  
21      pavement.

22                   MR. SPARROW: Well, it's not just

1 pavement, that's what I'm saying. Even in  
2 gravel roads, there's specifications of what  
3 have to be followed for that material on a  
4 gravel road. So I mean, I'd have take a look  
5 at it on a case-by-case basis, but, you know,  
6 whoever designed that road has to have a  
7 specification for that material, and that  
8 material has to meet it, or you'd have to ask  
9 for a design exception and work it through the  
10 process of a design exception, which talks  
11 about previously when we talked about design  
12 and asking for design exception. But that --  
13 and it shows you the process that you have to  
14 follow through.

15 Construction and construction  
16 monitoring. What are those construction  
17 standards? What type of monitoring? What  
18 type of inspection? What type of -- how many  
19 times do you have to test the concrete, or  
20 test the gravel, or test the subgrade?  
21 Information on the standards that have to be  
22 followed with that.

1                   From a project administration  
2 perspective, what kind of reports, what kind  
3 of records have to be kept on a project, or  
4 should be kept on a project. If it's a BIA  
5 project that the BIA is operating on behalf of  
6 the tribe, what are the requirements that the  
7 BIA has to follow, and providing those  
8 documents to the tribe or to the public. If  
9 the tribe's doing the project, pretty much the  
10 same sort of monitoring and reporting  
11 requirements, but what type of availability  
12 does the tribe have to make those available to  
13 Federal Highway, let's say, if we come up to  
14 look at a project.

15                   Excuse me. And then when it comes  
16 to construction project closeout, who do you  
17 invite to the final inspection? Who gives the  
18 final approval? What kind of reports have to  
19 be provided? And then who has to do that  
20 final closeout report itself? There's a  
21 closeout to every project. Does the tribe do  
22 it? Does the BIA do it? It kind of depends

1 on who did the job in the first place. It  
2 describes that type of information.

3 Excuse me. Management systems.  
4 It talks briefly about management systems.  
5 What type of systems are required. A pavement  
6 management system. A bridge management  
7 system. A safety management system. Those  
8 types of things.

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



1 really the bottom line.

2 Yes.

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

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

12 Yes, Sam.

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

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

21 Bridge inspection. As I said  
22 before, there's a new statutory requirement

1 for when and how bridge inspections are to be  
2 performed. The notification requirements of  
3 when someone's coming out to inspect tribal  
4 bridges or BIA bridges. They wouldn't be  
5 inspecting tribal bridges unless you knew  
6 that, so let me back that up and say BIA  
7 bridges. But the notification process that  
8 someone is on the reservation or in the  
9 village doing bridge inspections.

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

15 And then the distribution of the  
16 bridge inspection reports.

17 Honestly, this all ties into what  
18 -- to that whole bridge inspection section now  
19 of MAP-21. Bottom line is the tribal bridges  
20 will be included in the national bridge  
21 inventory system and be recorded there. And  
22 they'll have to be inspected.

1                   Now, a question came up as to  
2                   where the money is going to come from to  
3                   inspect those bridges, and we're still trying  
4                   to figure that out, because there's language  
5                   in there that says it's to come out of the  
6                   tribal shares. There's other, you know -- and  
7                   for the money for the -- for Park Service, it  
8                   comes out of the Park Service program or the  
9                   Park Road Program, or it comes out of the IRR  
10                  -- or the TTP program. But it says in there  
11                  for tribal bridges that it comes out of the  
12                  tribal shares. So we're still trying to  
13                  figure out, get our hands around what sort of  
14                  inspection type system we're going to have to  
15                  come up with or be told we have to come up  
16                  with, and then working through that process of  
17                  trying to get the program underway and the  
18                  bridges inspected.

19                         Yes, sir.

20                         MR. STEVIG: Gary, Chickaloon  
21                         Village.

22                         The tribes need the ability to

1 build new bridges. All the terminology is for  
2 existing bridges, and Alaska's new to the  
3 program. We need new bridges.

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

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

19 Appendix A to Subpart D talks  
20 about the cultural resources and environmental  
21 requirements of the program. Appendix B is  
22 the design standards we talked about.

1                   Appendix C is a new appendix. It  
2 used to be part of Subpart C. It went back  
3 with the RNDF. It still talks about cost to  
4 construct. It still talks about functional  
5 classifications and other information when  
6 getting the documentation or getting your  
7 inventory updated, or getting your new roads  
8 into the inventory.

9                   Yes, ma'am.

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

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

19                  Functional classifications I think  
20 are viable, though it might be worthwhile to  
21 review them. I know that during last year's  
22 comment period I had recommended maybe an

1 additional functional classification, for  
2 instance, for a primary access trail needs to  
3 be included. It doesn't really fit into the  
4 other categories.

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

18 So it seems like there's things --  
19 some things that are still in the regulation  
20 that may cause burden, particularly in this  
21 region, where we're seeing for most tribes a  
22 diminishing in funding. And we just really

1 don't have the funds to do a lot of this extra  
2 work based on the ultimate benefit. You know,  
3 we're not seeing a huge benefit from it.

4 So my recommendation would be to  
5 drop some of these things.

6 MR. SPARROW: Thank you.

7 MR. STEVIG: Comments. Bob. Gary  
8 Stevig, Chickaloon Village.

9 The same comment.

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

14 425/427 talks about working  
15 through the process to submit a TIP, and  
16 reviewing the documentation and responding to  
17 the tribe. That hasn't changed from before.

18 Public hearings. All these dates  
19 are the same dates as they were previously.

20 Design exceptions, the same sort  
21 of timeframes as previous. There's really  
22 been no change.

1                   Again, just review and approval of  
2                   the PS&E. There really is no timeframe, but  
3                   I stuck it in here. This is the language out  
4                   of the statute, you know, providing assurance  
5                   that the PS&E meets or exceeds applicable  
6                   health and safety standards, and then a copy  
7                   of that certification is provided to BIA or  
8                   Federal Highway.

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

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

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

19                  Record keeping with regards to  
20                  developing your TIP. When and how Federal  
21                  Highway and BIA regional offices notify the  
22                  tribes of updated TIPs and projected --



1       there's another mistake -- IRR program  
2       funding. I've got to quit cutting and  
3       pasting.

4                       (Laughter)

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

8                       (Laughter)

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

13                      We've got to quit coming to Alaska  
14       first.

15                      (Laughter)

16               MR. SPARROW: This is getting  
17       brutal.

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

21                      Public hearings. What's that?  
22       Again? I did, didn't I. Right there.

1 PARTICIPANT: Give us a million  
2 every time it's still in there.

3 MR. SPARROW: Oh, yeah. Yeah.

4 (Laughter)

5 MR. SPARROW: Let's see here.

6 Construction reporting. That  
7 table is in there, and it says what needs to  
8 be kept. None of that has been changed.

9 And that's it. And according to  
10 my records, I have no changes have to be made.  
11 There's no IRR in here. I never saw it. TTP  
12 is there.

13 (Laughter)

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

19 I apologize for getting into the  
20 detail on the -- in the funding formula. It  
21 is complicated. Every time we go out, we try  
22 to make sure that we explain what's going on,

1 because it is so complicated, quite honestly.

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

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

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

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

18 Subpart E, service delivery for  
19 Tribal Transportation Program, for the TTP,  
20 primarily deals with -- initially when this  
21 was developed as part of the regulation, this  
22 was the portion that primarily addressed the

1 contractual procedures, the processes that  
2 involved how services are to be procured or in  
3 the case of Indian Self-determination Act, how  
4 the tribes are to perform the work. And, of  
5 course, as I mentioned before, a lot of that  
6 is already in the regulations in either 900 or  
7 1000, and so where it was applicable to repeat  
8 those sections, we did. Otherwise we're  
9 basically saying, comply with 900 and 1000.

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

16 This subpart basically covers the  
17 funding process, a strict part of how funds  
18 are made available; contracts and agreements.  
19 There's miscellaneous provisions that talk  
20 about how contract support cost applies; how  
21 start-up activities would be considered; force  
22 account methods. There was a question earlier

1 about force account, and we'll talk a little  
2 bit about that in here also.

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

13 This tells how the Indian Self-  
14 determination and Education Assistance Act,  
15 the Federal Highway Administration, and other  
16 appropriate agreements and contracts can be  
17 used to contract for programs through the TTP,  
18 and, of course, for Title 1 contracts, Title  
19 4 agreements, and the Federal Highway Program  
20 agreements, and then the other appropriate  
21 agreements, which includes everything from  
22 purely pass-through agreements that we have

1 sometimes where we have a state that is  
2 looking to provide funds to tribe and does --  
3 and the tribe knows what it's for, the state  
4 knows what it's for, and -- but they have no  
5 way of being able to provide those funds. And  
6 the BIA will generally in that case act as a  
7 mechanism to do a process of providing -- I  
8 clean also.

9 (Laughter)

10 The rights of first refusal,  
11 contingency funds in terms of -- all these  
12 things that normally come up in terms of the  
13 regular self-determination contracting  
14 procedures that are out there, how does that  
15 apply, what's the application of those within  
16 the TTP program. I almost said IRR program.  
17 In the TTP program, including cost overruns,  
18 how are those handled. And, of course, a big  
19 issue that was really a big issue early on  
20 back in 2000, the early 2000, regarding  
21 advance payments, which is not really an issue  
22 any more, because all funds are treated fairly

1 closely to the Title 4 type of agreements, as  
2 well as the other agreements consider that a  
3 big part of government-to-government is the  
4 providing of funds in advance.

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

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

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

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

22 Federal Tort Claims Act and how it applies and

1 where it applies. Technical assistance  
2 available to tribes who are planning to  
3 contract.

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

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



1 here when it's tribal shares.

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

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

21 It explains how the funds may be  
22 acquired if unforeseen costs are encountered.

1                   And, of course, it follows very  
2 closely what's in -- this is one of those  
3 instances where we took it as much as we could  
4 verbatim out of what's currently in the regs  
5 under 900 and applied them here.

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

1 agree to in that process.

2 It clarifies legislation,  
3 regulation, and other requirements for  
4 procurement in terms of again relating it back  
5 to those that are currently in existence with  
6 -- in 900 and 1000.

7 And then the one area that it  
8 talks about is how -- because this is a tribal  
9 shares program, how does this all fit into  
10 contract support costs. And because this is  
11 a tribal shares program, it is very much -- I  
12 mean, there's very few, if any, programs that  
13 are out there in the DOI arena under Office --  
14 the operation of Indian programs or other  
15 programs within the Interior that have a  
16 tribal shares formula where it's in statute,  
17 but this is what a tribe is going to receive.  
18 And as a result of that, of course, now we  
19 treat them in terms of some of these things  
20 that we're looking at that are available under  
21 the Indian Self-determination Act is  
22 identified.

1                   What TTP functions a tribe may  
2                   assume. And, of course, we know that as those  
3                   functions which are contractible and which --  
4                   those which are not are also listed as not  
5                   being available or the non-contractible  
6                   project activities, which is primarily -- one  
7                   of the things that SAFETEA-LU did -- and these  
8                   regs are pre-SAFETEA-LU. One of the things  
9                   that SAFETEA-LU did was, as you read the regs  
10                  now, or as they exist right now, it talked  
11                  about that the funds made available for  
12                  activities which are otherwise not  
13                  contractible were program management and  
14                  oversight. Program management and oversight.  
15                  Anything that was project related was at that  
16                  time considered a function that the BIA could  
17                  go in and say, if it's your tribal share, and  
18                  you -- and we're going to do the work of  
19                  approving the plans, if we're going to do the  
20                  work of monitoring the project, even the final  
21                  inspection which is an inherent function, that  
22                  we would go and take from your tribal shares

1 that amount of money to perform that function.

2 Well, SAFETEA-LU make it very  
3 clear in addition to identifying that six  
4 percent of the funds would be available,  
5 specifically the amount equal to six percent,  
6 is actually a cash amount, \$27 million for the  
7 last year of SAFETEA-LU. It identified  
8 included project-related administrative  
9 activities. And if you -- you know,  
10 government, we're real good at acronyms. If  
11 you look at what project-related  
12 administrative expenses is, it spells PRAY,  
13 and that's basically what we started doing  
14 when we realized that that's how the law was  
15 written. We starting praying. Because what  
16 we normally would do with about \$40 million  
17 for the program, at that time running at about  
18 275 to 300, was we would use that amount to do  
19 those project-related activities, which were  
20 administratively required, but we considered  
21 them as being inherently federal. Well,  
22 SAFETEA-LU came and said, no, you need to do

1 all those things which are your  
2 responsibility, inherently federal, even the  
3 project-related stuff, and you need to take it  
4 out of this one pot of \$27 million. So that  
5 changed a lot of things that were there.

6 So what this does is this takes a  
7 look and says, how is it that we're now -- how  
8 that funded and how is that developed. And,  
9 of course, we talk in there about a national  
10 budget that we develop working with the  
11 regions in terms of being able to make that  
12 determination, and the fact that this now just  
13 doesn't apply to us, this applies to Federal  
14 Highways, that we work out a process of a  
15 budget with Federal Highways for that amount.

16 It talks about technical  
17 assistance, the process of providing technical  
18 assistance. And that's a big thing, and I  
19 think a it is, that's one of the areas that  
20 we're really starting to identify as areas  
21 that we should be shifting our mission towards  
22 is technical assistance as opposed to what we

1 were before, which was oversight and  
2 monitoring. Oversight and monitoring was when  
3 we were talking about earlier, saying, you  
4 know, we want to see your cylinder breaks at  
5 7 day, 14 days, and 28 days. That's the way  
6 it used to be. That's in part some of the  
7 things that we're seeing still in Subpart J,  
8 900. But under the concept of what's come  
9 about with TEA-21 and SAFETEA-LU, and even  
10 more so under MAP-21, it's pointing us in a  
11 direction of government-to-government so that  
12 we -- you take a look at your cylinders, you  
13 break them at seven. You know the law, you  
14 know what ASHTO says, and ASTM. You break  
15 those cylinders at 7 and 14 and 28. You know  
16 when you're in compliance or not.

17           You have a built-in quality  
18 control system that you're doing it, and  
19 you're not necessarily looking to us to be  
20 able -- we can still provide the technical  
21 assistance, and that's why it comes in.  
22 That's where we're trying to emphasize our

1 direction to help that process succeed as  
2 opposed to I need to see your plans, can you  
3 send me your ADTs? I don't think this is --  
4 design is right. That's why the design  
5 approval process can rest directly with the  
6 tribe. The tribe has that authority to do  
7 that as long as they have licensed  
8 professional engineers.

9           They certify that they're going to  
10 comply with all health and safety aspects of  
11 a project. That's not in 900 or 1000, but  
12 they still have to provide that information to  
13 the BIA under those requirements. But that's  
14 why technical assistance is a big item there.  
15 It may be one of the things that I think  
16 should receive a little more attention in  
17 terms of where we're heading in this area, but  
18 right now, rather than put it in there, it's  
19 something that is out there, and we would like  
20 some comments and feedback relative to that.  
21 Again, going back to that concept of being  
22 there to provide technical assistance rather



1 than an oversight role. And oversight's still  
2 there, but it's in a different fashion as  
3 opposed to what it was in the past.

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

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

21 Appendix A to Subpart E again is  
22 that -- those functions which are not

1 otherwise contractible. And again that's  
2 making payments. You can't make payments to  
3 yourself. If it comes from Federal Highways  
4 into the system, we have to be able to make  
5 that. That's those activities. Develop an  
6 agreement, signing agreements, providing  
7 technical assistance. Those are things that  
8 are identified in there. Take a close look at  
9 that and see what you think relative to those  
10 functions also.

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

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

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

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

1 with Federal Highways, and we've modified  
2 those budgets based on that.

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

8 Yes, Gary.

9 MR. STEVIG: Gary, Chickaloon  
10 Village.

11 A clarification. So BIA region,  
12 Alaska region, is receiving program  
13 administration funds to deal with Federal  
14 Highway agreements for the purposes of the  
15 inventory. And are all the regions receiving  
16 this money on a timely basis? Originally  
17 going in, I heard that our Alaska region was  
18 having some difficulties accessing the PMO's  
19 monies to do business with Federal Highway  
20 agreement tribes. I just wanted to restate  
21 that there is a mechanism for BIA to be  
22 compensated for working with Federal Highway

1 agreement tribes. I know it's on the books,  
2 but I'm just indicating I want to make sure  
3 Alaska region is receiving that money on a  
4 timely fashion.

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

16 And it worked, because the other  
17 tribes -- other regions were able to work  
18 through the process to be able to do that. but  
19 that's one of the big factors that we have to  
20 consider is how much money do we continue to  
21 keep at the region level relative to that to  
22 perform those functions that are associated

1 with activities that still apply to the  
2 Federal Highway tribes who are currently  
3 contracting directly with Federal Highways,  
4 because there's a lot of activities that are  
5 still -- that we still have to accomplish and  
6 complete there. Running the formula, of  
7 course, is one of them. Distributing the  
8 funds in terms of being able review it. The  
9 budgets and those kinds of things are part of  
10 that process. Good question.

11 Okay. That's delivery of service.  
12 As I've indicated, that's pretty straight  
13 forward.

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

1 to that.

2 As you recall, some of you who  
3 were around, I don't want to give away your  
4 age, but some of you who were around back when  
5 we were still doing contracts back in 1998 and  
6 1999, you recall that some of those contracts  
7 were this thick. They were just full of --  
8 even though they were self-determination  
9 contracts, they had a lot of FAR requirements  
10 in there. They had requirements from the  
11 quality control perspective.

12 MS. LAMPE: Use the mic.

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

14 (Laughter)

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

17 (Laughter)

18 MR. GISHI: And so they were that  
19 thick, but it had all kinds of stuff in it.  
20 And the big part about that was, is how do we  
21 now, since we've come to SAFETEA-LU and since  
22 then with MAP-21, take a look at a government-

1 to-government process that allows us to be  
2 able to even under those contracts develop  
3 templates, streamline procedures that we can  
4 reference agreements.

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

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

20 So this section normally would be  
21 a huge one, but it's actually fairly small  
22 because a lot of those things are all



1 referenced in here that need to be addressed.

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

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

17 Monitoring of the Secretary of all  
18 Tribal Transportation Program activities.

19 When we get to that, we'll talk a little bit  
20 about how the -- what the difference is, is  
21 where we come from prior to this, and where  
22 we're heading, and hopefully where we're at

1 right now in terms of the oversight and  
2 accountability.

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

13 Stewardship plans, or business  
14 plans somebody -- some people refer to them  
15 as, is basically identifies the roles that the  
16 Federal Highways and BIA have in administering  
17 the TTP program, and also describes the  
18 processes used in the program itself. We have  
19 -- we're starting with a new round of those in  
20 terms of -- and this is primarily agreements  
21 between the Federal Highway Administration and  
22 the BIA. We have various forms of things that

1 we do. We've got some guidance out there that  
2 we've been working off of. We have an  
3 existing plan that was approved back in 1999  
4 or somewhere in that area.

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

15 This -- the tribes wanted to allow  
16 their ability to develop agreements for that  
17 purpose of just saying, this is what we -- you  
18 know, we're not going to do the work, but it  
19 would be nice if we had in X-number of days  
20 these plans are going to be completed, that  
21 this work was going to be advertised by a  
22 certain date, that the cost of this would be

1 monitored and communicated with us on a  
2 biannual basis or quarterly or whatever. So  
3 those are things that you would look at under  
4 these MOUs.

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

10 Timelines, timetables. What  
11 happens when the review process identifies  
12 areas for improvement. Part of the review  
13 process is that when we develop these  
14 different agreements, we develop a review  
15 process that allows us to first of all step  
16 back from things that we normally -- and  
17 really a lot of the states still have a lot of  
18 those built into their agreements when they  
19 work with local governments and contractors  
20 where they have certain things that have to be  
21 done, they have progress payments every two  
22 weeks. You have to submit those in, including

1 your payroll sheets, and that's how you get  
2 aid from a contractor's perspective. That's  
3 a contractor/government relationship.

4           What we're trying to work with  
5 here is a process of government-to-government,  
6 and in that context not necessarily look at  
7 those things, but also from a government-to-  
8 government perspective, we have to have a  
9 review process that allows us to be able to  
10 see what the tribes are doing, look at best  
11 practices, look at areas that we can provide  
12 technical assistance, and just in general make  
13 sure that we are -- that the tribes and we are  
14 making this project move along in accordance  
15 with the requirements of the law. Big time.  
16 Because the laws in terms of construction,  
17 there's a lot of things that are built in  
18 inherently to -- into the function, into the  
19 process of construction, design, those things  
20 which have to be complied with. W

21           e talked about this earlier, about  
22 bridge inspections and how there are

1 certification requirements that are associated  
2 with it. A team leader has to have 15 years  
3 of experience. Well, you have to be able to  
4 show those kind of data in order to be able to  
5 do that function. And part of that review  
6 process would be to take a look at those  
7 things and make sure that's being complied  
8 with. And that's at that very high level.

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

14 Record keeping. What happens  
15 when a review process identifies areas for  
16 improvement. When the review process  
17 identifies areas for improvement, (d) says the  
18 reviewed tribe or BIA region implements the  
19 plan and reports whether annually or  
20 biennially to BIADOT, which is central office,  
21 and Federal Highways central office,  
22 headquarters, on implementation

1 accomplishments. And this is not any  
2 different than any process that you go through  
3 when you do an A 123 type of review in which  
4 you're looking at complying with OMB circulars  
5 that require you to be able to make sure that  
6 you're accomplishing those parts of program  
7 implementation. The same thing happens here,  
8 except this provides a basis from a project  
9 perspective and a program perspective to be  
10 able to identify and report back and then  
11 eventually check that off as having been  
12 accomplished and then move on.

13 Questions. That's Subpart F.

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

16 Are your stewardship plans  
17 primarily for highway projects?

18 MR. GISHI: The stewardship plans  
19 -- the question is, are the stewardship plans  
20 primarily for highway projects. The plan is  
21 basically a document that just really talks  
22 about all the general activities associated

1 with the program. So it could be plans. It  
2 can be -- it could be development of a TIP.  
3 It could be how are projects selected in terms  
4 of what's the process that you go through in  
5 order to be able to do that. And a lot of  
6 those are actually referenced in the  
7 regulations, and in the law, because you would  
8 have to be able to say, this is why we do what  
9 we're doing, because it's in the law or it's  
10 in the regulations. So it's for the whole  
11 program as a whole. How do you -- what do you  
12 do when you have funds left over? The savings  
13 aspect. Well, savings -- you then refer to  
14 that part of the regulation that says it's  
15 tribal share, so it goes back to the tribe.  
16 That then provides a mechanism to be able to  
17 say, this is how the program operates in terms  
18 of how we oversee the stewardship of the  
19 program as a whole, not just from those  
20 activities which are contractible, but those  
21 which are not contractible which are part of  
22 our inherent responsibility to perform.



1                   When we were breaking these out, I  
2                   told Bob I like E, F and G.

3                   Maintenance.

4                   MR. KEITH: LeRoy.

5                   MR. GISHI: Yes.

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

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

20                  And I'm just curious about the  
21                  data reporting also. Is it going to be  
22                  consistent across whether it's Federal

1 Highways, whether it's a tribal consortium, or  
2 whether it's direct service, because that's  
3 been a problem. Data reporting to Congress  
4 has been a problem a problem with BIA in other  
5 areas with regards to self-governance when --  
6 I don't think this will be a problem here, but  
7 you've still got three different parties, or  
8 three or four different parties, involved in  
9 roads constructions and maintenance. And is  
10 there going to be enough resources out there  
11 to handle the workload, because that was a  
12 problem under SAFETEA-LU, because that was --  
13 that brought about a massive amount of change.

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

18 (Laughter)

19 MR. GISHI: No, he's right. I  
20 mean, that process has been decreasing. We  
21 were at one point up to 900 employees. We're  
22 down to about 600. So that kind of in a way

1       answers your question. We've had to in a lot  
2       of regions hold off on rehires. In a lot of  
3       regions where we've had 25 tribes in one  
4       region, 14 of them, and I think now 15 of  
5       them, have all taken on Federal Highway in  
6       terms of their contracts that are there. So  
7       we're seeing what we thought was the residual  
8       -- ultimate residual staff is what we're  
9       planning toward. If every tribe contracted,  
10      what would we look like? Well, we didn't  
11      realize that we weren't -- it wasn't going to  
12      be all 25 tribes contracting, and what would  
13      we look like managing those 25 contracts, but  
14      it turns out we're not looking at 24, we're  
15      looking at 11, because the other tribes, that  
16      funds -- those funds never come to us in terms  
17      of the program. So there has had to be some  
18      adjustments.

19                       We're now looking at just in  
20      recent weeks the buy-out. we have a number of  
21      employees that have left the BIA in early  
22      retirement, and have been compensated for it.

1 And part of the requirement that the U.S.  
2 Office of Personnel requires is when you go  
3 through that process, you have to very  
4 strictly justify if you're going to rehire  
5 that position, because what you said was, if  
6 we let this person go, it's for a reason. We  
7 don't anticipate rehiring that position. And  
8 some of these were key positions that are out  
9 there. So we're struggling with that right  
10 now.

11 But in terms of where we're going,  
12 we've seen the funds increase, so our six  
13 percent has been able to increase relative to  
14 that. Even though there's some of that went  
15 back to Federal Highways, we're able to  
16 maintain that. And this year is really  
17 difficult, because as Bob indicated, before  
18 when the statute was written so that it said  
19 \$27 million, that's a hard number. It didn't  
20 matter how much Congress took down in  
21 recision. It didn't matter how much Federal  
22 Highways reduced the program by ob limit, it

1 was \$27 million. MAP-21 wrote -- was written  
2 differently. MAP-21 now says, those  
3 percentages are subject to those recisions and  
4 subject to that ob limit. So we're not  
5 getting \$27 million now. We're getting, as  
6 Bob indicated, 26 and change. 26.5, 26.4.  
7 Which means there's a reduction of that much  
8 money also. So from that standpoint, that's  
9 an area that we've had to continue to monitor,  
10 which means that a lot of the impacts of any  
11 program is making sure that we first and  
12 foremost maintain our service to the tribes.  
13 And this is sort of an internal battle we  
14 always have at BIA no matter what program you  
15 look at, of being able to make sure that the  
16 program people who perform those functions are  
17 -- continue to be in there.

18 So from that standpoint, it has  
19 been difficult, and it's going to get much  
20 more difficult in terms of what is there. So  
21 we are in hiring freeze. We have to justify  
22 everything that we do. And at the same time,

1 we're still expected to perform these  
2 functions that are related to the program. So  
3 things that we look at are more web  
4 conferencing, more teleconferences, making  
5 sure that we get the coverage we need at a  
6 meeting, but not send two or three people.  
7 Kind of the tough life that everybody else has  
8 have to deal with over the years which we now  
9 -- has now impacted us as a program.

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

16 Subpart G used to be called BIA  
17 maintenance program, BIA roads maintenance  
18 program. It is now referred to as the  
19 maintenance program, because we have a  
20 maintenance program that came about as a  
21 result of SAFETEA-LU. Provisions of SAFETEA-  
22 LU changed, and then they continue to change

1 even more under MAP-21 where we're looking at  
2 a maintenance program that is eligible under  
3 the TTP program, as well as the maintenance  
4 program which this reg was initially developed  
5 and addressing was the BIA road maintenance  
6 program as a whole.

7           The question came about earlier  
8 about how -- who has the responsibility to  
9 maintain roads. Ultimately the entity that's  
10 responsible for maintaining roads is the  
11 public authority. And the public authority is  
12 defined in not only Title 23, it's in our  
13 regulation as a governmental entity that is --  
14 that has the responsibility for maintaining,  
15 can finance, construct, collect tolls for toll  
16 and non-toll roads. Basically an entity who  
17 has the responsibility, jurisdiction in terms  
18 of a road itself. so from that standpoint,  
19 the question came about was, is how does that  
20 fit into the definitions that we're looking --  
21 if you look at the definitions, that's what  
22 we're trying to fashion that towards so that

1 if a road is identified in the reg -- in the  
2 road inventory, or the National Tribal  
3 Transportation Facility Inventory as ownership  
4 of one or two or three, then really that road  
5 is associated with in terms of the maintenance  
6 responsibility and ultimately who is  
7 responsible for that road in terms of making  
8 those improvements that are associated with  
9 it.

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

18 It talks -- we covered the tribe  
19 -- the BIA transportation facility maintenance  
20 program, and how it's unique in terms of its  
21 funding, its eligibility. Maintenance funding  
22 under the TTP program versus the DOI



1       appropriations. The eligible uses of TTP  
2       funds by tribes who have contracts and  
3       agreements with either DOI or DOT, primarily  
4       the highway trust fund programs funding, and  
5       the performance of those maintenance  
6       activities.

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

14                      Yes.

15                      MR. STEVIG: Gary Stevig,  
16       Chickaloon Village.

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

22                      MR. GISHI: What you're referring

1 to is currently the status of the Bureau of  
2 Indian Affairs or actually what they refer to  
3 them is Indian Affairs manuals, is -- are  
4 required by all programs within Interior,  
5 Indian Affairs, as to this is how we do  
6 business, or a least this is how we as an  
7 agency require ourselves to perform work  
8 associated with this program.

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

19           It basically says -- references a  
20 BIA handbook, okay, in which the BIA will then  
21 -- that's where you have those standard  
22 details of how you do things. So that part of

1 it is actually a process that BIA holds itself  
2 accountable within the Department of Interior,  
3 along with other programs, whether it's  
4 cultural historic preservation, whether it's  
5 record keeping, all of the things that are  
6 associated with an agency are still part of  
7 the IAM.

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

15 Eligible uses of TTP funds for  
16 contracts and agreements. It mentioned that.  
17 Standards and responsibilities to the  
18 traveling public.

19 List of tribal facilities,  
20 transportation facilities activities that are  
21 eligible for funding under the BIA -- under  
22 BIA facility and tribal transportation

1 facility maintenance. Again, that's associated  
2 with -- a lot of times we have funds that are  
3 associated specifically with that.

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

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

15 The roles of local governments,  
16 tribes, and the B A in this process of  
17 maintenance. And also what we -- what was put  
18 in there in the regulation in 2004 was a  
19 maintenance management system, very much is  
20 where you could probably refer to the IAM and  
21 the handbook itself would fit into this  
22 process, because it describes procedures of

1 what we would need to be able to do in order  
2 to implement maintenance activities, and which  
3 would include maintenance standards.

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

15           But if you don't, my goodness,  
16 they just want to start drilling, why don't  
17 you have that? Is here a reason why? Then  
18 they start looking at performance and a number  
19 of things which they don't really need to.  
20 You may not have a problem. But having those  
21 procedures in place is a good idea, and this  
22 talks a little bit about what you need to be

1       able to use. You always have this to  
2       reference when you develop those standards at  
3       a tribal level for the roads that you manage  
4       and maintain.

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

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

14                   Record keeping. This is one of  
15      the areas that it talks about, and someone  
16      made mention of it earlier this morning, that  
17      part of Title 23 references that if for some  
18      reason there's lack of maintenance funding for  
19      a transportation facility not being maintained  
20      to certain standards, what do we need to be  
21      able to do? And there's a process of being  
22      able -- actually described in Title we that we

1 need to make this known to not only the  
2 Secretary of the Interior, but also the  
3 Secretary of Transportation. And it goes back  
4 to that concept of -- it's -- that's one of  
5 those tough things. It's written in there.  
6 It's been in there for forever. We can  
7 probably count on one hand, one finger, the  
8 number of times that this has been actually  
9 implemented across the board, not just on  
10 Indian reservation roads or tribal  
11 transportation facilities, but across the  
12 board on all public roads that are out there  
13 in -- on the state system, the county system  
14 that's out there. But it continues to be  
15 written in there, so it has to be complied  
16 with in terms of what we need to be able to  
17 assure that the roads are being maintained.

18 Yes.

19 UNIDENTIFIED VOICE: What does the  
20 acronym stand for?.

21 MR. GISHI: Oh, transportation  
22 facility maintenance management system. Okay.

1 UNIDENTIFIED VOICE: That's  
2 through IRR?

3 MR. GISHI: This is under an IRR.  
4 (Laughter)

5 MR. GISHI: That's really TTF.  
6 You're just not seeing it right.

7 Okay. Bottom line. Those are  
8 three sections that are there. Again very  
9 much different just because of where the  
10 program as a whole is progressing. We talked  
11 about contracts. Pretty straight forward. We  
12 talk about accountability and oversight.  
13 Pretty straight forward. On a government-to-  
14 government perspective, it really -- there's  
15 not a lot of things that need to be put in  
16 there other than the main things that need to  
17 be there, and that is the tribes are complying  
18 with the laws and regulations, that they have  
19 -- they can develop their own procedures to be  
20 able to assure that they are complying with  
21 those things. And the result of that is we do  
22 that from a government-to-government. We in



1 turn do the reviews, to make sure that we  
2 provide technical assistance, to make sure the  
3 -- from a broad perspective that the laws are  
4 being complied with.

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

9 MR. SPARROW: There's no change.

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

1       become more informed.

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

17                   Yes.

18                   MR. STEVIG: Gary, Chickaloon  
19 Village.

20                   A quick note on the FEMA. When I  
21 was reviewing the regulations, I saw between  
22 the lines and the lettering, emergency relief

1 terminology, readiness, preparedness planning.  
2 I'd just like to stress that in the future,  
3 because of the changes to the Stanford Act,  
4 there's going to be mitigation plans, and  
5 that's going to be a requirement to activate  
6 and allow the money to flow from FEMA.

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

11           MR. GISHI: That's important. I  
12 mean, FEMA has actually developed a policy a  
13 few years back on how it was to treat tribal  
14 roads and BIA roads, so there -- they do have  
15 a policy out there. I think it's -- very  
16 little of it is known to the public, but  
17 primarily in that perspective as to -- it used  
18 to be they would say, well, if the roads  
19 belong to another agency in terms of funding-  
20 wise, then they have to deal with it. But  
21 they actually were able to come up with a  
22 policy on how they would begin making those

1 eligible, and that's out there. And so FEMA  
2 has been a big part of this in terms of coming  
3 up with solutions of what they needed to be  
4 able to do. And then, of course, the big  
5 thing is, is what we run into ERFA all the  
6 time, one of the big requirements was just as  
7 was noted, that it would only -- we could only  
8 advance this forward on -- at the declaration  
9 of the President, and now we've got certain  
10 authorities that tribes have, how does that  
11 now play into the whole process.

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

22 Yes, sir.

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

5 MR. GISHI: He wants to do I.

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

8 MR. THOMAS: Okay.

9 MR. SPARROW: Okay. Subpart I.

10 COURT REPORTER: Microphone.

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

1 Program is listed as Section 1123 of MAP-21.

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

17 Because of that, there are  
18 different time frames. If you were successful  
19 or you made application to this program in the  
20 past, you'll remember you had to have the  
21 application in to BIA or Federal Highway by  
22 December 31st. And then by January 31st we'd

1 let you know that we got the application. By  
2 February 30 -- or I guess there's no 31st days  
3 in February. By the end of February we'd say,  
4 you know, we're reviewing them. and by March  
5 we'd make selection and ranking and by April  
6 the funds were made available.

7 All that is gone, because since  
8 it's not funded, there's no reason to day  
9 December 31st put your application in. What  
10 they've said is no later than 60 days -- or no  
11 earlier than 60 days after this program is  
12 funded, we need to have a call for projects.  
13 So what that says is, you know, if Congress  
14 was to fund the program tomorrow, we'd have to  
15 go out with a notification that says, okay,  
16 projects are due, or applications are due 90  
17 days from now, or something along those lines.

18 The most important aspect of this  
19 though is the content. I's the same as what  
20 it was before. Maximum program project size,  
21 \$1 million. We heard that that's not enough,  
22 the problem -- and I totally don't disagree

1 with that, but the fact remains Congress says  
2 the project maximum size is \$1 million.

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

17 So very little change. Just the  
18 fact that (a) it requires a separate distinct  
19 action by Congress to get funded; and (b)  
20 because of that, the time frames that were  
21 involved in the IRRHPP do not apply. It says,  
22 once it's funded, we get the call for projects



1 out. We have certain days, so many days to  
2 respond, et cetera, et cetera.

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

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

17 So that's pretty much it. Okay.  
18 Any questions on that.

19 (No comments)

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

22 MR. THOMAS: I have to wear some

1 cheaters. Somehow the copying got blurry when  
2 I copied it.

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

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

7 Mr. Gishi, Mr. Sparrow, Vivian.  
8 When the Organized Village of Kasaan received  
9 the dear tribal leader letter dated April  
10 12th, 2013, a little bit of -- and then got  
11 the revisions of 25 CFR, Part 170, I drafted  
12 two letters identifying (1) the content of the  
13 actual language in the dear tribal leader  
14 letter, along with the contents that were put  
15 forward to the tribal government to consider  
16 in the consultation process of 25 CFR, Part  
17 170, as well as the proposed requirements for  
18 proposed roads and primary access.

19 So what the tribe did is they came  
20 up with two different letters. One on the  
21 actual dear tribal leader letter and then one  
22 on just the revisions to the 25 CFR. If I may,

1 I will go ahead and read the letter  
2 identifying the dear tribal leader letter and  
3 how the tribe -- then we'll go on to the next  
4 part.

5 It says, Dear Mr. Black. The  
6 Organized Village of Kasaan has received the  
7 dear tribal leader letter dated April 12th,  
8 2013 announcing the Bureau of Indian Affairs  
9 will be conducting a tribal consultation on  
10 draft proposed revision of 25 CFR, Part 170,  
11 the Tribal Transportation Program, as well as  
12 cover the requirements for the proposed roads  
13 and access roads to be included in the  
14 National Tribal Transportation Inventory.

15 First, I would call these tribal  
16 consultation -- I wouldn't call these tribal  
17 consultation meetings, because it goes the  
18 Department of Interior's tribal consultation  
19 policy and does not meet the definition  
20 spelled out within the proposed 25 CFR, Part  
21 170 reg revisions. Consultation means  
22 government-to-government communication in a

1 timely manner by all parties about a proposed  
2 or contemplated decision in order to (1)  
3 secure meaningful tribal input, involvement in  
4 decisionmaking process; and (2) advise the  
5 tribal of the final decision and provide an  
6 explanation.

7 Second, the Bureau has not  
8 provided a red-lined version of the proposed  
9 25 CFR, Part 170 so that tribes could do an  
10 in-depth analysis of the proposed changes and  
11 see what kind of impacts the changes may have  
12 on the tribes. BIA has not provided any  
13 requirements to the tribes on the requirements  
14 for the proposed roads and access roads to be  
15 included in the National Tribal Transportation  
16 Inventory.

17 Based on what has been set to the  
18 tribes throughout the United States on the  
19 proposed revisions to 25 CFR, Part 170, as  
20 well as the new requirements to be imposed on  
21 the tribal governments should not be  
22 considered an official identification of

1 tribal consultation until all the tribes  
2 throughout the United States have an  
3 opportunity to receive and analyze the  
4 proposed revisions and requirements to see  
5 what these impacts or potential impacts on  
6 tribal governments.

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

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

19 Okay. The BIA has conducted  
20 tribal consultation on the proposed  
21 requirements for proposed roads and access  
22 that it might want to put into the National

1 Tribal Transportation in June of 2012. The  
2 tribes have not been given the results or  
3 comments from these sessions of how these  
4 questions were going to be weighed out. And  
5 now the BIA ha come forth with requirements  
6 for the proposed roads and access roads. It's  
7 totally not government-to-government.

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

16 Tribes cannot afford to spend  
17 these funds on the resources necessary to do  
18 the requirements needed to just put proposed  
19 roads on access road -- onto the National  
20 Tribal Transportation Facility Inventory.  
21 These requirements usually happen later on  
22 within the project development or specific

1 road or route. OVK feels that these should  
2 not -- that there should be a sunset clause of  
3 five years instead of just outright making  
4 tribes spend huge amounts of money to get the  
5 routes in the National Tribal Transportation  
6 Inventory.

7 I guess this goes about to the  
8 likelihood of what the requirements under  
9 170.443 is identifying to make tribes spend a  
10 lot of money in the preliminary planning  
11 process of getting stuff into the inventory as  
12 a proposed action, and we don't feel it's  
13 right.

14 I've got a lineup behind me.

15 (Laughter)

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

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

22 I submitted written comments, our

1 input on MAP-21, and I think it should be  
2 noted that in order for me to come up with  
3 anything meaningful to me, I had to go outside  
4 the materials that I see here. I was  
5 fortunate enough to be able to attend some of  
6 the PCC meetings and those materials were  
7 helpful. I had to talk to an attorney. I had  
8 to talk to an engineering consultant who was  
9 familiar with the program who had some  
10 history, because only in that way can you come  
11 up with, you know -- can you make a  
12 determination of what the impacts are to the  
13 tribe.

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

21 And when I -- you know I need --  
22 we need to maybe to talk about what meaningful



1 means. I just attended a session with the  
2 National Congress of American Indians where we  
3 had all the agencies that had anything to do  
4 with any program in Indian Country come and  
5 report and talk about ways that they had, and,  
6 you know, interacted with tribes in order to  
7 get something meaningful on the table. And it  
8 was fairly easy to see in that process those  
9 that were observing what I call the minimum  
10 requirements in order to get through a  
11 process, and those that were truly interested  
12 in partnering and in involving and in engaging  
13 their partners in, you know, achieving an  
14 outcome.

15 FEMA for instance. In order to  
16 get -- in order to make it possible for a  
17 tribe to be involved in the declaration of a  
18 disaster affecting the Indian community, they  
19 held hands with them. Before they went to the  
20 consultation process, there was a lot of  
21 dialogue, there was a lot of involvement,  
22 there was a lot of outreach, because -- and

1 the guy who led that was very -- you know,  
2 very specific. He said, we did that, because  
3 we wanted to -- we wanted this to be truly  
4 meaningful in Indian Country, because once you  
5 engage -- once you start the consultation  
6 process, there are some really set rules on  
7 what you can do.

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

20 Thank you.

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

1 IRA president.

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

12 In regards to high priority  
13 projects, that was basically a target, because  
14 primarily Alaska tribes utilized that program.  
15 And in talking with LeRoy and other -- at  
16 another meeting before, the amount -- he was  
17 suggesting that the amount is not enough, and  
18 I kind of agree with him. But the number of  
19 tribes that were applying and the number of  
20 grants that were awarded, there was -- there's  
21 disparity there. So there's a need for it to  
22 be greater than \$30 million. There is a need

1 for that to come back. And I hope the next  
2 evolution -- or next -- I don't know what  
3 they're going to call it next, the MAP-21, I  
4 hope it does sunset after two years.

5 But SAFETEA-LU carried on for five  
6 continuing resolutions?

7 MS. PHILBIN: Nine.

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

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

16 But that's one of the things I  
17 want to get at from Kawerak's perspective is  
18 we object to the arbitrary treatment of  
19 proposed roads and the additional submissions  
20 required by 170.443. There is no reason to  
21 treat to treat proposed roads differently.  
22 The same requirements for submission of all

1 other inventory should be all that is  
2 required. Nothing in MAP-21 authorized a  
3 QA/QC team to oversee this. There is no  
4 appeal process. This will create an enormous  
5 disparate impact funding for Alaska versus the  
6 Lower 48. At a minimum, any additional  
7 regulatory requirements should only apply  
8 going forward.

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

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

16 Thank you.

17 MR. DANIEL: Clarence Daniel, AVCP.

18 And your slides didn't really, you  
19 know, cover all the changes in here. We had  
20 to go through and look it to find them all.  
21 And your presentation didn't really cover  
22 everything. and I think it should. I think

1       there should be more time to go over the  
2       things will, you know, hit the tribes hard,  
3       impact them hard.

4                   I've been -- I am pretty new to  
5       transportation still, but, you know, since  
6       I've gotten involved with transportation, I've  
7       noticed that we've pretty much had a hard  
8       battle, and we've have to battle through  
9       negative -- you know, negativity, negative  
10      images. And I feel that all of the resources,  
11      the funding opportunities that were available  
12      are being taken away. And with these proposed  
13      regulations, I feel that, you know, it's  
14      making it harder for us to try to do what we  
15      want to do. And is it because, you know, oh,  
16      it's Alaska, they don't need money, don't give  
17      them money. Is it because of that? Because  
18      that's kind of how I feel since I've started  
19      attending some of the meetings, you know, down  
20      in the Lower 48. I've felt that -- you know,  
21      I've been told by some tribes from the Lower  
22      48 that we don't need this money, we're -- we

1 don't need to build this, we don't need to  
2 this, but we're the ones who are living here,  
3 and we're the ones who are trying to improve  
4 the conditions for our people, just like they  
5 were trying to do it for their people several  
6 -- you know, a long time ago also.

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

13 Thank you.

14 MS. BALTAR: Almost there.

15 Julianne Baltar with Bristol Bay Native  
16 Association.

17 LeRoy and Bob, Vivian, Andy, all  
18 of those that have been intimately involved in  
19 this process, I think in general that what  
20 you've got in this draft is very reasonable  
21 for the most part There are some exceptions  
22 that I've noted a few of them.

1                   But I would say that there are  
2                   some definitions what weren't included in the  
3                   original regulation that could have helped an  
4                   awful lot with a lot of the processes that  
5                   we've had. Gary sort of alluded to one  
6                   earlier regarding ownership. There's been a  
7                   lot of discussion on what does ownership mean.  
8                   Does it mean that you've got maintenance  
9                   responsibility? We've heard that stated now  
10                  and then by Sheldon when he's done the -- you  
11                  know, what does he give credit for ownership  
12                  in the inventory, and we've been told that if  
13                  a tribe maintains it, then the tribe can claim  
14                  it as tribal ownership.

15                         In reality, we need a good  
16                         definition of what it means to own a road.  
17                         And that would include for existing roads and  
18                         for proposed roads, you know. You've got the  
19                         definition for the BIA for a BIA system road,  
20                         which is that the BIA either owns or intends  
21                         to acquire the right-of-way. Something very  
22                         similar to that could be helpful in the



1 proposed side of things, too, and for  
2 tribally-owned roads.

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

18 Thank you.

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

21 One of the things that I had  
22 written down was -- and it was brought up

1 Ouzinkie, was the methodology for funding the  
2 waterways, you know, how is that going to --  
3 how do you determine the mileage from one  
4 village to another, or to a hub community  
5 where they get their fuel or whatever.

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

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

1 with faxes.

2 So we have to remember about those  
3 40 some villages that have no internet  
4 connectivity.

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

1 tribes to be looking at with FEMA and Homeland  
2 Security, oil spill and emergency  
3 preparedness.

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

9 Thanks.

10 MR. HANSON: Scott Hanson,  
11 Chilkoot Indian Association.

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

21 There are a lot of questions and a  
22 lot of details, too, but we look forward to

1 more meaningful consultation over the details  
2 that this means, because it means a lot to us.  
3 There's a lot of details, and the impacts are  
4 great with the numerous communities  
5 represented here. So we would hope we could  
6 have better consultation.

7 Thank you.

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

10 One of the things that wasn't  
11 talked about in a whole lot of detail was the  
12 thing on waive of sovereignty immunity.  
13 There's a lot of villages out there that where  
14 I come from there's like dual governments, one  
15 by the State of Alaska and the other by the  
16 federal government. The majority of the work  
17 that -- like we partner with the state at  
18 times. It becomes very difficult. I heard  
19 briefly this morning that the waiver of  
20 sovereign immunity is an issue where I come  
21 from. And I think that should be described  
22 or, you know, addressed in a little bit more

1 detail, so that, you know, there can be some  
2 understanding between the two organizations,  
3 like the state and the feds.

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

10 I just wanted to bring that up.

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

15 This goes out to dear Mr. Black,  
16 the Organized Village of Kasaan has received  
17 your dear tribal leader letter dated April 12,  
18 2013, announcing the consultation process for  
19 the revisions to 25 CFR, Part 170, the Tribal  
20 Transportation Program. And the Organized  
21 Village of Kasaan has reviewed the proposed  
22 revisions and offers the following input for

1 the proposed revisions.

2 170.5, definition of Alaska  
3 native. And basically we just offer to use  
4 the same definition as per SAFETEA-LU.

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

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

19 And then under the -- another  
20 additional definition, we'd like add tribal  
21 force account, and that means work performed  
22 by tribal employee, work force, or employees.

1                   Then under Section 170.155, under  
2                   number (2)-little (b), the committee consists  
3                   of 24 tribal regional representatives, two  
4                   from each BIA region. And we're suggesting a  
5                   primary and an alternate be included to that.  
6                   And then two non-voting federal -- BIA and  
7                   federal representative.

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

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

21                  Under Section 170.226, this goes  
22                  back to the first part, number (a) were



1 included in the BIA Indian Affairs system  
2 prior to October 1, 2012.

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

12 And then under 170.443, I think  
13 this just -- this needs to be revamped as  
14 identified in the first letter, and that  
15 others have identified. This is putting a  
16 huge financial burden on a tribal government  
17 up front. I'm going to use number (e) of this  
18 subsection identifies documentation that a  
19 proposed road is feasible for a cost,  
20 environment, and engineering perspective.  
21 That's a huge undertaking, and just coming up  
22 with the planning to put a proposed or a

1 primary access road in for the inventory, I  
2 think it's not called for. I think it could  
3 be a deal breaker for tribes wanting to put --  
4 when they spend all their money up front,  
5 they're not going to have any money for  
6 construction or things thereafter or planning  
7 activity; therefore we don't feel it's  
8 justifiably needed. I think more of a sunset  
9 clause scenario, say if a tribe could  
10 demonstrate from a perspective that they have  
11 -- move forward within a certain sunset time  
12 frame, you know, either three years, five  
13 years, whatever that sunset clause may be, to  
14 allow them to move forward with those  
15 different planning activities. If they can't  
16 do it within the sunset clause, then pull them  
17 off of the inventory. I just don't think  
18 imposing those kind of financial burden on  
19 them up front is a way to go.

20 And then Subpart D. I think with  
21 some of the provisions, or some of the  
22 activities identified in Subpart D, making it

1 sound like it's more of a federal inherent  
2 function versus a tribal function for the  
3 planning perspective. So I think some of  
4 those things needs to be looked at a little  
5 more in depth. I'm not -- just in reading it  
6 and whatnot, I think, you know, and some of my  
7 brothers and sisters in here are probably a  
8 little more better at wordsmithing and  
9 identifying what those different activities  
10 are to put it in a legitimate format to where  
11 you guys could make it towards more tribal  
12 user friendly than the way it's spelled out  
13 within the proposed identity here.

14 MR. SPARROW: What section is that?

15 MR. THOMAS: Subpart D.

16 MR. SPARROW: Subpart D?

17 MR. THOMAS: D. D as in David.

18 The planning section.

19 MR. SPARROW: Okay.

20 MR. THOMAS: And in relationship  
21 to all this, the Organized Village of Kasaan  
22 would like to take the opportunity to speak in

1 relationship. We felt that, you know, the  
2 diligence was done for -- on the high priority  
3 project thing not to tear that up and try to  
4 re-invent the wheel on that. And we commend  
5 you guys for that, because as you guys  
6 identified earlier, it's a huge program for  
7 this region. We probably took 70 percent of  
8 the funds out of that program and brought them  
9 back to Alaska. And it was geographic  
10 isolation that was sustained in there, was a  
11 key component of the reason why we got a lot  
12 of those funds. So thanks again.

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

15 And I want to thank you for coming  
16 up and allowing us this chance to interact  
17 with you. I hope you don't feel that the lack  
18 of people here in terms of the number of  
19 tribes that we have is representative of the  
20 lack of interest. Our distance issues,  
21 remoteness do affect our ability to  
22 participate.

1 I do have a suggestion that  
2 relates to that. If you're able to post  
3 comments as you receive them to a website, I  
4 think that would be very helpful for Kawerak.  
5 Just today even hearing from other entities  
6 and their comments has been helpful. So if  
7 you're able to do that as you receive them,  
8 especially prior to the June 14th deadline,  
9 some of the smaller tribes or tribes who don't  
10 have access to consultants and attorneys, and  
11 engineers to help us wade through what these  
12 proposed changes -- or how they would affect  
13 us, they might be able to take a look at what  
14 is being submitted and echo some of the  
15 concerns if they choose to.

16 Thank you.

17 MR. THOMAS: I'm not sure if  
18 you've concluded all your presentations, Mr.  
19 Sparrow, but you were going to talk about  
20 Tiger, and from my perspective, Tiger, you  
21 know, sounds good and everything, but there's  
22 some things in Tiger that's impediment to

1 tribes in Alaska to be able to compete  
2 nationwide. And we've addressed those, and it  
3 looks to me like they didn't get to the higher  
4 ups when they developed the criteria for  
5 Tiger. One of them's the cost/benefit analysis  
6 ratios, that we don't score very high when  
7 we're looking at cost/benefit analysis coming  
8 forth to the forefront when we're developing  
9 projects. So I think that would be, you know,  
10 something to look at, and maybe put higher up  
11 the food chain.

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

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

17 (No comments)

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

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

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