

Purpose, convened two meetings with a Community Advisory Group, held a meeting with Participating and Cooperating Agencies and held a series of Public Scoping meetings. Based on public input and studies conducted to date, FHWA, TxDOT and Alamo RMA now propose to include an additional segment from FM 1957 to U.S. 90 in the EIS so that the limits of the proposed improvements would be from U.S. 90 to IH 35 North, a total distance of approximately 37 miles. The additional segment between FM 1957 and U.S. 90 is described in the San Antonio-Bexar County Metropolitan Planning Organization's Mobility 2035 Plan (adopted December 7, 2009) as added capacity improvements consisting of expanding the existing facility to a four lane expressway with four toll mainlanes and four non-toll outer lanes. The need for improvements within the additional segment relate to compromised safety, decreased mobility, and operational deficiencies attributed to substantial growth in traffic. The purpose of adding the proposed segment is to address these needs by upgrading the existing roadway to current design standards to improve safety, enhance mobility and improve operational efficiency.

Anticipated Federal permits, pending selection of alternatives and field surveys may include, but are not limited to, the following: Section 401/404 (Clean Water Act), and Section 7 (Endangered Species Act). The Draft Project Coordination Plan will be updated in accordance with Public Law 109-59, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Title VI, section 6002, Efficient Environmental Reviews for Project Decision Making, August 10, 2005, to reflect the change in project limits. The Project Coordination Plan will continue to promote early and continuous involvement from stakeholders, agencies, and the public as well as describe the proposed project, the roles of the agencies and the public, the project need and purpose, schedule, level of detail for alternatives analysis, methodologies to be used in the environmental analysis, and the proposed process for coordination and communication.

The Revised Project Coordination Plan will be available for public review, input, and comments at public meetings, including scoping meetings and hearings held in accordance with the National Environmental Policy Act (NEPA) through the evaluation process, and upon request at the Alamo RMA's office. Pursuant to section 6002 of

SAFETEA-LU, cooperating agencies, participating agencies, and the public will be given an opportunity for input in the development of the project. The second series of public scoping meetings, conducted in an open house format, is planned to be held in April of 2010.

Issued on: April 7, 2010.

Salvador Deocampo,
District Engineer, Austin, Texas.

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submitted electronically through the GRANTS.GOV APPLY function. Anyone intending to apply electronically through GRANTS.GOV should initiate the process of registering on the GRANTS.GOV site immediately to ensure completion of registration before the deadline for submission. Those who apply via GRANTS.GOV should receive two confirmation e-mails. The first will confirm that the application was received and a subsequent e-mail will be sent indicating whether the application was validated or rejected by the system.

TIGGER program proposals must be submitted by August 11, 2010.

Applicants are encouraged to submit applications early in order to allow for full consideration by FTA. Instructions for applying for the TIGGER program can be found at <http://www.fta.dot.gov/tigger> and will also be available in the "FIND" module of grants.gov.

FOR FURTHER INFORMATION CONTACT:

Contact the appropriate FTA Regional Administrator (Appendix A) for proposal-specific information and issues. For general program information on the TIGGER program, contact Walter Kulyk, Office of Mobility Innovation, (202) 366-4995, e-mail: walter.kulyk@dot.gov. For program information on the Clean Fuels/Bus and Bus Facilities Program; contact Juan Morrison, Office of Program Management, (202) 366-7005, e-mail: juan.morrison@dot.gov. A TDD is available at 1-800-877-8339 (TDD/FIRS).

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FY 2010 Discretionary Sustainability Funding Opportunity; Transit Investments for Greenhouse Gas and Energy Reduction (TIGGER) Program and Clean Fuels Grant Program, Augmented With Discretionary Bus and Bus Facilities Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability of FTA environmental sustainability program funds: solicitation of project proposals.

SUMMARY: The Federal Transit Administration (FTA) announces the availability of discretionary funds in Fiscal Year (FY) 2010 for the Transit Investments for Greenhouse Gas and Energy Reduction (TIGGER) program funds and FY 2009 and 2010 Clean Fuels Grant program funds, augmented with FY 2010 Section 5309 Bus and Bus Facilities program funds. These discretionary program funds will be distributed in accordance with the mission of each program and in support of the U.S. Department of Transportation's (DOT) environmental sustainability efforts.

This notice includes priorities established by FTA for these discretionary funds, the criteria FTA will use to identify meritorious projects for funding, and describes how to apply for funding under each discretionary program. This announcement is available on the FTA Web site at: <http://www.fta.dot.gov>. FTA will announce final selections on the Web site and in the **Federal Register**. A synopsis of each funding opportunity will be posted in the FIND module of the government-wide electronic grants Web site at <http://www.grants.gov>.

DATES: Complete proposals for Clean Fuels/Bus and Bus Facilities discretionary grants must be submitted by June 14, 2010. All proposals must be

I. FTA Sustainability Program Overview

A. Authority

These programs are authorized under section 5308, 5309(b) (as amended by the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU)) and Division A of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act 2010.

B. Policy Priority

Among the goals of the Obama Administration is one to improve our Nation's environment and to secure its energy future. Effective provision of public transportation is a key part of this goal. The Administration believes that we must commit ourselves to an economic future in which the strength of our economy is not tied to the unpredictability of oil markets. We must make the investments in clean energy sources that will both enhance the environment through improved air quality and curb our dependence on fossil fuels, making America energy independent by:

- *Breaking Dependence on Oil.* Provide increased public transportation options that minimize the use of fossil fuels and invest in the development of alternative fuel vehicles.

• *Producing More Energy at Home.* Enhance U.S. energy supplies through responsible development of domestic renewable energy, fossil fuels, advanced biofuels and nuclear energy.

• *Promoting Energy Efficiency.* Promote investments in the transportation, electricity, industrial, building and agricultural sectors that reduce energy bills.

FTA advances these energy and environmental goals by funding projects that:

- Enhance the quality of public transportation services.
- Assist nonattainment and maintenance areas in achieving or maintaining the National Ambient Air Quality standards for ozone and carbon monoxide.
- Support emerging Clean Fuel and advanced propulsion technologies for transit buses and markets for those technologies.
- Reduce greenhouse gas emissions of public transportation systems.

By this notice, FTA announces the availability of at least \$156.2 million in FY 2009 and FY 2010 discretionary resources to help encourage transit projects that promote the usage and development of energy efficient technologies that reduce greenhouse gas

emissions and other pollutants. Projects funded as a result of this notice will further the Department's environmental sustainability efforts. To support these efforts, and to ensure FTA is able to fund a wide variety of investment types, FTA intends to provide funds from the TIGGER program and Clean Fuels Grant program, augmented with Section 5309 Bus and Bus Facilities program funds in support of capital investment that will improve energy efficiency and reduce emissions. As each program has separate eligibility and program requirements, FTA encourages applicants to carefully consider which program to apply under. FTA will provide \$75 million under the TIGGER program. This program is intended for projects of innovative and national significance with a minimum project cost of \$1 million. To complement TIGGER, FTA also will award approximately \$81.2 million under the Clean Fuels Grant program. FTA also intends to further our environmental sustainability goals by allowing applicants not eligible under the Clean Fuels Grant program to apply for projects which promote the use of clean fuels and fund those projects with additional Bus and Bus Facilities program funds.

II. Sustainability Program Information

A. TIGGER Program

The Transportation, Housing and Urban Development, and Related Agencies Appropriations Act 2010 (Pub. L. 111-68), appropriated \$75 million for grants to public transit agencies for capital investments that will reduce the energy consumption or greenhouse gas emissions of their public transportation systems, referred to as the Transit Investments for Greenhouse Gas and Energy Reduction (TIGGER) program. \$100 million was previously provided for TIGGER in the American Recovery and Reinvestment Act of 2009 (ARRA) and awarded by FTA.

Based on lessons learned in the application and review process from the ARRA-funded TIGGER program, for which proposals exceeding \$2 billion were submitted, FTA is changing some of the application procedures for the FY 2010-funded TIGGER program to simplify the process. Additionally, given the availability of other FTA discretionary programs in FY 2010, such as the Bus and Bus Facilities program and the Clean Fuels Grant program, FTA will rate more favorably innovative technologies of national significance, such as electric drive and other forward-looking technologies, not normally funded out of other FTA programs.

This notice announces the availability of the grant program funding, application requirements, and deadlines for submitting proposals for funding.

1. Program Purpose

There are two eligible purposes for TIGGER grants: (1) For capital investments that will assist in reducing the energy consumption of a transit system; or (2) for capital investments that will reduce greenhouse gas emissions of a public transportation system. Project proposals may be submitted under either or both categories; however only one project may be submitted under a single proposal. FTA has established a range of funding that will be considered for approval. Each submitted project must request a minimum of \$1,000,000 and must not exceed a maximum of \$25,000,000. Applications for projects less than \$1,000,000 may be applied for if they are part of a consolidated proposal submitted by the State Department of Transportation (State DOT) that, in total, meets or exceeds the \$1,000,000 threshold. FTA may decide to provide only partial funding for certain proposals to maximize the impact of this program. FTA encourages applicants with projects that are not technologically innovative, or which do not meet these funding thresholds, to apply under the Bus and Bus Facilities or Clean Fuels programs, which have simpler application criteria.

2. Eligible Applicants

Only public transportation agencies or State DOTs may apply. Unlike the ARRA-funded TIGGER program, FTA will not accept consolidated proposals from public transportation agencies. A public transportation agency may only apply for one project for a single transit agency in one proposal. However, public transportation agencies may submit multiple proposals (applications). A State DOT may submit a consolidated proposal for multiple projects from one or more transit agencies in order to meet the \$1,000,000 threshold. Consolidated proposals must contain individual project level information, as described in Section 5. Application Content, for each project included in the consolidated proposal. Grant awards will be made for a particular project directly to public transportation agencies or to a State Department of Transportation on behalf of a public transportation agency.

3. Eligible Projects

Eligible expenses must meet the following criteria: (1) The expense must be an eligible capital expense as defined

under 49 U.S.C. 5302(a)(1); and (2) the project will assist in the reduction of the energy consumption of a public transportation system and/or the reduction of greenhouse gas emissions of a public transportation system.

4. Cost Sharing or Matching

The expected Federal share for TIGGER grants is 90 percent, although applicants may request a different Federal share. A proposed Federal share can be less than 90 percent, or up to 100 percent. However, applicants requesting a lower Federal share may be given a higher rating in the evaluation process, all else being equal.

5. Application Content

a. Proposal Submission Process

Project proposals must follow the submission guidelines that will be provided shortly at <http://www.fta.dot.gov/tigger>. A synopsis of this announcement will be posted in the “FIND” module of the GRANTS.GOV. Mail and fax submissions will not be accepted except for supplemental information that cannot be sent electronically.

b. Proposal Content

Proposals from public transit agencies may contain only one project. Unlike the ARRA-funded TIGGER program, FTA will not accept consolidated proposals with projects from multiple public transit agencies, or multiple projects from one public transit agency. Agencies may submit multiple proposals (applications), but each proposal must be clearly define a separate project. See Appendix B for an outline of project proposal requirements.

Proposals from State DOTs may contain multiple projects from one or more transit agencies in order to meet the \$1,000,000 threshold. Consolidated proposals must contain individual project level information, as described below, for each project included in the consolidated proposal.

Project Summary—The applicant may be requested to enter summary information about the proposed project into a project summary sheet or electronic application tool. Guidelines for application procedures, further instructions, and application tools will be located on FTA’s Web site at www.fta.dot.gov/tigger. Instructions for completing and submitting the sheet will be provided at the Web site.

(1) Applicant Information

This addresses basic identifying information, including:

i. Applicant name;

ii. Contact information (including contact name, address, e-mail address, phone and fax number);

iii. Whether the applicant’s area is attainment, non-attainment, or maintenance for ozone or CO;

iv. Description of services provided by the agency, including areas served;

v. Congressional district(s) served by the proposed project;

vi. If the project proposal includes vehicles, provide existing fleet information, such as a current rail or bus fleet management plan, if not already on file with the FTA Regional Office; and

vii. A description of the technical, legal and financial capacity of the project sponsor.

(2) Project Information

Every proposal must:

i. Include a project management plan to be utilized to implement the proposed project;

ii. Address whether the project is to be evaluated under energy reduction or greenhouse gas reduction criteria, or both criteria;

iii. Include the project scope, including descriptions of the proposed capital investment as well as the existing system, subsystem, facility, vehicle, or component that the investment will replace or be applied to. The project scope determines where measurement of energy reductions or greenhouse gas emissions reductions will take place and must be directly related to the actual capital investment. It should be determined in a manner that permits measurement before and after the investment to determine either the energy savings or greenhouse gas reductions, or both;

iv. Include a line-item budget for the project and its total cost. For scalable projects, a scaling plan describing the minimum amount necessary for a feasible project and the energy or greenhouse gas reduction impacts of a reduced funding level;

v. State the expected useful life of the investment based on accepted FTA and industry practices;

vi. Provide a project time-line outlining steps from project development through completion, including significant milestones such as date of contract awards and dates of project implementation; and

vii. Include the proposed location of the project. For facilities and other infrastructure this means the city or county where the infrastructure will be located. For transit vehicles it means the cities or counties where transit services are likely to be provided.

(3) Project Measurement Information

i. Proposals must provide a narrative describing how the greenhouse gas and/

or energy saving estimates were calculated. Proposals also must identify the process the agency will use to determine the actual energy savings and/or greenhouse gas emission reductions realized once the investment is implemented. FTA will post on its Web site (<http://www.fta.dot.gov/tigger>) the information or other application tools that may be used to develop these calculations.

ii. Project Measurement Criteria for Energy Reduction Projects: The proposal must include:

iii. Project’s Current Annual Energy Use

iv. Project’s Estimated Annual Energy Use

v. Project’s Estimated Annual Energy Savings

vi. Project’s Total Estimated Energy Savings Over Its Useful Life

vii. Project’s Total Energy Savings as a Percentage of the Agency’s Total Annual Energy Use. This can be reported as less than one percent or the proposal must include:

(a) Total Annual Energy Consumption of the Public Transportation Agency

(b) The Project’s Total Energy Savings as a percentage of the Total Annual Energy Consumption of the Public Transportation Agency

(4) Project Measurement Criteria for Greenhouse Gas Emission Reduction Projects: Proposals must include:

i. Project’s Current Annual Greenhouse Gas Emissions

ii. Project’s Estimated Annual Greenhouse Gas Emissions

iii. Project’s Estimated Annual Greenhouse Gas Savings

iv. Project’s Total Estimated Greenhouse Gas Savings over the Project’s Useful Life

(5) Proposed deviations from FTA Circular 5010

FTA’s capital program includes the introduction of new technology, through innovative and improved products, into public transportation as an eligible expense. FTA intends to apply 49 U.S.C. 53 requirements and FTA Circular 5010.1.D Grant Management

Requirements issued on November 1, 2008 to this program. This Circular may be found at: http://www.fta.dot.gov/laws/circulars/leg_reg_8640.html. The applicant should identify any waivers to these requirements it anticipates it may need that would affect its ability to introduce new technology. However, FTA is disinclined to grant any Buy America waivers.

(6) A project proposal should address each of the evaluation criteria separately, except for geographic diversity which need not be addressed by the applicant.

c. Funding Restrictions

Only proposals from eligible recipients for eligible activities will be considered for funding (see Section II of this Notice).

6. Evaluation Criteria

Proposals will be evaluated for their ability to reduce energy consumption and/or greenhouse gas emissions of the transit agency. An applicant will be evaluated under both criteria if it provides the necessary project measurement information.

a. Evaluation Criteria for Energy Consumption Reduction Projects

FTA will evaluate proposals on total energy consumption savings projected to result from the project, and projected energy savings of the project as a percentage of the total energy usage of the public transit agency. Refer to Appendix B for definitions.

b. Evaluation Criterion for Greenhouse Gas Emission Reduction Projects

FTA will evaluate proposals based on the total amount of greenhouse gas reductions projected to result from the project.

c. Evaluation Criteria for All Projects

In addition, FTA will evaluate all proposals on the following criteria:

(1) Project Innovation

The project identifies a unique, significant, or innovative approach to reducing energy consumption or greenhouse gas emissions.

FTA encourages qualified projects that will demonstrate innovative technologies and other approaches to reducing energy consumption or greenhouse gas emissions such as electric drive technologies. FTA will give some priority consideration to these projects if all other project evaluation criteria are comparable.

Examples of innovation include:

i. On-Board Vehicle Energy Management (energy storage, regenerative braking, fuel cells, turbines, engine auto start/stop, etc.)

ii. Electrification of Accessories (air conditioning, air compressor, power steering, etc.)

iii. Bus Design (lightweight materials, component packaging, maintainability, etc.)

iv. Rail Transit Energy Management (energy storage, regenerative braking, solar propulsion engine systems, power load-leveling, etc.)

v. Locomotive Design (energy storage, regenerative braking, fuel cells, turbines, engine auto start/stop, lightweight material, etc.)

vi. Other innovative approaches to reduce energy consumption or greenhouse gas emissions.

(2) *National Applicability*. The national applicability of the project as an example of energy savings or greenhouse gas reductions, including whether the project could be replicated by other transit agencies regionally or nationally and is consistent with FTA livability and environmental sustainability goals should be demonstrated.

(3) *Project Readiness*. FTA will evaluate the proposed timeframe of the project for timeliness and reasonableness.

(4) *Project Management*. The applicant demonstrates the capacity to carry out the project.

i. The applicant is in a fundable status for the FTA grant program.

ii. The applicant's project team demonstrates the technical capacity to carry out the project, including the project approach or project management plan.

iii. The applicant has the ability to collect information and demonstrate the results of the project for at least one year following project implementation.

(5) *Return on Investment*. This factor addresses the energy savings and/or greenhouse gas reduction relative to the total project cost, including the proposed Federal and local shares.

(6) *Geographic Diversity*. To provide the ability to evaluate technologies in a wide variety of conditions, FTA may select projects to ensure there is sufficient geographic diversity.

d. Review and Selection Process

Proposals first will be screened by FTA program staff. During the process, FTA may seek clarifications or corrections to some proposals to ensure adequate information is available to evaluate the proposal. After evaluating proposals based on the established technical criteria, FTA will publish the list of all selected projects and funding levels in the **Federal Register**.

7. Award Administration Information

a. Award

Once proposals have been reviewed and projects have been selected, successful applicants will apply for and FTA will award grant funding through FTA's TEAM grant management system. These grants will be administered and managed by FTA regional offices in accordance with the applicable Federal requirements of 49 U.S.C. chapter 53.

Depending on award amount, FTA may require a scope and project budget reduction before a grant is submitted in TEAM.

b. Administrative and National Policy Requirements

(1) Grant Requirements

If selected, project sponsors will apply for a grant through TEAM and adhere to the customary FTA grant requirements of 49 U.S.C. chapter 53, including those identified in FTA Circular 5010.1D and the FTA Master Agreement, unless otherwise specified in the grant agreement. Technical assistance regarding these requirements is available from the corresponding FTA regional office.

Applicants must sign and submit current Certifications and Assurances before receiving a grant. If the applicant has already submitted the annual Certifications and Assurances in TEAM, they do not need to be resubmitted. The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The Applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The Applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise.

(2) Planning

Applicants are encouraged to notify the appropriate State DOT and Metropolitan Planning Organization (MPO) in areas likely to be served by the project funds made available under this program. Incorporation of funded projects in the long-range plans and transportation improvement programs of States and metropolitan areas is required of all funded projects. FTA cannot obligate grant funds unless the project is contained in a Federally approved State Transportation Improvement Plan (STIP).

Similarly, all environmental requirements must be complete before FTA can obligate and award a grant in TEAM.

c. Reporting Requirements

FTA reporting requirements include standard reporting requirements identified in FTA Circular 5010.1D, and the Master Grant Agreement. In addition, the TIGGER program has additional reporting requirements. A recipient of TIGGER funds must report on an annual basis:

(1) Actual annual energy consumed within the project scope attributable to the investment for energy consumption reduction projects;

(2) Actual greenhouse gas emissions within the project scope attributable to the investment for greenhouse gas reduction projects; and

(3) Actual annual reductions or increases in operating costs attributable to the investment for all projects.

B. Clean Fuels/Bus and Bus Facilities Program

The Clean Fuels Grant program was first established as the Clean Fuels Formula Grant program in Section 3008 of the Transportation Equity Act for the 21st Century, Public Law 105-178, June 9, 1998 (now codified at 49 U.S.C. Sec. 5308). The program was developed to assist non-attainment or maintenance areas in achieving or maintaining the National Ambient Air Quality Standards for ozone and carbon monoxide (CO). Additionally, the program supported emerging clean fuel and advanced propulsion technologies for transit buses and markets for those technologies. FY 2009 unallocated funding and the FY 2010 Transportation Appropriations Act provides \$81 million dollars in discretionary Clean Fuels Grant program resources. Additionally, FTA is expanding the eligible applicant pool and may fund projects that meet the Clean Fuels Grant program objectives in attainment areas using a portion of FY 2010 discretionary Bus and Bus Facilities program resources that are available. **Please Note:** Subsequent to this notice, FTA will also publish a Notice of Funding Availability that announces the availability of additional Bus and Bus Facilities program funds that will assist grantees to improve the state of good repair of buses and bus facilities.

1. Program Purpose

The Clean Fuels/Bus and Bus Facilities program has a two-fold purpose. First, the Clean Fuels Grant program was developed to assist nonattainment and maintenance areas in achieving or maintaining the National Ambient Air Quality Standards for ozone and CO. The second program purpose is to support emerging clean fuel and advanced propulsion technologies for transit buses and markets for those technologies.

2. Eligible Applicants

Eligible applicants under the FY 2010 Clean Fuels Grant program are:

a. Designated recipients in maintenance or non-attainment areas for ozone or CO, which are entities

designated to receive Federal urbanized formula funds under 49 U.S.C. 5307.

b. FTA will also accept applications from direct recipients, tribes for rural areas, and State Departments of Transportation in attainment areas. Note: Projects selected in attainment areas will be funded using Bus and Bus Facilities program funds.

3. Eligible Projects

Section 5308 grants authority to the Secretary to make grants under this section to assist recipients to finance eligible projects such as the following: (1) Purchasing or leasing clean fuel buses, including buses that employ a lightweight composite primary structure and vans for use in revenue service. The purchase or lease of non-revenue vehicles is not an eligible project; (2) Constructing or leasing clean fuel bus facilities or electrical recharging facilities and related equipment; (3) Projects relating to clean fuel, biodiesel, hybrid electric, or zero emissions technology buses that exhibit equivalent or superior emissions reductions to existing clean fuel or hybrid electric technologies.

Funds made available under this program cannot be used to fund operating expenses or preventive maintenance. Funds made available under this program cannot be used to reimburse projects that have incurred prior eligible expenses without a Letter of No Prejudice (LONP) issued by FTA for the project before the costs are incurred.

4. Cost Sharing or Matching

c. Clean Fuels

For projects awarded Clean Fuels funding, costs will be shared as follows:

(1) Vehicles—90 percent FTA/10 percent local contribution for the *net incremental cost of the clean fuels* component. For administrative simplicity, FTA allows recipients to compute the Federal share at 83 percent for eligible vehicle purchases. The 83 percent share is a blended figure representing 80 percent of the vehicle and 90 percent of the vehicle-related equipment to be acquired in compliance with the Clean Air Act.

(2) Facilities—The 83 percent Federal share does *not* apply to facilities, for which the costs are more variable. The eligibility of facility-related cost elements at the 90 percent share will be reviewed for eligibility of the higher Federal share on a case-by-case basis as part of the grant application process.

(3) The FY 2010 Appropriations Act allows a 90 percent Federal share for the total cost of a biodiesel bus.

(4) The FY 2010 Appropriations Act allows a 90 percent Federal share for the net capital cost of factory installed hybrid electric propulsion systems and any equipment related to such a system. For administrative simplicity, FTA allows recipients to compute the Federal share at 83 percent for eligible vehicle purchases.

(5) FTA will not approve deferred local share.

d. Bus and Bus Facilities

For projects awarded Bus and Bus Facilities funding, costs will be shared as follows:

(1) 80 percent FTA/20 percent local contribution for the net capital project cost, unless the grant recipient requests a lower percentage.

(2) The Federal share may exceed 80 percent for certain projects related to the Americans with Disabilities Act (ADA) and the Clean Air Act (CAA) as follows: ADA—The Federal share is 90 percent for the cost of vehicle-related equipment or facilities attributable to compliance with the ADA of 1990 (42 U.S.C. 12101 *et seq.*); CAA—The Federal share is 90 percent for the cost of vehicle related equipment or facilities (including clean-fuel or alternative-fuel vehicle related equipment or facilities) attributable to compliance with the CAA (42 U.S.C. 7401 *et seq.*). For administrative simplicity, FTA allows recipients to compute the Federal share at 83 percent for eligible ADA and CAA vehicle purchases.

(3) The FY 2010 Appropriations Act allows a 90 percent Federal share for the total cost of a biodiesel bus.

(4) The FY 2010 Appropriations Act also allows a 90 percent Federal share for the net capital cost of factory installed or retrofitted hybrid electric propulsion systems and any equipment related to such a system. For administrative simplicity, FTA allows recipients to compute the Federal share at 83 percent for eligible vehicle purchases.

(5) FTA will not approve deferred local share.

5. Application Content

a. Proposal Submission Process

(1) Project proposals must be submitted electronically through <http://www.grants.gov> and a synopsis of this announcement will be available in the “FIND” module. Mail and fax submissions will not be accepted except for supplemental information that cannot be sent electronically.

(2) Applicants can only apply for funds currently available for allocation. However, an applicant may propose a

project that would expend money over multiple years. The project, however, should be ready to implement and should be completed in a reasonable period of time. In sum, the period of performance of the award is separate from the year that funds are awarded.

b. Proposal Content

(1) Applicant Information

This addresses basic identifying information, including:

- i. Applicant's name,
- ii. Contact information (including contact name, address, e-mail address, phone and fax number),
- iii. Whether the applicant's area is attainment, non-attainment, or maintenance for ozone or CO,
- iv. Description of services provided by the agency, including areas served,
- v. If the project proposal includes vehicles, include existing fleet information, such as a current bus fleet management plan if not already on file with the FTA regional office, and
- vi. A description of your technical, legal, and financial capacity to implement the proposed project.

(2) Project Information

Every proposal must:

- i. Describe the project to be funded and include with the proposal any necessary supporting documentation. Example: Information on the age of the current fleet, MPO concurrence letters, ridership information.
- ii. Address each of the evaluation criteria separately.
- iii. Congressional district(s) served by the proposed project.
- iv. Provide a line-item budget for the project and its total cost.
- v. Provide the Federal amount requested for each purpose for which funds are sought.
- vi. Document matching funds, including amount and source of the match.
- vii. Provide project time-line, including significant milestones such as date or contract for purchase of vehicle(s), actual or expected delivery date of vehicles and contract award and completion of facility improvements.

c. Funding Restrictions

Only proposals from eligible recipients for eligible activities will be considered for funding. Due to funding limitations, applicants that are selected for funding may receive less than the amount requested.

6. Evaluation Criteria for Clean Fuels Grant Program

a. Project Evaluation Criteria

Projects will be evaluated according to the following criteria:

- (1) Demonstrated Need
 - i. Project represents a one-time or periodic need that cannot reasonably be funded from formula allocations or State and/or local revenues.
 - ii. Project or applicant did not receive significant funding in an earmark.
 - iii. The project will have a positive impact on air quality.
 - iv. The project is consistent with the applicant's bus fleet management plan.
 - v. The project is a transportation control measure in an approved State Implementation Plan (if applicable).
- (2) Planning and prioritization at local/regional level.
 - i. Project is consistent with the transit priorities identified in the long range plan and/or contingency/illustrative projects. The project could not be included in the financially constrained Transportation Improvement Plan (TIP)/STIP due to lack of funding (if selected, project must be in federally approved STIP before grant award).
 - ii. Local support is demonstrated by availability of local match for this and/or related projects and letters of support.
 - iii. In an area with more than one transit operator, the application demonstrates coordination with and support of other transit operators, or other related projects within the applicant's MPO or the geographic region within which the proposed project will operate.

- (3) The project is ready to implement.
 - i. Any required environmental work has been initiated for construction projects requiring an Environmental Assessment (EA).
 - ii. Implementation plans are ready, including initial design of facilities projects.
 - iii. TIP/STIP can be amended (evidenced by MPO/State endorsement).
 - iv. Project can be obligated and begin implementation quickly, if selected.

- (4) The applicant demonstrates the benefits of the proposed project in reducing transportation related pollutants.

- (5) The proposed project supports emerging clean fuels technologies or advanced technologies for transit buses.
- (6) The applicants demonstrate the technical, legal, and financial capacity

to carry out the project. This criterion refers to implementation of the particular project proposed.

- i. The applicant has the technical capacity to administer the project.
- ii. The acquisition is consistent with the bus fleet management plan.
- iii. There are no outstanding legal, technical, or financial issues with the grantee that would make this a high-risk project.

- iv. Source of local match is identified and is available for prompt project implementation if selected (no deferred local share will be allowed).

(7) **Geographic Diversity.** To provide the ability to evaluate technologies in a wide variety of conditions, FTA may select projects to ensure there is sufficient geographic diversity.

III. Technical Assistance

FTA will post answers to commonly asked questions about the TIGGER program as well as provide information to assist in calculations at <http://www.fta.dot.gov/tigger>. Commonly asked questions about the FY 2010 Clean Fuels Grant program can be found at http://www.fta.dot.gov/funding/grants/grants_financing_3560.html. Technical assistance regarding these requirements is available from each FTA regional office listed in Appendix A. The regional offices will contact those applicants selected for funding regarding grants and reporting requirements and will provide assistance in preparing the documentation necessary for the grant award.

Contact the appropriate FTA Regional or Metropolitan Office for application-specific information and issues. For general TIGGER program information, contact Walter Kulyk, Office of Mobility Innovation, (202) 366-4995, e-mail: walter.kulyk@dot.gov. For program information on the Clean Fuels/Bus and Bus Facilities Program; contact Juan Morrison, Office of Program Management, (202) 366-7005, e-mail: juan.morrison.dot.gov. A TDD is available at 1-800-877-8339 (TDD/FIRS).

Issued in Washington, DC, this 8th day of April 2010.

Peter Rogoff,
Administrator.

Appendix A

FTA Regional and Metropolitan Offices

Richard H. Doyle, Regional Administrator, Region 1—Boston, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, Tel. 617–494–2055.

States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Brigid Hynes-Cherin, Regional Administrator, Region 2—New York, One Bowling Green, Room 429, New York, NY 10004–1415, Tel. 212–668–2170.

States served: New Jersey, New York.

New York Metropolitan Office, Region 2—New York, One Bowling Green, Room 428, New York, NY 10004–1415, Tel. 212–668–2202.

Letitia Thompson, Regional Administrator, Region 3—Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Tel. 215–656–7100.

States served: Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and District of Columbia.

Philadelphia Metropolitan Office, Region 3—Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Tel. 215–656–7070.

Washington, DC Metropolitan Office, 1990 K Street, NW., Room 510, Washington, DC 20006, Tel. 202–219–3562.

Yvette Taylor, Regional Administrator, Region 4—Atlanta, 230 Peachtree Street, NW., Suite 800, Atlanta, GA 30303, Tel. 404–865–5600.

States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North, Carolina, Puerto Rico, South Carolina, Tennessee, and Virgin Islands.

Marisol Simon, Regional Administrator, Region 5—Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312–353–2789.

States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Chicago Metropolitan Office, Region 5—Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312–353–2789.

Robert C. Patrick, Regional Administrator, Region 6—Ft. Worth, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, Tel. 817–978–0550.

States served: Arkansas, Louisiana, Oklahoma, New Mexico, and Texas.

Mokhtee Ahmad, Regional Administrator, Region 7—Kansas City, MO, 901 Locust Street, Room 404, Kansas City, MO 64106, Tel. 816–329–3920.

States served: Iowa, Kansas, Missouri, and Nebraska.

Terry Rosapep, Regional Administrator, Region 8—Denver, 12300 West Dakota Ave., Suite 310, Lakewood, CO 80228–2583, Tel. 720–963–3300.

States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Leslie T. Rogers, Regional Administrator, Region 9—San Francisco, 201 Mission Street, Room 1650, San Francisco, CA 94105–1926, Tel. 415–744–3133.

States served: American Samoa, Arizona, California, Guam, Hawaii, Nevada, and the Northern Mariana Islands.

Los Angeles Metropolitan Office, Region 9—Los Angeles, 888 S. Figueroa Street, Suite 1850, Los Angeles, CA 90017–1850, Tel. 213–202–3952.

Rick Krochalis, Regional Administrator, Region 10—Seattle, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, Tel. 206–220–7954.

States served: Alaska, Idaho, Oregon, and Washington.

Appendix B

TIGGER Program Glossary of Terms

Energy Use of the Public Transportation System is the sum of the lower (net) heating value of fuels purchased directly by the public transportation system plus electricity purchased directly by the public transportation system. It includes energy used to perform both revenue and non revenue operations directly operated by the agency, but not energy used by purchased services. It includes fuels used by an agency to generate energy, but not energy generated by an agency. As an example, an applicant would count the lower heating value of the diesel fuel used to operate a diesel generator by an agency but not the electricity produced by the generator. Energy produced on-site using solar or wind power is also not counted as part of consumption.

Expected Useful Life is the expected lifetime of project property, or the acceptable period of use in service, based on standard industry practices such as those defined in FTA Circular 9300.1B. If a useful life is claimed that differs from standard industry practices, or for which no standard practice exists, the assumed useful life of a project should be justified using appropriate citations or well-documented assumptions and reasoning.

Greenhouse Gases are gases that trap heat in the atmosphere expressed in Carbon Dioxide (CO₂)-equivalent mass. The principal greenhouse gases that enter the atmosphere because of human activities are: Carbon

Dioxide (CO₂); Methane (CH₄); Nitrous Oxide (N₂O); and Fluorinated Gases (Hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride)

Greenhouse Gas Emissions of the Public Transportation Agency are greenhouse gas emissions from public transportation systems vehicles or facilities, otherwise known as direct emissions. It does not include indirect emissions (e.g., from third-party power plants) or displaced emissions (e.g., emissions from manufacturing transit equipment, waste disposal, emissions released by upstream processes prior to purchase of the fuel or electricity by the transit agency, etc.).

Project is the proposed capital investment as well as the existing system, subsystem, facility, vehicle, or component that the investment will replace or be applied to. The project scope determines where measurement of energy reductions or emissions reductions will take place and must be directly related to the actual capital investment.

Total Project Energy Savings is the estimated annual project energy savings multiplied by the expected useful life of the investment.

Total Project Greenhouse Gas Emission Reductions is the estimated annual project greenhouse gas emission reductions multiplied by the expected useful life of the investment.

Appendix C

TIGGER Project Proposal Outline

Each project proposal must contain the following information. Additional application instructions and tools will be located on FTA's TIGGER Program Web site: <http://www.fta.dot.gov/tigger>.

a. **Project Summary Sheet**—The applicant may be requested to enter summary information about the project into a project summary sheet that will be posted on FTA's Web site at <http://www.fta.dot.gov/tigger>. Instructions for completing and submitting the sheet will be provided at the Web site.

b. **Applicant information:** For each transit agency included in the proposal, the information should include:

- (1) Applicant name
- (2) Contact information
- (3) Whether the applicant's area is attainment, non-attainment, or maintenance for ozone or CO
- (4) Description of services provided by the agency and areas served

(5) If proposal includes vehicles, include existing fleet information, such as a current rail or bus fleet management plan, if not already on file with the FTA Regional Office, and

(6) A description of their technical, legal, financial, and program management capacity to implement the proposed project.

c. **Project Information:** The information should include:

(1) Whether the project is to be evaluated under energy reduction, greenhouse gas reduction criteria, or both.

(2) A description of the scope of the project.

(3) Provide a line item budget for the project and its total cost and for scalable projects include the minimum amount necessary to implement the project if FTA were not to fund the total cost.

(4) Identify the expected useful life of the investment.

(5) Provide brief project time-line outlining steps from project development through completion, including significant milestones such as date of contract awards and dates of project implementation (e.g. when vehicles will begin revenue service).

(6) Provide the proposed location of the project, for facilities and other infrastructure provide the city or county where the investment will be located as applicable; for vehicles provide the cities or counties where services are likely to be provided.

(7) Congressional district(s) served by the proposed project.

d. Project Measurement Criteria for Energy Reduction projects: Proposals should identify the process the agency will use to determine the actual energy savings once the investment is implemented. For projects proposed to reduce energy consumption the proposal should include:

- (1) Project's Current Annual Energy Use
- (2) Project's Estimated Annual Energy Use
- (3) Project's Estimated Annual Energy

Savings

- (4) Project's Total Estimated Energy Savings Over its Useful Life

e. Project's Total Energy Savings as a Percentage of the Agency's Total Energy Use. This can be reported as less than one percent or the proposal must include:

- (1) Total Energy Consumption of the Public Transportation Agency
- (2) The Project's Total Energy Savings as a percentage of the Total Energy Consumption of the Public Transportation Agency

f. Project Measurement Criteria for Greenhouse Gas Emission Reduction projects: Proposals should identify the process the agency will use to determine the

greenhouse gas emission reductions once the investment is implemented. For projects proposed to reduce greenhouse gas emissions the proposal should include:

(1) Project's Current Annual Greenhouse Gas Emissions

(2) Project's Estimated Annual Greenhouse Gas Emissions

(3) Project's Estimated Annual Greenhouse Gas Savings

(4) Project's Total Estimated Greenhouse Gas Savings over the Project's Useful Life

g. Any proposed deviations from FTA requirements

h. Address each of the evaluation criteria separately.

- (1) Project Innovation

- (2) National Applicability

- (3) Project Readiness

- (4) Project Management

- (5) Return on Investment

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APPENDIX D

FEDERAL TRANSIT ADMINISTRATION - PROGRAM MATRIX

Program	Transit Investments for Greenhouse Gas and Energy Reduction (TIGGER)	Clean Fuels Grant Program	Bus and Bus Facilities Program
Program Purpose	Provide funding for capital investments that assist in reducing the energy consumption of a transit system or for capital investments that will reduce greenhouse gas emissions of a public transportation system.	Assist nonattainment and maintenance areas in achieving or maintaining the National Ambient Air Quality Standards for ozone and CO and to support emerging clean fuel and advanced propulsion technologies for transit buses and markets for those technologies.	As a part of FTA's sustainability efforts, the program is consistent with the Clean Fuels Grant program, although funds may be used in attainment areas.
Amount Available	\$75 million	\$81.2 million	Undetermined
Eligible Applicants	Eligible applicants are public transportation agencies or State Departments of Transportation.	Eligible applicants are designated recipients, which are entities designated to receive Federal urbanized formula funds under 49 U.S.C. 5307. Applicants must be in areas that are maintenance or non-attainment for ozone or CO.	As a part of FTA's sustainability efforts, eligible applicants are tribes in rural areas, State Departments of Transportations and direct recipients in attainment areas.
Eligible Activities	(1) An eligible capital expense as defined under 49 USC 5302(a)(1); and (2) The project will assist in the reduction of the energy consumption of a public transportation system and/or the reduction of greenhouse gas emissions of a public transportation system.	1) Purchasing or leasing clean fuel buses, including buses that employ a lightweight composite primary structure and vans for use in revenue service. The purchase or lease of non-revenue vehicles is not an eligible project. (2) Constructing or leasing clean fuel bus facilities or electrical recharging facilities and related equipment. (3) Projects relating to clean fuel, biodiesel, hybrid electric, or zero emissions technology buses that exhibit equivalent or superior emissions reductions to existing clean fuel or hybrid electric technologies.	As part of FTA's sustainability efforts, eligible activities are those consistent with the Clean Fuels Grant program.
Minimum and Maximum Award	\$1 million minimum/\$25 million maximum		Not Applicable

APPENDIX D

Program	Transit Investments for Greenhouse Gas and Energy Reduction (TIGGER)	Clean Fuels Grant Program	Bus and Bus Facilities Program
Cost Sharing or Matching	<p>The expected Federal share for TIGGER grants is 90 percent, although applicants may request up to 100 percent. Note: Applicants requesting a lower Federal share may be given a higher score in the evaluation process, all else being equal.</p> <ul style="list-style-type: none"> • Vehicles - 90 percent FTA/10 percent local contribution for the net incremental cost of the clean fuels component. For administrative simplicity, FTA allows recipients to compute the Federal share at 83 percent for eligible vehicle purchases. The 83 percent share is a blended figure representing 80 percent of the vehicle and 90 percent of the vehicle-related equipment to be acquired in compliance with the Clean Air Act. • Facilities - The 83 percent Federal share does not apply to facilities, for which the costs are more variable. The eligibility of facility-related cost elements at the 90 percent share will be reviewed on a case-by-case basis as part of the grant application process. • The FY 2010 Appropriations Act allows a 90 percent Federal share for the total cost of a biodiesel bus. • The FY 2010 Appropriations Act also allows a 90 percent Federal share for the net capital cost of factory installed hybrid electric propulsion systems and any equipment related to such a system. For administrative simplicity, FTA allows recipients to compute the Federal share at 83 percent for eligible vehicle purchases. • FTA will not approve deferred local share. 	<ul style="list-style-type: none"> • 80 percent FTA/20 percent local contribution for the net capital project cost, unless the grant recipient requests a lower percentage. • The Federal share may exceed 80 percent for certain projects related to the Americans with Disabilities Act (ADA) and the Clean Air Act (CAA), as follows: ADA - The Federal share is 90 percent for the cost of vehicle-related equipment or facilities attributable to compliance with the ADA of 1990 and CAA - The Federal share is 90 percent for the cost of vehicle related equipment or facilities (including clean-fuel or alternative-fuel vehicle related equipment or facilities) attributable to compliance with the CAA. FTA allows recipients to compute the Federal share at 83 percent for eligible vehicle purchases. For administrative simplicity, FTA allows recipients to compute the Federal share at 83 percent for eligible ADA and CAA vehicle purchases. • The FY 2010 Appropriations Act allows a 90 percent Federal share for the total cost of a biodiesel bus. • The FY 2010 Appropriations Act also allows a 90 percent Federal share for the net capital cost of factory installed hybrid electric propulsion systems and any equipment related to such a system. For administrative simplicity, FTA allows recipients to compute the Federal share at 83 percent for eligible vehicle purchases. • The FY 2010 Appropriations Act also allows a 90 percent Federal share for the net capital cost of factory installed or retrofitted hybrid electric propulsion systems and any equipment related to such a system. For administrative simplicity, FTA allows recipients to compute the Federal share 	<p>Go to: www.grants.gov (note: the Clean Fuels Grant and Bus and Bus Facilities programs will be listed under one announcement.)</p> <p>60 days from the date of this notice</p>
Application Procedures	Go to: www.fta.dot.gov/tigger and www.grants.gov		
Application Deadline	120 days from the date of this notice		

[FR Doc. 2010-8398 Filed 4-9-10; 11:15 am]

BILLING CODE C**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration**

[Docket No. NHTSA-2010-0042; Notice 1]

Graco Children's Products Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Graco Children's Products Inc. (Graco), has determined that certain warning labels attached to detachable accessory pillows that it sold with certain MyRide™ 65 line car seats produced between April, 2009, and October, 2009, failed to meet the flammability requirements of Federal Motor Vehicle Safety Standards (FMVSS) No. 213.¹ Graco estimates that about 90,000 car seats may be affected. Graco has filed an appropriate report pursuant to 49 CFR part 573 *Defect and Noncompliance Responsibility and Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Graco has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Graco's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are all models of MyRide™ 65 convertible car seats manufactured between April, 2009, and October, 2009, in the Company's Mexico facility. The Company estimates that approximately 90,000 car seats may be affected, and of this total, 50,000 are potentially in use by its customers (consumers) and 40,000 are currently with retailers.²

¹ Graco describes the noncompliance as one with FMVSS No. 302. However, FMVSS No. 302 does not in itself apply to motor vehicle equipment. Paragraph S4 of FMVSS No. 302 is invoked by reference in FMVSS No. 213, therefore, this noncompliance is a noncompliance with FMVSS No. 213 not FMVSS No. 302.

² Graco's petition, which was filed under 49 CFR part 556, requests an agency decision to exempt Graco as manufacturer from the notification and recall responsibilities of 49 CFR part 573 for all 90,000 of the affected child seats. However, the agency cannot relieve Graco's distributors of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant child seats under their control after Graco recognized that the subject noncompliance existed. Those child seats must be brought into conformance, exported, or destroyed.

Graco describes the MyRide™ 65 car seat as being manufactured with a detachable accessory pillow, and this pillow includes a warning label (the "pillow label") regarding appropriate use of the pillow for children of a certain age range. The pillow label warns consumers not to use the pillow when the MyRide™ 65 seat is being used by children weighing more than 40 lbs (18.1 kg). The pillow, which is removable, is attached to the MyRide™ 65 seat by a hook and loop fastener material, one side of which is sewn onto a "tail" of the pillow and the other onto the top of the seat above the child's head.

Paragraph S5.7 of FMVSS No. 213 requires in pertinent part:

S5.7 Flammability. Each material used in a child restraint system shall conform to the requirements of S4 of FMVSS No. 302 (571.302). In the case of a built-in child restraint system, the requirements of S4 of FMVSS No. 302 shall be met in both the "in-use" and "stowed" positions.

Based on its internal investigation, Graco believes that the noncompliance is that a pillow label sewn onto the detachable head pillow of certain MyRide™ 65 car seats does not comply with paragraph S5.7 of FMVSS No. 213. After discovering that a recent lot of pillow labels delivered in late October 2009 to the Company's Mexico facility had not been properly treated for flame resistance, Graco's plant management began an investigation. They immediately started reviewing all pillow label lots previously delivered to its Mexico facility since April 2009, the production start date for the MyRide™ line car seats, to determine the extent of the noncompliance among its lots of pillow labels.

Graco found that its noncompliant pillow labels were manufactured by a sub-supplier to Graco's normal pillow label supplier. Graco has determined that the sub-supplier did not follow Graco's production specifications, and as a result, failed to meet the requirements of FMVSS No. 213. Graco also concluded that the sub-supplier was solely responsible for providing the noncompliant pillow labels.

Graco also found that all other labels and materials for its MyRide™ 65 car seats were provided by Graco's regular supplier itself and not the sub-supplier. In addition to its investigation, the Company's plant management also examined and verified through laboratory testing, that all other material components used in the MyRide™ 65 car seats comply with the standards of FMVSS No. 213. Graco added that new plant management at its Mexico plant has implemented more robust quality

controls to prevent such problems from happening in the future and that Graco has received no complaints, reports or any other information about adverse impacts from this noncompliance from consumers or any other outside source.

Since the discovery of the noncompliance, Graco indicated that it has taken steps to ensure that every MyRide™ 65 seat subsequently released for shipment has been manufactured with labels compliant with all applicable safety standards, including FMVSS No. 213. In addition, Graco stopped all shipments of the MyRide™ 65 car seats in its possession when the noncompliance was discovered and replaced the detachable accessory pillows with pillows manufactured with a pillow label compliant with the FMVSS No. 213 prior to delivery.

Graco believes that the noncompliance of the pillow label to meet the requirements of FMVSS No. 213 is inconsequential to overall motor vehicle safety for the following reasons:

When reviewing the accessory pillow at issue, including its size, location, function and overall design, the risk of injury resulting from the noncompliant Label on the detachable accessory pillow is inconsequential to the overall safety of the MyRide seat. Specifically, the Label is a physically small component of the child restraint system located in an area not likely to be exposed to open flame. In fact, the potential for the Label serving as an ignition point for a larger conflagration is near zero. This circumstance, along with the compliant status of all other fabric and label components of the MyRide seat, render the Label's noncompliance inconsequential to motor vehicle safety.

As noted above, the Label is a rectangular shaped tag measuring approximately 3 inches by 1 1/4 inches. The area of the Label is insignificant with respect to the over two yards of fabric that is used to make the pad and the "soft goods" for the MyRide seat. Proportionally, the percentage of material is less than 1/100% of the total surface area of the seat. Moreover, all other fabric, including other warning labels for the MyRide seat, are flame resistant. The small size of affected material renders the likelihood of ignition of this one Label highly untenable.

In addition * * * the Label is also located in an area that makes it highly unlikely to be exposed to an open flame without the passenger compartment of the car being already engulfed in flame * * * When put in its proper place * * * the Label is surrounded by flame resistant material and in a location interior to the overall seat design * * *.

Moreover * * * the owner's manual and instructions for the MyRide seat express state that the pillow is not to be used with any child over 18.1 kg (40 lbs) placed into the MyRide seat. Accordingly, a significant number of MyRide seats are not used with