of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 14, 2006.

Carla Mauney,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2006–24063]

Disadvantaged Business Enterprises; Western States Guidance for Public Transportation Providers

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability and policy guidance.

SUMMARY: This notice announces the Federal Transit Administration's (FTA) implementation of Department of Transportation guidance for participants of the Disadvantaged Business Enterprise (DBE) program. This notice solely concerns FTA implementation procedures applicable to FTA grantees in the states comprising the 9th Federal Judicial Circuit (California, Oregon, Washington, Alaska, Arizona, Idaho, Montana, Nevada, and Hawaii).

DATES: *Effective Date:* This policy takes effect on August 21, 2006.

FOR FURTHER INFORMATION CONTACT: Scheryl Portee, Attorney Advisor, Office of the Chief Counsel, (202) 366–4011 (telephone) and (202) 366–3809 (fax).

SUPPLEMENTARY INFORMATION:

1. Availability of the DOT Guidance and Comments

A copy of the Department of Transportation Guidance for participants of the Disadvantaged Business Enterprise (DBE) program in the affected States and comments received from the public are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may retrieve the guidance and comments online through the Document Management System (DMS) at: *http://dms.dot.gov.* Enter the docket number 24063 in the search field. The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. An electronic copy of the document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's Web page at: *http://www.gpoaccess.gov/fr/index.html.*

2. Background

The General Counsel of the Department of Transportation issued guidance concerning the effects of the *Western States Paving Co.* v. *United States and Washington State Department of Transportation,* 407 F. 3d 983 (9th Cir. 2005) in January 2006. On March 23, 2006, FTA published a **Federal Register** notice requesting comments on its implementation of the Department's guidance (56 FR 14775).

The guidance applies to recipients of Federal funds authorized under chapter 53 of Title 49 of the United States Code that are located within the states of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington.

The Court of Appeals for the 9th Circuit, like other Federal courts that have reviewed the Department of Transportation's DBE program, held that 49 CFR part 26 and the authorizing statute for the DBE program in TEA–21 were constitutional. The court affirmed that Congress had determined that there was a compelling need for the DBE program and part 26 was narrowly tailored. However, the 9th Circuit opinion held that the Washington State Department of Transportation's program for implementing part 26 was not narrowly tailored because the State's evidence of discrimination supporting the use of race conscious measures in the program was inadequate. The January 2006 DOT guidance provides information to recipients in the 9th Circuit about how to address the implications of the court's decision in their programs. This document provides further information on how FTA will administer the DBE program for FTA recipients in light of the court decision and the DOT guidance.

3. Response to Comments

This notice responds to comments regarding the procedures that FTA will employ in its review process for overall goal submissions from grantees in 9th Circuit States for Fiscal Year 2006 (that were due August 1, 2005) and subsequent-year submissions. These procedures concern such matters as race-neutral submissions, the evidence gathering process to determine evidence of discrimination or its effects in grantees' markets, and action plans for disparity/availability studies or other appropriate evidence gathering processes.

FTA solicited comments on two transit-specific issues. FTA considered all comments and statements filed that pertained to these two issues. FTA responses to these comments are included in this section. There is no discussion by FTA of comments that addressed Department-wide DBE issues, the content of the January 2006 DOT guidance, or statutory requirements. These issues were beyond the scope of the FTA notice. FTA received 10 comments in response to the two transit-specific issues we raised. The breakdown among commenter categories follows:

- Nonprofits and special transit providers: 1.
- City and County transit providers: 8.
- Trade association: 1.

Issues

1. Commitment To Conduct Disparity Studies

On the two matters posed for comment regarding FTA's implementation of the *Western States* guidance, there were limited comments on the first issue, that FTA may require recipients to certify that they will conduct or participate in a disparity or availability study. Those that did respond expressed concern that the Regional Civil Rights Office may require this certification.

FTA Response: DBE compliance is a condition of the FTA Master Agreement for all applicable recipients. The Regional Civil Rights Officer, in its review of DBE goal submissions, will work with grantees. In some cases, this will result in grantees having to commit to conducting disparity studies or similar evidence gathering efforts.

The Department's Guidance explicitly states that if a recipient does not currently have sufficient evidence of discrimination or its effects, then an all

race-neutral overall goal for Fiscal Year 2006 would be submitted, along with a statement concerning the absence of adequate evidence and a description of plans to conduct a study or other appropriate evidence gathering process, an action plan, and time lines for its completion. The Regional Civil Rights Office review of the annual goal submissions will determine whether evidence of discrimination or its effects has been provided.

Under part 26, any recipient, wherever located, would submit an all race-neutral overall goal if it concluded, based on the information used in the goal-setting process, that it could meet its overall goal without any use of race conscious measures like contract goals. If a recipient in the 9th Circuit presents an analysis making this showing, then the recipient need not submit an action plan for conducting a disparity study or similar evidence gathering effort. However, if a 9th Circuit recipient's Part 26 goal-setting analysis concludes that race conscious measures would be necessary to meet part of its overall goal and that the recipient does not have sufficient evidence to meet the requirements of the *Western States* decision, the recipient would submit a race-neutral overall goal and an action plan for a disparity study or similar evidence gathering effort. In some cases, it may be necessary for grantees who have already submitted Fiscal Year 2006 goals to rework their submissions to address these matters.

2. Costs of Disparity Studies

A common thread was noted in comments responding to the second issue concerning funding of disparity studies. Commenters stated that additional targeted funding for disparity studies is needed to avoid reducing the current pressing service-related needs. Commenters also noted the financial limitations of small transit operators with respect to conducting such studies.

FTA Response: FTA is aware of the costs involved in conducting disparity studies or availability studies. For recipients in the 9th Circuit states whose goal-setting processes would lead to the use of race conscious means, but for the effects of the *Western States* decision, a disparity study or similar evidence gathering effort is essential, and consistent with DOT's guidance, is a condition of FTA's approval of a race-neutral overall goal. As noted in the General Counsel's DBE guidance, funding of disparity studies is reimbursable from Federal program funds, subject to the availability of those funds and under the FTA statute, this is an eligible capital expense. Recipients that propose to undertake a study may wish to consider joint studies within their locale or participate in studies that will be undertaken by other transit properties in the local market. The Regional Civil Rights Office will review the overall goal submissions and work with recipients to respond to local circumstances and to achieve compliance with the overall objectives of the DBE program.

FTA also suggests that recipients communicate with the State DOT to determine what preparations are being undertaken for a statewide study and whether participation in the study is feasible. Per the guidance, this is occurring and some recipients are complying with the guidance by submission of a race-neutral overall goal and participation in studies currently underway rather than conducting their own study.

3. Group-Specific Goals

One commenter asked about an apparent inconsistency between Part 26 and the DOT guidance concerning group-specific goals.

FTA Response: Part 26 prohibits group-specific goals. Following the completion of a disparity study, a recipient might conclude that it had evidence of discrimination with respect to some, of the groups presumed to be disadvantaged under the rule. In such a case, the recipient should apply for a program waiver under § 26.15 of the rule. This opportunity is not limited to recipients in the 9th Circuit or to FTA grantees. For example, Colorado DOT applied for and was granted such a waiver on the basis of its disparity study for its Fiscal Year 2000 overall goal.

FTA will continue to work with recipients in the 9th Circuit to meet the requirements of a ''narrowly tailored'' DBE program in light of the recent developments in case law.

Dated: August 15, 2006.

Sandra K. Bushue,

Deputy Administrator.

[FR Doc. 06–7053 Filed 8–18–06; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2006–24928; Notice 2]

Continental Tire North America, Grant of Petition for Decision of Inconsequential Noncompliance

Continental Tire North America (Continental) has determined that certain tires it produced in 2004 and 2005 do not comply with S5.5(f) of 49 CFR 571.139, Federal Motor Vehicle Safety Standard (FMVSS) No. 139, ''New pneumatic radial tires for light vehicles.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Continental has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of a petition was published, with a 30-day comment period, on June 14, 2006, in the **Federal Register** (71 FR 34414). NHTSA received no comments.

Affected are a total of approximately 2,627 model 235/55R17 99H Conti Pro Contact replacement tires manufactured during 2004 and 2005. S5.5(f) of FMVSS No. 139 requires the actual number of plies in the tread area to be molded on both sidewalls of each tire. The noncompliant tires are marked on the sidewall ''*Tread Plies 1 Rayon + 2 Steel + 2 Nylon*'' whereas the correct marking should be ''*Tread Plies 1 Rayon + 2 Steel + 1 Nylon*.'' Continental has corrected the problem that caused these errors so that they will not be repeated in future production.

Continental Tire believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Continental Tire states,

> All other sidewall identification markings and safety information are correct. This noncompliant sidewall marking does not affect the safety, performance and durability of the tire; the tires were built as designed.

The Transportation Recall, Enhancement, Accountability, and Documentation (TREAD) Act (Pub. L. 106–414) required, among other things, that the agency initiate rulemaking to improve tire label information. In response, the agency published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on December 1, 2000 (65 FR 75222).

The agency received more than 20 comments on the tire labeling information required by 49 CFR 571.109 and 119, part 567, part 574, and part 575. In addition, the agency conducted a series of focus groups, as required by the TREAD Act, to examine consumer perceptions and understanding of tire labeling. Few of the focus group participants had knowledge of tire labeling beyond the tire brand name, tire size, and tire pressure.

Based on the information obtained from comments to the ANPRM and the consumer focus groups, we have