

pilot program Web site. Permitted Communications also include general discussions over measures by the FAA taken to reduce delays including traffic management initiatives.

Only communications made to the FAA as part of the Strategic Planning Telcons or to the FAA via the pilot program Web site shall qualify as Permitted Communications. Other carriers and foreign air carriers participating in the pilot program may receive such communication by participating in the Strategic Planning Telcon or by viewing the pilot program Web site.

Permitted Communications do not include: (1) Offers to cancel specifically identified flights (as opposed to a total number of operations); (2) discussions of fares; (3) discussions of passenger revenues attributable to cancelled, retimed or rerouted operations; (4) discussions of marketing strategies or passenger accommodations, including but not limited to amounts paid in compensation to, or other consideration provided to, passengers whose flights are cancelled, retimed or rerouted; and (5) any other discussions likely to result in an agreement violative of the antitrust laws, except as expressly authorized under these guidelines as Permitted Communications. However, nothing in these guidelines precludes any carrier from taking unilateral action based on information gained during conference calls or other communications permitted under the pilot program.

The Department of Justice, in addition to the FAA, may monitor all communications that occur during the telephone conferences or via the pilot program Web site. For this purpose, the telephone conferences will be recorded and an electronic record of the activity on the pilot program Web site will be preserved for 45 days.

Antitrust Immunity

As authorized by section 40129(h), and subject to concurrence by the Attorney General, during the period the pilot program is in effect, the Secretary intends to exempt U.S. and foreign air carriers participating in the program from the antitrust laws for activities they engage in to the extent those activities are necessary for their participation in the program. The antitrust exemption is for the sole purpose of participating in the pilot program, and shall not extend to any discussions, agreements, or activities outside the scope of the pilot program as described in these guidelines. It shall apply only to the extent that the U.S. or foreign air carrier complies with the conditions imposed by these guidelines.

The FAA reserves the authority to modify or terminate the exemption prospectively, or to otherwise modify or terminate the program or a particular carrier's participation in it, if it is determined by the FAA or the Secretary, respectively, and with the concurrence of the Department of Justice, that the purpose of the program is not being furthered or that the program or the particular carrier's participation is having an adverse effect on competition. This statement shall serve as the notice required by section 40129(h) that states the Secretary's intention to use the authority created by that section to grant antitrust immunity.

Evaluation

The FAA will evaluate the pilot program to determine whether it has reduced total passenger delays, facilitated a more effective use of air traffic capacity through improvements in the realized airport arrival rate, or enabled a greater utilization of reservation times during ground delay programs. The FAA will also consider whether benefits from one airport's participation in the program have brought benefits to other parties of the National Airspace System.

The Department is obligated to evaluate the pilot program's effects on airline competition and service to communities. We ask for comment on what kinds of data should be obtained by us to conduct the evaluation. This data could include the following, but commenters may suggest alternatives or discuss whether the following data would be unnecessary:

- (1) Identification of flights scheduled, including number of seats sold, average fare, markets scheduled to be served, and times from the selected airports, during the CRE;
- (2) Identification of flights cancelled during the CRE; flights operated during the CRE and within 24 hours afterwards including average fares, destinations, etc.;
- (3) Identification of communities that lost service during the CRE; and
- (4) Data on the extent, if any, the program disadvantages carriers with limited flight schedules.

We welcome other ideas as to how the program's effectiveness should be evaluated.

Additionally, while we recognize (as described above) that flight delays impose additional costs on air carriers, airports and the FAA, it would also be beneficial to obtain information about the direct effect of this program on the traveling public. Such information would allow us to evaluate the amount

of delay experienced by passengers traveling on airlines participating in the program compared to the delay experienced during similar events that occurred before the program went into effect. Such information could include the number of passengers given prior notification of an impending CRE, the number of passengers who are rebooked on flights that depart in advance, during, or immediately after a CRE, reductions in the number of passengers who are offered compensation because of "overbooking" during the relevant time period, the number of passengers who are rebooked on other carriers' flights in response to notification of an impending CRE, or the speed with which carriers are able to accommodate all passengers wishing to travel during or immediately following a CRE.

Issued in Washington, DC, on March 16, 2004.

Marion C. Blakey,
Administrator.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of a Petition for an Investigation Into the Adequacy of Recall Remedy, RP03-001

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for an investigation into the adequacy of a recall remedy.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30120(e), requesting that the agency investigate the adequacy of a remedy to address a defect in the adjustable brake and accelerator pedals on model year (MY) 2000 Mercury Sable vehicles. The petition is identified as RP03-001.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan White, Office of Defects Investigation (ODI), NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-5226.

SUPPLEMENTARY INFORMATION: Ms. Linda Rodman of North Hollywood, CA, submitted a petition to NHTSA by letter dated September 5, 2003, requesting NHTSA to further investigate the adjustable brake/accelerator pedal movement on MY 2000 Mercury Sable vehicles manufactured by Ford Motor Company (Ford). Ms. Rodman reported that on June 21, 2003, her mother was

turning into a parking space when her MY 2000 Mercury Sable suddenly accelerated on to a grassy median, struck a light pole head on, and then came to rest after hitting a parked car.

NHTSA had previously conducted an investigation (PE02-035) into this issue. Consistent with facts developed in that investigation, on October 1, 2002, Ford notified NHTSA that it would recall 369,614 MY 2000 through 2002 Ford Taurus and Mercury Sable vehicles (subject vehicles) to address a safety-related defect (NHTSA Recall 02V-266). Under that recall, Ford and Mercury dealers were to inspect the lateral separation distance between the brake pedal and the accelerator pedal and, if needed, adjust the pedals to obtain a minimum lateral separation of 50 mm. This would reduce the likelihood of a driver contacting both the brake and accelerator pedals, which could result in unwanted vehicle acceleration.

The petitioner stated that she brought her vehicle to her dealer in response to this recall and was told that no adjustment was needed. Subsequently, while the petitioner's mother was driving the vehicle, it allegedly suddenly accelerated and struck a light pole and a parked car. The petitioner therefore claims that the remedy identified by Ford for this recall does not sufficiently correct the brake and accelerator pedal lateral movement in the subject vehicles.

A review of the ODI complaint database revealed only one complaint regarding the adequacy of the recall remedy, that of the petitioner.

On December 10, 2003, an ODI investigator inspected Ms. Rodman's vehicle with the special tool used by Ford and Mercury dealers to perform the recall inspection. The brake/accelerator pedal lateral separation distance on Ms. Rodman's vehicle was 63 mm, well in excess of the 50 mm minimum specified under the recall. This measurement was performed as in the recall with the lash, or lateral movement, accounted for by moving the brake pedal towards the accelerator with light pressure.

The lateral movement of the pedal in the Rodman vehicle brake pedal was found to be comparable to other similarly equipped Sable and Taurus vehicles, approximately 30 mm.

Considering the fact that there were over 369,000 MY 2000-2002 Ford Taurus and Mercury Sable vehicles recalled and that the only alleged remedy failure reported to ODI was by the petitioner, there is no basis to open an investigation to examine whether the recall remedy is adequate. It is unclear what caused the unwanted vehicle

acceleration reported by Ms. Rodman. The brake/accelerator pedal lateral separation distance on her vehicle was significantly more than the 50 mm minimum specified under the recall and the lateral movement of the brake pedal was not excessive.

In view of the foregoing, it is unlikely that NHTSA would issue an order requiring Ford to provide a different remedy for this defect. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

Authority: 49 U.S.C. 30120(e); delegations of authority at CFR 1.50 and 501.8.

Issued on: March 18, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04-6455 Filed 3-22-04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Section 5a Application No. 46 (Sub-No. 20)]

Southern Motor Carriers Rate Conference, Inc.

AGENCY: Surface Transportation Board, DOT.

ACTION: Request for comments.

SUMMARY: The Surface Transportation Board is reopening the record regarding the application of the Southern Motor Carriers Rate Conference, Inc. (SMCRC) to expand the geographic scope of its collective ratemaking authority from regional to nationwide. The Board is taking this action to update the record for this matter by providing the opportunity for SMCRC to submit additional information in support of its application and for interested persons to file comments in reply to SMCRC's proposal. SMCRC will then be allowed to file rebuttal.

DATES: Initial statement from SMCRC is due by April 22, 2004. Replies are due by May 24, 2004. Rebuttal from SMCRC is due by June 7, 2004.

ADDRESSES: Send an original and 10 copies of pleadings, referring to STB Section 5a Application No. 46 (Sub-No. 20), to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. Also, send one copy to the representative of applicant SMCRC in STB Section 5a Application No. 46 (Sub-No. 20): Law Office of John R. Bagileo, No. 300, 1101 30th Street, NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT:

Joseph H. Dettmar, (202) 565-1609. [Federal Information Relay Service for the hearing impaired: 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: SMCRC is

one of several motor carrier rate bureaus (associations of motor carriers of property) that have antitrust immunity to set rates collectively under Board jurisdiction and oversight pursuant to 49 U.S.C. 13703. SMCRC currently engages in collective ratemaking on a regional (non-nationwide) basis. In 1994, SMCRC filed an application with the Interstate Commerce Commission, the Board's predecessor agency, for authority to operate collectively on a nationwide basis,¹ and six other regional rate bureaus responded with separate requests that they be granted nationwide authority in the event that SMCRC. The territorial expansion requests were eventually (a) consolidated for decision, (b) merged into a broader proceeding to determine whether there was still a need for antitrust immunity for collective ratemaking, and (c) made the subject of two requests in the **Federal Register** for comments.² In a decision served on December 18, 1998, in *EC-MAC Motor Carriers Service Assoc., Inc., et al.*,³ 3 S.T.B. 926, 935 (1998) (*EC-MAC*), the Board commented favorably on territorial expansion, provided that the bureaus reduce their class rate levels, but the agency declined to resolve the issue with finality due to a request for delay from certain members of Congress. In December 1999, Congress amended the Board's governing statute to prohibit the agency from authorizing regional rate bureaus to operate nationwide.³ Recognizing this amendment in its February 2000 decision in *EC-MAC*,⁴ the Board thereafter took no further action to rule on the requests for nationwide authority, although most of

¹ SMCRC's application for nationwide authority was originally docketed as Section 5a Application No. 46 (Amendment No. 19). On December 19, 1996, SMCRC resubmitted its request for nationwide authority in a new application that was docketed as Section 5a Application No. 46 (Sub-No. 20), the subject of the instant notice. SMCRC's (Sub-No. 20) application also proposed minor, unrelated changes that were separately approved in a decision served on September 4, 1997.

² See 59 FR 25121 (May 13, 1994) (consolidating the territorial expansion requests and seeking comments); 62 FR 27653 (May 20, 1997) (broadening the issues to include the need for continued antitrust immunity for bureaus and seeking additional comments on all issues).

³ See former 49 U.S.C. 13703(d) (2000).

⁴ *EC-MAC Motor Carriers Service Association, Inc., Et Al.*, Sec. 5a Application No. 118 (Amendment No. 1), *et al.* (STB served Feb. 11, 2000). See also the decisions in *EC-MAC* served on November 20, 2001, and March 27, 2003.