

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

The purpose of the proposed rule change is to attract business to the Exchange. Specifically, the Exchange believes that permanently waiving the equity floor brokerage fee of 5 percent of net floor brokerage income and implementing a modest monthly fee of \$250 should encourage floor brokers to send additional order flow to the Exchange and enhance the competitiveness of the Exchange. Charging a flat \$250 monthly charge would also simplify Phlx accounting procedures and billing. In addition, specifying that the \$250 monthly charge would be assessed on members who derive their primary income from brokerage business conducted on the equity floor of the Exchange should help to avoid any member confusion with respect to the billing of the floor brokerage assessment.

**2. Statutory Basis**

The Exchange believes that its proposal to amend its schedule of dues, fees, and charges is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>6</sup> in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change, as amended, has become effective

immediately pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and Rule 19b-4(f)(2)<sup>8</sup> thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>9</sup>

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-Phlx-2003-83. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, your comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2003-83 and should be submitted by February 10, 2004.

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</sup> For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on January 9, 2004, the date on which the Exchange filed Amendment No. 1.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-1081 Filed 1-16-04; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**Environmental Impact Statement:  
Dallas and Ellis Counties, Texas**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Supplemental notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public of a change in the study limits of an Environmental Impact Statement being prepared for a proposed transportation project in Dallas and Ellis Counties, Texas.

**FOR FURTHER INFORMATION CONTACT:** Mr. Salvador Deocampo, District Engineer, Federal Highway Administration, 300 East 8th Street, Room 826, Austin, Texas 78701, Telephone 512-536-5950.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Texas Department of Transportation (TXDOT) and the Dallas County Department of Public Works, is preparing an Environmental Impact Statement (EIS) on the proposal to build Loop 9, a new location highway, from US 287 to IH 20 in Southern Dallas and Northern Ellis Counties. A previous notice, published in the Federal and State Registers identified the study limits as SH 360 to IH 20. Due to changes in the proposed alignment location in the vicinity of SH 360, the study limits have been changed from "SH 360 to IH 20" to "US 287 to IH 20". The study corridor is still approximately 40 miles.

From a regional perspective, there is still a great demand for additional east-west transportation capacity and access throughout the limits of the corridor. Over the last 30 years, this area has experienced tremendous growth and has more than quadrupled in population. A Major Investment Study (MIS) will be integrated with the EIS. The Loop 9 facility is included in the Mobility 2025 Update: The Metropolitan Transportation Plan as a new location staged parkway calling for the preservation of right-of-way through this corridor. The environmental study will examine viable alternatives and potential transportation modes including the No-Build; Transportation

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

Systems Management/Congestion Management Systems; controlled access freeway and other potential options. It will also include extensive and continuous public involvement to address the long-term mobility needs of both the region and local communities. The environmental study will include the determination of the number of lanes (four to six are anticipated), roadway configuration and operational characteristics. It will also include a discussion of the effects on the social, economic, and natural environments and of other known and reasonably foreseeable agency actions proposed within the Loop 9 study corridor.

A public scoping meeting was held in June of 2003. This was the first in a series of meetings to solicit public comments on the proposed action during the National Environmental Policy Act (NEPA) process. In addition, a public hearing will be held following the approval of the Draft EIS. Public notice will be given of the time and place of the meetings and the hearing. The Draft EIS will be available for public and agency review and comment before the public hearing.

To ensure that the full range of issues related to this proposed section are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Dated: January 7, 2004.

**Salvador Deocampo,**

*District Engineer, Austin, Texas.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA 2003-15690; Notice 2]

#### General Motors North America, Inc.; Grant of Application for Decision of Inconsequential Noncompliance

General Motors North America, Inc. (GM) has determined that certain 2001-2003 Oldsmobile Silhouettes and 2003 Pontiac Azteks did not meet requirement S5.2 of Federal Motor Vehicle Safety Standard (FMVSS) No.

120—"Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), GM 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 the application was published, with a 30-day comment period, on August 15, 2003 in the **Federal Register** (68 FR 48992). NHTSA received no comments.

GM produced 55,825 model year 2001-2003 Oldsmobile Silhouettes and 15,343 model year 2003 Pontiac Azteks, totaling 71,168 vehicles. These vehicles are classified as multipurpose passenger vehicles (MPVs). According to GM, the rims fitted to the MPVs were originally released for use on passenger cars, and meet all the requirements of FMVSS No. 110, "Tire Selection and Rims—Passenger Cars." FMVSS No. 110 does not require marking the rims with either the designation of the source of the rims' dimensions or the symbol "DOT." When the rims were subsequently released for use on the subject MPVs, they were evaluated for the alternative usage with respect to performance requirements, but they inadvertently were not reviewed with respect to the marking requirements of FMVSS No. 120. These rims meet all requirements of FMVSS No. 120, except the marking requirements of S5.2(a) and S5.2(c), which require the designation of the source of the rims' dimensions, and use of the symbol "DOT," respectively.

Paragraph S5.2 of FMVSS No. 120 requires that each rim be marked with specific information, including a designation indicating the source of the rim's published nominal dimensions and the symbol "DOT," constituting a certification by the manufacturer of the rim that the rim complies with all applicable motor vehicle safety standards.

The agency concludes that the noncompliance is inconsequential to motor vehicle safety. All other informational markings including the correct rim size designation, as required by FMVSS No. 120, are present. While the absence of the letter "T" could increase the possibility of mismatching rims to tires, GM stated and the agency verified that the dimensions of these rims, as published in the Tire and Rim Association Yearbook (T), and by European Tyre and Rim Technical Organisation and the Japan Automobile Tire Manufacturers Association, Inc., are essentially identical. In addition, the rims of the affected vehicles are

properly matched and appropriate with respect to all performance requirements and the vehicle placards correctly indicate the rim sizes.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety. Accordingly, GM's application is hereby granted, and the applicant is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

**Authority:** (49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: January 14, 2004.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 04-1132 Filed 1-16-04; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34456]

#### The Burlington Northern and Santa Fe Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant temporary overhead trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) over UP's Dallas Subdivision lines between UP milepost 245.3 at Fort Worth, TX (East Tower 55), and UP milepost 214.6 at Dallas, TX (Terminal Junction), a distance of approximately 30.7 miles.

The transaction was scheduled to become effective on January 13, 2004, and the trackage rights are scheduled to expire on January 22, 2004. The purpose of the temporary trackage rights is to allow BNSF to bridge its train service while its main lines are out of service due to certain programmed track, roadbed, and structural maintenance.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), *aff'd sub nom. Railway Labor Executives' Ass'n v. United States*, 675 F.2d 1248 (D.C. Cir. 1982).

This notice is filed under 49 CFR 1180.2(d)(8). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to