

from the planned Loop 49 West/IH 20 interchange to connect with the existing U.S. 69 north of the City of Lindale, a roadway distance of approximately 5–6 miles.

The proposed Lindale Reliever Route would serve as a connector between Loop 49 and U.S. 69 and address safety, mobility, connectivity and capacity needs.

Alternatives under consideration include (1) taking no action (the no-build alternative), (2) constructing a proposed Lindale Reliever Route facility built to current highway standards, and (3) improvements to existing highways. The proposed facility will be evaluated as a toll road project. A Feasibility Study prepared in 2001 evaluated four corridor alternatives along new location right-of-way and a No-Build alternative, resulting in the identification of a recommended study corridor. Subsequent public involvement opportunities have identified additional study corridors. Evaluation of a reasonable number of alignment alternatives will be documented in the EIS, as well as the no-build and existing highway improvement alternatives, based on input from federal, state, and local agencies, as well as private organizations and concerned citizens.

The EIS will evaluate potential impacts from construction and operation of the proposed roadway including, but not limited to, the following: Impacts to residences and businesses, including potential relocations and displacements; transportation impacts (construction detours, construction traffic, and mobility improvement); air and noise impacts from construction equipment and operation of the roadway; social and economic impacts; impacts to cultural resources; water quality impacts from construction and roadway runoff; impacts related to tolling; and impacts to waters of the U.S. including wetlands from right-of-way encroachment.

Correspondence describing the proposed project and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed interest in the proposal. TxDOT completed a Feasibility Study for the project in May 2001. In conjunction with the Feasibility Study, TxDOT developed a steering committee, provided project information at two public meetings, and met with interested stakeholders. An agency scoping meeting is anticipated to be held by TxDOT in September 2006 to coordinate and solicit agency representatives' input on project plans

including the purpose and need and the range of alternatives, introduce project team members, obtain comments pertaining to the scope of the EIS, identify important issues, set goals, develop project schedule, and respond to questions. A continuing public involvement program will include a project mailing list, project newsletters, a public scoping meeting (public notice will be given of the time and place), and numerous informal meetings with interested citizens and stakeholders. In addition, a public hearing will be held after the publication of the Draft EIS. Public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action 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 12373 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Donald E. Davis,**

*District Engineer.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### **Adoption of Environmental Impact Statement, Participation in a Section 106 Programmatic Agreement, and Notice of Availability of Section 4(f)/303 Statement**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Adoption and Recirculation of Final Environmental Impact Statement and Final Supplemental Environmental Impact Statement; Participation as a Concurring Party to a Section 106 Programmatic Agreement; and Notice of Availability of a Draft Section 4(f)/303 Statement.

**SUMMARY:** FRA is issuing this notice to advise the public and interested agencies that FRA has decided to adopt the Environmental Impact Statement (EIS) and Supplemental Environmental

Impact Statement (SEIS) issued by the Surface Transportation Board (STB) for construction and operation of a new rail line and related improvements by the Dakota, Minnesota and Eastern Railroad Corporation (DM&E). Under applicable regulations, FRA is allowed to adopt and recirculate the STB's Final EIS and Final SEIS as its own, since FRA's proposed action is substantially the same as the action covered by the STB's EISs. The FRA further announces the availability of a draft Section 4(f)/303 Statement prepared for the Project by the FRA pursuant to Section 4(f) of the Department of Transportation Act (49 U.S.C. § 303(c)). The draft Section 4(f)/303 Statement and STB's EISs are available and comments may be submitted as indicated below.

This project, known as the Powder River Basin Expansion Project (Project), would involve construction of approximately 280 miles of new rail line to reach the coal mines of Wyoming's Powder River Basin and reconstruction of another approximately 600 miles of DM&E's existing rail line that would allow operation of unit coal trains along the reconstructed route to and from the new line. The Project takes place in the States of Minnesota, South Dakota and Wyoming. The DM&E has applied to the FRA for a \$2.3 billion loan under the Railroad Rehabilitation and Improvement Financing (RRIF) program to finance the Project.

**DATES:** Submit comments on the Final EIS, Final SEIS, or the draft Section 4(f)/303 Statement no later than October 10, 2006 to David Valenstein, Environmental Program Manager, at the address listed below.

**ADDRESSES:** The EIS documents and the draft Section 4(f)/303 Statement can be inspected at the FRA office at the address listed below. The draft Section 4(f)/303 Statement may be obtained from the FRA Web site at <http://www.fra.dot.gov> or by contacting the FRA. Additionally, the STB's Draft EIS, Final EIS, Draft SEIS and Final SEIS are available in electronic format on the STB Web site at <http://www.stb.dot.gov> under Environmental Matters, Key Cases, DM&E Links and one or more of the EISs may be viewed in 70 libraries in the Project area as listed on FRA's Web site.

**FOR FURTHER INFORMATION CONTACT:** David Valenstein, Environmental Program Manager; 1120 Vermont Avenue, NW.; Mail Stop 20; Washington, DC 20590; Phone (202) 493–6368.

**SUPPLEMENTARY INFORMATION:** The DM&E filed an application in 1998 with the STB for authority to construct and

operate the Project, which would involve construction of approximately 280 miles of new rail line to reach the coal mines of Wyoming's Powder River Basin. See STB Finance Docket No. 33407. Reconstruction of another approximately 600 miles of DM&E's existing rail lines would be required in conjunction with the new line construction to allow operation of unit coal trains along the reconstructed route to and from the new line. STB's National Environmental Policy Act (NEPA) review considered the impacts of both the new line construction and existing line reconstruction. The STB's Section of Environmental Analysis (SEA) prepared a Draft Environmental Impact Statement (DEIS) for the Project on September 27, 2000, provided a comment period from October 6, 2000 to March 6, 2001, and prepared a Final EIS on November 19, 2001. After litigation challenging the adequacy of the EIS, the court remanded the case back to the STB. *Mid States Coalition for Progress v. Surface Transportation Board*, 345 F.3d 520 (8th Cir. 2003). The STB subsequently issued a Draft SEIS on April 15, 2005, and a Final SEIS on December 30, 2005. On February 15, 2006, the STB issued a decision approving the construction and operation of the proposed project, subject to various environmental conditions and oversight. The STB issued the above-mentioned EISs with assistance from the following five cooperating agencies which had jurisdiction over various aspects of the Project: The U.S. Department of Agriculture, Forest Service; the U.S. Department of Interior, Bureau of Land Management; the U.S. Army Corps of Engineers; the U.S. Department of Interior, Bureau of Reclamation; and the U.S. Coast Guard. The FRA was not a cooperating agency because it had no involvement or jurisdiction over any aspect of the Project at that time.

Amendments to the RRIF program adopted in section 9003 of the Safe Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109-59, 119 Stat 1144) expanded the scope of the RRIF program and made other changes to the underlying statute and implementing regulations which, when taken together, made possible the DM&E RRIF application to finance the Project. The DM&E originally submitted a preliminary application for RRIF financing in late 2005 that contained several components, including the construction of a new rail line into the Powder River Basin (PRB), and the rehabilitation of several segments of its

existing system. However, that application was subsequently replaced by two separate applications, one in February, 2006 for the PRB construction and another in March, 2006 for some rehabilitation work necessary for the west end of the DM&E rail system independent of the PRB project. Provision of a loan to the DM&E under the RRIF program requires FRA compliance with the requirements of the NEPA, Section 4(f) of the Department of Transportation Act, 49 U.S.C. 303(c), and FRA's Environmental Procedures [64 FR 28545, 28522 at § 12 (May 6, 1999)], see also 49 CFR 260.35.

FRA has conducted an independent review of the EIS and SEIS for the purpose of determining whether FRA could adopt these documents pursuant to 40 CFR 1506.3. FRA's review concluded that the action encompassed by the DM&E RRIF application is substantially the same as the action documented in the EIS and SEIS, that the EIS and SEIS adequately assess the environmental impacts associated with the Project and meet the standards of the Council on Environmental Quality (CEQ) NEPA Regulation (40 CFR parts 1500-1508), and that the EIS and SEIS can be adopted by the FRA. CEQ's regulations implementing NEPA strongly encourage agencies to reduce paperwork and duplication, 40 CFR 1500.4. One of the methods identified by CEQ to accomplish this goal is adopting the environmental documents prepared by other agencies in appropriate circumstances, 40 CFR 1500.4(n), 1500.5(h), and 1506.3. In instances where the actions covered by the original environmental impact statement and the proposed action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement, 40 CFR 1506.3(b).

In accordance with the Environmental Protection Agency's (EPA) requirements regarding the filing of EISs, FRA has provided the EPA with a notice of adoption and five copies of the STB's Final EIS and Final SEIS. EPA will publish a notice of availability of the Final EIS and SEIS in the **Federal Register** consistent with its usual practices. Because of the multi-volume size of the FEIS and SEIS and its continued availability in libraries in the affected States and on the STB's Web site, FRA is not republishing the document on its own. This would be costly, defeat CEQ's goals of reducing paperwork and duplication of effort, and be of little or no additional value to other agencies or the public. FRA has mailed a notification of FRA's adoption and where the EISs are available to

persons and parties of record who have participated in the most recent phase of STB's EIS process.

Because the STB's EIS for the Project did not include an evaluation pursuant to Section 4(f) of the Department of Transportation Act (49 U.S.C. § 303(c)), the FRA, with assistance from an independent contractor, has prepared a separate draft Section 4(f)/303 Statement consistent with FRA procedures and posted it on FRA's Web site (<http://www.fra.dot.gov>). Comments on the draft section 4(f)/303 Statement may be forwarded to the FRA at the address listed above.

In adopting the STB EIS and issuing a draft 4(f)/303 Statement, the FRA finds that FRA's undertaking under Section 106 of the National Historic Preservation Act is substantially the same as the undertaking addressed by the STB and consequently FRA seeks to join, as a concurring party, the March 2003 Programmatic Agreement (PA) agreed to pursuant to Section 106 for the Project and included in the Draft SEIS as Appendix D. The PA was developed and executed by the STB, the DM&E, the Advisory Council on Historic Preservation, State Historic Preservation Officers, and other invited signatories in the affected States to coordinate additional evaluation and consultation regarding historic and cultural resources. FRA agrees with the area of potential effects, the level of effort for identification of historic properties, and the procedures to be followed for treatment of affected historic properties outlined in the PA. By joining as a concurring party, the FRA would be better able to require the applicant to comply with the PA as a condition of the FRA loan and permit continued FRA involvement in future decisions regarding historic resources should the FRA decide to approve the loan.

Accordingly, FRA has adopted the STB EIS and SEIS, is recirculating the Final EIS and Final SEIS, is seeking to join the PA, and has concluded that no supplement or additional environmental review beyond the Section 4(f)/303 Statement referenced herein is required to support the FRA's proposed action. FRA anticipates that a final Section 4(f)/303 Statement and Record of Decision will be issued after October 10, 2006.

Issued in Washington, DC on August 10, 2006.

**Joseph H. Boardman,**

*Federal Railroad Administrator.*

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