

Transportation, Office of the General Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590.

Decided: June 8, 2023.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2023-12706 Filed 6-13-23; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on the I-26 Asheville Connector in North Carolina

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other federal agencies.

SUMMARY: This notice announces actions taken by FHWA and the other Federal agencies that are final. The actions relate to the proposed improvements to upgrade the I-26 corridor in Asheville from south of the I-26/I-40/I-240 interchange through the I-240 interchange with US 19-23-74A/Patton Avenue west of the French Broad River so that I-240 can be redesignated as I-26 in Buncombe County, North Carolina. The project is commonly referred to as the I-26 Asheville Connector and is identified as State Transportation Improvement Program Project (STIP) No. I-2513. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filled on or before November 13, 2023. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Clarence W. Coleman, P. E., Preconstruction and Environment Director, FHWA, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina, 27601-1418; telephone: (919) 747-7014; email: clarence.coleman@dot.gov. FHWA North Carolina Division's regular office hours are 8 a.m. to 5 p.m. (Eastern Time). For North Carolina Department of Transportation (NCDOT): Mr. Derrick Weaver, P. E., Deputy Director of

Technical Services, NCDOT, 1536 Mail Service Center, Raleigh, North Carolina 27699-1536; telephone (919) 707-2516, email: dweaver@dot.state.nc.us.

NCDOT's regular office hours are 8 a.m. to 5 p.m. (Eastern Time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA and other Federal agencies have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of North Carolina: proposed improvements to upgrade the I-26 corridor in Asheville from south of the I-26/I-40/I-240 interchange through the I-240 interchange with US 19-23-74A/Patton Avenue west of the French Broad River so that I-240 can be redesignated as I-26. The proposed action includes improvements to the I-40 interchanges with Smoky Park Highway, I-26/I-240 and Brevard Road, upgrading I-240 (as well as interchanges at Brevard Road, Amboy Road, and Haywood Road) from the I-26/I-240 interchange with I-40 to the I-240 interchange with Patton Avenue west of the French Broad River, constructing I-26 on new location from the Patton Avenue interchange north across the French Broad River, tying into US 19/23/70 south of Broadway Street, and widening Riverside Drive from Hill Street to Broadway Street. The 7.0-mile project is commonly referred to as the I-26 Asheville Connector and is identified in the Statewide Transportation Improvement Plan (STIP) as STIP No. I-2513. The actions by the Federal Agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on January 9, 2020, in the FHWA ROD approved on May 26, 2023, and in other documents in the project record. The FEIS, ROD, and other project records are available by contacting the FHWA or the NCDOT at the addresses provided above. The FEIS and ROD can be viewed and downloaded from the project website at <https://www.ncdot.gov/projects/asheville-i-26-connector/Pages/default.aspx>, or obtained from any contact listed above.

This notice applies to all Federal Agency decisions that are final as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321 *et seq.*]; Federal-Aid Highway Act [23 U.S.C. 109].
2. *Air:* Clean Air Act [42 U.S.C. 7401 *et seq.*].
3. *Land:* Section 4(f) of the Department of Transportation Act of

1966 [49 U.S.C. 303; 23 U.S.C. 138]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531-1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Anadromous Fish Conservation Act [16 U.S.C. 757(a) *et seq.*], Fish and Wildlife Coordination Act [16 U.S.C. 661 *et seq.*], Migratory Bird Treaty Act [16 U.S.C. 703-712], Magnuson-Stevenson Fishery Conservation and Management Act of 1976 [16 U.S.C. 1801 *et seq.*].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966 [54 U.S.C. 306108]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa) *at seq.*]; Archeological and Historic Preservation Act [54 U.S.C. 312501-312508]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001-3013].

6. *Social and Economic:* Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000(d) *et seq.*]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201-4209].

7. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251 *et seq.*]; Coastal Barrier Resources Act [16 U.S.C. 3501-3510]; Coastal Zone Management Act [16 U.S.C. 1451 *et seq.*]; Land and Water Conservation Fund (LWCF) [54 U.S.C. 200301 *et seq.*]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f) *et seq.*]; Rivers and Harbors Act of 1899 [33 U.S.C. 401 *et seq.*]; Wild and Scenic Rivers Act [16 U.S.C. 1271-1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; Wetlands Mitigation [23 U.S.C. 119(g) and 133(b)(14)]; Flood Disaster Protection Act [42 U.S.C. 4001 *et seq.*].

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601 *et seq.*]; Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 11001 *et seq.*]; Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901 *et seq.*].

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination

with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

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

Authority: 23 U.S.C. 139(l)(1).

Clarence W. Coleman,

*Preconstruction and Environment Director,
Raleigh, North Carolina.*

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Safety Advisory 2023-01; Evaluation of Policies and Procedures Related to the Use and Maintenance of Hot Bearing Wayside Detectors (Supplement)

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

ACTION: Notice of Safety Advisory; notice No. 2.

SUMMARY: On March 3, 2023, in response to a series of rail accidents suspected of being caused by burnt journal bearings, FRA published Safety Advisory 2023-01 addressing the use and maintenance of hot bearing detectors (HBDs). Since publication of that Safety Advisory, FRA has continued to evaluate railroads' use of HBDs and on May 10, 2023, in New Castle, Pennsylvania, another accident occurred that is suspected of being the result of a burnt journal bearing. Preliminary information related to this most recent accident shows that the train involved passed a HBD which alarmed prior to the accident. Accordingly, FRA is issuing this Notice to supplement Safety Advisory 2023-01 with one additional recommendation. Specifically, this Notice adds a fifth recommendation to Safety Advisory 2023-01 recommending that railroads take action to evaluate the resiliency and accuracy of the overall process used to monitor and measure bearing health.

FOR FURTHER INFORMATION CONTACT: Karl Alexy, Associate Administrator for Railroad Safety and Chief Safety Officer, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE, Washington, DC 20590, (202)-493-6282.

Disclaimer: This Safety Advisory is considered guidance pursuant to DOT Order 2100.6A (June 7, 2021). Except

when referencing laws, regulations, policies, or orders, the information in this Safety Advisory does not have the force and effect of law and is not meant to bind the public in any way. This document does not revise or replace any previously issued guidance.

SUPPLEMENTARY INFORMATION:

Background

In response to recent rail accidents, on February 21, 2023, while calling on the freight rail industry and Congress to take action to improve rail safety, U.S. Department of Transportation Secretary Pete Buttigieg reiterated the Department's commitment to enhancing rail safety through specific targeted actions.¹ In addition to various regulatory and other activities FRA already had underway at the time of Secretary Buttigieg's announcement, one of the actions announced included a focused inspection program of routes over which high-hazard flammable trains (HHFTs)² and other trains transporting large volumes of hazardous materials travel (Route Assessment). Subsequently, in response to continued derailments and the death of a Norfolk Southern Railway (NS) worker, FRA launched a supplemental safety assessment of NS, issued three safety advisories and two safety bulletins³ calling attention to the risks FRA identified in the recent accidents.

HHFT Route Assessment

As noted above, in March 2023, FRA initiated a nationwide comprehensive assessment of HHFT routes and other rail routes over which large quantities of other hazardous materials are transported. The Route Assessment includes all FRA technical safety disciplines (*i.e.*, hazardous materials, track, signal and train control, mechanical, operating practices, and grade crossing). The Route Assessment is designed to evaluate the overall condition of the rail infrastructure

¹ See <https://www.transportation.gov/briefing-room/us-department-transportation-fact-sheet-steps-forward-freight-rail-industry-safety>.

² An HHFT is "a single train transporting 20 or more loaded tank cars of a Class 3 flammable liquid in a continuous block or a single train carrying 35 or more loaded tank cars of a Class 3 flammable liquid throughout the train consist." 49 CFR 171.8.

³ <https://railroads.dot.gov/elibrary/safety-advisory-2023-01-evaluation-policies-and-procedures-related-use-and-maintenance-hot>; <https://railroads.dot.gov/elibrary/safety-advisory-2023-02-train-makeup-and-operational-safety-concerns>; <https://railroads.dot.gov/elibrary/safety-advisory-2023-03-accident-mitigation-and-train-length>; <https://railroads.dot.gov/elibrary/safety-bulletin-2023-01-switching-operation-accident>; <https://railroads.dot.gov/sites/fra.dot.gov/files/2023-03/Safety%20Bulletin%202023-02%2028031623%29.pdf>.

(including, but not limited to, the track, rolling stock, signal systems, and other equipment that affects or monitors the safety of rail operations) and railroads' compliance with both FRA safety regulations and the regulations of the Pipeline and Hazardous Materials Safety Administration.

Initial observations from the Route Assessment point to significant inconsistencies in the railroads' application of best practices associated with the installation and maintenance of HBDs, as well as in the assessment and use of HBD data to address failing or failed bearings. FRA is continuing to evaluate the tools, algorithms, and other methodologies railroads use to evaluate bearing health, and the training practices for all railroad employees involved in monitoring bearing health information and/or taking action in response to that information.

Supplemental Safety Assessment of Norfolk Southern

On March 15, 2023, FRA initiated a supplemental safety assessment of NS (NS Assessment), with a specific focus on safety culture and training, as well as a deep dive into compliance with selected regulations and the status of recommendations from FRA's 2022 System Audit of NS performed January through May of 2022.⁴ The investigation phase of FRA's NS Assessment was completed mid-May 2023, and analysis of survey results is currently in process. While FRA continues to analyze results to confirm FRA's findings and any recommendations, several areas of concern have arisen, including the resiliency of NS's processes and procedures for monitoring and actioning bearing health information from the railroad's system of HBDs.

New Castle, Pennsylvania Accident—May 10, 2023

On May 10, 2023, at 11:24 p.m., a NS general merchandise train (*i.e.*, not an HHFT) derailed nine cars in New Castle, Pennsylvania. Five cars derailed on a bridge over the Mahoning River. Both the National Transportation Safety Board and FRA are investigating the accident and both investigations are ongoing. Although no final conclusions as to the cause of the accident have been identified yet, preliminary information indicates that a burnt journal bearing played a role in the derailment and that the train involved passed at least one HBD that alarmed before the derailment. FRA is probing the communication and

⁴ FRA Audit Number: 2022-NS Special Audit -01-1; <https://railroads.dot.gov/elibrary/fra-audit-report-norfolk-southern-railway-company>.