

U.S. Air Force and other U.S. National Test ranges use 0.0001 as the expected casualty limit across all three hazards as their criterion. See U.S. Air Force Instruction 91-217, *Space Safety and Mishap Prevention Program* (2010); NASA Procedural Requirements 8715.5 Rev A, *Range Flight Safety Program* (2010); Range Commanders Council (RCC) Standard 321-10, *Common Risk Criteria Standards for National Test Ranges* (2010). If the Falcon 9 v1.1's collective risk were to exceed 0.0001 expected casualties, SpaceX would not launch until conditions improved sufficiently for the risk of the launch to satisfy the limits allowed by the waiver.

The increase in the E_c for the first launch of the Falcon 9 v1.1 vehicle from VAFB is largely attributable to two factors. First, the launch will take place from VAFB. VAFB is located in California, and frequently experiences unique weather conditions that exacerbate far field blast overpressure from a launch. An inversion layer, an atmospheric region with a warmer temperature than the region below, is common much of the year at VAFB. The presence of an inversion layer could increase damage caused by an explosion because an inversion layer may reflect the shock wave from an explosion back towards the ground. By reflecting the shock wave back towards the ground, surrounding buildings, and particularly glass windows, may experience greater pressure, which could cause greater glass breakage. Second, the estimated probability of failure to the Falcon 9 v1.1 is high because it is a new launch vehicle. There is no way to reduce this estimated failure probability, which is derived from the historically high number of launch failures in new vehicles. This probability of failure is one of the most critical variables in the E_c calculations.

This waiver for the risk from far field blast overpressure is consistent with the Air Force total risk threshold for E_c of 100×10^{-6} for risks from debris, toxic release, and far field blast overpressure combined. The current E_c requirement for U.S. Government launches from U.S. National Test Ranges is 0.0001, which, because it comprises debris, toxics, and overpressure, means that the federal launch ranges permit the risk attributable to overpressure to exceed the FAA's risk threshold. See Air Force Instruction 91-217, *Space Safety and Mishap Prevention Program* (2010). The U.S. Air Force approved a government launch of a Titan, where the risk ranged from 145 to 317 in a million. Dept. of

the Air Force Memorandum, Overflight Risk Exceedance Waiver for Titan IV B-30 Mission, (Apr. 4, 2005). Additionally, the FAA granted a waiver on April 17, 2012, for risk from debris up to 0.000130 for a Falcon 9 launch from Cape Canaveral Air Force Station. *Waiver of Acceptable Risk Restriction for Launch and Reentry*, Notice of Waiver, 77 FR 24556 (April 24, 2012). Again, risk was largely a result of a relatively high failure probability that is unavoidably attached to a new launch vehicle. Based on the fact that risk will remain very low, and will be limited to the requirement for government launches (E_c of less than 0.0001), granting a waiver in this case would not jeopardize public health and safety or safety of property.

ii. National Security and Foreign Policy Implications

The FAA has identified no national security or foreign policy implications associated with granting this waiver.

iii. Public Interest

The waiver is consistent with the public interest goals of Chapter 509. Three of the public policy goals of Chapter 509 are: (1) To promote economic growth and entrepreneurial activity through use of the space environment; (2) to encourage the United States private sector to provide launch and reentry vehicles and associated services; and (3) to facilitate the strengthening and expansion of the United States space transportation infrastructure to support the full range of United States space-related activities. See 51 U.S.C. 50901(b)(1), (2), (4).

With a requirement that E_c be less than 0.00003 for far field blast overpressure, launch availability for the Western Range is estimated to be virtually zero percent due to atmospheric conditions at the launch site and the high failure probability necessarily assigned to a new launch vehicle. This would certainly make the launch site impractical for commercial launches, at least of new launch vehicles. Granting a limited waiver for risk from far field blast overpressure as long as the risk for all three risks does not exceed 100×10^{-6} increases launch availability for the first launch of Falcon 9 v1.1 at VAFB to approximately forty percent for September, depending on detailed analytical assumptions concerning flight termination action. VAFB is the most suitable U.S. launch facility for supporting the launches of satellites by large vehicles into polar orbits. Granting this waiver makes VAFB a viable site for commercial launches, helping to sustain the launch

capacity for U.S. launch providers, thereby supporting the industrial base and lowering overall launch costs for commercial customers and the U.S. Government.

Additionally, the proposed launch is consistent with the principles and goals of the 2010 National Space Policy, which emphasizes the importance of developing a robust domestic commercial space transportation industry and acquiring commercial space services to meet United States Government requirements. The development of commercial launch service providers is crucial because, as noted in the 2010 National Space Policy, United States access to space depends in the first instance on launch capabilities. To that end, SpaceX has applied to the U.S. Air Force's EELV Program to become a certified launch service provider for National Security space missions. In accordance with the Air Force's approved New Entrant Certification Guide, SpaceX is required to demonstrate its compliance with EELV program requirements, including successfully demonstrating launches of the launch vehicle being proposed for certification. In the certification approach being taken under the New Entrant Certification Guide, SpaceX is required to successfully launch three Falcon 9 launch vehicles, the first of which is planned to be the Cassiope mission from VAFB. Each flight of the Falcon 9 builds heritage for this vehicle, which will be used by the United States Government. NASA has already contracted with SpaceX for Cargo Resupply Services missions from CCAFS using Falcon 9 v1.1. Accordingly, proceeding with the proposed launch is in the public interest.

Issued in Washington, DC, on August 19, 2013.

Kenneth Wong,

Licensing and Evaluation Division Manager, Commercial Space Transportation.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Indiana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and United States Fish and Wildlife Service (USFWS), DOI.

launch vehicle. The 30th Space Wing uses this standard time for its analysis.

SUMMARY: This notice announces actions taken by the FHWA and the USFWS that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to proposed highway projects for a 21 mile segment of I-69 in the Counties of Monroe and Morgan, State of Indiana, and grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public that the FHWA and the USFWS have made decisions that are subject to 23 U.S.C. 139(l)(1) and are final within the meaning of that law. A claim seeking judicial review of those Federal agency decisions on the proposed highway project will be barred unless the claim is filed on or before January 24, 2014. 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 the shorter time period applies.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Ms. Michelle Allen, Federal Highway Administration, Indiana Division, 575 North Pennsylvania Street, Room 254, Indianapolis, IN 46204-1576; telephone: (317) 226-7344; email: Michelle.Allen@dot.gov. The FHWA Indiana Division Office's normal business hours are 7:30 a.m. to 4 p.m., e.t. For the USFWS: Mr. Scott Pruitt, Field Supervisor, Bloomington Field Office, USFWS, 620 South Walker Street, Bloomington, IN 47403-2121; telephone: (812) 334-4261; email: Scott.Pruitt@fws.gov. Normal business hours for the USFWS Bloomington Field Office are: 8 a.m. to 4:30 p.m., e.t. You may also contact Mr. Thomas Seeman, Project Manager, Indiana Department of Transportation (INDOT), 100 North Senate Avenue, Indianapolis, IN 46204; telephone: (317) 232-5336; email: TSeeman@indot.IN.gov. Normal business hours for the Indiana Department of Transportation are: 8 a.m. to 4:30 p.m., e.t.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has approved a Tier 2 Final Environmental Impact Statement (FEIS) for section 5 of the I-69 highway project from Evansville to Indianapolis and issued a Record of Decision (ROD) for section 5 on August 7, 2013. Section 5 of the I-69 project extends from the intersection of Victor Pike and State Road 37 (south of Bloomington) to south of the intersection of State Road 37 and State Road 39 (south of Martinsville). Section 5 generally follows the alignment of and upgrades State Road 37, an existing four-lane median divided highway, to a fully access-controlled highway. As approved in the Tier 1 ROD, the corridor is generally 2,000 feet wide.

The ROD selected Refined Preferred Alternative 8 for section 5, as described in the *I-69 Evansville to Indianapolis, Indiana, Tier 2 Final Environmental Impact Statement Bloomington to Martinsville, Indiana* (FEIS), available at <http://www.i69indyevn.org/section-5-FEIS.html>. The ROD also approved the locations of the interchanges, grade separations, and access roads (which include new roads, road relocations, and realignments). The FHWA had previously issued a Tier 1 FEIS and ROD for the entire I-69 project from Evansville to Indianapolis, Indiana. A Notice of Limitation on Claims for Judicial Review of Actions by FHWA and United States Fish and Wildlife Service (USFWS), DOI, was published in the **Federal Register** on April 17, 2007. A claim seeking judicial review of the Tier 1 decisions must have been filed by October 15, 2007, to avoid being barred under 23 U.S.C. 139(1). Decisions in the FHWA Tier 1 ROD that were cited in that **Federal Register** notice included, but were not limited to, the following:

1. Purpose and need for the project.
2. Range of alternatives for analysis.
3. Selection of the Interstate highway build alternative and highway corridor for the project, as Alternative 3C.
4. Elimination of other alternatives from consideration in Tier 2 NEPA proceedings.
5. Process for completing the Tier 2 alternatives analysis and studies for the project, including the designation of six Tier 2 sections and a decision to prepare a separate environmental impact statement for each Tier 2 section.

The Tier 1 ROD and Notice specifically noted that the ultimate alignment of the highway within the corridor, and the locations and number of interchanges and rest areas would be evaluated in the Tier 2 NEPA proceedings. Those proceedings for section 5 of the I-69 project from Evansville to Indianapolis have culminated in the August 7, 2013 ROD and this Notice. Interested parties may consult the Tier 2, section 5 ROD and FEIS for details about each of the decisions described above and for information on other issues decided. The Tier 2, section 5 ROD can be viewed and downloaded from the project Web site at <http://www.i69indyevn.org/>. People unable to access the Web site may contact FHWA or INDOT at the addresses listed above. Decisions in the section 5, Tier 2 ROD that have final approval include, but are not limited to, the following: 1. National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4351]. 2. Endangered Species Act [16 U.S.C. 1531-1544]. 3. Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128]. 4. Clean Air Act, 42

U.S.C. 7401-7671(q). 5. Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]. 6. Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]. 7. Bald and Golden Eagle Protection Act [16 U.S.C. 688-688d].

Notice is hereby given that, subsequent to the earlier FHWA notices cited above, the USFWS has taken two final agency actions within the meaning of 23 U.S.C. 139(l)(1) by issuing: 1) "Amendment 2 to the Tier 1 Revised Programmatic Biological Opinion (dated August 24, 2006, previously amended May 25, 2011) for the I-69, Evansville to Indianapolis, Indiana Highway" dated July 24, 2013, and, 2) an individual Biological Opinion, dated July 25, 2013, for the Tier 2, section 5, 21 mile I-69 project in Monroe and Morgan counties, that concluded that the section 5 project was not likely to jeopardize the continued existence of the Indiana bat and was not likely to adversely modify the bat's designated Critical Habitat.

Previous actions taken by the USFWS for the Tier 1, I-69 project, pursuant to the Endangered Species Act, 16 U.S.C. 1531-1544, included its concurrence with the FHWA's determination that the I-69 project was not likely to adversely affect the eastern fanshell mussel (*Cyprogenia stegaria*) and that the project was likely to adversely affect, but not jeopardize, the bald eagle. The USFWS also concluded that the project was not likely to jeopardize the continued existence of the Indiana bat and was not likely to adversely modify the bat's designated Critical Habitat. These USFWS decisions were described in the Programmatic Biological Opinion issued on December 3, 2003, the Revised Programmatic Biological Opinion issued on August 24, 2006, and other documents in the Tier 1 project records. A Notice of Limitation on Claims for Judicial Review of these actions and decisions by the USFWS, DOI, was published in the **Federal Register** on April 17, 2007. The USFWS affirmed its decisions in the Amendment to the Revised Programmatic Biological Opinion issued on May 25, 2011. A Notice of Limitation on Claims for Judicial Review of these actions and decisions by the USFWS, DOI, was published in the **Federal Register** on July 20, 2011. A claim seeking judicial review of the Amendment to the Revised Programmatic Biological Opinion must have been filed by January 17, 2012, to avoid being barred under 23 U.S.C. 139(l).

For the Tier 2, section 5, 21 mile I-69 Project in Monroe County, an

individual Biological Opinion was issued on July 25, 2013, which concluded that the Section 5 project was not likely to jeopardize the continued existence of the Indiana bat and was not likely to adversely modify the bat's designated Critical Habitat. In addition, the USFWS issued an Incidental Take Statement subject to specific terms and conditions. The USFWS also issued a Bald Eagle Take Exempted under ESA permit (NO. MB218918-0) for the incidental take of the bald eagles for all sections of the I-69 project. The permit was effective as of June 25, 2009, and is subject to the terms and conditions of the Endangered Species Act section 7 incidental take statement and the August 24, 2006, Revised Programmatic Biological Opinion. The biological opinions, Bald Eagle permit no. MB218918-0, and other project records relating to the USFWS actions, taken pursuant to the Endangered Species Act, 16 U.S.C. 1531-1544, are available by contacting the FHWA, INDOT, or USFWS at the addresses provided above. The Tier 2, section 5 Biological Opinion can be viewed and downloaded from the project Web site at <http://www.i69indyevn.org/section-5-feis/>.

On July 24, 2013, USFWS issued "Amendment 2 To the Tier 1 Revised Programmatic Biological Opinion (RPBO dated August 24, 2006, previously amended May 25, 2011) for the I-69, Evansville to Indianapolis, Indiana highway" USFWS decided to issue the Amendment to the RPBO primarily due to the identification of two new Indiana bat maternity colonies in the Section 5 project area (which begins south of Bloomington near Victor Pike in Monroe County, Indiana and terminates south of State Road 39 south of Martinsville in Morgan County, Indiana). Additionally, the project identified increases to exempt level of forest and wetland impacts based on refinement of the Tier 1 RPBO estimates. Finally additional forest impacts were revealed within and adjacent to the Section 4 (which begins east of the intersection of U.S. 231 and SR 45/SR58 in Greene County, Indiana and terminates at SR 37 near Victor Pike in Monroe County, Indiana) project right-of-way due to private landowner tree-clearing actions. In light of this new information, USFWS chose to reevaluate impacts to the Indiana bat and to update the 2006 and 2011 Tier 1 RPBO and Incidental Take Statement. The Amendment 2 to the Tier 1 RPBO contains new analysis and comment for each of the sections of the 2006 Tier 1 RPBO affected by the new information, and USFWS affirmed that all other

sections of the Tier 1 RPBO remain valid. Based on analysis of the new information, USFWS concluded that appreciable reductions in the likelihood of survival and recovery of Indiana bats due to the construction, operation, and maintenance of I-69 from Evansville to Indianapolis, Indiana are unlikely to occur, and hence, the FHWA has ensured that the proposed action is not likely to jeopardize the continued existence of the Indiana bat or destroy or adversely modify designated critical habitat. USFWS did not conduct any new analysis for either the bald eagle or eastern fanshell mussel (*Cyprogenia stegaria*), and the non-jeopardy conclusion regarding impacts to the bald eagle still stands as stated in the original Tier 1 Biological Opinion (dated December 3, 2003). The Amendment 2 To the Tier 1 Revised Programmatic Biological Opinion (RPBO dated August 24, 2006, previously amended May 25, 2011) for the I-69, Evansville to Indianapolis, Indiana highway can be found and downloaded from the project Web site at <http://www.i69indyevn.org/corridor-wide-technical-reports/>.

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

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

Richard J. Marquis,
Division Administrator, Indianapolis,
Indiana.

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for projects in the following locations: San Francisco, CA; Rochester, NY; Michigan City, IN; Chicago, IL; and Minneapolis, MN. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject projects and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: By this notice, FTA is advising the public of final agency actions subject to Section 139(l) of Title 23, United States Code (U.S.C.). A claim seeking judicial review of the FTA actions announced herein for the listed public transportation project will be barred unless the claim is filed on or before January 24, 2014.

FOR FURTHER INFORMATION CONTACT: Nancy-Ellen Zusman, Assistant Chief Counsel, Office of Chief Counsel, (312) 353-2577 or Terence Plaskon, Environmental Protection Specialist, Office of Human and Natural Environment, (202) 366-0442. FTA is located at 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 9:00 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation projects listed below. The actions on the projects, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA administrative record for the projects. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information on the project. Contact information for FTA's Regional Offices may be found at <http://www.fta.dot.gov>.

This notice applies to all FTA decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA [42 U.S.C. 4321-4375], Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303], Section 106 of the National Historic Preservation Act [16 U.S.C. 470f], and the Clean Air Act [42 U.S.C. 7401-7671q]. This notice does not, however, alter or extend the limitation period for challenges of project decisions subject to previous notices published in the **Federal Register**. For example, this notice does not extend the limitation on claims announced for earlier decisions on the Central Corridor Light Rail Transit project. The projects and actions that are the subject of this notice are:

1. *Project name and location:* Mission Bay Transit Loop Project, San Francisco, CA. *Project sponsor:* San Francisco Municipal Transportation Agency (SFMTA). *Project description:* The Mission Bay Transit Loop Project would provide turn-around capabilities for the T-Third Street light rail line via a