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ONE-PAGE BRIEF · V1.0 · NOV. 4, 2026

FAA commercial space waiver: industry backs it and splits over its reach

FAA-2026-8614 · Proposed rule (NPRM, Notice No. 26-11) · comments July 30 to August 31, 2026 (30 days; Regulations.gov shows September 1 as the close)

QUESTION

An operator, spaceport, investor or law practice following commercial space licensing asked where the industry agrees and disagrees on the waiver, which provision is most exposed in court, and what that means for projects and timelines.

BOTTOM LINE

The launch operators that filed, SpaceX, Blue Origin, Rocket Lab, Relativity and Stoke among them, want the FAA's waiver finalized, and they disagree about how far it should go. SpaceX wants it kept whole and widened, Blue Origin wants it cut back to NEPA, ESA and NHPA, and Stoke asks the FAA to settle first whether NEPA applies to licensing at all. The final rule will turn on that disagreement more than on the volume of opposition. The FAA is likely to publish a final rule by the end of 2027 (55 to 80%). A lawsuit is likely if the final text keeps a categorical NEPA waiver (55 to 80%).

6 FORECASTS TO SCORE WHEN THE FINAL RULE PUBLISHES

#	FORECAST	LIKELIHOOD	CONFIDENCE	CONFIRMED IF
1	Final rule published by 31 December 2027	Likely	Moderate	Federal Register
2	§ 400.3(c) narrowed or removed for airspace closures or airport layout plans	Roughly even	Low	Final text of § 400.3(c)
3	Final list adds any of the eight statutes the FAA floated	Unlikely	Moderate	Final text of § 400.3(b)
4	Final rule text or preamble states how the waiver applies where the Department of the Air Force or NASA runs its own environmental review at a federal range	Likely	Moderate	Final rule and preamble
5	Lawsuit challenging the rule filed within six months of publication, if the final text keeps a categorical NEPA waiver	Likely	Moderate	Court dockets
6	Proposal withdrawn by 31 December 2027	Very unlikely	Moderate	Federal Register, Unified Agenda

WHAT THE RECORD SHOWS

12 of 13	The industry that would use the waiver supports it and disagrees about its reach.
Section 400.3(c)	Section 400.3(c) draws objections from both sides.
95.8%	Opposition is near unanimous in number and comes from people, not institutions.
30.7%	Nearly a third of the record objects to SpaceX, mostly its Louisiana site, and not to the rule.
12%	The legal arguments a challenger would use are already on file.

WHO SHOULD ACT NOW

Operator launching from a federal range	Keep range environmental reviews in the schedule; watch the final preamble and any revision of the FAA's agreements with the Department of the Air Force and NASA
Operator or spaceport relying on federal land leases or airspace closures	Do not build a timeline on § 400.3(c) until the final text and any challenge are known
Developer at a contested coastal site	Plan for opposition at the state and permit level, apart from the fate of the rule
Law practice	Read those four letters first; the authority question on § 400.3(c) is where a challenge is strongest
Investor	Treat project dates that depend on § 400.3(c) or on the NEPA waiver as at risk until the final text and the first ruling
Industry association	Press the points the launch operators share; the split points are where the FAA has to choose

DATES TO WATCH NPRM published 30 July 2026; comments closed 31 August 2026; no final rule found as of 3 November 2026. Watch the Unified Agenda, OIRA's review list and the Federal Register for RIN 2120-AM51.

Full report. Read the full report online, with a source for every number and the data files, or download it as a PDF. Download this page as a PDF. Request a report on your docket, or write to vpanitz@wisc.edu.

Likelihood terms follow ICD 203 and are analyst judgments. Vanessa Panitz and John Panitz, ComtIQ.