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

Waiver of Specified Statutory Requirements for Commercial Space Launch and Reentry Actions, proposed rule, 91 FR 47997

DOCKET

FAA-2026-8614

AGENCY

Federal Aviation Administration, Department of Transportation

RIN

2120-AM51

CITATION

91 FR 47997

STAGE

Proposed rule (NPRM, Notice No. 26-11)

COMMENT PERIOD

July 30 to August 31, 2026 (30 days; Regulations.gov shows September 1 as the close)

DATA CUTOFF

Nov. 4, 2026

QUESTION THIS REPORT ANSWERS

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 UP FRONT

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 provision most exposed in court is proposed § 400.3(c). Section 50905(b)(2)(C) lets the FAA act "by regulation", so a general rule is within its power. Section 400.3(c) goes further and carries the waiver to airspace closures, airport layout plan approvals and leases of federal land, actions that rest on other statutes. The California Attorney General contests that extension, and so does Airlines for America, from inside the aviation constituency. For an operator the practical question is which of the thirteen statutes will still reach a project through another agency's permit, lease or consultation, whatever the FAA decides.

The public record is overwhelmingly against the waiver. Of the 2,218 comments that discuss the rule, 2,125 oppose it (95.8%); counting all 3,201 coded comments, 94.7% do. Setting aside the 983 comments that never discuss the rule does not soften the count. Most of those object to SpaceX's planned launch site at Pecan Island, Louisiana, a local dispute with its own audience.

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%).

KEY FINDINGS

1. **The industry that would use the waiver supports it and disagrees about its reach.** 12 of 13 regulated companies support, 10 of them with changes. The one that opposes, Ishpiming Aerospace Systems (0125), asks the FAA to withdraw the rule and keep case-by-case interagency consultation; its founder writes from a background in federal environmental law. SpaceX (3021) asks the FAA to finalize without narrowing, keep § 400.3(c) in full and add the eight statutes the FAA itself floated in the preamble (Ocean Dumping Act, CERCLA, Safe Drinking Water Act, RCRA, TSCA, Bald and Golden Eagle Protection Act, Migratory Bird Treaty Act, National Wildlife Refuge System Administration Act). The Commercial Space Federation (2917) wants the waiver to cover the application stage and a standing cadence of rulemakings adding laws. Blue Origin (2939) asks to narrow it to NEPA, ESA and NHPA, make it elective per application and say whether it reaches federal ranges such as Cape Canaveral and Vandenberg. Stoke Space (3178) asks the FAA to decide first whether NEPA applies to licensing at all. Rocket Lab (3094) backs the conforming amendments already proposed for parts 420, 433, 437 and 450 and supports covering leases of federal land. Relativity (3079) wants the

Department of the Air Force and NASA agreements updated so their reviews do not duplicate the FAA's. The common ground is narrow: finalize, and say how the waiver meets the reviews other agencies run at federal ranges. Confidence: high. Source: organization letters.

2. **Section 400.3(c) draws objections from both sides.** The proposed text extends the waiver to airspace closures under FAA Order 7400.2R, airport layout plan approvals and leases of federal land. The California Attorney General with four state agencies (2951) argues chapter 509 reaches only a license or permit under that chapter. Airlines for America (2603) and ALPA (2612), which oppose with an alternative, ask the FAA to take airspace closures and airport layout plans out of the waiver; Airlines for America says those decisions rest on title 49. SpaceX asks to keep the provision whole and Rocket Lab to keep the land leases. A provision attacked from the environmental side and from the aviation side is the likeliest to change. Confidence: high that the objections are on file; moderate on how a court would weigh them. Source: organization letters.
3. **Opposition is near unanimous in number and comes from people, not institutions.** Of the 2,218 comments that discuss the rule, 2,125 oppose it (95.8%), 39 support it and 54 take no clear position. Across all 3,201 coded comments the figure is 3,031 (94.7%), which also counts the 983 comments that never discuss the rule (finding 4). Individuals and anonymous filers are 96% of the record and oppose at 96%. These counts describe the record; they do not measure legal strength or predict the final rule. Confidence: high for the shares. Source: ComtIQ census.
4. **Nearly a third of the record objects to SpaceX, mostly its Louisiana site, and not to the rule.** 983 comments (30.7%) never address the proposed rule. Most object to SpaceX's planned Starbase Louisiana site at Pecan Island, Vermilion Parish, citing the marsh, the fisheries, the whooping cranes at White Lake and the risk of debris and noise; the rest object to SpaceX at Boca Chica or Cape Canaveral, or to coastal development in general. Of the 983, 906 oppose, 9 support and 68 take no clear position. ComtIQ codes each by the stance it takes and flags it off-topic so it can be set apart. A ComtIQ check of 40 flagged comments found 24 explicitly about Louisiana, 13 about SpaceX elsewhere or development in general, and 3 that do discuss the waiver and belong with the rule; a check of 20 unflagged comments naming the Louisiana site found 2 that never discuss the rule. The errors run both ways, so 983 stands as an approximate count. These comments show local resistance to a site, not a view on § 400.3, and the waiver would not end every

review such a project faces, since state permits and other agencies' permits outside § 400.3(c) remain. Confidence: moderate. Source: ComtIQ census and analyst check.

5. **The legal arguments a challenger would use are already on file.** The California Attorney General (2951), the California Air Resources Board (2819), Earthjustice for three conservation groups (2735), the Southern Environmental Law Center (2853) and Tangirnaq Native Village (0511) contest the FAA's authority, the NEPA waiver and the CZMA. Their strongest point is the reach of § 400.3(c); their objection to any categorical waiver of whole statutes is weaker, because the statute contemplates regulation. Coordinated campaigns are a small part of the record, 18 campaigns and 384 letters (12%). Confidence: high that the arguments are on file; moderate on their weight in court. Source: organization letters, ComtIQ census.

THE RECORD IN NUMBERS

MEASURE	VALUE
Submissions received (agency)	14,672
Comments posted	3,203
Comments stored and detailed	3,203 / 3,203
Attachments with text	498
Attachments that are images only	158
Distinct texts read (comment fields and attachments counted separately, campaign copies once)	3,250
Coordinated campaigns / letters	18 / 384
Comments with a coded reading	3,201 (99.9%)
Read directly / inherited from campaign	2,835 / 366
Oppose among comments flagged off-topic	906 of 983 (92.2%)

MEASURE	VALUE
Oppose among comments on the rule	2,125 of 2,218 (95.8%)
Without a readable text	2
Posting days	27

Gap recorded by the census (received vs posted): difference 11,469, posted 3,203, received 14,672.

WHO IS COMMENTING

COMMENTER TYPE	COMMENTS	SUPPORT	OPPOSE	OTHER
Academics and universities	3	0	2	1
Advocacy and nonprofit organizations	55	0	50	5
Anonymous	637	6	601	30
Foreign governments	1	0	1	0
Individuals	2,452	19	2,355	78
Law firms on behalf of clients	7	0	1	6
Local businesses	6	2	4	0
Local governments	5	1	3	1
Regulated companies	13	12	1	0
State attorneys general	1	0	1	0
State agencies	2	1	1	0
Think tanks	3	2	1	0

COMMENTER TYPE	COMMENTS	SUPPORT	OPPOSE	OTHER
Trade associations	6	5	1	0
Tribal governments	2	0	2	0
Type unclear	7	0	6	1
Unions	1	0	1	0

Individuals are reported only in aggregate. The record holds 105 organization letters; ComtIQ analysts read each one in full before publication. Organizations are named in this report where a finding or an argument rests on them; the list of all filers with their stance is in the data file organizations.csv.

Coalitions in the record: Earthjustice filing for DarkSky International, Public Employees for Environmental Responsibility and American Bird Conservancy (2735, with technical attachments filed as 2736 to 2756, one filing); the California Attorney General with CalEPA, the Natural Resources Agency, the Coastal Commission and Fish and Wildlife (2951); Louisiana Wildlife Federation with National Wildlife Federation and Pontchartrain Conservancy (0725); Friends of Canaveral with Merritt Island Wildlife Association, National Wildlife Refuge Association and National Parks Conservation Association (1075). Audubon appears nine times through chapters and the national society. The U.S. Chamber of Commerce (2483) supports in general terms and never discusses a specific statute. CCIA, expected from the intake, has no filing under its name in the posted record, and the organization letters never mention it. One filer is a foreign agency, Mexico's Agencia de Transformación Digital y Telecomunicaciones (3187); the codebook used for this docket had no category for foreign governments, so the report lists it as one by hand. It opposes with an alternative.

ARGUMENTS

Themes, by number of comments carrying them (a comment can carry several).

THEME	COMMENTS	SHARE OF CODED
air-water-pollution-toxics	892	27.9%

THEME	COMMENTS	SHARE OF CODED
climate	129	4.0%
coastal-communities	1,547	48.3%
launch-cadence-economy	302	9.4%
national-security-competitiveness	61	1.9%
noise-and-debris	478	14.9%
oversight-vs-deregulation	2,088	65.2%
permitting-delays	126	3.9%
public-participation	737	23.0%
state-authority	92	2.9%
tribal-lands	45	1.4%
wetlands-habitat	1,420	44.4%
wildlife-endangered-species	1,728	54.0%

Argument types, by number of comments.

ARGUMENT TYPE	COMMENTS	SHARE OF CODED
alternative_proposed	358	11.2%
constitutional	29	0.9%
economic_cost_benefit	566	17.7%
enforcement_feasibility	87	2.7%
environmental_impact	2,638	82.4%
federalism_state_role	47	1.5%

ARGUMENT TYPE	COMMENTS	SHARE OF CODED
health_impact	642	20.1%
none_identifiable	121	3.8%
personal_experience	767	24.0%
political_partisan	125	3.9%
procedure_apa	68	2.1%
procedure_comment_period	65	2.0%
regulatory_impact_analysis	40	1.2%
safety_risk	471	14.7%
scientific_evidence	218	6.8%
statutory_authority	433	13.5%
tribal_consultation	19	0.6%
values_moral	2,462	76.9%

Provisions, coded for organizations and law firms only.

PROVISION	OPPOSE	SUPPORT	MODIFY	MENTIONS ONLY
clean-air-act	30	4	0	14
clean-water-act	37	4	2	12
comment-period-30-days	6	0	2	0
czma	21	4	2	7
esa	39	5	0	13
mmpa	21	3	0	14

PROVISION	OPPOSE	SUPPORT	MODIFY	MENTIONS ONLY
nepa	43	13	5	12
nhpa	18	5	0	11
no-case-by-case	18	6	2	0
other-statutes	33	2	5	12
scope-four-regimes	7	8	11	5
sec-400-3-general-waiver	61	13	18	1

The statute. Section 50905(b)(2)(C) lets the Secretary prescribe "by regulation" that a requirement of a law of the United States is not a requirement for a license or permit, if the Secretary, after consulting the head of the appropriate executive agency, decides it is not necessary to protect public health and safety, safety of property, and national security and foreign policy interests. It is a different power from § 50905(b)(3), which lets the Secretary waive a requirement for an individual applicant in the public interest; the NPRM itself treats them as separate (footnote 9). So the FAA may write a general rule. The fight is over what such a rule can reach.

Against, the arguments a court would weigh. First, reach beyond the FAA license. Proposed § 400.3(c) applies the waiver to airspace closures, airport layout plan approvals and leases of federal land to operators. The California Attorney General says chapter 509 reaches only "a license or permit" under that chapter; Airlines for America (2603) says airspace and airport layout decisions rest on title 49. Removing a requirement from the FAA's own license is one thing; switching off a duty that binds another agency, or the FAA acting under a different statute, is another. This is the most exposed part of the rule. Second, categorical findings. California argues that the necessity finding and the consultation have to be made for each requirement, and a single finding for thirteen statutes, unconnected to any site, vehicle or launch rate, cannot meet them; the comments frame the same point under the APA (68 comments raise it as a procedural defect; 61 organizations oppose the general waiver). This is weaker than the first, because the statute does authorise a rule, but it gains force if the consultation record is thin. Third, NEPA and CZMA: 43 organizations oppose the NEPA waiver, and the coastal states argue the FAA must finish CZMA consistency review

before it finalises. Fourth, a thirty-day comment period on a thirteen-statute waiver (65 comments).

For, the arguments supporting the rule that the FAA may rely on. Congress authorised removal by regulation, and the rule generalises existing practice (Chamber, Rise Space, 1812 Group); predictability for financing and contracting (Chamber, Outlier, InterFlight); launch cadence and national competitiveness (Spaceport America, Commercial Space Federation); redundancy with host-agency review at federal ranges (Spaceport America, Blue Origin); site flexibility rather than a closed list (Boeing, MetaTech, SpaceX).

TechFreedom's narrower point (2714). NEPA requires review only for federal actions that significantly affect "the quality of the human environment". TechFreedom argues that what a spacecraft does in orbit, the part the FAA examines in its payload review under § 450.43 (the letter cites § 450.53), does not touch that environment inside the United States, so NEPA never applied to it, and the FAA should say so instead of waiving it. A declaration of non-applicability concedes less than a waiver and is harder to attack. It leaves untouched what opponents care about, the pad, the site and the coast. The argument has firmer footing since the Fiscal Responsibility Act of 2023, which excludes from "major Federal action" any decision "with effects located entirely outside of the jurisdiction of the United States" (42 U.S.C. 4336e(10)). Two things cut against applying it to launch licensing as a whole. Before the amendment, the D.C. Circuit applied NEPA to a federal incinerator in Antarctica because the decision was made in the United States (Environmental Defense Fund v. Massey, 986 F.2d 528 (D.C. Cir. 1993)), and whether that reasoning survives the new text is open. And launch, reentry, debris and upper-atmosphere emissions have effects that come back to American land and air, which is the point of the astronomy comment on reentry (2469). Article VIII of the Outer Space Treaty gives the United States jurisdiction over objects it registers; that does not settle where NEPA reaches. The argument is strongest confined to effects that are wholly extraterritorial.

Context. In Center for Biological Diversity v. FAA, No. 1:23-cv-01204 (D.D.C. Sept. 15, 2025), the court granted partial summary judgment to the FAA and SpaceX on the adequacy of the programmatic environmental assessment for Starship at Boca Chica. That case asked whether a review was good enough. This rule would remove the review, a different question.

COORDINATED CAMPAIGNS

Letters with near-identical text are grouped by a similarity detector whose thresholds are fixed before any docket is read. Members take the reading of the group's representative text.

CAMPAIGN	LETTERS	POSITION	REPRESENTATIVE TYPE	SPONSOR
351	174	Oppose	Individuals	not stated in text
352	41	Oppose	Individuals	not stated in text
353	22	Oppose	Anonymous	not stated in text
354	21	Oppose	Individuals	not stated in text
355	21	Oppose	Individuals	not stated in text
356	20	Undetermined	Individuals	not stated in text
357	17	Oppose	Individuals	not stated in text
358	13	Oppose	Individuals	not stated in text
359	7	Oppose	Anonymous	not stated in text
360	6	Oppose	Individuals	not stated in text
361	6	Oppose	Anonymous	not stated in text
362	6	Oppose	Individuals	not stated in text
363	5	Oppose	Individuals	not stated in text
364	5	Oppose	Individuals	not stated in text
365	5	Oppose	Individuals	not stated in text
366	5	Oppose	Individuals	not stated in text
367	5	Oppose	Individuals	not stated in text

CAMPAIGN	LETTERS	POSITION	REPRESENTATIVE TYPE	SPONSOR
368	5	Oppose with alternative	Individuals	not stated in text

No campaign names a sponsor in its text, and none of the three largest carries an attachment; all are form text typed into the comment field. The largest, 174 copies, is a Louisiana letter in three parts: the 125,000-acre Vermilion Parish site beside the White Lake Wetlands Conservation Area where whooping cranes were reintroduced in 2011, and the fisheries nursery habitat the state is spending billions to restore under the Coastal Master Plan; documented property and health harm near existing launch sites; and a legal point, that Seven County Infrastructure Coalition v. Eagle County does not license an agency to skip review altogether. It asks for withdrawal. The second, 41 copies, asks the FAA to keep project-level review and limit waivers to documented, case-specific circumstances, an alternative rather than plain opposition. The third, 22 copies, is written for a Louisiana resident who supports economic development and commercial space and asks that meaningful environmental review stay in the licensing process. The three use complementary arguments aimed at different readers; the record does not show common sponsorship or coordination among them. By ComtIQ's rule the sponsor is reported as not declared in the record; the firm does not look for organizers outside the docket. All eighteen campaigns oppose except one group of 20 letters with no readable stance.

AGENCY RESPONSE

Not applicable at the proposed-rule stage. At the final rule, each significant issue above is matched to the preamble's response and unanswered issues are flagged.

IMPLICATIONS AND SCENARIOS

Each judgment carries a likelihood term and band (ICD 203), a confidence and the test that settles it, and goes into the forecast log.

ID	JUDGMENT	LIKELIHOOD	CONFIDENCE	BASIS	SETTLES IT
S1	Final rule published by 31 December 2027	Likely (55 to 80%)	Moderate	Administration priority (EO 14335) and support of the launch operators; consultation with CEQ, EPA, Interior and others not yet on the record	Federal Register
S2	§ 400.3(c) narrowed or removed for airspace closures or airport layout plans	Roughly even (45 to 55%)	Low	Objection from aviation (A4A, ALPA) and from California, against SpaceX's request to keep it whole	Final text of § 400.3(c)
S3	Final list adds any of the eight statutes the FAA floated	Unlikely (20 to 45%)	Moderate	Asked for by SpaceX and CSF, but each needs its own consultation and finding	Final text of § 400.3(b)
S4	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 (55 to 80%)	Moderate	Asked by Blue Origin, Relativity and Spaceport America; the preamble already asks about differences between sites	Final rule and preamble

ID	JUDGMENT	LIKELIHOOD	CONFIDENCE	BASIS	SETTLES IT
S5	Lawsuit challenging the rule filed within six months of publication, if the final text keeps a categorical NEPA waiver	Likely (55 to 80%)	Moderate	Detailed legal objections from California and the Earthjustice coalition; environmental groups sued over the Starship license before. The record shows the arguments, not a suit in preparation	Court dockets
S6	Proposal withdrawn by 31 December 2027	Very unlikely (5 to 20%)	Moderate	Industry opposition limited to one small firm; policy set by executive order	Federal Register, Unified Agenda

What would change this view: a supplemental notice reopening comments, which would push S1 out; a final rule that drops § 400.3(c), which would lower the stakes of S5 without removing it.

RECOMMENDED ACTIONS AND DATES

What the record means for each reader, and what to do before the final rule.

READER	WHAT THE RECORD SHOWS	WHAT TO DO NOW
Operator launching from a federal range	The waiver takes requirements out of the FAA license. Department of the Air Force and NASA reviews at ranges such as Cape Canaveral and Vandenberg continue unless their agreements change, which Blue Origin and Relativity asked for (S4)	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

READER	WHAT THE RECORD SHOWS	WHAT TO DO NOW
Operator or spaceport relying on federal land leases or airspace closures	Section 400.3(c) is the provision most likely to be narrowed (S2) or challenged (S5)	Do not build a timeline on § 400.3(c) until the final text and any challenge are known
Developer at a contested coastal site	Most of the 983 comments that never discuss the rule oppose one Louisiana site; state permits and federal permits outside § 400.3(c) still apply	Plan for opposition at the state and permit level, apart from the fate of the rule
Law practice	The challengers' arguments are on file in full: California Attorney General (2951), Earthjustice (2735), SELC (2853), with Airlines for America (2603) on § 400.3(c)	Read those four letters first; the authority question on § 400.3(c) is where a challenge is strongest
Investor	A final rule is likely; its reach is uncertain and a lawsuit is likely if it keeps a categorical NEPA waiver	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	Agreement on finalizing and on clarity at federal ranges; split on the list of statutes, on elective or mandatory use and on the eight added laws	Press the points the launch operators share; the split points are where the FAA has to choose

Dates: 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.

METHOD, SOURCES AND LIMITS

Collection. Every posted comment and attachment in docket FAA-2026-8614 was pulled through the Regulations.gov v4 API and stored with a dated snapshot; attachments were read as PDF, Word or plain text, scanned PDFs through OCR, and image-only files recorded as comments without words. Census generated Nov. 4, 2026.

Processing. Exact and near duplicates grouped and coordinated campaigns detected as described above. One representative per campaign was coded; 2,835 comments were read one by one, holding 3,250 distinct texts once each attachment is counted on its own, and campaign members inherit their representative's reading.

Analysis. Each comment was read and coded by ComtIQ's AI coding system against a fixed codebook, returning position, commenter type, themes, argument types, provisions for organizations, and the sentence each judgment rests on. The system is calibrated against comments coded by ComtIQ analysts, and every organization letter was read in full by an analyst before publication.

Limits. 11,469 submissions the agency counts as received are not posted; the census cannot say whether they are duplicates, late filings or withheld. 2 posted comments carry no readable text. Texts above 40,000 characters were read up to that limit and flagged. Position of individuals is the most reliable field; themes and arguments are automated readings with lower agreement and are reported as counts, not as findings, unless an analyst confirmed them. No comment is labeled as written by AI; nothing here speaks to authorship.

APPENDIX. CITED COMMENTS

COMMENT	LINK
FAA-2026-8614-0125	https://www.regulations.gov/comment/FAA-2026-8614-0125
FAA-2026-8614-0511	https://www.regulations.gov/comment/FAA-2026-8614-0511
FAA-2026-8614-0725	https://www.regulations.gov/comment/FAA-2026-8614-0725
FAA-2026-8614-1075	https://www.regulations.gov/comment/FAA-2026-8614-1075
FAA-2026-8614-2483	https://www.regulations.gov/comment/FAA-2026-8614-2483
FAA-2026-8614-2603	https://www.regulations.gov/comment/FAA-2026-8614-2603
FAA-2026-8614-2612	https://www.regulations.gov/comment/FAA-2026-8614-2612
FAA-2026-8614-2714	https://www.regulations.gov/comment/FAA-2026-8614-2714

COMMENT	LINK
FAA-2026-8614-2735	https://www.regulations.gov/comment/FAA-2026-8614-2735
FAA-2026-8614-2819	https://www.regulations.gov/comment/FAA-2026-8614-2819
FAA-2026-8614-2853	https://www.regulations.gov/comment/FAA-2026-8614-2853
FAA-2026-8614-2917	https://www.regulations.gov/comment/FAA-2026-8614-2917
FAA-2026-8614-2939	https://www.regulations.gov/comment/FAA-2026-8614-2939
FAA-2026-8614-2951	https://www.regulations.gov/comment/FAA-2026-8614-2951
FAA-2026-8614-3021	https://www.regulations.gov/comment/FAA-2026-8614-3021
FAA-2026-8614-3079	https://www.regulations.gov/comment/FAA-2026-8614-3079
FAA-2026-8614-3094	https://www.regulations.gov/comment/FAA-2026-8614-3094
FAA-2026-8614-3178	https://www.regulations.gov/comment/FAA-2026-8614-3178
FAA-2026-8614-3187	https://www.regulations.gov/comment/FAA-2026-8614-3187

The data behind the tables (organizations with their stance, campaigns, position by commenter type) is published with this report as CSV files.