

**COMMENTS OF CALIFORNIA ATTORNEY GENERAL, CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY, CALIFORNIA NATURAL RESOURCES
AGENCY, CALIFORNIA COASTAL COMMISSION, AND CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE**

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Via electronic submission at www.regulations.gov

Sean Duffy
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue SE
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Bryan Bedford
Administrator
Federal Aviation Administration
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Re: Docket # FAA–2026–8614
Comments on *Notice of Proposed Rulemaking: Waiver of Specified Statutory
Requirements for Commercial Space Launch and Reentry Actions* (FAA 26-11)
91 Fed. Reg. 47,997 (July 30, 2026)

Dear Mr. Duffy and Mr. Bedford:

The Office of the Attorney General of California, California Environmental Protection Agency, California Natural Resources Agency, California Coastal Commission, and California Department of Fish and Wildlife (collectively, California) respectfully submit these comments on the Federal Aviation Administration (FAA)’s Notice of Proposed Rulemaking, entitled *Waiver of Specified Statutory Requirements for Commercial Space Launch and Reentry Actions*, published at 91 Fed. Reg. 47,997 (July 30, 2026) (Proposed Rule). The FAA proposes to amend its commercial space licensing regulations to waive requirements under thirteen environmental laws for commercial space licenses and permits to operate a launch site, licenses to operate a reentry site, experimental permits, and licenses to operate a launch or reentry vehicle. This proposed amendment goes beyond the FAA’s statutory authority, violates the APA, and fails to address a vast array of foreseeable impacts to the environment and public health and safety. California strongly urges the FAA to withdraw this Proposed Rule. If the FAA proceeds with the Proposed Rule, however, it should circulate a revised rule for further public comment. The FAA should also issue a nationwide Environmental Impact Statement (EIS) that fully analyzes the impacts of the Proposed Rule, and comply with the Coastal Zone Management Act consistency determination process, before finalizing it.

I. BACKGROUND

A. The Proposed Rule

The Proposed Rule invites comment on the broad waiver of the requirements of thirteen U.S. environmental laws. The FAA claims to invoke statutory authority under the Commercial Space Launch Act of 1984, as amended and codified at 51 U.S.C. 50901–50924, and as delegated by the Secretary of Transportation (Secretary). 91 Fed. Reg. at 47,997. Section 50905(b)(2)(C) of the Act provides that the Secretary may promulgate a “regulation that a requirement of a law of the United States not be a requirement for a license or permit if the Secretary, after consulting with the head of the appropriate executive agency, decides that the requirement is not necessary to protect the public health and safety, safety of property, and national security and foreign policy interests of the United States.” 51 U.S.C. § 50905(b)(2)(C).

The FAA proposes to amend title 14 of the Code of Federal Regulations to add a “General Waiver” at section 400.3, making such a waiver applicable, at subdivision (a), to licenses to operate a launch or reentry site, licenses to operate a launch or reentry vehicle, and experimental permits for space launches (collectively “FAA Licenses”). 91 Fed. Reg. at 48,001. Section 400.3, subdivision (b) would waive the following federal legal requirements as to FAA Licenses: (1) the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*; (2) U.S. Department of Transportation Act, 49 U.S.C. 303(f); (3) Endangered Species Act, 16 U.S.C. 1531 *et seq.*; (4) Clean Water Act, 33 U.S.C. 1251 *et seq.*; (5) Coastal Zone Management Act (CZMA), 16 U.S.C. 1451 *et seq.*; (6) Clean Air Act, 42 U.S.C. 7401 *et seq.*; (7) National Historic Preservation Act, 54 U.S.C. 300101 *et seq.*; (8) Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*; (9) Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*; (10) Wild and Scenic Rivers Act, 16 U.S.C. 1271 *et seq.*; (11) Noise Control Act of 1972, 42 U.S.C. 4901 *et seq.*; (12) Rivers and Harbors Act, 33 U.S.C. 401 *et seq.*; and (13) National Marine Sanctuaries Act, 16 U.S.C. 1431 *et seq.* *Id.* at 48,001–48,002. In short, the effect of proposed Section 400.3, subdivisions (a) and (b), is to broadly prescribe that these thirteen federal statutes do not apply at all to FAA Licenses.

The proposed new 14 CFR section 400.3, subdivision (c) applies the general waiver of the thirteen federal statutes to a license or permit associated with (1) issuance, renewal, or modification of FAA Licenses, (2) authorizing airspace closures, (3) unconditional or mixed Airport Layout Plan (ALP) approval of airport development for which the FAA has ALP approval authority, or (4) lease of land to operate from a Federal site. 51 Fed. Reg. at 48,002.

These wide-ranging general waivers are in excess of the FAA’s statutory authority, violate NEPA and the APA, and are likely to cause harmful environmental and health impacts to California.

B. Space Launch Activities in California

The State of California hosts space launch activities, which currently occur primarily at the Vandenberg Space Force Base on the coast north of Santa Barbara, California. California collaborates with federal agencies to expand launch capabilities while ensuring the protection of natural resources in the State.

California's launch capabilities are extensive, with over 2,000 launches to date. A third of U.S. space technology companies call California home, and the space industry is a thriving sector of California's economy accounting for about \$37 billion in the State's annual gross domestic product output and over 110,000 California jobs. California is also home to a rich and diverse environment with extensive natural resources—from the varied coast islands off the coastline to the nine National Parks, it is the most biodiverse and ecologically diverse state in the Nation. California has a long history of creating one of the largest economies in the world (currently the fourth or fifth in the world, and the largest of any State in the Nation) while protecting its rich environment. These two goals are not in conflict, but in harmony. California fosters an environment where human innovation and engineering thrive, including innovation in space. The Proposed Rule threatens to harm this balance to the detriment of California's economy, environment, and natural resources.

Currently, there are two spaceports in California: (1) Vandenberg Space Force Base, which is a site of the Falcon 9 launch program and similar launch programs and (2) the Mojave Air and Space Port, which has capacity for horizontal launches. California is also aware of preparations at different stages for two other possible launch locations. In July 2026, the Bureau of Ocean Energy Management (BOEM) solicited public comments on the potential use of the Outer Continental Shelf for offshore space launch activities, and the City of Paso Robles, California, is working toward a conversion of its municipal airport into a commercial space launch facility. Commercial space launches from the Vandenberg Space Force Base, and others, can result in substantial impacts to the environment. Among other things, rocket launches cause sonic booms, noise, and vibrations which are felt in surrounding communities and disturb protected wildlife and marine animals. Space launches also degrade the quality of the air that nearby residents breathe, potentially harming their health, and may additionally damage cultural resources and property.

Historically, California has worked cooperatively to support the space industry in the state if appropriately balanced with environmental protections. California can only support the development of additional launch sites and foster California's innovative space economy *because* federal and state environmental laws help ensure their environmental and public harms are known in advance and can be mitigated, offset, or avoided. To date, none of these spaceports

have been halted or obstructed by the thirteen laws that the FAA proposes to waive. These laws are, however, necessary to protect the public health and safety and ensure our state's natural resources, public safety, and economic sectors continue to be preserved. The future of space launch technology and capability is unknown. Presently, it is unclear what types of rocket technologies, the locations of launch sites, and the frequency and trajectory of launches and reentries, will be possible or proposed in the future and would be allowed to invoke this general waiver. The FAA cannot decide now that thirteen laws are unnecessary, whatever the future of space launch innovation and activities might hold. To the extent the effects of this sweeping waiver can be foreseen, the FAA must complete NEPA and CZMA review, as discussed below, before finalizing the Proposed Rule.

II. THE PROPOSED RULE IS OVERBROAD, UNCLEAR, AND IN EXCESS OF THE FAA'S STATUTORY AUTHORITY

The FAA's proposed general waiver of thirteen U.S. environmental and natural resource laws is overbroad and unlawful for several reasons. First, it exceeds the FAA's statutory authority, which is limited to granting waivers of particular requirements of particular laws with respect to single licenses or permits. Second, before the FAA may grant a waiver of a legal requirement, it must make a supportable determination, after consulting with the head of the appropriate executive agency, that the waived federal requirement is "not necessary to protect the public health and safety, safety to property, and national security and foreign policy interests." 51 U.S.C. § 50905(b)(2)(C). But here, the FAA proposes to fully exempt a rapidly innovating industry from complying with well-established U.S. environmental laws designed to protect the environment, the public health and safety, and ensure public transparency with no limits on the proposed waiver's applicability to future rocket technologies or future launch site locations. The open-ended and unlimited scope of the waiver is so overbroad that the FAA has not, and could not, make such a determination. And third, the FAA fails to cite, and entirely lacks, the authority to waive legal requirements for airspace closures, ALP approvals, or leases of federal land.

In order for a regulation to be valid, it must be consistent with the statute under which it is promulgated. *United States v. Larinoff*, 431 U.S. 864, 873 (1977). The "agency's interpretation of the statute cannot supersede the language chosen by Congress." *Pacific Gas and Elec. Co. v. U.S.*, 664 F.2d 1133, 1137 (9th Cir. 1981) (internal quotation marks omitted). As stated above, the FAA claims that its Proposed Rule is authorized by 51 U.S.C. § 50905(b)(2)(C), which provides that the Secretary "may prescribe...by regulation that a law of the United States not be a requirement for a license or permit if the Secretary, after consulting with the head of the appropriate executive agency, decides that the requirement is not necessary to protect the public health and safety, safety of property, and national security and foreign policy interests of the United States."

Section 50905(b)(2)(C), by its plain language, does not authorize the FAA to exempt itself from entire categories of federal laws. It is explicitly narrower in its grant of authority to waiving “a requirement of a law . . . for a license or permit.” *Id.* This statutory authorization contemplates a targeted waiver of “a requirement of law” in a Notice of Proposed Rulemaking where the Secretary or FAA can and does make a determination, supported by evidence and after consulting with the head of the appropriate executive agency, that the requirement of law “is not necessary to protect the public health and safety, safety of property, and national security and foreign policy interests of the United States.” *Id.* FAA’s proposed categorical waiver of federal laws, rather than “a requirement of a law,” is not authorized by statute and cannot satisfy the statute’s consultation and finding requirements. *Id.* (emphasis added). Furthermore, Section 50905(b)(2)(C) is limited to waiving a requirement for “a license *or* permit,” not general categories of licenses or permits. The Proposed Rule does not identify “a license or permit” by application, applicant, location, launch program, or any other identifier of the license or permit that will be exempt. *Id.* Instead, the Proposed Rule purports to authorize a blanket, open-ended waiver, effectively waiving the applicability of federal legal requirements to the FAA’s issuance of FAA Licenses. This is beyond the authorization granted under Section 50905(b)(2)(C).

The Proposed Rule is also in excess of the FAA’s statutory authority because the FAA cannot determine and decide now that the requirements of all thirteen of the specified laws are “unnecessary to protect public health and safety, safety of property, and national security and foreign policy interests.” 51 U.S.C. § 50905(b)(2)(C). Indeed, the thirteen federal statutes, including NEPA, the CZMA, the Clean Air Act, Clean Water Act, Endangered Species Act, Noise Control Act, National Marine Sanctuaries Act, and Magnuson-Stevens Fishery Conservation and Management Act, are all designed to protect the environment, public health and safety, and economic interests. One purpose of NEPA, for example, is to “promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man.” 42 U.S.C. § 4321. A purpose of the Clean Air Act is to “protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1). And the policies behind the Clean Water Act include prohibiting the discharge of “toxic pollutants in toxic amounts,” and for federal agencies to “co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.” 33 U.S.C. §§ 1251(a)(3), (g). A waiver of these statutory requirements forecloses the federal safeguards that identify and, when possible, avoid harm to public health and safety and to the environment.

The FAA also cannot determine and decide now that the requirements of all thirteen of the specified laws are unnecessary regardless of the type of rocket launched and from what location in the Nation. Nothing in the Proposed Rule identifies, classifies, or limits the FAA Licenses that would be exempt from the thirteen federal laws. It could involve launches of

rockets of any size or technology, whether currently in use or in development or only yet imagined. It could apply to any frequency of launches, from daily to hourly or less, and to launches generating any level of sound, pressure wave, or sonic boom across the landscape, impacting communities, schools, hospitals, or other sensitive receptors. The FAA cannot make a decision and determination that each waived requirements of federal law is not necessary to protect “the public health and safety” or “safety of property,” 51 U.S.C. § 50905(b)(2)(C), because the FAA cannot know the universe of FAA Licenses that would be subject to this general waiver of law.

Finally, Section 400.3, subdivisions (a) and (b), of the Proposed Rule would broadly exempt FAA Licenses from the thirteen laws, so it is unclear what the FAA intends to further exempt in Section 400.3, subdivision (c). To the extent “licenses and permits” in section 400.3, subdivision (c), could be read to mean any “licenses and permits” other than FAA Licenses, or subdivision (c) seeks to apply the waiver of the thirteen laws to the actions in subdivision (c)(2)–(4), the proposal far exceeds the authority in 51 USC 50905(b)(2)(C) and is unlawful. Section 50905(b)(2)(C) grants limited authorization to waive a legal requirement for “a license or permit under this Chapter,” 51 U.S.C. § 50905(b) [referring to Chapter 509 of Title 51 of the United States Code]. The statute grants no authority to waive federal requirements of law for any licenses, permits, or other federal actions beyond FAA Licenses, and the FAA does not cite any such authority. As proposed, subdivision (c) is ambiguous and too unclear to evaluate what actions other FAA Licenses, if any, the FAA seeks to exempt and, therefore, it is too unclear for meaningful comment.

III. FINALIZING THE PROPOSED RULE WOULD VIOLATE NEPA, THE CZMA, AND THE APA

A. The FAA Must Take a Hard Look at the Environmental Impacts under NEPA Before Finalizing the Proposed Rule

The FAA cannot reasonably conclude that the proposed action of nationwide commercial space launches need not comply with thirteen U.S. environmental laws without first ensuring it has taken a hard look at the context-specific conditions of its proposed action and at necessary mitigation measures. NEPA requires that the FAA assess the environmental consequences of its actions by incorporating the assessment of those consequences in its decision-making process. *See, e.g., City of Alexandria, Va. v. Slater*, 198 F.3d 862, 866 (D.C. Cir. 1999). NEPA does so by requiring that agencies fulfill what the Supreme Court has described as NEPA’s twin goals. “First, it places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action.” *Baltimore Gas & Elec. Co.*, 462 U.S. 87, 97, 103 S. Ct. 2246, 2252 (1983). “Second, it ensures that the agency will inform the public that it has indeed considered environmental concerns in its decision-making process.” *Id.* NEPA’s mandate that agencies consider the environmental effects of their actions does not dictate results, but is

instead a required procedure. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351, 109 S. Ct. 1835, 1846 (1989) (“NEPA merely prohibits uninformed—rather than unwise—agency action.”). Compliance with NEPA’s procedural requirements is not discretionary. *Kleppe v. Sierra Club*, 427 U.S. 390, 406, 96 S.Ct. 2718, 2728 (1976).

As discussed above, the Commercial Space Launch Act of 1984 does not afford the FAA the authority to waive the application of NEPA, or other statutes, to its licensing actions nationwide. But if the FAA decides to proceed with a final rule, it must comply with NEPA’s procedural requirements by preparing a national EIS.

As discussed above, EISs prepared by the FAA and other federal agencies establish that launch sites, reentry sites, experimental permits, and launch and reentry vehicles have the potential to cause significant environmental impacts. For example, the EIS prepared for the Authorization of Changes to the Falcon Launch Program at Vandenberg Space Force Base in California analyzed the impacts that increase in launches would have on air quality, water quality, human health and safety, among many other resources. *See* Dept. of the Air Force, Final Environmental Impact Statement for Authorizing Changes to the Falcon Launch Program at Vandenberg Space Force Base, California, EISX-007-57-USF-1728547807 (Oct. 2025) at S-2 through S-7, 3-1 through 3-118

<https://vsfbfalconlauncheis.com/Portals/falconprogrameis/PublicDocuments/FEIS%20Document/s/VSFBFalcon100LaunchFinalEIS20251014.pdf> (Vandenberg EIS). And the Record of Decision from the Air Force authorizing the changes analyzed in that EIS required the implementation of 17 pages of mitigation measures to reduce impacts to resources including air, water, and numerous species. *See generally* Dept. of the Air Force, Record of Decision – Attachment A, Mitigation Measures that are to be Implemented and Carried Forward as Directed in this Record of Decision

<https://vsfbfalconlauncheis.com/Portals/falconprogrameis/PublicDocuments/FEIS%20Document/s/VSFB100LaunchEISRODAttachmentAMitigationsFINAL.pdf>

Waiving NEPA for FAA’s licensing actions would accordingly necessitate the FAA preparing an EIS because prior EISs prepared for similar actions establish that discrete FAA actions limited to single sites have the potential to cause significant environmental impacts. Those EISs have analyzed the potential impacts from a small subset of what the agency is proposing to exempt from environmental analysis in this Proposed Rule. The EIS for any final rule, if that rule were to waive the applicability of the laws specified in the Proposed Rule, would accordingly need to consider the potential environmental impacts that the licensing actions could have in every possibly impacted location. It would similarly need to provide opportunities for public notice and comment in those locations and would need to consider alternatives to the Proposed Rule.

The FAA cannot avoid its responsibilities under NEPA by arguing that they will be fulfilled by other federal agencies. In the Proposed Rule, the FAA notes that “many commercial space launch and reentry operations take place at Federal sites owned or operated by the Federal Government such as the National Aeronautics and Space Administration (NASA), the U.S. Department of the Air Force (DAF), and other agencies.” 91 Fed. Reg. at 47,998. It further states that such operations often require from those other agencies “a major Federal action subject to NEPA given the Federal agency’s substantial Federal control and responsibility over the action and the potential for significant impacts to the human environment.” *Id.* The FAA then concludes that “[w]aiving NEPA only for the commercial space licensing and permitting actions” subject to the FAA’s approval “would merely shift the responsibility for leading the NEPA review and ensuring compliance with other requirements from one executive agency to another.” *Id.*¹

This conclusion is fundamentally flawed for at least two reasons. First, as the FAA notes, many, but not all, commercial space launch and reentry operations take place at Federal sites. If those operations take place at non-federal sites, the FAA’s failure to prepare a NEPA analysis would result in no NEPA analysis being done. Second, the FAA has already relied on other federal agencies to lead NEPA reviews for the actions included in the Proposed Rule. It does not require the waiver contemplated in the Proposed Rule to do so. For example, in the Vandenberg EIS mentioned above, the Air Force prepared the EIS as the lead federal agency, and the FAA participated as a cooperating agency. *See Vandenberg EIS at S-1* (“DAF is the lead agency for the Proposed Action and is responsible for the scope and content of this EIS in accordance with (IAW) the Memorandum of Understanding between FAA and DAF. The FAA and United States (U.S.) Coast Guard (USCG) are cooperating agencies. The FAA is a cooperating agency because the scope of the Proposed Action includes the FAA’s issuance of licenses along with potential license renewals and modifications for SpaceX operations analyzed in this EIS. In addition, the FAA must approve related airspace closures for launch operations.”).

Nor does the Supreme Court’s recent decision in *Seven County Infrastructure Coalition* provide support for the FAA’s attempt to ignore environmental impacts of its licensing decisions. *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 605 U.S. 168 (2025). In *Seven County*, the Supreme Court found that the Court of Appeals for the District of Columbia Circuit had pushed the boundaries of what a federal agency must consider in a NEPA analysis too far. The Court held that NEPA does not require agencies to “address[] effects from another project that is separate in time or place from the project at hand—particularly when it would require the agency to speculate about the effects of a separate project that is outside its regulatory jurisdiction.” *Id.* at 188-89 (citations omitted). Here, in contrast, the FAA seeks to cite dicta from the decision as justification for ignoring environmental effects of its *own* actions. But an FAA licensing action is most certainly not “a separate project that is outside of its regulatory jurisdiction” and *Seven County* accordingly provides no support for the FAA’s attempt to abdicate its duty to address the reasonably foreseeable impacts of such actions.

B. The FAA Must Comply with the Coastal Zone Management Act Before Finalizing the Proposed Rule.

The FAA has not complied with the CZMA and cannot reasonably determine that the Proposed Rule would have no potential direct or indirect effect on coastal resources. Before finalizing the Proposed Rule, the FAA must review and determine it is consistent to the maximum extent practicable with the enforceable policies of the California Coastal Management Plan, and other affected States' coastal management plans, and submit that consistency determination to the State agency for review and public hearing. 16 U.S.C. § 1456(c)(1)(A); 15 C.F.R. §§ 930.31(a), 930.36. Any "Federal agency activity" must comply with the CZMA's consistency determination process, 16 U.S.C. § 1456(c)(1)(A), which includes early consultation with the State agency, submittal of a consistency determination, public participation, and an opportunity for the State agency to respond, 15 C.F.R. §§ 930.31, 930.39, 930.41, 930.42.

A Federal agency activity is "any functions performed by . . . a Federal agency in the exercise of its statutory responsibilities" and include "a range of activities where the Federal agency makes a proposal for action initiating an activity or series of activities when coastal effects are reasonably foreseeable," including "a proposed rulemaking that alters uses of the coastal zone." 15 C.F.R. § 930.31(a); 65 Federal Register 77124-01; 71 FR 788-01. Whether an activity would have a reasonably foreseeable effect on coastal resources is "determined by looking at reasonably foreseeable direct or indirect effects on any coastal use or resource" and includes actions even if they have "minimal or no environmental effects" that may affect "public access and recreational opportunities," among other things. 15 C.F.R. § 930.33.

The FAA cannot reasonably determine that the Proposed Rule could have no direct or indirect effect on a coastal resource. It is known that commercial space launches can impact coastal resources due to direct exposure to rocket launches and repeat exposure to sonic booms. It is also known that rocket launches can necessitate the closure the public parks and public access to the coast. Even more, Section 400.3, subdivision (c) of the Proposed Rule appears to attempt to extend the waiver to certain licenses and permits associated with Airport Layout Plan (ALP) approval of airport development. The meaning of subdivision (c) is ambiguous and unclear. To the extent the FAA intends to extend the waiver to the development of new airports, these actions would further impact coastal resources and may impact California's NOAA-approved review of new airports under the CZMA.

Even if the FAA could determine that the Proposed Rule could have no reasonably foreseeable direct or indirect effects on any coastal use or resource, which it cannot, the FAA must make that determination with findings before finalizing this rulemaking. 15 C.F.R. § 930.33, 930.35. The FAA has not done so.

C. The Proposed Rule Violates the Administrative Procedure Act

The Proposed Rule violates the Administrative Procedure Act (APA) because it is “arbitrary, capricious, an abuse of discretion,” and “otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). Under the APA, an agency must “articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (*State Farm*) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)). While agencies may change their existing policies, they must “provide a reasoned explanation for the change.” *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016) (citing *Nat’l Cable & Telecommunications Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 981–82 (2005)); *see also Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1913 (2020).

In reviewing the agency’s explanation, a court “must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.” *State Farm*, 463 U.S. at 43 (quotations omitted). An agency’s decision is arbitrary and capricious if, among other things, the agency has “entirely failed to consider an important aspect of the problem” or “offered an explanation for its decision that runs counter to the evidence before the agency.” *Id.*

1. The Proposed Rule exceeds the FAA’s statutory authority

The Proposed Rule is “not in accordance with law,” and therefore violates the APA, because it is contrary to the FAA’s statutory mandate. 5 U.S.C. § 706(2)(A); *see, e.g., Nat’l Env’t Dev. Assn’s Clean Air Project v. EPA*, 752 F.3d 999, 1003 (D.C. Cir. 2014). As explained in *supra* section II, 51 U.S.C. section 50905(b)(2)(C) narrowly authorizes waiving “a requirement of a law . . . for a license or permit.” This statutory language narrowly referencing waiver of “a requirement of a law” does not authorize the categorical waiver of an entire environmental law consisting of many distinct requirements—and certainly not *thirteen* environmental laws. *Id.* (emphasis added). Nor does the language allowing waivers for “a license or permit” authorize such waivers for the broad categories encompassed by the FAA Licenses. *Id.* (emphasis added). Furthermore, as explained above, 51 U.S.C. section 50905(b)(2) provides *no* authority for waiving federal legal requirements with respect to authorization of airspace closures, approval of ALPs, or leases of Federal lands, as none of these actions fall under the Commercial Space Launch Act of 1984.

2. The FAA provides no reasoned explanation for the Proposed Rule

In addition to being unsupported by the FAA’s statutory authority, the Proposed Rule is arbitrary and capricious because it is entirely bereft of necessary facts and reasoned explanation.

Indeed, other than a brief recital of FAA regulations that implement NEPA, there is no discussion at all of the laws that the FAA proposes to waive. An agency action is arbitrary and capricious where it is not “reasonable and reasonably explained.” *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021); *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016); *Amerijet Int’l, Inc. v. Pistole*, 753 F.3d 1343, 1350 (D.C. Cir. 2014). In the Proposed Rule, FAA only states, without further analysis, that it seeks to “reduce regulatory barriers” and “eliminate environmental review processing while protecting public health and safety, safety of property, and national security interests and foreign policy interests of the U.S.” 91 Fed. Reg. at 47,998. The FAA fails to provide any explanation of which requirements of the thirteen laws that it seeks to waive apply to FAA Licenses, how these requirements have applied to such licenses and permits in the past, and what the potential impacts of waiving these laws might be, including how waiving these laws would promote efficiency for commercial space activity, or how the waiver protects health or safety. The FAA provides no specific example nor does it offer any supporting study. Thus, not only is the FAA’s explanation unsatisfactory, but there is no explanation whatsoever of the reasons for, or impacts of, the Proposed Rule. A proposed rule that “relies upon a threadbare explanation,” as the FAA does here, is arbitrary and capricious. *Spirit Airlines, Inc. v. U.S. Dep’t of Transportation & Federal Aviation Admin.*, 997 F.3d 1247, 1255 (D.C. Cir. 2021).

The FAA also fails to provide a reasoned explanation for its proposal to eliminate NEPA requirements and does not “make a rational connection between the facts found and the choice made.” *State Farm*, 463 U.S. at 43. In the mere handful of paragraphs dedicated to NEPA, the FAA acknowledges that the issuance of FAA Licenses constitutes a “major federal action” under NEPA which requires environmental review “that may be extensive.” 91 Fed. Reg. 47,998. However, the only basis that the FAA provides for eliminating NEPA environmental review requirements is that such reviews “*can* involve multiple statutes and agencies, *sometimes* leading to duplicative processes and delay for near-term launch operations.” 91 Fed. Reg. 47,998 (emphasis added). But an observation, whether accurate or not, that NEPA environmental reviews can sometimes be duplicative, is no justification for eliminating *all* NEPA reviews for FAA Licenses on the part of the FAA. Moreover, as explained in *supra* section III.A, in many circumstances, if the FAA fails to perform a NEPA review for a project, this would result in no NEPA review being done at all. The environmental protection and disclosure requirements that Congress put in place under NEPA would be vitiated.

Furthermore, as discussed in *supra* section II, the FAA’s limited statutory authority to waive the requirements of the thirteen environmental laws at issue does not extend to anything other than individual FAA Licenses. Yet, it appears the FAA seeks, in Section 400.3, subdivision (c), of the Proposed Rule, to extend the waiver beyond FAA Licenses, though that is unclear. The FAA has made no attempt to clearly and unambiguously define what the waiver would apply to, justify why the waiver of federal requirements for anything other than FAA Licenses is

necessary, or justify how such a waiver would not impact public health and safety or safety of property. The FAA implies that because it believes the proposed waiver of laws for FAA Licenses would “merely” shift the responsibility for NEPA reviews to other agencies, the FAA proposes expanding the Proposed Rule beyond FAA Licenses. 91 Fed. Reg. at 47,998–99. This conclusory statement, however, which appears to be based on the anticipated result of eliminating NEPA reviews for FAA Licenses, does not provide any reasoned explanation for why environmental laws should not apply to wholly different categories of licenses, permits, or other actions.

Additionally, as further discussed in *supra* section III.A, and contrary to the FAA’s statements, the Supreme Court’s decision in *Seven County Infrastructure Coalition* provides no support for the Proposed Rule. In *Seven County*, the Supreme Court concluded that a 3,600-page Environmental Impact Statement was sufficient under NEPA. *Seven County*, 605 U.S. at 175–76, 186 fn. 5. In holding that the subject agency did not need to broaden its environmental analysis, the Court stated a need for a “course correction” that limited “agency analysis of separate projects, more consideration of attenuated effects, more exploration of alternatives to proposed agency action, more speculation and consultation and estimation and litigation,” resulting in “[d]elay upon delay.” *Id.* at p. 183. But the Court’s rejection of overbroad and speculative NEPA analysis does not equate to holding that *no* NEPA analysis is required. Here, the FAA arbitrarily and capriciously misconstrues the stated need for a “course correction” as equivalent to the elimination of the *entire* course of environmental review that is mandated by federal law. *Seven County* does not stand for such a proposition.

3. The FAA has failed to consider the impacts of its Proposed Rule

The Proposed Rule, if finalized, would likely result in health, safety, and financial impacts to the State of California in the future. The Proposed Rule contains no discussion of these impacts, or any other environmental, health, or safety impacts, despite its proposal to issue a broad and sweeping waiver of the application of thirteen environmental laws to licenses and permits for commercial space activities. The Proposed Rule therefore is not based on a “consideration of the relevant factors,” and the FAA has “entirely failed to consider [] important aspect[s] of the problem.” *State Farm*, 463 U.S. at 43.

Instead, the FAA merely states that it will consult with other appropriate executive agencies “during the pendency of this rulemaking,” and finds, without explanation, that it “has determined this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have federalism implications.” 91 Fed. Reg. at 47,999–48,000. This reference to future consultations and conclusory statement of no substantial direct effect on the States does not substitute for a reasoned explanation and is arbitrary and capricious. *See Spirit Airlines*, 997 F.3d at 1255

Indeed, the Proposed Rule, if adopted, would have a substantial direct effect on California, which enjoys the protections of the thirteen environmental laws that the FAA has proposed waiving. For example, the FAA recognizes that the issuance of the FAA Licenses constitutes a major Federal action under NEPA, triggering an environmental review. 91 Fed. Reg. At 47,998. Indeed, the FAA recently participated in developing the Vandenberg EIS as a cooperating agency for licensing for SpaceX Falcon and Falcon Heavy launches at Vandenberg Space Force Base. That NEPA review identified potential impacts to protected species and mitigations, in addition to air quality and noise impacts of space launches. By completely eviscerating NEPA requirements with respect to the enumerated licenses and permits, the regulations set forth in the Proposed Rule would allow the FAA to evade disclosure of environmental impacts to California and its residents, avoid considering alternatives that might lessen these impacts, and prevent any informed discussion of mitigation measures that the FAA could adopt. This would vitiate NEPA's twin aims of ensuring the federal government has considered the environmental impacts of its actions and has disclosed and discussed these impacts with the affected communities, which include both the State and its residents living in proximity to Vandenberg Space Force Base. *See Baltimore Gas & Elec. Co.*, 462 U.S. at 97.

A waiver of Magnuson-Stevens Fishery Conservation and Management Act (MSA) could also have unforeseen, but foreseeable, impacts to fisheries and the fishing economy off the coast of California. California's commercial and recreational fisheries account for over 120,000 jobs and \$27 billion in sales impact. Among other requirements, the MSA mandates consultation for any proposed federal activity that may adversely affect Essential Fish Habitat (EFH). California has a long history of collaboration with the federal government to protect fisheries in California. This consultation is necessary to identify impacts to essential fish habitat that is critical to the sustainability of the nation's fisheries. The MSA specifically integrates economic considerations to ensure that offshore marine resources are managed for long-term economic sustainability, taking into account the importance of the fisheries to coastal communities. Without consultation under the MSA, a future FAA License could unknowingly decimate a fishery, which would be detrimental to California's economy and public health, and the FAA has no basis now to determine that the consultation is unnecessary for any future FAA License.

Moreover, the Proposed Rule presents potential direct effects on California and its residents by proposing the elimination of requirements under the Clean Air Act for FAA Licenses. Rocket launches and other operations at space launch and reentry sites generate emissions of air pollutants from booster launches and landings, launch vehicle processing, off-road equipment used for maintenance, marine vessels, and passenger vehicles and heavy-duty trucks. These pollutants include nitrogen oxides, which can trigger coughing and shortness of breath in the short term and asthma and chronic lung disease in the long term, and carbon monoxide, which, even at low levels, can cause flu-like symptoms. Although activities at Vandenberg would still be subject to the California Clean Air Act, and the rules and regulations

of the Santa Barbara Air Pollution Control District, eliminating protections under the Clean Air Act, which additionally require the FAA to determine the significance of air quality impacts from its actions and conform with state implementation plans for air quality, could result in impacts to the health of Californians in the communities surrounding Vandenberg and any other bases used for commercial space launches in the future.

The proposed waiver of requirements under the Endangered Species Act also has direct effects on California that have not been considered in the Proposed Rule. For example, a wide variety of species, including the federally protected Monarch butterfly, federally threatened tidewater goby, endangered southern California steelhead, endangered California tiger salamander, federally threatened California red-legged frog, endangered Arroyo toad, protected Southwestern pond turtle, endangered California condor, and endangered Least Bell's vireo, among many others, are present within the noise footprint of spacecraft launches from Vandenberg. Under the ESA, the FAA would be required to consult with the U.S. Fish and Wildlife Service and implement appropriate mitigations reducing the impacts of its licensing and permit approvals, before taking action. Without Endangered Species Act requirements, these protection measures may not be taken, further jeopardizing the survival of species that contribute to the biodiversity underpinning California's healthy ecosystems.

Finally, the Proposed Rule will have untold impacts on the California economy. In addition to potential harms to California's fishing industry, the unregulated expansion of space launches could, depending on its location, harm California's energy industry due to incompatibility of uses, California's technology sector due to harms to the livability of innovation centers, California's tourism economy due to impacts to areas of natural beauty or disruption to cities, among many other unknown harms.

The FAA's failure to evaluate these harmful impacts and provide a reasoned explanation for proceeding with the Proposed Rule is arbitrary and capricious.

4. The FAA ignores the State's reliance interests

The Supreme Court has held that an agency must provide an even more detailed justification for its change in policy "when its prior policy has engendered serious reliance interests that must be taken into account." *Federal Communications Comm'n v. Fox Television Stations*, 556 U.S. 502, 515 (2009). In these circumstances, "a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy." *Id.* at 516, accord *Dep't of Homeland Security v. Regents of the Univ. of California*, 591 U.S. 1, 30 (2020) ("[w]hen an agency changes course, it must be 'cognizant that longstanding policies may have 'engendered serious reliance interests that must be taken into account'" (quoting *FCC v. Fox*, 556 U.S. at 515); see also *Smiley v. Citibank (South Dakota), N.A.*, 517 U.S. 735, 742 (1996). Here, the FAA is "required to assess whether there [are] reliance interests, determine

whether they [are] significant, and weigh any such interests against competing policy concerns.” 591 U.S. at 33.

California has significant reliance interests in the application of federal environmental protections against, and mitigation for, the impacts of space launches and reentries. As discussed above, the State relies on cooperation from the FAA in disclosing, evaluating, and preventing environmental impacts of commercial space launches and reentries. The Proposed Rule would also significantly impact federal funding for environmental protections on which the State has relied for decades. If adopted, the Proposed Rule would force the State to fill the resulting regulatory gaps, creating significant additional financial, administrative, and regulatory burdens. *New Jersey v. EPA*, 989 F.3d 1038, 1046 (D.C. Cir. 2021) (noting that “exacerbated [state] administrative costs and burdens imposed by [a federal rule] ... constitute a concrete and particularized injury”). For example, to the extent the FAA would no longer need to perform environmental evaluations under NEPA, the entire burden of studying and disclosing impacts of commercial space launches and reentries on the environment would fall to California.

California also relies on federal agencies to consult with the U.S. Fish and Wildlife Service and implement mitigation measures for their actions which may impact protected species under the Endangered Species Act. Without this mitigation, California would need to expend its own resources to preserve protected species that may be threatened by an increase in space launches and reentries in the State. Furthermore, California relies on consultation with federal agencies under the Magnuson-Stevens Fishery Conservation and Management Act to protect the \$27 billion fishing industry in the State. Without this consultation the FAA could approve licenses and permits without disclosing, evaluating, or mitigating potential impacts to fisheries, resulting in damage to this important California industry, which California has relied on consultation efforts and mitigation to prevent.

IV. THE FAA SHOULD PUBLISH A FURTHER NOTICE OF PROPOSED RULEMAKING AND INVITE ADDITIONAL PUBLIC COMMENTS BEFORE ADVANCING ANY FINAL RULE

The FAA did not provide the public with enough time to comment on its sweeping Proposed Rule. Thirty days is insufficient to evaluate the myriad potential impacts of doing away with the requirements of thirteen environmental laws that have applied to licenses for space launches, reentries, and transport, and experimental permits, for decades.

More importantly, the paucity of any explanation for the Proposed Rule, and lack of any analysis of environmental, health, and economic impacts, prevents the public from meaningfully understanding and commenting on the Proposed Rule during the meager comment period that *has* been provided. *See Idaho Farm Bureau Fed. v. Babbitt*, 58 F.3d 1392, 1404 (“The purpose of the notice and comment requirement is to provide for meaningful public participation in the rule-

making process.”); *Wash. Trollers Ass’n v. Kreps*, 645 F.2d 684, 686 (9th Cir. 1981) (“To suppress meaningful comment by failure to disclose the basic data relied upon is akin to rejecting comment altogether.”). Before proceeding with the Proposed Rule, the FAA must provide potential commenters with a comprehensive analysis of the Proposed Rule’s impacts, including the environmental and health harms that could result from increasing commercial space launches without the protections afforded by the requirements of the thirteen statutes that the FAA proposes to waive. This analysis must be supported by data and studies.

The FAA must also disclose and seek comment on any information received during consultation with other executive agencies, and any subsequent analysis of the impacts of the Proposed Rule, before finalizing the Proposed Rule. Under 51 U.S.C. § 50905(b)(2)(C) requires the FAA to “consult[] with the head of the appropriate executive agency” before deciding that a requirement is “not necessary to protect the public health and safety, safety of property, and national security and foreign policy interests of the United States.” The FAA states that it is consulting with the Council on Environmental Quality, Environmental Protection Agency, Department of the Interior, Department of Commerce, NASA, Department of War, and the Advisory Council on Historic Preservation, regarding the Proposed Rule, but has not disclosed to the public what information these agencies may have provided, as well as what input from these agencies the FAA has considered or rejected. In order for the public to provide informed comment on the Proposed Rule, the information shared by the aforementioned executive agencies must be made available.

Moreover, given the open-ended nature of much of the content of the Proposed Rule, the public lacks notice regarding the specific regulatory changes the FAA proposes to adopt. The sheer breadth of this general waiver to the myriad types of potential commercial space launch projects makes it impossible for California to meaningfully comment on its potential effects. It is unforeseeable to California or the FAA what types of space launches, and from what launch site locations, will be exempt from federal legal requirements under the Proposed Rule. If the FAA decides to advance this rulemaking after it has considered public input on this Proposed Rule, the agency must ensure that it complies with the notice requirements of the Administrative Procedure Act. *See* 5 U.S.C. § 553(b); *Connecticut Light and Power Co. v. N.R.C.*, 673 F.2d 525, 533 (D.C. Cir. 1982) (“An agency adopting final rules that differ from its proposed rules is required to renote when the changes are so major that the original notice did not adequately frame the subjects for discussion.”). Thus, before the FAA decides to finalize any revisions to its regulations through a final rule, the FAA must craft a more specific proposal, publish a further notice of proposed rulemaking in the Federal Register, and consider additional public comments. At a minimum, stakeholders would benefit from public notice of a more refined set of proposals by the FAA, and opportunity for further comment. As set forth above, the FAA should explain more fully the impacts of eliminating requirements under the thirteen affected environmental laws, and provide additional time for public comment.

Furthermore, the FAA must provide notice and an opportunity to comment if it seeks to expand the application of the Proposed Rule. In addition to its blunt application to thirteen environmental laws, the Proposed Rule seeks comment on whether this proposed waiver should also apply to a multitude of other environmental laws, including the Ocean Dumping Act, Comprehensive Environmental Response, Compensation, and Liability Act, Safe Drinking Water Act, Resource Conservation and Recovery Act, Toxic Substances Control Act, Bald and Golden Eagle Protection Act, Migratory Bird Treaty Act, and National Wildlife Refuge System Administrative Act. The FAA must study and disclose the potential impacts of the waiver of these laws and allow the public an opportunity to review and comment on its analysis, before expanding the Proposed Rule.

If the Proposed Rule is amended to include any of the additional aforementioned environmental laws, or if any section or subsection of any other law is added, the public will need additional opportunity to review and comment.

V. CONCLUSION

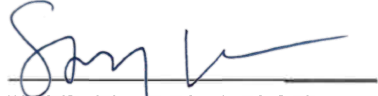
For all the foregoing reasons, the State of California urges the FAA to immediately withdraw the Proposed Rule. If, however, the FAA moves forward with the Proposed Rule, it must revise the rule to provide greater specificity and include a comprehensive analysis of its impacts supported by data, and publish a proposed revised rule for further public comment. The FAA should also issue a nationwide EIS that fully analyzes the impacts of the revised proposed rule and comply with the CZMA consistency determination process before finalizing any proposed rule.

Respectfully submitted,

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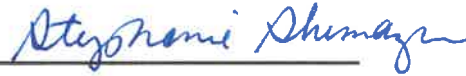
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