

Some options for DOI to consider including in any final Conservation and Landscape Health Rule that may be adopted to avoid disruption to ongoing projects in the permitting process:

- The regulations in this part shall not apply to any project that has commenced the National Environmental Policy Act process through issuance of a Notice of Intent, received a Record of Decision or conducted construction under an agency authorization prior to [EFFECTIVE DATE].
- The regulations in this part shall apply to any project begun after [EFFECTIVE DATE].

This proposed text is based upon numerous examples of precedent previously used by federal agencies that have been adopted to avoid project and broader economic disruptions from the adoption of significant rules and programs.

1. Exclusions - Jewell Coal Moratorium:

([https://www.doi.gov/sites/doi.gov/files/elips/documents/archived-3338\\_-\\_discretionary\\_programmatic\\_environmental\\_impact\\_statement\\_to\\_modernize\\_the\\_federal\\_coal\\_program.pdf](https://www.doi.gov/sites/doi.gov/files/elips/documents/archived-3338_-_discretionary_programmatic_environmental_impact_statement_to_modernize_the_federal_coal_program.pdf))

- “Section 6. Exclusions. Nothing in this Order will be deemed to prohibit or restrict: . . . e. the sale and issuance of new thermal coal leases by application, 43 C.F.R. Subpart 3425, or the issuance of thermal coal lease modifications, 43 CFR Subpart 3432, under pending applications for which the environmental analysis under NEPA has been completed and a Record of Decision or Decision Record has been issued by the BLM or the applicable Federal surface management agency as of the date of this Order. This exception extends to previously issued Records of Decision or Decision Records that have been (or may be) vacated by judicial decision and are undergoing re-evaluation in accordance with the judicial decision. Before holding any lease sale or issuing any lease under this exception, the BLM must confirm and ensure that the applicable NEPA document for a project is adequate and includes, at a minimum, an analysis of the direct and indirect greenhouse gas emissions resulting from the proposed leasing action.”

2. NEPA regulations:

- Proposed National Environmental Policy Act Implementing Regulations Revisions Phase 2 (<https://www.govinfo.gov/content/pkg/FR-2023-07-31/pdf/2023-15405.pdf>)
  - “§ 1506.13 Effective date. The regulations in this subchapter apply to any NEPA process begun after [EFFECTIVE DATE OF THE FINAL RULE]. An agency may apply the regulations in this subchapter to ongoing activities and environmental documents begun before [EFFECTIVE DATE OF THE FINAL RULE].”
- Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act (Trump Era NEPA Rule) (<https://www.govinfo.gov/content/pkg/FR-2020-07-16/pdf/2020-15179.pdf>)
  - “§ 1506.13 Effective date. The regulations in this subchapter apply to any NEPA process begun after September 14, 2020. An agency may apply the regulations in this

subchapter to ongoing activities and environmental documents begun before September 14, 2020.”

3. Delayed Effective Dates:

- 40 CFR 770.2, TSCA - Formaldehyde Emission Standards for Composite Wood Products Rule:
  - “(d) Notwithstanding any other provision of this part, Third Party Certifiers (TPC) that are approved by CARB to certify composite wood products have until March 22, 2019 [e.g., two years after TPCs not approved by CARB must apply to EPA for recognition], to become accredited by an EPA TSCA Title VI AB(s) pursuant to the requirements of this part. During this two-year transition period, existing CARB-approved TPCs that are recognized by EPA and CARB TPCs approved during this transition period may carry out certification activities under TSCA Title VI, provided that they remain approved by CARB and comply with all aspects of this part other than the requirements of [§ 770.7\(c\)\(1\)\(i\)](#) and [\(ii\)](#) and [\(c\)\(2\)\(iii\)](#) and [\(iv\)](#). After the two-year transition period, CARB-approved TPCs may continue to certify composite wood products under TSCA Title VI provided the TPC maintains its CARB approval, follows the requirements under this part, submits to EPA documentation from CARB supporting their eligibility for reciprocity and has received EPA recognition as an EPA TSCA Title VI TPC. All TPCs that are certifying products as compliant with TSCA Title VI, both during and after the transition period, are subject to enforcement actions for any violations of TSCA Title VI or these regulations.
  - (e) Beginning June 1, 2018, all manufacturers (including importers), fabricators, suppliers, distributors, and retailers of composite wood products, and component parts or finished goods containing these materials, must comply with this part, subject to the following:
    - (1) Beginning June 1, 2018, laminated product producers must comply with the requirements of this part that are applicable to fabricators.
    - (2) Beginning March 22, 2024, producers of laminated products must comply with the requirements of this part that are applicable to hardwood plywood panel producers (in addition to the requirements of this part that are applicable to fabricators) except as provided at [§ 770.4](#).
    - (3) Beginning March 22, 2024, producers of laminated products that, as provided at [§ 770.4](#), are exempt from the definition of “hardwood plywood” must comply with the recordkeeping requirements in [§ 770.40\(c\)](#) and [\(d\)](#) (in addition to the requirements of this part that are applicable to fabricators).
    - (4) Composite wood products manufactured (including imported) before June 1, 2018 may be sold, supplied, offered for sale, or used to fabricate component parts or finished goods at any time.
- Oil and Gas and Sulfur Operations in the Outer Continental Shelf—Blowout Preventer Systems and Well Control (<https://www.govinfo.gov/content/pkg/FR-2016-04-29/pdf/2016-08921.pdf>)
  - “DATES: This final rule becomes effective on July 28, 2016. Compliance with certain provisions of the final rule, however, will be deferred until the times specified in those provisions and as described in Part III of the preamble.”
    - Part III of the preamble:

- “BSEE has considered the public comments on the proposed compliance dates, as well as relevant information gained during, among other activities, BSEE’s interactions with stakeholders, involvement in development of industry standards, and evaluation of current technology. Accordingly, BSEE is setting an effective date of 90 days following publication of the final rule, by which time operators will be required to demonstrate compliance with most of the final rule’s provisions. BSEE has determined, however, that it is appropriate to extend the compliance dates for the following new requirements. Detailed explanations for these extended compliance dates are provided in parts V and VI of this document.”
  - Goes on to set effective date phase-in periods for a variety of actions, such as installing a certain type of gas bleed line, for between two to five years after the effective date.

#### 4. Grandfathering:

- The Clean Air Act Amendments of 1977, [Pub. L. No. 95-95, 91 Stat 685 \(1997\)](#) established more stringent requirements in Sec. 109, New Source Standards of Performance, but left a carve out for new or modified facilities where construction was commenced before the enactment of the amendments:
  - “(b)(6) The revised standards of performance required by enactment of subsection (a)(1)(A) (i) and (ii) shall be promulgated not later than one year after enactment of this paragraph. Any new or modified fossil fuel fired stationary source which commences construction prior to the date of publication of the proposed revised standards shall not be required to comply with such revised standards.”
- Omnibus Public Land Management Act of 2009, Pub. L. No. 111-11, § 1602(c)(3), 123 Stat. 991, 1042 (2009) (pg 41 of pdf <https://www.congress.gov/111/plaws/publ11/PLAW-111publ11.pdf>) (codified at 16 U.S.C. § 1132 note)
  - “(1) IN GENERAL.—Subject to valid existing rights, the Wilderness shall be administered by the Secretary in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.), except that— . . .
    - (3) LIVESTOCK.—Except as provided in section 1402 and by Presidential Proclamation Number 7318, dated June 9, 2000 (65 Fed. Reg. 37247), the grazing of livestock in the Wilderness, if established before the date of enactment of this Act, shall be permitted to continue subject to such reasonable regulations as are considered necessary by the Secretary in accordance with—
      - A) section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)); and
      - (B) the guidelines set forth in Appendix A of the report of the Committee on Interior and Insular Affairs of the House of Representatives accompanying H.R. 2570 of the 101st Congress (H. Rept. 101–405).”