

**AMENDMENT TO THE RULES COMMITTEE PRINT
FOR H.R. 3080
OFFERED BY MRS. CAPITO OF WEST VIRGINIA**

At the end of the bill, insert the following:

1 TITLE V—WATER IMPROVEMENT

2 SEC. 501. NATIONAL POLLUTANT DISCHARGE ELIMINATION
3 SYSTEM.

4 (a) APPLICABILITY OF GUIDANCE.—Section 402 of
5 the Federal Water Pollution Control Act (33 U.S.C. 1342)
6 is amended by adding at the end the following:

7 “(s) APPLICABILITY OF GUIDANCE.—

8 “(1) DEFINITIONS.—In this subsection:

9 “(A) GUIDANCE.—

10 “(i) IN GENERAL.—The term ‘guid-
11 ance’ means draft, interim, or final guid-
12 ance issued by the Administrator.

13 “(ii) INCLUSIONS.—The term ‘guid-
14 ance’ includes—

15 “(I) the comprehensive guidance
16 issued by the Administrator and dated
17 April 1, 2010;

18 “(II) the proposed guidance enti-
19 tled ‘Draft Guidance on Identifying

1 Waters Protected by the Clean Water
2 Act’ and dated April 28, 2011;

3 “(III) the final guidance pro-
4 posed by the Administrator and dated
5 July 21, 2011; and

6 “(IV) any other document or
7 paper issued by the Administrator
8 through any process other than the
9 notice and comment rulemaking proc-
10 ess.

11 “(B) NEW PERMIT.—The term ‘new per-
12 mit’ means a permit covering discharges from a
13 structure—

14 “(i) that is issued under this section
15 by a permitting authority; and

16 “(ii) for which an application is—

17 “(I) pending as of the date of en-
18 actment of this subsection; or

19 “(II) filed on or after the date of
20 enactment of this subsection.

21 “(C) PERMITTING AUTHORITY.—The term
22 ‘permitting authority’ means—

23 “(i) the Administrator; or

24 “(ii) a State, acting pursuant to a
25 State program that is equivalent to the

1 program under this section and approved
2 by the Administrator.

3 “(2) PERMITS.—

4 “(A) IN GENERAL.—Notwithstanding any
5 other provision of law, in making a determina-
6 tion whether to approve a new permit or a re-
7 newed permit, the permitting authority—

8 “(i) shall base the determination only
9 on compliance with regulations issued by
10 the Administrator or the permitting au-
11 thority; and

12 “(ii) shall not base the determination
13 on the extent of adherence of the applicant
14 for the new permit or renewed permit to
15 guidance.

16 “(B) NEW PERMITS.—If the permitting
17 authority does not approve or deny an applica-
18 tion for a new permit by the date that is 270
19 days after the date of receipt of the application
20 for the new permit, the applicant may operate
21 as if the application were approved in accord-
22 ance with Federal law for the period of time for
23 which a permit from the same industry would
24 be approved.

1 “(C) SUBSTANTIAL COMPLETENESS.—In
2 determining whether an application for a new
3 permit or a renewed permit received under this
4 paragraph is substantially complete, the permit-
5 ting authority shall use standards for deter-
6 mining substantial completeness of similar per-
7 mits for similar facilities submitted in fiscal
8 year 2007.”.

9 (b) STATE PERMIT PROGRAMS.—

10 (1) IN GENERAL.—Section 402 of the Federal
11 Water Pollution Control Act (33 U.S.C. 1342) is
12 amended by striking subsection (b) and inserting the
13 following:

14 “(b) STATE PERMIT PROGRAMS.—

15 “(1) IN GENERAL.—At any time after the pro-
16 mulgation of the guidelines required by section
17 304(I)(2), the Governor of each State desiring to ad-
18 minister a permit program for discharges into navi-
19 gable waters within the jurisdiction of the State may
20 submit to the Administrator—

21 “(A) a full and complete description of the
22 program the State proposes to establish and ad-
23 minister under State law or under an interstate
24 compact; and

1 “(B) a statement from the attorney gen-
2 eral (or the attorney for those State water pol-
3 lution control agencies that have independent
4 legal counsel), or from the chief legal officer in
5 the case of an interstate agency, that the laws
6 of the State, or the interstate compact, as ap-
7 plicable, provide adequate authority to carry out
8 the described program.

9 “(2) APPROVAL.—The Administrator shall ap-
10 prove each program for which a description is sub-
11 mitted under paragraph (1) unless the Adminis-
12 trator determines that adequate authority does not
13 exist—

14 “(A) to issue permits that—

15 “(i) apply, and ensure compliance
16 with, any applicable requirements of sec-
17 tions 301, 302, 306, 307, and 403;

18 “(ii) are for fixed terms not exceeding
19 5 years;

20 “(iii) can be terminated or modified
21 for cause including—

22 “(I) a violation of any condition
23 of the permit;

1 “(II) obtaining a permit by mis-
2 representation or failure to disclose
3 fully all relevant facts; and

4 “(III) a change in any condition
5 that requires either a temporary or
6 permanent reduction or elimination of
7 the permitted discharge; and

8 “(iv) control the disposal of pollutants
9 into wells;

10 “(B)(i) to issue permits that apply, and
11 ensure compliance with, all applicable require-
12 ments of section 308; or

13 “(ii) to inspect, monitor, enter, and require
14 reports to at least the same extent as required
15 in section 308;

16 “(C) to ensure that the public, and any
17 other State the waters of which may be af-
18 fected, receives notice of each application for a
19 permit and an opportunity for a public hearing
20 before a ruling on each application;

21 “(D) to ensure that the Administrator re-
22 ceives notice and a copy of each application for
23 a permit;

24 “(E) to ensure that any State (other than
25 the permitting State), whose waters may be af-

1 fected by the issuance of a permit may submit
2 written recommendations to the permitting
3 State and the Administrator with respect to any
4 permit application and, if any part of the writ-
5 ten recommendations are not accepted by the
6 permitting State, that the permitting State will
7 notify the affected State and the Administrator
8 in writing of the failure of the State to accept
9 the recommendations, including the reasons for
10 not accepting the recommendations;

11 “(F) to ensure that no permit will be
12 issued if, in the judgment of the Secretary of
13 the Army acting through the Chief of Engi-
14 neers, after consultation with the Secretary of
15 the department in which the Coast Guard is op-
16 erating, anchorage and navigation of any of the
17 navigable waters would be substantially im-
18 paired by the issuance of the permit;

19 “(G) to abate violations of the permit or
20 the permit program, including civil and criminal
21 penalties and other means of enforcement;

22 “(H) to ensure that any permit for a dis-
23 charge from a publicly owned treatment works
24 includes conditions to require the identification
25 in terms of character and volume of pollutants

1 of any significant source introducing pollutants
2 subject to pretreatment standards under section
3 307(b) into the treatment works and a program
4 to ensure compliance with those pretreatment
5 standards by each source, in addition to ade-
6 quate notice, which shall include information on
7 the quality and quantity of effluent to be intro-
8 duced into the treatment works and any antici-
9 pated impact of the change in the quantity or
10 quality of effluent to be discharged from the
11 publicly owned treatment works, to the permit-
12 ting agency of—

13 “(i) new introductions into the treat-
14 ment works of pollutants from any source
15 that would be a new source as defined in
16 section 306 if the source were discharging
17 pollutants;

18 “(ii) new introductions of pollutants
19 into the treatment works from a source
20 that would be subject to section 301 if the
21 source were discharging those pollutants;
22 or

23 “(iii) a substantial change in volume
24 or character of pollutants being introduced
25 into the treatment works by a source intro-

1 ducing pollutants into the treatment works
2 at the time of issuance of the permit; and
3 “(I) to ensure that any industrial user of
4 any publicly owned treatment works will comply
5 with sections 204(b), 307, and 308.

6 “(3) ADMINISTRATION.—Notwithstanding para-
7 graph (2), the Administrator may not disapprove or
8 withdraw approval of a program under this sub-
9 section on the basis of the following:

10 “(A) The failure of the program to incor-
11 porate or comply with guidance (as defined in
12 subsection (s)(1)).

13 “(B) The implementation of a water qual-
14 ity standard that has been adopted by the State
15 and approved by the Administrator under sec-
16 tion 303(e).”.

17 (2) CONFORMING AMENDMENTS.—

18 (A) Section 309 of the Federal Water Pol-
19 lution Control Act (33 U.S.C. 1319) is amend-
20 ed—

21 (i) in subsection (c)—

22 (I) in paragraph (1)(A), by strik-
23 ing “402(b)(8)” and inserting
24 “402(b)(2)(H)”; and

1 (II) in paragraph (2)(A), by
2 striking “402(b)(8)” and inserting
3 “402(b)(2)(H)”; and

4 (ii) in subsection (d), in the first sen-
5 tence, by striking “402(b)(8)” and insert-
6 ing “402(b)(2)(H)”.

7 (B) Section 402(m) of the Federal Water
8 Pollution Control Act (33 U.S.C. 1342(m)) is
9 amended in the first sentence by striking “sub-
10 section (b)(8) of this section” and inserting
11 “subsection (b)(2)(H)”.

12 (c) SUSPENSION OF FEDERAL PROGRAM.—Section
13 402(c) of the Federal Water Pollution Control Act (33
14 U.S.C. 1342(c)) is amended—

15 (1) by redesignating paragraph (4) as para-
16 graph (5); and

17 (2) by inserting after paragraph (3) the fol-
18 lowing:

19 “(4) LIMITATION ON DISAPPROVAL.—Notwith-
20 standing paragraphs (1) through (3), the Adminis-
21 trator may not disapprove or withdraw approval of
22 a State program under subsection (b) on the basis
23 of the failure of the following:

1 “(A) The failure of the program to incor-
2 porate or comply with guidance (as defined in
3 subsection (s)(1)).

4 “(B) The implementation of a water qual-
5 ity standard that has been adopted by the State
6 and approved by the Administrator under sec-
7 tion 303(e).”.

8 (d) NOTIFICATION OF ADMINISTRATOR.—Section
9 402(d)(2) of the Federal Water Pollution Control Act (33
10 U.S.C. 1342(d)(2)) is amended—

11 (1) by striking “(2) No” and inserting the fol-
12 lowing:

13 “(2) OBJECTION BY ADMINISTRATOR.—

14 “(A) IN GENERAL.—Subject to subpara-
15 graph (C), no permit shall issue if—

16 “(i) not later than 90 days after the
17 date on which the Administrator receives
18 notification under subsection (b)(2)(E), the
19 Administrator objects in writing to the
20 issuance of the permit; or

21 “(ii) not later than 90 days after the
22 date on which the proposed permit of the
23 State is transmitted to the Administrator,
24 the Administrator objects in writing to the

1 issuance of the permit as being outside the
2 guidelines and requirements of this Act.”;

3 (2) in the second sentence, by striking “When-
4 ever the Administrator” and inserting the following:

5 “(B) REQUIREMENTS.—If the Adminis-
6 trator”; and

7 (3) by adding at the end the following:

8 “(C) EXCEPTION.—The Administrator
9 shall not object to or deny the issuance of a
10 permit by a State under subsection (b) or (s)
11 based on the following:

12 “(i) Guidance, as that term is defined
13 in subsection (s)(1).

14 “(ii) The Administrator’s interpreta-
15 tion of a water quality standard that has
16 been adopted by the State and approved by
17 the Administrator under section 303(c).”.

18 **SEC. 502. PERMITS FOR DREDGED OR FILL MATERIAL.**

19 (a) IN GENERAL.—Section 404(a) of the Federal
20 Water Pollution Control Act (33 U.S.C. 1344(a)) is
21 amended—

22 (1) by striking the section heading and all that
23 follows through “SEC. 404. (a) The Secretary may
24 issue” and inserting the following:

1 **“SEC. 404. PERMITS FOR DREDGED OR FILL MATERIAL.**

2 “(a) PERMITS.—

3 “(1) IN GENERAL.—The Secretary may issue”;

4 and

5 (2) by adding at the end the following:

6 “(2) DEADLINE FOR APPROVAL.—

7 “(A) PERMIT APPLICATIONS.—

8 “(i) IN GENERAL.—Except as pro-
9 vided in clause (ii), if an environmental as-
10 sessment or environmental impact state-
11 ment, as appropriate, is required under the
12 National Environmental Policy Act of
13 1969 (42 U.S.C. 4321 et seq.), the Sec-
14 retary shall—

15 “(I) begin the process not later
16 than 90 days after the date on which
17 the Secretary receives a permit appli-
18 cation; and

19 “(II) approve or deny an applica-
20 tion for a permit under this sub-
21 section not later than the latter of—

22 “(aa) if an agency carries
23 out an environmental assessment
24 that leads to a finding of no sig-
25 nificant impact, the date on

1 which the finding of no signifi-
2 cant impact is issued; or

3 “(bb) if an agency carries
4 out an environmental assessment
5 that leads to a record of decision,
6 15 days after the date on which
7 the record of decision on an envi-
8 ronmental impact statement is
9 issued.

10 “(ii) PROCESSES.—Notwithstanding
11 clause (i), regardless of whether the Sec-
12 retary has commenced an environmental
13 assessment or environmental impact state-
14 ment by the date described in clause (i)(I),
15 the following deadlines shall apply:

16 “(I) An environmental assess-
17 ment carried out under the National
18 Environmental Policy Act of 1969 (42
19 U.S.C. 4321 et seq.) shall be com-
20 pleted not later than 1 year after the
21 deadline for commencing the permit
22 process under clause (i)(I).

23 “(II) An environmental impact
24 statement carried out under the Na-
25 tional Environmental Policy Act of

1 1969 (42 U.S.C. 4321 et seq.) shall
2 be completed not later than 2 years
3 after the deadline for commencing the
4 permit process under clause (i)(I).

5 “(B) FAILURE TO ACT.—If the Secretary
6 fails to act by the deadline specified in clause
7 (i) or (ii) of subparagraph (A)—

8 “ (i) the application, and the permit
9 requested in the application, shall be con-
10 sidered to be approved;

11 “ (ii) the Secretary shall issue a permit
12 to the applicant; and

13 “ (iii) the permit shall not be subject
14 to judicial review.”.

15 (b) STATE PERMITTING PROGRAMS.—

16 (1) AUTHORITY OF EPA ADMINISTRATOR.—Sec-
17 tion 404(c) of the Federal Water Pollution Control
18 Act (33 U.S.C. 1344(c)) is amended by striking
19 “(c)” and inserting the following:

20 “(c) AUTHORITY OF EPA ADMINISTRATOR.—

21 “(1) POSSIBLE PROHIBITION OF SPECIFICA-
22 TION.—Until such time as the Secretary has issued
23 a permit under this section, the Administrator is au-
24 thorized to prohibit the specification (including the
25 withdrawal of specification) of any defined area as

1 a disposal site, and he is authorized to deny or re-
2 strict the use of any defined area for specification
3 (including the withdrawal of specification) as a dis-
4 posal site, whenever he determines, after notice and
5 opportunity for public hearings, that the discharge
6 of such materials into such area will have an unac-
7 ceptable adverse effect on municipal water supplies,
8 shellfish beds and fishery areas (including spawning
9 and breeding areas), wildlife, or recreational areas.
10 Before making such determination, the Adminis-
11 trator shall consult with the Secretary. The Admin-
12 istrator shall set forth in writing and make public
13 his findings and his reasons for making any deter-
14 mination under this subsection.

15 “(2) AUTHORITY OF STATE PERMITTING PRO-
16 GRAMS.—Paragraph (1) shall not apply to any per-
17 mit if the State in which the discharge originates or
18 will originate does not concur with the Administra-
19 tor’s determination that the discharge will result in
20 an unacceptable adverse effect as described in para-
21 graph (1).”.

22 (c) STATE PROGRAMS.—The first sentence of section
23 404(g)(1) of such Act (33 U.S.C. 1344(g)(1)) is amended
24 by striking “for the discharge” and inserting “for some
25 or all of the discharges”.

1 **SEC. 503. IMPACTS OF EPA REGULATORY ACTIVITY ON EM-**
2 **PLOYMENT AND ECONOMIC ACTIVITY.**

3 (a) ANALYSIS OF IMPACTS OF ACTIONS ON EMPLOY-
4 MENT AND ECONOMIC ACTIVITY.—

5 (1) ANALYSIS.—Before taking a covered action,
6 the Administrator shall analyze the impact,
7 disaggregated by State, of the covered action on em-
8 ployment levels and economic activity, including esti-
9 mated job losses and decreased economic activity.

10 (2) ECONOMIC MODELS.—

11 (A) IN GENERAL.—In carrying out para-
12 graph (1), the Administrator shall utilize the
13 best available economic models.

14 (B) ANNUAL GAO REPORT.—Not later
15 than December 31st of each year, the Comp-
16 troller General of the United States shall sub-
17 mit to Congress a report on the economic mod-
18 els used by the Administrator to carry out this
19 subsection.

20 (3) AVAILABILITY OF INFORMATION.—With re-
21 spect to any covered action, the Administrator
22 shall—

23 (A) post the analysis under paragraph (1)
24 as a link on the main page of the public Inter-
25 net Web site of the Environmental Protection
26 Agency; and

1 (B) request that the Governor of any State
2 experiencing more than a de minimis negative
3 impact post such analysis in the Capitol of such
4 State.

5 (b) PUBLIC HEARINGS.—

6 (1) IN GENERAL.—If the Administrator con-
7 cludes under subsection (a)(1) that a covered action
8 will have more than a de minimis negative impact on
9 employment levels or economic activity in a State,
10 the Administrator shall hold a public hearing in each
11 such State at least 30 days prior to the effective
12 date of the covered action.

13 (2) TIME, LOCATION, AND SELECTION.—A pub-
14 lic hearing required under paragraph (1) shall be
15 held at a convenient time and location for impacted
16 residents. In selecting a location for such a public
17 hearing, the Administrator shall give priority to loca-
18 tions in the State that will experience the greatest
19 number of job losses.

20 (c) NOTIFICATION.—If the Administrator concludes
21 under subsection (a)(1) that a covered action will have
22 more than a de minimis negative impact on employment
23 levels or economic activity in any State, the Administrator
24 shall give notice of such impact to the State's Congres-

1 sional delegation, Governor, and Legislature at least 45
2 days before the effective date of the covered action.

3 (d) DEFINITIONS.—In this section, the following defi-
4 nitions apply:

5 (1) ADMINISTRATOR.—The term “Adminis-
6 trator” means the Administrator of the Environ-
7 mental Protection Agency.

8 (2) COVERED ACTION.—The term “covered ac-
9 tion” means any of the following actions taken by
10 the Administrator under the Federal Water Pollu-
11 tion Control Act (33 U.S.C. 1201 et seq.):

12 (A) Issuing a regulation, policy statement,
13 guidance, response to a petition, or other re-
14 quirement.

15 (B) Implementing a new or substantially
16 altered program.

17 (3) MORE THAN A DE MINIMIS NEGATIVE IM-
18 PACT.—The term “more than a de minimis negative
19 impact” means the following:

20 (A) With respect to employment levels, a
21 loss of more than 100 jobs. Any offsetting job
22 gains that result from the hypothetical creation
23 of new jobs through new technologies or govern-
24 ment employment may not be used in the job
25 loss calculation.

1 (B) With respect to economic activity, a
2 decrease in economic activity of more than
3 \$1,000,000 over any calendar year. Any offset-
4 ting economic activity that results from the hy-
5 pothetical creation of new economic activity
6 through new technologies or government em-
7 ployment may not be used in the economic ac-
8 tivity calculation.

9 **SEC. 504. IDENTIFICATION OF WATERS PROTECTED BY THE**
10 **CLEAN WATER ACT.**

11 (a) IN GENERAL.—The Secretary of the Army and
12 the Administrator of the Environmental Protection Agen-
13 cy may not—

14 (1) finalize, adopt, implement, administer, or
15 enforce the proposed guidance described in the no-
16 tice of availability and request for comments entitled
17 “EPA and Army Corps of Engineers Guidance Re-
18 garding Identification of Waters Protected by the
19 Clean Water Act” (EPA–HQ–OW–2011–0409) (76
20 Fed. Reg. 24479 (May 2, 2011)); and

21 (2) use the guidance described in paragraph
22 (1), any successor document, or any substantially
23 similar guidance made publicly available on or after
24 December 3, 2008, as the basis for any decision re-
25 garding the scope of the Federal Water Pollution

1 Control Act (33 U.S.C. 1251 et seq.) or any rule-
2 making.

3 (b) RULES.—The use of the guidance described in
4 subsection (a)(1), or any successor document or substan-
5 tially similar guidance made publicly available on or after
6 December 3, 2008, as the basis for any rule shall be
7 grounds for vacating the rule.

8 **SEC. 505. LIMITATIONS ON AUTHORITY TO MODIFY STATE**
9 **WATER QUALITY STANDARDS.**

10 (a) STATE WATER QUALITY STANDARDS.—Section
11 303(c)(4) of the Federal Water Pollution Control Act (33
12 U.S.C. 1313(c)(4)) is amended—

13 (1) by redesignating subparagraphs (A) and
14 (B) as clauses (i) and (ii), respectively;

15 (2) by striking “(4)” and inserting “(4)(A)”;

16 (3) by striking “The Administrator shall pro-
17 mulgate” and inserting the following:

18 “(B) The Administrator shall promulgate;”

19 and

20 (4) by adding at the end the following:

21 “(C) Notwithstanding subparagraph
22 (A)(ii), the Administrator may not promulgate
23 a revised or new standard for a pollutant in any
24 case in which the State has submitted to the
25 Administrator and the Administrator has ap-

1 proved a water quality standard for that pollutant,
2 unless the State concurs with the Administrator's
3 determination that the revised or new standard is
4 necessary to meet the requirements of this Act.".

6 (b) **FEDERAL LICENSES AND PERMITS.**—Section
7 401(a) of such Act (33 U.S.C. 1341(a)) is amended by
8 adding at the end the following:

9 “(7) With respect to any discharge, if a State
10 or interstate agency having jurisdiction over the navigable
11 waters at the point where the discharge originates or will
12 originate determines under paragraph (1) that the discharge
13 will comply with the applicable provisions of sections 301,
14 302, 303, 306, and 307, the Administrator may not take
15 any action to supersede the determination.”.

17 **SEC. 506. STATE AUTHORITY TO IDENTIFY WATERS WITHIN**
18 **ITS BOUNDARIES.**

19 Section 303 of the Federal Water Pollution Control
20 Act (33 U.S.C. 1313) is amended by striking subsection
21 (d)(2) and inserting the following:

22 “(2)(A) Each State shall submit to the Administrator
23 from time to time, with the first such submission not
24 later than 180 days after the date of publication of the
25 first identification of pollutants

1 under section 304(a)(2)(D), the waters identified
2 and the loads established under paragraphs (1)(A),
3 (1)(B), (1)(C), and (1)(D) of this subsection. The
4 Administrator shall approve the State identification
5 and load or announce his disagreement with the
6 State identification and load not later than 30 days
7 after the date of submission and if—

8 “(i) the Administrator approves the identi-
9 fication and load submitted by the State in ac-
10 cordance with this subsection, such State shall
11 incorporate them into its current plan under
12 subsection (e); and

13 “(ii) the Administrator announces his dis-
14 agreement with the identification and load sub-
15 mitted by the State in accordance with this sub-
16 section he shall submit, not later than 30 days
17 after the date that the Administrator announces
18 his disagreement with the State’s submission, to
19 such State his written recommendation of those
20 additional waters that he identifies and such
21 loads for such waters as he believes are nec-
22 essary to implement the water quality standards
23 applicable to such waters.

24 “(B) Upon receipt of the Administrator’s rec-
25 ommendation the State shall within 30 days either—

1 “(i) disregard the Administrator’s rec-
2 ommendation in full and incorporate its own
3 identification and load into its current plan
4 under subsection (e);

5 “(ii) accept the Administrator’s rec-
6 ommendation in full and incorporate its identi-
7 fication and load as amended by the Adminis-
8 trator’s recommendation into its current plan
9 under subsection (e); or

10 “(iii) accept the Administrator’s rec-
11 ommendation in part, identifying certain addi-
12 tional waters and certain additional loads pro-
13 posed by the Administrator to be added to such
14 State’s identification and load and incorporate
15 the such State’s identification and load as
16 amended into its current plan under subsection
17 (e).

18 “(C)(i) If the Administrator fails to either ap-
19 prove the State identification and load or announce
20 his disagreement with the State identification and
21 load within the time specified in this subsection then
22 such State’s identification and load is deemed ap-
23 proved and such State shall incorporate the identi-
24 fication and load that it submitted into its current
25 plan under subsection (e).

1 “(ii) If the Administrator announces his dis-
2 agreement with the State identification and load but
3 fails to submit his written recommendation to the
4 State within 30 days as required by subparagraph
5 (A)(ii) then such State’s identification and load is
6 deemed approved and such State shall incorporate
7 the identification and load that it submitted into its
8 current plan under subsection (e).

9 “(D) This section shall apply to any decision
10 made by the Administrator under this subsection
11 issued on or after March 1, 2013.”.

