

Calendar No. 620

111TH CONGRESS
2^D SESSION**S. 1816****[Report No. 111-333]**

To amend the Federal Water Pollution Control Act to improve and reauthorize the Chesapeake Bay Program.

IN THE SENATE OF THE UNITED STATES

OCTOBER 20, 2009

Mr. CARDIN (for himself, Ms. MIKULSKI, Mr. CARPER, and Mr. KAUFMAN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

SEPTEMBER 28, 2010

Reported by Mrs. BOXER, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To amend the Federal Water Pollution Control Act to improve and reauthorize the Chesapeake Bay Program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Chesapeake Clean
5 ~~Water and Ecosystem Restoration Act of 2009”.~~

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) the Chesapeake Bay and the tributary wa-
4 ters of the Chesapeake Bay are natural resources of
5 outstanding ecological, economic, and cultural im-
6 portance to the United States;

7 (2) for more than 20 years, the Federal Gov-
8 ernment and the States of the Chesapeake Bay Wa-
9 tershed, the Chesapeake Bay Commission, and var-
10 ious local government, scientific, and citizen advisory
11 boards have worked through the Chesapeake Bay
12 Program of the Environmental Protection Agency to
13 develop an unparalleled body of scientific informa-
14 tion and cooperative partnerships to advance the
15 Chesapeake Bay restoration effort;

16 (3) despite significant efforts by Federal, State,
17 and local governments and other interested parties,
18 water pollution in the Chesapeake Bay prevents the
19 attainment of existing State water quality standards
20 and the ecological goals of the Federal Water Pollu-
21 tion Control Act (33 U.S.C. 1251 et seq.);

22 (4) the Chesapeake Bay Program partnership
23 has developed a rich body of environmental data
24 based on an extensive network of monitors, which
25 provide a critical measure of success in attainment
26 of the goals of the restoration effort;

1 (5) the Chesapeake Bay Program partnership
2 has also developed some of the world's foremost
3 water quality and ecosystem computer models, which
4 are invaluable planning tools for resource managers;

5 (6) the major pollutants affecting the water
6 quality of the Chesapeake Bay and related tidal wa-
7 ters are nitrogen, phosphorus, and sediment;

8 (7) the largest developed land use in the Chesa-
9 peake Bay watershed, and the largest single-sector
10 source of nitrogen, phosphorus, and sediment pollu-
11 tion, is agriculture;

12 (8) conservation practices have resulted in sig-
13 nificant reductions in pollution loads from the agri-
14 cultural sector;

15 (9) to speed continued progress in the agricul-
16 tural sector, the Federal Government and State gov-
17 ernments have initiated a number of agricultural
18 conservation programs, including the Chesapeake
19 Bay watershed initiative under section 1240Q of the
20 Food Security Act of 1985 (16 U.S.C. 3839bb-4);

21 (10) atmospheric deposition of nitrogen oxides
22 and ammonia on the Chesapeake Bay watershed
23 contributes as much as $\frac{1}{3}$ of the nitrogen pollution
24 in the Chesapeake Bay;

1 (11) for years, a steady stream of technology
2 development and increasingly stringent permit re-
3 quirements have resulted in a steady decline in the
4 nitrogen and phosphorus pollution derived from
5 wastewater treatment plants in the Chesapeake Bay
6 watershed;

7 (12) suburban and urban development is the
8 fastest growing land use sector in the Chesapeake
9 Bay watershed, and stormwater runoff from that
10 sector is the only major source of pollution in the
11 watershed that is increasing;

12 (13) during the period beginning in 1990 and
13 ending in 2000, impervious cover, the hardened sur-
14 faces through which water cannot penetrate, in-
15 creased by nearly 250,000 acres, about 41 percent,
16 or the size of 5 Districts of Columbia;

17 (14) during that period, the watershed popu-
18 lation of the Chesapeake Bay grew by just 8 per-
19 cent;

20 (15) the population of the watershed is esti-
21 mated to be growing by about 157,000 people per
22 year;

23 (16) continuing at that rate, the population will
24 increase to nearly 20,000,000 by 2030;

1 (17) about 58 percent of the watershed of the
2 Chesapeake Bay is undeveloped and mostly forested,
3 but as many as 100 acres of forest are lost to devel-
4 opment each day;

5 (18) States, local governments, developers, and
6 nonprofit organizations have developed numerous
7 low-impact development techniques since the late
8 1990s, which use natural area protection, infiltra-
9 tion, and pervious surfaces to reduce stormwater
10 runoff and associated sediment and nutrient pollu-
11 tion;

12 (19) many of those techniques are less expen-
13 sive than traditional pollution stormwater control
14 management techniques;

15 (20) the decline of key aquatic habitats and
16 species has resulted in a loss of the important water
17 quality benefits that the habitats and species tradi-
18 tionally provided;

19 (21) native oysters, the numbers of which have
20 declined precipitously in the Chesapeake Bay in sig-
21 nificant part because of diseases brought into the
22 watershed by nonnative oysters, are natural filters
23 that once effectively filtered a volume of water equiv-
24 alent to that of the entire Chesapeake Bay in a mat-
25 ter of days;

1 (22) although less well-understood, menhaden,
2 a species of fish found in the Chesapeake Bay, also
3 provide important filtering capacity as well as a
4 number of other key ecosystem functions;

5 (23) wetlands are a vital part of any major eco-
6 system;

7 (24) studies have demonstrated that nontidal
8 wetland near the Chesapeake Bay removed as much
9 as 89 percent of the nitrogen and 80 percent of the
10 phosphorus that entered the wetland through upland
11 runoff, groundwater, and precipitation;

12 (25) riparian forests remove as much as 90 per-
13 cent of nitrogen and phosphorus that would other-
14 wise enter the water;

15 (26) the loss of forests and wetlands in the
16 Chesapeake Bay has resulted in diminished water
17 quality, among other effects;

18 (27) in certain locations in the Chesapeake
19 Bay, nutria, a nonnative species, has caused exten-
20 sive destruction of key wetlands; and

21 (28) in spite of the achievements of the Ches-
22 apeake Bay Program partnership and increasing
23 knowledge about ecosystem functions, the restora-
24 tion of the Chesapeake Bay will require significantly

1 stronger tools to manage pollution levels and other
 2 impediments to water quality.

3 **SEC. 3. CHESAPEAKE BAY PROGRAM.**

4 Section 117 of the Federal Water Pollution Control
 5 Act (~~33~~ U.S.C. 1267) is amended to read as follows:

6 **“SEC. 117. CHESAPEAKE BAY PROGRAM.**

7 “(a) DEFINITIONS.—In this section:

8 “(1) ADMINISTRATIVE COST.—The term ‘ad-
 9 ministrative cost’ means the cost of salaries and
 10 fringe benefits incurred in administering a grant
 11 under this section.

12 “(2) ASIAN OYSTER.—The term ‘Asian oyster’
 13 means the species *Crassostrea ariakensis*.

14 “(3) BASELINE.—The term ‘baseline’ means
 15 the basic standard or level used for measuring (as
 16 applicable)—

17 “(A) the nutrient control requirements
 18 credit sellers must achieve before becoming eli-
 19 gible to generate saleable nutrient credits; or

20 “(B) the nutrient load reductions required
 21 of individual sources to meet water quality
 22 standards or goals under a TMDL or watershed
 23 implementation plan.

24 “(4) BASIN COMMISSIONS.—The term ‘basin
 25 commissions’ means—

1 “(A) the Interstate Commission on the Po-
2 tomac River Basin established under the inter-
3 state compact consented to and approved by
4 Congress under the Joint Resolution of July
5 11, 1940 (54 Stat. 748, chapter 579) and Pub-
6 lic Law 91–407 (84 Stat. 856); and

7 “(B) the Susquehanna River Basin Com-
8 mission established under the interstate com-
9 pact consented to and approved by Congress
10 under Public Law 91–575 (84 Stat. 1509) and
11 Public Law 99–468 (100 Stat. 1193).

12 “(5) CHESAPEAKE BAY AGREEMENT.—The
13 term ‘Chesapeake Bay Agreement’ means the for-
14 mal, voluntary agreements executed to achieve the
15 goal of restoring and protecting the Chesapeake Bay
16 ecosystem and the living resources of the Ches-
17 apeake Bay ecosystem and signed by the Chesapeake
18 Executive Council.

19 “(6) CHESAPEAKE BAY ECOSYSTEM.—The term
20 ‘Chesapeake Bay ecosystem’ means the ecosystem of
21 the Chesapeake Bay watershed.

22 “(7) CHESAPEAKE BAY PROGRAM.—The term
23 ‘Chesapeake Bay Program’ means the program di-
24 rected by the Chesapeake Executive Council in ac-
25 cordance with the Chesapeake Bay Agreement.

1 “(8) CHESAPEAKE BAY STATE.—The term
2 ‘Chesapeake Bay State’ means any of—

3 “(A) the States of Delaware, Maryland,
4 New York, Pennsylvania, Virginia, and West
5 Virginia; or

6 “(B) the District of Columbia.

7 “(9) CHESAPEAKE BAY WATERSHED.—The
8 term ‘Chesapeake Bay watershed’ means the Ches-
9 apeake Bay and the area consisting of 19 tributary
10 basins within the Chesapeake Bay States through
11 which precipitation drains into the Chesapeake Bay.

12 “(10) CHESAPEAKE EXECUTIVE COUNCIL.—The
13 term ‘Chesapeake Executive Council’ means the sig-
14 natories to the Chesapeake Bay Agreement.

15 “(11) CLEANING AGENT.—The term ‘cleaning
16 agent’ means a laundry detergent, dishwashing com-
17 pound, household cleaner, metal cleaner, degreasing
18 compound, commercial cleaner, industrial cleaner,
19 phosphate compound, or other substance that is in-
20 tended to be used for cleaning purposes.

21 “(12) DIRECTOR.—The term ‘director’ means
22 the Director of the Chesapeake Bay Program Office
23 of the Environmental Protection Agency.

24 “(13) LOCAL GOVERNMENT.—The term ‘local
25 government’ means any county, city, or other gen-

1 eral purpose political subdivision of a State with ju-
 2 risdiction over land use.

3 “(14) MENTHADEN.—The term ‘menhaden’
 4 means members of stocks or populations of the spe-
 5 cies *Brevoortia tyrannus*.

6 “(15) NUTRIA.—The term ‘nutria’ means the
 7 species *Myocaster coypus*.

8 “(16) POINT-OF-REGULATION.—The term
 9 ‘point-of-regulation’ means any entity that—

10 “(A) is subject to a limitation on pollution
 11 or other regulation under this Act; and

12 “(B) has sufficient technical capacity and
 13 legal authority to meet the obligations of the
 14 entity under this Act.

15 “(17) SIGNATORY JURISDICTION.—The term
 16 ‘signatory jurisdiction’ means a jurisdiction of a sig-
 17 natory to the Chesapeake Bay Agreement.

18 “(18) TMDL.—

19 “(A) IN GENERAL.—The term ‘TMDL’
 20 means the total maximum daily load that the
 21 Administrator establishes or approves for nitro-
 22 gen, phosphorus, and sediment loading to the
 23 waters in the Chesapeake Bay mainstem and
 24 tidal tributaries identified on the list of a
 25 Chesapeake Bay State under section 303(d).

1 “(B) INCLUSIONS.—The term ‘TMDL’
2 may include nitrogen, phosphorus, and sedi-
3 ment allocations in temporal units of greater
4 than daily duration if applicable allocations—

5 “(i) are demonstrated to achieve
6 water quality standards; and

7 “(ii) do not lead to exceedances of
8 other applicable water quality standards
9 for local receiving waters.

10 “(19) TRIBUTARY BASIN.—The term ‘tributary
11 basin’ means an area of land or body of water
12 that—

13 “(A) drains into any of the 19 Chesapeake
14 Bay tributaries or tributary segments; and

15 “(B) is managed through watershed imple-
16 mentation plans under this Act.

17 “(b) CONTINUATION OF CHESAPEAKE BAY PRO-
18 GRAM.—

19 “(1) IN GENERAL.—In cooperation with the
20 Chesapeake Executive Council (and as a member of
21 the Council), the Administrator shall continue the
22 Chesapeake Bay Program.

23 “(2) PROGRAM OFFICE.—

1 “(A) IN GENERAL.—The Administrator
2 shall maintain in the Environmental Protection
3 Agency a Chesapeake Bay Program Office.

4 “(B) FUNCTION.—The Chesapeake Bay
5 Program Office shall provide support to the
6 Chesapeake Executive Council by—

7 “(i) implementing and coordinating
8 science, research, modeling, support serv-
9 ices, monitoring, data collection, and other
10 activities that support the Chesapeake Bay
11 Program;

12 “(ii) developing and making available,
13 through publications, technical assistance,
14 and other appropriate means, information
15 pertaining to the environmental quality
16 and living resources of the Chesapeake
17 Bay ecosystem;

18 “(iii) in cooperation with appropriate
19 Federal, State, and local authorities, as-
20 sisting the signatories to the Chesapeake
21 Bay Agreement in developing and imple-
22 menting specific action plans to carry out
23 the responsibilities of the signatories to the
24 Chesapeake Bay Agreement;

1 “(iv) coordinating the actions of the
2 Environmental Protection Agency with the
3 actions of the appropriate officials of other
4 Federal agencies and State and local au-
5 thorities in developing strategies to—

6 “(I) improve the water quality
7 and living resources in the Ches-
8 apeake Bay ecosystem; and

9 “(II) obtain the support of the
10 appropriate officials of the agencies
11 and authorities in achieving the objec-
12 tives of the Chesapeake Bay Agree-
13 ment; and

14 “(v) implementing outreach programs
15 for public information, education, and par-
16 ticipation to foster stewardship of the re-
17 sources of the Chesapeake Bay.

18 “(e) INTERAGENCY AGREEMENTS.—The Adminis-
19 trator may enter into an interagency agreement with a
20 Federal agency to carry out this section.

21 “(d) TECHNICAL ASSISTANCE AND ASSISTANCE
22 GRANTS.—

23 “(1) IN GENERAL.—In cooperation with the
24 Chesapeake Executive Council, the Administrator
25 may provide technical assistance, and assistance

1 grants, to nonprofit organizations, State and local
2 governments, colleges, universities, and interstate
3 agencies to carry out this section, subject to such
4 terms and conditions as the Administrator considers
5 appropriate.

6 ~~“(2) FEDERAL SHARE.—~~

7 ~~“(A) IN GENERAL.—Except as provided in~~
8 ~~subparagraph (B), the Federal share of an as-~~
9 ~~sistance grant provided under paragraph (1)~~
10 ~~shall be determined by the Administrator in ac-~~
11 ~~cordance with guidance issued by the Adminis-~~
12 ~~trator.~~

13 ~~“(B) CHESAPEAKE BAY STEWARDSHIP~~
14 ~~GRANTS PROGRAM.—The Federal share of an~~
15 ~~assistance grant provided under paragraph (1)~~
16 ~~to carry out an implementing activity under~~
17 ~~subsection (h)(2) shall not exceed 75 percent of~~
18 ~~eligible project costs, as determined by the Ad-~~
19 ~~ministrator.~~

20 ~~“(3) NON-FEDERAL SHARE.—An assistance~~
21 ~~grant under paragraph (1) shall be provided on the~~
22 ~~condition that non-Federal sources provide the re-~~
23 ~~mainder of eligible project costs, as determined by~~
24 ~~the Administrator.~~

1 “(4) ADMINISTRATIVE COSTS.—Administrative
2 costs shall not exceed 10 percent of the annual grant
3 award.

4 “(e) IMPLEMENTATION AND MONITORING
5 GRANTS.—

6 “(1) IN GENERAL.—On the request of the chief
7 executive of the Chesapeake Bay State, the Adminis-
8 trator—

9 “(A) shall make an implementation grant
10 to the Chesapeake Bay State, or a designee of
11 a Chesapeake Bay State (such as a soil con-
12 servation district, nonprofit organization, local
13 government, college, university, interstate basin
14 commission, or interstate agency), for the pur-
15 pose of implementing the TMDL plans of the
16 Chesapeake Bay State and achieving the goals
17 established under the Chesapeake Bay Agree-
18 ment, subject to such terms and conditions as
19 the Administrator considers to be appropriate;
20 and

21 “(B) may make a monitoring grant to—

22 “(i) a Chesapeake Bay State, or a
23 designee of a Chesapeake Bay State (such
24 as a soil conservation district, nonprofit or-
25 ganization, local government, college, uni-

1 iversity, interstate basin commission, or
 2 interstate agency), for the purpose of mon-
 3 itoring the ecosystem of freshwater tribu-
 4 taries to the Chesapeake Bay, or

5 “(ii) the States of Delaware, Mary-
 6 land, or Virginia, the District of Columbia,
 7 or a designee (such as a nonprofit organi-
 8 zation, local government, college, univer-
 9 sity, or interstate agency) for the purpose
 10 of monitoring the Chesapeake Bay, includ-
 11 ing the tidal waters of the Chesapeake
 12 Bay.

13 “(2) ADMINISTRATION.—In making implemen-
 14 tation grants to each of the Chesapeake Bay States
 15 for a fiscal year under this subsection, the Adminis-
 16 trator shall ensure that not less than—

17 “(A) 10 percent of the funds available to
 18 make such grants are made to the States of
 19 Delaware, New York, and West Virginia; and

20 “(B) 20 percent of the funds available to
 21 make such grants are made to States for the
 22 sole purpose of providing technical assistance to
 23 agricultural producers and foresters to access
 24 conservation programs and other resources de-
 25 voted to improvements in water quality in the

1 Chesapeake Bay and the tributaries of the
2 Chesapeake Bay.

3 ~~“(3) PROPOSALS.—~~

4 ~~“(A) IMPLEMENTATION GRANTS.—~~

5 ~~“(i) IN GENERAL.—A Chesapeake~~
6 ~~Bay State described in paragraph (1) may~~
7 ~~apply for a grant under this subsection for~~
8 ~~a fiscal year by submitting to the Adminis-~~
9 ~~trator a comprehensive proposal to imple-~~
10 ~~ment programs and achieve the goals es-~~
11 ~~tablished under the Chesapeake Bay~~
12 ~~Agreement.~~

13 ~~“(ii) IMPLEMENTATION GRANT CON-~~
14 ~~TENTS.—A proposal under clause (i) shall~~
15 ~~include—~~

16 ~~“(I) a description of proposed ac-~~
17 ~~tions that the Chesapeake Bay State~~
18 ~~commits to take within a specified~~
19 ~~time period that are designed—~~

20 ~~“(aa) to achieve and main-~~
21 ~~tain all applicable water quality~~
22 ~~standards, including standards~~
23 ~~necessary to support the aquatic~~
24 ~~living resources of the Ches-~~

1 peake Bay and related tributaries
2 and to protect human health;

3 “(bb) to restore, enhance,
4 and protect the finfish, shellfish,
5 waterfowl, and other living re-
6 sources; habitats of those species
7 and resources; and ecological re-
8 lationships to sustain all fisheries
9 and provide for a balanced eco-
10 system;

11 “(cc) to preserve, protect,
12 and restore those habitats and
13 natural areas that are vital to the
14 survival and diversity of the liv-
15 ing resources of the Chesapeake
16 Bay and associated rivers;

17 “(dd) to develop, promote,
18 and achieve sound land use prac-
19 tices that protect and restore wa-
20 tershed resources and water qual-
21 ity; reduce or maintain reduced
22 pollutant loadings for the Chesa-
23 peake Bay and related tribu-
24 taries; and restore and preserve
25 aquatic living resources;

1 “(cc) to promote individual
2 stewardship and assist individ-
3 uals; community-based organiza-
4 tions; businesses; local govern-
5 ments; and schools to undertake
6 initiatives to achieve the goals
7 and commitments of the Ches-
8 apeake Bay Agreement; or

9 “(ff) to provide technical as-
10 sistance to agricultural pro-
11 ducers; foresters; and other eligi-
12 ble entities; through technical in-
13 frastructure; including activities;
14 processes; tools; and agency func-
15 tions needed to support delivery
16 of technical services; such as
17 technical standards; resource in-
18 ventories; training; data; tech-
19 nology; monitoring; and effects
20 analyses;

21 “(H) a commitment to dedicate
22 not less than 20 percent of the grant
23 of the Chesapeake Bay under this
24 subsection to support technical assist-
25 ance for agricultural and forestry land

1 or nutrient management practices
2 that protect and restore watershed re-
3 sources and water quality; reduce or
4 maintain reduced pollutant loadings
5 for the Chesapeake Bay and related
6 tributaries; and restore and preserve
7 aquatic living resources; and

8 “(III) the estimated cost of the
9 actions proposed to be taken during
10 the fiscal year.

11 “(B) MONITORING GRANTS.—

12 “(i) IN GENERAL.—A Chesapeake
13 Bay State described in paragraph (1) may
14 apply for a grant under this subsection for
15 a fiscal year by submitting to the Adminis-
16 trator a comprehensive proposal to monitor
17 freshwater or estuarine ecosystems, includ-
18 ing water quality.

19 “(ii) MONITORING GRANT CON-
20 TENTS.—A proposal under this subpara-
21 graph shall include—

22 “(I) a description of the proposed
23 monitoring system;

24 “(II) certification by the Ches-
25 peake Bay Program Director that

1 such a monitoring system includes
2 such parameters as the Chesapeake
3 Bay Program Director determines to
4 be necessary to assess progress to-
5 ward achieving the goals of the Chesa-
6 peake Clean Water and Ecosystem
7 Restoration Act of 2009; and

8 “(III) the estimated cost of the
9 monitoring proposed to be conducted
10 during the fiscal year.

11 “(iii) CONCURRENCES.—The Adminis-
12 trator shall—

13 “(I) obtain the concurrence of
14 the Director of the United States Geo-
15 logical Survey regarding the design
16 and implementation of the freshwater
17 monitoring systems established under
18 this subsection; and

19 “(II) obtain the concurrence of
20 the Director of the Chesapeake Bay
21 Office of the National Oceanic and
22 Atmospheric Administration regarding
23 the design and implementation of the
24 estuarine monitoring systems estab-
25 lished under this subsection.

1 “(iv) CONSULTATION.—The Adminis-
2 trator shall—

3 “~~(I)~~ consult with the Interstate
4 Commission on the Potomac River
5 Basin, the Susquehanna River Basin
6 Commission, and the Chesapeake Bay
7 States regarding the design and im-
8 plementation of the freshwater moni-
9 toring systems established under this
10 subsection, giving particular attention
11 to the measurement of the water qual-
12 ity effectiveness of agricultural con-
13 servation program implementation (in-
14 cluding geospatial agricultural con-
15 servation program data), including the
16 Chesapeake Bay Watershed Initiative
17 under section 1240Q of the Food Se-
18 curity Act of 1985 (16 U.S.C.
19 ~~3839bb-4~~);

20 “~~(II)~~ consult with Old Dominion
21 University, the Virginia Institute of
22 Marine Science, the University of
23 Maryland Center for Environmental
24 Science, and the Chesapeake Bay
25 States regarding the estuarine moni-

1 toring systems established under this
2 subsection;

3 “(III) consult with the Chesapeake Bay Program Scientific and
4 Technical Advisory Committee regarding
5 independent review of monitoring
6 designs giving particular attention to
7 integrated freshwater and estuarine
8 monitoring strategies; and

9 “(IV) consult with Federal departments and agencies regarding
10 cooperation in implementing monitoring
11 programs.

12 “(f) FEDERAL FACILITIES COORDINATION.—

13 “(1) SUBWATERSHED PLANNING AND RESTORATION.—A Federal agency that owns or operates a
14 facility (as defined by the Administrator) within the
15 Chesapeake Bay watershed shall participate in regional and subwatershed planning and restoration
16 programs.

17 “(2) COMPLIANCE WITH AGREEMENTS AND PLANS.—The head of each Federal agency that owns
18 or occupies real property in the Chesapeake Bay watershed shall ensure that the property, and actions
19

1 taken by the agency with respect to the property,
2 comply with—

3 “(A) the Chesapeake Bay Agreement;

4 “(B) the Federal Agencies Chesapeake
5 Ecosystem Unified Plan;

6 “(C) the Chesapeake Bay action plan de-
7 veloped in accordance with subparagraph
8 (g)(1)(A); and

9 “(D) any subsequent agreements and
10 plans.

11 “(g) FEDERAL ANNUAL ACTION PLAN AND
12 PROGRESS REPORT.—The Administrator, in accordance
13 with Executive Order 13508 entitled ‘Chesapeake Bay
14 Protection and Restoration’ and signed on May 12, 2009
15 (74 Fed. Reg. 23099), shall—

16 “(1) make available to the public, not later than
17 March 31 of each year—

18 “(A) a Chesapeake Bay action plan de-
19 scribing, in the greatest practicable degree of
20 detail, how Federal funding proposed in the an-
21 nual budget of the United States submitted by
22 the President to Congress will be used to pro-
23 tect and restore the Chesapeake Bay during the
24 upcoming fiscal year; and

25 “(B) an annual progress report that—

1 “(i) assesses the key ecological at-
2 tributes that reflect the health of the
3 Chesapeake Bay ecosystem;

4 “(ii) reviews indicators of environ-
5 mental conditions in the Chesapeake Bay;

6 “(iii) distinguishes between the health
7 of the Chesapeake Bay ecosystem and the
8 results of management measures;

9 “(iv) assesses implementation of the
10 action plan during the preceding fiscal
11 year;

12 “(v) recommends steps to improve
13 progress in restoring and protecting the
14 Chesapeake Bay; and

15 “(vi) describes how Federal funding
16 and actions will be coordinated with the
17 actions of States, basin commissions, and
18 others;

19 “(2) create and maintain, with the concurrence
20 of the Secretary of Agriculture, a Chesapeake Bay-
21 wide database containing comprehensive data on im-
22 plementation of conservation management practices
23 in the Chesapeake Bay watershed that—

24 “(A) includes baseline conservation man-
25 agement practice implementation data as of the

1 effective date of the Chesapeake Clean Water
2 and Ecosystem Restoration Act of 2009;

3 “(B) includes data on subsequent con-
4 servation management practice implementation
5 projects funded by or reported to the Agency or
6 the Department;

7 “(C) presents the required data in statis-
8 tical or aggregate form without identifying
9 any—

10 “(i) individual owner, operator, or
11 producer; or

12 “(ii) specific data gathering site; and

13 “(D) is made available to the public not
14 later than December 31, 2010.

15 “(h) CHESAPEAKE BAY PROGRAM.—

16 “(1) MANAGEMENT STRATEGIES.—The Admin-
17 istrator, in coordination with other members of the
18 Chesapeake Executive Council, shall ensure that
19 management plans are developed and implemented
20 by Chesapeake Bay States to achieve and main-
21 tain—

22 “(A) the nutrient goals of the Chesapeake
23 Bay Agreement for the quantity of nitrogen and
24 phosphorus entering the Chesapeake Bay and
25 the watershed of the Chesapeake Bay;

1 “(B) the water quality requirements nec-
2 essary to restore living resources in the Ches-
3 apeake Bay ecosystem;

4 “(C) the Chesapeake Bay Basinwide Tox-
5 ins Reduction and Prevention Strategy goal of
6 reducing or eliminating the input of chemical
7 contaminants from all controllable sources to
8 levels that result in no toxic or bioaccumulative
9 impact on the living resources of the Ches-
10 apeake Bay ecosystem or on human health;

11 “(D) habitat restoration, protection, cre-
12 ation, and enhancement goals established by
13 Chesapeake Bay Agreement signatories for wet-
14 land, riparian forests, and other types of habi-
15 tat associated with the Chesapeake Bay eco-
16 system; and

17 “(E) the restoration, protection, creation,
18 and enhancement goals established by the
19 Chesapeake Bay Agreement signatories for liv-
20 ing resources associated with the Chesapeake
21 Bay ecosystem.

22 “(2) CHESAPEAKE BAY STEWARDSHIP GRANTS
23 PROGRAM.—The Administrator, in cooperation with
24 the Chesapeake Executive Council, shall—

1 “(A) establish a Chesapeake Bay Steward-
2 ship Grants Program; and

3 “(B) in carrying out that program—

4 “(i) offer technical assistance and as-
5 sistance grants under subsection (d) to
6 local governments, soil conservation dis-
7 tricts, academic institutions, and nonprofit
8 organizations in the Chesapeake Bay re-
9 gion to implement—

10 “(I) cooperative watershed strate-
11 gies that address the water quality,
12 habitat, and living resource needs in
13 the Chesapeake Bay ecosystem;

14 “(II) locally based protection and
15 restoration programs or projects with-
16 in a watershed that complement the
17 State watershed implementation
18 plans, including the creation, restora-
19 tion, or enhancement of habitat asso-
20 ciated with the Chesapeake Bay eco-
21 system; and

22 “(III) innovative nitrogen, phos-
23 phorus, or sediment reduction efforts;
24 and

1 “(ii) give preference to cooperative
2 projects that involve local governments.

3 “(i) TOTAL MAXIMUM DAILY LOAD.—

4 “(1) TMDL.—

5 “(A) ESTABLISHMENT.—Not later than
6 December 31, 2010, the Administrator shall es-
7 tablish a Chesapeake Bay-wide TMDL.

8 “(B) REQUIREMENTS.—The Administrator
9 shall not establish or approve a TMDL de-
10 scribed in subparagraph (A) unless the TMDL
11 includes—

12 “(i) wasteload allocations for nitrogen,
13 phosphorus, and sediment necessary to im-
14 plement the applicable water quality stand-
15 ards in the Chesapeake Bay watershed and
16 achieve those standards in the Chesapeake
17 Bay and the tidal tributaries of the Ches-
18 apeake Bay;

19 “(ii) enforceable or otherwise binding
20 load allocations for all nonpoint sources,
21 including atmospheric deposition, agricul-
22 tural runoff, and stormwater sources for
23 which a permit under section 402 is not
24 required;

1 “(iii) a margin of safety so as to en-
2 sure that the TMDL does not exceed any
3 applicable water quality standard; and

4 “(iv) a requirement for no net in-
5 crease of nitrogen, phosphorus, and sedi-
6 ment loads above the pollution limitations
7 necessary to meet water quality standards
8 for the Chesapeake Bay, including no net
9 projected increased pollutant loads from—

10 “(I) new or increased impervious
11 surfaces;

12 “(II) concentrated animal feeding
13 operations;

14 “(III) transportation systems;
15 and

16 “(IV) septic systems.

17 “(2) PERMITS.—

18 “(A) IN GENERAL.—Effective beginning on
19 January 1, 2011, a new or reissued permit
20 issued by the Administrator under section
21 402(a) or a State authorized to administer a
22 permit program under section 402(b) shall in-
23 clude limits consistent with all applicable
24 wasteload allocations in the Chesapeake Bay
25 TMDL.

1 “(B) PERMITS.—

2 “~~(i)~~ IN GENERAL.—Effective begin-
3 ning on January 1, 2011, each Chesapeake
4 Bay State shall submit to the Adminis-
5 trator copies of any permit for discharges
6 of nitrogen, phosphorus, or sediment into
7 the Chesapeake Bay watershed that is al-
8 lowed to continue beyond 5 years pursuant
9 to a State law analogous to section 558(e)
10 of title 5, United States Code, not later
11 than 60 days after the expiration date of
12 the permit.

13 “~~(ii)~~ REVIEW.—The Administrator
14 shall have the opportunity to review and
15 object to the continuance of the permit in
16 accordance with the process described in
17 section 402(d) for permits proposed to be
18 issued by a State.

19 “~~(j)~~ ACTIONS BY STATES.—

20 “~~(1)~~ WATERSHED IMPLEMENTATION PLANS.—

21 “~~(A)~~ PLANS.—

22 “~~(i)~~ IN GENERAL.—Not later than
23 May 12, 2011, each Chesapeake Bay State
24 shall, after providing for reasonable notice
25 and 1 or more public hearings, adopt and

1 submit to the Administrator for approval a
 2 watershed implementation plan for the por-
 3 tion of each of the 92 tidal water segments
 4 that is subject to the jurisdiction of the
 5 Chesapeake Bay State that together com-
 6 prise the Chesapeake Bay.

7 “(ii) TARGETS.—The watershed im-
 8 plementation plan shall establish reduction
 9 targets, key actions, and schedules for re-
 10 ducing, to levels that will attain water
 11 quality standards, the loads, of nitrogen,
 12 phosphorus, and sediment, including pollu-
 13 tion from—

14 “(I) agricultural runoff;

15 “(II) point sources, including
 16 point source stormwater discharges;

17 “(III) nonpoint source
 18 stormwater runoff; and

19 “(IV) septic systems and other
 20 onsite sewage disposal systems.

21 “(iii) POLLUTION LIMITATIONS.—

22 “(I) IN GENERAL.—The tribu-
 23 tary pollution limitations shall be the
 24 nitrogen, phosphorous, and sediment
 25 cap loads identified in the tributary

1 cap load agreement numbered EPA
 2 ~~903-R-03-007~~, date December 2003,
 3 and entitled ‘Setting and Allocating
 4 the Chesapeake Bay Basin Nutrient
 5 and Sediment Loads: The Collaborative
 6 Process, Technical Tools and
 7 Innovative Approaches,’ or a Chesapeake
 8 Bay TMDL established by the
 9 Administrator.

10 “(H) STRINGENCY.—A watershed
 11 implementation plan shall be designed
 12 to attain, at a minimum, the
 13 pollution limitations described in sub-
 14 clause (I).

15 “(iv) PLAN REQUIREMENTS.—Each
 16 watershed implementation plan shall—

17 “(I) include State-adopted management
 18 measures, including rules or
 19 regulations, permits, consent decrees,
 20 and other enforceable or otherwise
 21 binding measures, to require and
 22 achieve reductions from pollution
 23 sources;

24 “(II) include programs to achieve
 25 voluntary reductions from pollution

1 sources, including funding commit-
2 ments necessary to implement those
3 programs;

4 “(III) include any additional re-
5 quirements or actions that the Chesa-
6 peake Bay State determines to be nec-
7 essary to attain the pollution limita-
8 tions by the deadline established in
9 this paragraph;

10 “(IV) provide for enforcement
11 mechanisms, including a penalty
12 structure for failures, such as fees or
13 forfeiture of State funds, including
14 Federal funds distributed or otherwise
15 awarded by the State to the extent
16 the State is authorized to exercise
17 independent discretion in amounts of
18 such distributions or awards, for use
19 in case a permittee, local jurisdictions,
20 or any other party fails to adhere to
21 assigned pollutant limitations, imple-
22 mentation schedules, or permit terms;

23 “(V) include a schedule for im-
24 plementation divided into 2-year peri-
25 ods, along with computer modeling to

1 demonstrate the projected reductions
2 in nitrogen, phosphorus, and sediment
3 loads associated with each 2-year pe-
4 riod;

5 “(VI) include the stipulation of
6 alternate actions as contingencies;

7 “(VII) account for how the
8 Chesapeake Bay State will address
9 additional loadings from growth
10 through offsets or other actions; and

11 “(VIII) provide assurances
12 that—

13 “(aa) if compared to an esti-
14 mated 2008 baseline based on
15 modeled loads, the initial plan
16 shall be designed to achieve, not
17 later than May 31, 2017, at least
18 60 percent of the nutrient and
19 sediment limitations described in
20 clause (iii)(I);

21 “(bb) the management
22 measures required to achieve a
23 50-percent reduction of nutrient
24 and sediment limitations shall be

1 in effect upon submission of the
2 plan;

3 “(cc) the Chesapeake Bay
4 State will have adequate per-
5 sonnel, funding, and authority
6 under State (and, as appropriate,
7 local) law to carry out the imple-
8 mentation plan, and is not pro-
9 hibited by any provision of Fed-
10 eral or State law from carrying
11 out the implementation plan; and

12 “(dd) in a case in which a
13 Chesapeake Bay State has relied
14 on a local government for the im-
15 plementation of any plan provi-
16 sion, the Chesapeake Bay State
17 has the responsibility for ensur-
18 ing adequate implementation of
19 the provision.

20 “(B) IMPLEMENTATION.—

21 “(i) IN GENERAL.—In implementing a
22 watershed implementation plan, each
23 Chesapeake Bay State shall follow a strat-
24 egy developed by the Administrator for the
25 implementation of adaptive management

1 principles to ensure full implementation of
2 all plan elements by not later than May
3 12, 2025, including—

4 “(I) biennial evaluations of State
5 actions;

6 “(II) progress made toward im-
7 plementation;

8 “(III) determinations of nee-
9 cessary modifications to future actions
10 in order to achieve objectives; and

11 “(IV) appropriate provisions to
12 adapt to climate changes.

13 “(ii) DEADLINE.—Not later than May
14 12, 2025, each Chesapeake Bay State
15 shall—

16 “(I) fully implement the water-
17 shed implementation plan of the
18 State; and

19 “(II) have in place all the mecha-
20 nisms outlined in the plan that are
21 necessary to attain the applicable pol-
22 lutant limitations for nitrogen, phos-
23 phorus, and sediments.

24 “(C) PROGRESS REPORTS.—Not later than
25 May 12, 2014, and biennially thereafter, each

1 Chesapeake Bay State shall submit to the Ad-
2 ministrator a progress report that, with respect
3 to the 2-year period covered by the report—

4 “(i) includes a listing of all manage-
5 ment measures that were to be imple-
6 mented in accordance with the approved
7 watershed implementation plan of the
8 Chesapeake Bay State, including a descrip-
9 tion of the extent to which those measures
10 have been fully implemented;

11 “(ii) includes a listing of all the man-
12 agement measures described in clause (i)
13 that the Chesapeake Bay State has failed
14 to fully implement in accordance with the
15 approved watershed implementation plan
16 of the Chesapeake Bay State;

17 “(iii) includes monitored and collected
18 water quality data;

19 “(iv) includes Chesapeake Bay Pro-
20 gram computer modeling data that detail
21 the nitrogen, phosphorus, and sediment
22 load reductions projected to be achieved as
23 a result of the implementation of the man-
24 agement measures and mechanisms carried
25 out by the Chesapeake Bay State;

1 “(v) includes, for the subsequent 2-
2 year period, implementation goals and
3 Chesapeake Bay Program computer mod-
4 eling data detailing the projected pollution
5 reductions to be achieved if the Ches-
6 apeake Bay State fully implements the sub-
7 sequent round of management measures;

8 “(vi) identifies compliance informa-
9 tion, including violations, actions taken by
10 the Chesapeake Bay State to address the
11 violations, and dates, if any, on which com-
12 pliance was achieved; and

13 “(vii) specifies any revisions to the
14 watershed implementation plan submitted
15 under this paragraph that the Chesapeake
16 Bay State determines are necessary to at-
17 tain the applicable pollutant limitations for
18 nitrogen, phosphorus, and sediments.

19 “(2) ISSUANCE OF PERMITS.—

20 “(A) IN GENERAL.—Notwithstanding any
21 other provision of this Act (including any exclu-
22 sion or exception contained in a definition
23 under section 502), for the purpose of achieving
24 the nitrogen, phosphorus, and sediment reduc-
25 tions required under a watershed implementa-

1 tion plan, a Chesapeake Bay State may issue a
2 permit in accordance with section 402 for any
3 pollution source the Chesapeake Bay State de-
4 termines to be necessary.

5 “(B) ENFORCEMENT.—The Administrator
6 shall enforce any permits issued in accordance
7 with the watershed implementation plan in the
8 same manner as other permits issued under
9 section 402 are enforced.

10 “(3) STORMWATER PERMITS.—

11 “(A) IN GENERAL.—Effective beginning
12 January 1, 2013, the Chesapeake Bay State
13 shall provide assurances to the Administrator
14 that—

15 “(i) the owner or operator of any de-
16 velopment or redevelopment project pos-
17 sessing an impervious footprint that ex-
18 ceeds a threshold to be determined by the
19 Administrator through rulemaking, will use
20 site planning, design, construction, and
21 maintenance strategies for the property to
22 maintain or restore, to the maximum ex-
23 tent technically feasible, the
24 predevelopment hydrology of the property

1 with regard to the temperature, rate, vol-
2 ume, and duration of flow; and

3 “(ii) as a further condition of permit-
4 ting such a development or redevelopment,
5 the owner or operator of any development
6 or redevelopment project possessing an im-
7 pervious footprint that exceeds a threshold
8 to be determined by the Administrator
9 through rulemaking will compensate for
10 any unavoidable impacts to the
11 predevelopment hydrology of the property
12 with regard to the temperature, rate, vol-
13 ume, and duration of flow, such that—

14 “(I) the compensation within the
15 jurisdictional boundaries of the local
16 government shall provide in-kind miti-
17 gation of function at a ratio to be de-
18 termined by the Administrator
19 through rulemaking; and

20 “(II) the compensation outside
21 the jurisdictional boundaries of the
22 local government shall provide in-kind
23 mitigation, at a ratio to be determined
24 by the Administrator through rule-

1 making, within the tributary water-
2 shed in which the project is located.

3 “(B) ADMINISTRATION.—Not later than
4 December 31, 2012, the Administrator shall
5 promulgate regulations that—

6 “(i) define the term ‘predevelopment
7 hydrology’ in subparagraph (A);

8 “(ii) establish the thresholds under
9 subparagraph (A); and

10 “(iii) establish the compensation ra-
11 tios under subparagraph (A)(ii).

12 “(4) PHOSPHATE BAN.—

13 “(A) PHOSPHORUS IN CLEANING
14 AGENTS.—Each Chesapeake Bay State shall
15 provide to the Administrator, not later than 3
16 years after the date of enactment of the Ches-
17 apeake Clean Water and Ecosystem Restoration
18 Act of 2009, assurances that within the juris-
19 diction, except as provided in subparagraph
20 (B), a person may not use, sell, manufacture,
21 or distribute for use or sale any cleaning agent
22 that contains more than 0.0 percent phosphorus
23 by weight, expressed as elemental phosphorus,
24 except for a quantity not exceeding 0.5 percent

1 phosphorus that is incidental to the manufac-
2 ture of the cleaning agent.

3 “(B) PROHIBITED QUANTITIES OF PHOS-
4 PHORUS.—Each Chesapeake Bay State shall
5 provide to the Administrator, not later than 3
6 years after the date of enactment of the Ches-
7 peake Clean Water and Ecosystem Restoration
8 Act of 2009, assurances that, within the juris-
9 diction, a person may use, sell, manufacture, or
10 distribute for use or sale a cleaning agent that
11 contains greater than 0.0 percent phosphorus
12 by weight, but does not exceed 8.7 percent
13 phosphorus by weight, if the cleaning agent is
14 a substance that the Administrator, by regula-
15 tion, excludes from the limitation under sub-
16 paragraph (A), based on a finding that compli-
17 ance with that subparagraph would—

18 “(i) create a significant hardship on
19 the users of the cleaning agent; or

20 “(ii) be unreasonable because of the
21 lack of an adequate substitute cleaning
22 agent.

23 “(k) ACTION BY ADMINISTRATOR.—

24 “(1) IN GENERAL.—Not later than 60 days
25 after the date of enactment of the Chesapeake Clean

1 Water and Ecosystem Restoration Act of 2009, the
2 Administrator shall establish minimum criteria that
3 any proposed watershed implementation plan must
4 meet before the Administrator may approve such a
5 plan.

6 “(2) COMPLETENESS FINDING.—

7 “(A) IN GENERAL.—Not later than 60
8 days after the date on which the Administrator
9 receives a new or revised proposed watershed
10 implementation plan from a Chesapeake Bay
11 State, the Administrator shall determine wheth-
12 er the minimum criteria for the plan established
13 under paragraph (1) have been met.

14 “(B) EFFECT OF FINDING OF INCOM-
15 PLETENESS.—If the Administrator determines
16 under subparagraph (A) that all or any portion
17 of a submitted watershed implementation plan
18 does not meet the minimum criteria established
19 under paragraph (1), the Chesapeake Bay State
20 submitting the plan shall be treated as not hav-
21 ing made the submission.

22 “(3) APPROVAL AND DISAPPROVAL.—

23 “(A) DEADLINE.—Not later than 90 days
24 after determining that a watershed implementa-
25 tion plan meets minimum criteria in accordance

1 with paragraph (2)(A), the Administrator shall
2 approve or disapprove the plan.

3 “(B) FULL AND PARTIAL APPROVAL AND
4 DISAPPROVAL.—In carrying out this paragraph,
5 the Administrator—

6 “(i) shall approve a watershed imple-
7 mentation plan if the plan meets all appli-
8 cable requirements under this section; and

9 “(ii) may approve the plan in part
10 and disapprove the plan in part if only a
11 portion of the plan meets those require-
12 ments.

13 “(C) CONDITIONAL APPROVAL.—The Ad-
14 ministrator—

15 “(i) may conditionally approve a re-
16 vised watershed implementation plan based
17 on a commitment of the Chesapeake Bay
18 State submitting the plan to adopt specific
19 enforceable management measures by not
20 later than 1 year after the date of approval
21 of the plan revision; but

22 “(ii) shall treat a conditional approval
23 as a disapproval under this paragraph if
24 the Chesapeake Bay State fails to comply

1 with the commitment of the Chesapeake
2 Bay State.

3 “(D) FULL APPROVAL REQUIRED.—A new
4 or revised watershed implementation plan shall
5 not be treated as meeting the requirements of
6 this section until the Administrator approves
7 the entire new or revised plan.

8 “(E) CORRECTIONS.—In any case in which
9 the Administrator determines that the action of
10 the Administrator approving, disapproving, con-
11 ditionally approving, or promulgating any new
12 or revised watershed implementation plan was
13 in error, the Administrator—

14 “(i) may, in the same manner as the
15 approval, disapproval, conditional approval,
16 or promulgation, revise the action of the
17 Administrator, as appropriate, without re-
18 quiring any further submission from the
19 Chesapeake Bay State; and

20 “(ii) shall make the determination of
21 the Administrator, and the basis for that
22 determination, available to the public.

23 “(F) EFFECTIVE DATE.—The provisions of
24 a State watershed implementation plan shall

1 take effect upon the date of approval of the
2 plan.

3 ~~“(4) CALLS FOR PLAN REVISION.—~~In any case
4 in which the Administrator determines that water-
5 shed implementation plan for any area is inadequate
6 to attain or maintain applicable pollution limitations,
7 the Administrator—

8 ~~“(A) shall notify the Chesapeake Bay~~
9 ~~State of, and require the Chesapeake Bay State~~
10 ~~to revise the plan to correct, the inadequacies;~~

11 ~~“(B) may establish reasonable deadlines~~
12 ~~(not to exceed 180 days after the date on which~~
13 ~~the Administrator provides the notification) for~~
14 ~~the submission of a revised watershed imple-~~
15 ~~mentation plan;~~

16 ~~“(C) make the findings of the Adminis-~~
17 ~~trator under paragraph (3) and notice provided~~
18 ~~under subparagraph (A) public; and~~

19 ~~“(D) require the Chesapeake Bay State to~~
20 ~~comply with the requirements applicable under~~
21 ~~the initial watershed implementation plan, ex-~~
22 ~~cept that the Administrator may adjust any~~
23 ~~dates (other than attainment dates) applicable~~
24 ~~under those requirements, as appropriate.~~

1 ~~“(5) FEDERAL IMPLEMENTATION.—~~If a Chesapeake Bay State fails to submit a watershed implementation plan, to submit a biennial report, or to correct a previously missed 2-year commitment made in a watershed implementation plan, the Administrator shall, after issuing a notice to the State and providing a 90-day period in which the failure may be corrected—

2 ~~“(A) withhold all funds otherwise available to the Chesapeake Bay State under this Act;~~

3 ~~“(B) develop and administer a watershed implementation plan for that Chesapeake Bay State until such time as the Chesapeake Bay State has remedied the plan, reports, or achievements to the satisfaction of the Administrator;~~

4 ~~“(C) require that all permits issued under section 402 for new or expanding discharges of nitrogen, phosphorus, or sediments acquire offsets that exceed by 100 percent an amount that would otherwise be required, taking into account attenuation, equivalency, and uncertainty; and~~

1 ~~“(D) for the purposes of developing and~~
 2 ~~implementing a watershed implementation plan~~
 3 ~~under subparagraph (B)—~~

4 ~~“(i) notwithstanding any other provi-~~
 5 ~~sion of this Act (including any exclusion or~~
 6 ~~exception contained in a definition under~~
 7 ~~section 502); promulgate such regulations~~
 8 ~~or issue such permits as the Administrator~~
 9 ~~determines to be necessary to control pollu-~~
 10 ~~tion sufficient to meet the water quality~~
 11 ~~goals defined in the watershed implementa-~~
 12 ~~tion plan; and~~

13 ~~“(ii) enforce any permits issued in ac-~~
 14 ~~cordance with the watershed implementa-~~
 15 ~~tion plan in the same manner as other per-~~
 16 ~~mits issued under section 402 are en-~~
 17 ~~forced.~~

18 ~~“(6) NITROGEN AND PHOSPHORUS TRADING~~
 19 ~~PROGRAM.—~~

20 ~~“(A) ESTABLISHMENT.—Not later than~~
 21 ~~May 12, 2012, the Administrator, in coopera-~~
 22 ~~tion with each Chesapeake Bay State, shall es-~~
 23 ~~tablish an interstate nitrogen and phosphorus~~
 24 ~~trading program for the Chesapeake Bay for~~
 25 ~~the generation, trading, and use of nitrogen and~~

1 phosphorus credits to facilitate the attainment
2 and maintenance of the Chesapeake Bay-wide
3 TMDL for nitrogen and phosphorus.

4 “(B) TRADING SYSTEM.—The trading pro-
5 gram established under this subsection shall, at
6 a minimum—

7 “(i) define and standardize nitrogen
8 and phosphorus credits and establish pro-
9 cedures or standards for ensuring equiva-
10 lent water quality benefits for all credits;

11 “(ii) establish procedures or standards
12 for certifying and verifying nitrogen and
13 phosphorus credits to ensure that credit-
14 generating practices from both point
15 sources and nonpoint sources are achieving
16 actual reductions in nitrogen and phos-
17 phorus;

18 “(iii) establish procedures or stand-
19 ards for generating, quantifying, trading,
20 and applying credits to meet regulatory re-
21 quirements and allow for trading to occur
22 between and across point source or
23 nonpoint sources;

1 “(iv) establish baseline requirements
2 that a credit seller must meet before be-
3 coming eligible to generate saleable credits;

4 “(v) establish points-of-regulation at
5 the sub-State level to facilitate trading and
6 promote water quality goals under which—

7 “(I) States may designate point
8 sources as points-of-regulation;

9 “(II) States may aggregate mul-
10 tiple sources to serve as points-of-reg-
11 ulation; and

12 “(III) the Administrator shall es-
13 tablish guidelines or standards to en-
14 sure that points-of-regulation shall be
15 generally consistent across States;

16 “(vi) ensure that credits are used in
17 accordance with permit requirements under
18 the national pollutant discharge elimi-
19 nation system established under section
20 402 and trade requirements have been ade-
21 quately incorporated into the permits;

22 “(vii) ensure that private contracts
23 between credit buyers and credit sellers
24 contain adequate provisions to ensure en-
25 forceability under applicable law;

1 “(viii) establish procedures or stand-
2 ards for providing public transparency on
3 nutrient trading activity;

4 “(ix) ensure that, if the local receiving
5 water is impaired for the nutrient being
6 traded but a TMDL has not yet been im-
7 plemented for the impairment—

8 “(I) trades are required to result
9 in progress toward or the attainment
10 of water quality standards in the local
11 receiving water; and

12 “(II) sources in the watershed
13 may not rely on credits produced out-
14 side of the watershed;

15 “(x) require that the application of
16 credits to meet regulatory requirements
17 under this section not cause or contribute
18 to exceedances of water quality standards,
19 total maximum daily loads, or wasteload or
20 load allocations for affected receiving wa-
21 ters, including avoidance of localized im-
22 pacts;

23 “(xi) except as part of a consent
24 agreement, prohibit the purchase of credits
25 from any entity that is in significant non-

1 compliance with an enforceable permit
2 issued under section 402;

3 “(xii) consider and incorporate, to the
4 maximum extent practicable, elements of
5 State trading programs in existence as of
6 the date of enactment of the Chesapeake
7 Clean Water and Ecosystem Restoration
8 Act of 2009; and

9 “(xiii) allow for, as appropriate, the
10 aggregation and banking of credits by
11 third parties.

12 “(C) FACILITATION OF TRADING.—In
13 order to attract market participants and facili-
14 tate the cost-effective achievement of water-
15 quality goals, the Administrator shall ensure
16 that the trading program established under this
17 paragraph—

18 “(i) includes measures to mitigate
19 credit buyer risk;

20 “(ii) makes use of the best available
21 science in order to minimize uncertainty
22 and related transaction costs to traders,
23 including the Administrator, in consulta-
24 tion with the Secretary of Agriculture, sup-
25 porting research and other activities that

1 increase the scientific understanding of
2 nonpoint nutrient pollutant loading and
3 the ability of various structural and non-
4 structural alternatives to reduce the loads;

5 “(iii) eliminates unnecessary or dupli-
6 cative administrative processes; and

7 “(iv) incorporates a permitting ap-
8 proach under the national pollutant dis-
9 charge elimination system established
10 under section 402 that allows trading to
11 occur without requiring the reopening or
12 reissuance of permits to incorporate indi-
13 vidual trades.

14 “(7) AUTHORITY RELATING TO DEVELOP-
15 MENT.—The Administrator shall—

16 “(A) establish, for projects resulting in im-
17 pervious development, guidance relating to site
18 planning, design, construction, and maintenance
19 strategies to ensure that the land maintains
20 predevelopment hydrology with regard to the
21 temperature, rate, volume, and duration of flow;

22 “(B) establish model ordinances and guide-
23 lines with respect to the construction of low-im-
24 pact development infrastructure and non-
25 structural low-impact development techniques

1 for use by States, local governments, and pri-
 2 vate entities; and

3 “(C) not later than 180 days after promul-
 4 gation of the regulations under subsection
 5 (j)(3)(B), issue such guidance, model ordi-
 6 nances, and guidelines as are necessary to carry
 7 out this paragraph.

8 “(8) ASSISTANCE WITH RESPECT TO
 9 STORMWATER DISCHARGES.—

10 “(A) GRANT PROGRAM.—The Adminis-
 11 trator may provide grants to any local govern-
 12 ment within the Chesapeake Bay watershed
 13 that adopts the guidance, ordinances, and
 14 guidelines issued under paragraph (7).

15 “(B) USE OF FUNDS.—A grant provided
 16 under subparagraph (A) may be used by a local
 17 government to pay costs associated with—

18 “(i) developing, implementing, and en-
 19 forcing the guidance, ordinances, and
 20 guidelines issued under paragraph (7); and

21 “(ii) implementing projects designed
 22 to reduce stormwater discharges.

23 “(9) CONSUMER AND COMMERCIAL PRODUCT
 24 REPORT.—Not later than 3 years after the date of
 25 enactment of the Chesapeake Clean Water and Eco-

1 system Restoration Act of 2009, the Administrator,
2 in consultation with the Chesapeake Executive Coun-
3 cil, shall—

4 “(A) review consumer and commercial
5 products, the use of which may affect the water
6 quality of the Chesapeake Bay watershed or as-
7 sociated tributaries, to determine whether fur-
8 ther product nutrient content restrictions are
9 necessary to restore or maintain water quality
10 in the Chesapeake Bay watershed and those
11 tributaries; and

12 “(B) submit to the Committees on Appro-
13 priations, Environment and Public Works, and
14 Commerce, Science, and Transportation of the
15 Senate and the Committees on Appropriations,
16 Natural Resources, Energy and Commerce, and
17 Transportation and Infrastructure of the House
18 of Representatives a product nutrient report de-
19 tailing the findings of the review under sub-
20 paragraph (A).

21 “(1) PROHIBITION ON INTRODUCTION OF ASIAN OYS-
22 TERS.—Not later than 2 years after the date of enactment
23 of the Chesapeake Clean Water and Ecosystem Restora-
24 tion Act of 2009, the Administrator shall promulgate reg-
25 ulations—

1 “(1) to designate the Asian oyster as a ‘biologi-
2 cal pollutant’ in the Chesapeake Bay and tidal wa-
3 ters pursuant to section 502;

4 “(2) to prohibit the issuance of permits under
5 sections 402 and 404 for the discharge of the Asian
6 oyster into the Chesapeake Bay and tidal waters;
7 and

8 “(3) to specify conditions under which scientific
9 research on Asian oysters may be conducted within
10 the Chesapeake Bay and tidal waters.

11 “(m) CHESAPEAKE NUTRIA ERADICATION PRO-
12 GRAM.—

13 “(1) GRANT AUTHORITY.—Subject to the avail-
14 ability of appropriations, the Secretary of the Inte-
15 rior (referred to in this subsection as the ‘Sec-
16 retary’), may provide financial assistance to the
17 States of Delaware, Maryland, and Virginia to carry
18 out a program to implement measures—

19 “(A) to eradicate or control nutria; and

20 “(B) to restore marshland damaged by nu-
21 tria.

22 “(2) GOALS.—The continuing goals of the pro-
23 gram shall be—

24 “(A) to eradicate nutria in the Chesapeake
25 Bay ecosystem; and

1 “(B) to restore marshland damaged by nu-
2 trria.

3 “(3) ACTIVITIES.—In the States of Delaware,
4 Maryland, and Virginia, the Secretary shall require
5 that the program under this subsection consist of
6 management, research, and public education activi-
7 ties carried out in accordance with the document
8 published by the United States Fish and Wildlife
9 Service entitled ‘Eradication Strategies for Nutria in
10 the Chesapeake and Delaware Bay Watersheds’,
11 dated March 2002, or any updates to the document.

12 “(n) STUDY ON THE IMPACTS OF THE COMMERCIAL
13 HARVESTING OF MENHADEN ON THE WATER QUALITY
14 OF THE CHESAPEAKE BAY.—

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

16 “(A) FISHERIES COMMISSION.—The term
17 ‘Fisheries Commission’ means the Atlantic
18 States Marine Fisheries Commission established
19 under the interstate compact consented to and
20 approved by pursuant to the Act of May 4,
21 1942 (56 Stat. 267, chapter 283) and the Act
22 of May 19, 1949 (63 Stat. 70, chapter 238).

23 “(B) FISHING.—Except as otherwise pro-
24 vided, the term ‘fishing’—

25 “(i) means—

1 “(I) the commercial catching,
2 taking, or harvesting of menhaden,
3 except when incidental to harvesting
4 that occurs in the course of commer-
5 cial or recreational fish-catching ac-
6 tivities directed at a species other
7 than menhaden;

8 “(II) the attempted commercial
9 catching, taking, or harvesting of
10 menhaden; or

11 “(III) any operation at sea in
12 support of, or in preparation for, any
13 activity described in subclause (I) or
14 (II); and

15 “(ii) does not include any scientific re-
16 search authorized by the Federal Govern-
17 ment or by any State government.

18 “(2) STUDY.—Not later than 5 years after the
19 date of enactment of the Chesapeake Clean Water
20 and Ecosystem Restoration Act of 2009, building on
21 the research underway or conducted under the over-
22 sight of the National Oceanic and Atmospheric Ad-
23 ministration, the Administrator, in cooperation and
24 consultation with the Administrator of the National
25 Oceanic and Atmospheric Administration and the

1 Fisheries Commission, shall conduct and submit to
2 Congress a study for the purposes of determining—

3 “(A) progress toward understanding the
4 structure of the menhaden population of the At-
5 lantic Coast of the United States and of the
6 Chesapeake Bay;

7 “(B) the role of the population as filter
8 feeders, including the role of the population
9 with respect to impacting water clarity, dis-
10 solved oxygen levels, and other ecosystem func-
11 tions;

12 “(C) the role of the population as prey spe-
13 cies for predatory fish in the Chesapeake Bay
14 and in coastal ecosystems;

15 “(D) the impact on the Atlantic coastal
16 and Chesapeake Bay ecosystems of fishing for
17 menhaden;

18 “(E) the impact on attainment of the
19 water quality goals of this Act of commercial
20 fishing for menhaden; and

21 “(F) the recommendations of the Adminis-
22 trator, if any, for future sustainable manage-
23 ment of such fishing and additional research
24 needed to fully address the progress, roles, and
25 impacts described in this paragraph.

1 “(o) EFFECT ON OTHER REQUIREMENTS.—

2 “(1) IN GENERAL.—Nothing in this section re-
3 moves or otherwise affects any other obligation for
4 a point source to comply with other applicable re-
5 quirements under this Act.

6 “(2) VIOLATIONS BY STATES.—The failure of a
7 State to submit a watershed implementation plan or
8 biennial report, or to correct a previously missed 2-
9 year commitment made in a watershed implementa-
10 tion plan, by the applicable deadline established
11 under this section shall—

12 “(A) constitute a violation of this Act; and

13 “(B) subject the State to—

14 “(i) enforcement action by the Admin-
15 istrator; and

16 “(ii) civil actions commenced pursuant
17 to section 505.

18 “(3) FAILURE OF ADMINISTRATOR TO ACT.—

19 The failure of the Administrator to act under this
20 section shall subject the Administrator to civil ac-
21 tions commenced pursuant to section 505.

22 “(p) EVALUATION BY THE INSPECTOR GENERAL.—

23 The Inspector General of the Environmental Protection
24 Agency shall evaluate the implementation of this section
25 on a periodic basis of not less than once every 3 years.

1 “(q) AUTHORIZATION OF APPROPRIATIONS.—

2 “(1) IMPLEMENTATION AND MONITORING
3 GRANTS.—

4 “(A) AUTHORIZATION OF APPROPRIA-
5 TIONS.—In addition to amounts authorized to
6 be appropriated or otherwise made available to
7 carry out this section, there are authorized to
8 be appropriated to the Administrator—

9 “(i) to provide implementation grants
10 under subsection (e)(3)(A), \$80,000,000
11 for each of fiscal years 2010 through
12 2015, to remain available until expended;

13 “(ii) to carry out a freshwater moni-
14 toring program under subsection (e)(3)(B),
15 \$5,000,000 for each of fiscal years 2010
16 through 2015; and

17 “(iii) to carry out a Chesapeake Bay
18 and tidal water monitoring program under
19 subsection (e)(3)(B), \$5,000,000 for each
20 of fiscal years 2010 through 2015.

21 “(B) COST-SHARING.—The Federal share
22 of the cost of a program carried out using
23 funds from a grant provided—

24 “(i) under subparagraph (A)(i) shall
25 not exceed 50 percent; and

1 “(ii) under clause (ii) or (iii) of sub-
2 paragraph (A) shall not exceed 80 percent.

3 ~~“(2) CHESAPEAKE STEWARDSHIP GRANTS.—~~

4 There is authorized to be appropriated to carry out
5 subsection (h)(2) \$15,000,000 for each of fiscal
6 years 2010 through 2014.

7 ~~“(3) STORM WATER POLLUTION PLANNING AND
8 IMPLEMENTATION GRANTS.—~~

9 ~~“(A) AUTHORIZATION OF APPROPRIA-
10 TIONS.—In addition to amounts authorized or
11 otherwise made available to carry out this sec-
12 tion, there are authorized to be appropriated to
13 the Administrator—~~

14 ~~“(i) to carry out subsection
15 (k)(8)(B)(i), \$10,000,000; and~~

16 ~~“(ii) to carry out subsection
17 (k)(8)(B)(ii), \$1,500,000,000.~~

18 ~~“(B) COST-SHARING.—A grant provided
19 for a project under—~~

20 ~~“(i) subsection (k)(8)(B)(i) may not
21 be used to cover more than 80 percent of
22 the cost of the project; and~~

23 ~~“(ii) subsection (k)(8)(B)(ii) may not
24 be used to cover more than 75 percent of
25 the cost of the project.~~

1 “(4) NUTRIA ERADICATION GRANTS.—

2 “(A) IN GENERAL.—There is authorized to
3 be appropriated to the Secretary of the Interior
4 to provide financial assistance in the Chesapeake Bay watershed under subsection (m)
5 \$4,000,000 for each of fiscal years 2010
6 through 2015.
7

8 “(B) COST-SHARING.—

9 “(i) FEDERAL SHARE.—The Federal
10 share of the cost of carrying out the pro-
11 gram under subsection (m) may not exceed
12 75 percent of the total costs of the pro-
13 gram.

14 “(ii) IN-KIND CONTRIBUTIONS.—The
15 non-Federal share of the cost of carrying
16 out the program under subsection (m) may
17 be provided in the form of in-kind con-
18 tributions of materials or services.

19 “(5) LIMITATION ON ADMINISTRATIVE EX-
20 PENSES.—Not more than 10 percent of the annual
21 amount of any grant provided by the Administrator
22 or Secretary under any program described in para-
23 graph (1), (2), (3), or (4) may be used for adminis-
24 trative expenses.

1 ~~“(6) AVAILABILITY.—~~Amounts authorized to be
2 appropriated under this subsection shall remain
3 available ~~until expended.”~~.

4 **SECTION 1. SHORT TITLE.**

5 *This Act may be cited as the “Chesapeake Clean Water*
6 *and Ecosystem Restoration Act”.*

7 **SEC. 2. FINDINGS.**

8 *Congress finds that—*

9 (1) *the Chesapeake Bay and the tributary waters*
10 *of the Chesapeake Basin are natural resources of out-*
11 *standing ecological, economic, and cultural impor-*
12 *tance to the United States;*

13 (2) *for more than 20 years, the Federal Govern-*
14 *ment and the States of Maryland, Pennsylvania, and*
15 *Virginia, the District of Columbia, the Chesapeake*
16 *Bay Commission, and various local government, sci-*
17 *entific, and citizen advisory boards have worked*
18 *through the Chesapeake Basin Program of the Envi-*
19 *ronmental Protection Agency to develop an unparal-*
20 *leled body of scientific information and cooperative*
21 *partnerships to advance the Chesapeake Bay restora-*
22 *tion effort;*

23 (3) *pursuant to a memorandum of under-*
24 *standing executed among the States of Delaware and*
25 *New York in 2000, and the State of West Virginia in*

1 2002, those States began formal participation in the
2 Chesapeake Basin Program water quality restoration
3 effort;

4 (4) despite significant efforts by Federal, State,
5 and local governments and other interested parties,
6 water pollution in the Chesapeake Bay—

7 (A) prevents the attainment of existing
8 State water quality standards and the ecological
9 goals of the Federal Water Pollution Control Act
10 (33 U.S.C. 1251 et seq.); and

11 (B) therefore, requires the development and
12 implementation of a total maximum daily load
13 under section 303(d) of that Act (33 U.S.C.
14 1313(d));

15 (5) a primary reason for the schedule to develop
16 a Chesapeake Bay total maximum daily load is the
17 Virginia total maximum daily load consent decree
18 dated 1999, which settled the civil action styled *Amer-*
19 *ican Canoe Ass'n, Inc. v. EPA*, Civil No. 98-979-A
20 (E.D. Va.), under which the Environmental Protec-
21 tion Agency must establish a Chesapeake Bay total
22 maximum daily load by not later than May 1, 2011;

23 (6) the principals' staff committee of the Ches-
24 apeake Basin Program, consisting of officials from
25 each Chesapeake Bay State, the District of Columbia,

1 *the Chesapeake Bay Commission, and the Environ-*
2 *mental Protection Agency, has requested a slightly ac-*
3 *celerated schedule, under which the Environmental*
4 *Protection Agency should complete a Chesapeake Bay*
5 *total maximum daily load by not later than Decem-*
6 *ber 31, 2010;*

7 *(7) the Chesapeake Bay total maximum daily*
8 *load will address all segments of the Chesapeake Bay*
9 *and tidal tributaries that are identified on the cur-*
10 *rently applicable lists of waters impaired by nitrogen,*
11 *phosphorus, and sediment of Chesapeake Bay States*
12 *under section 303(d) of the Federal Water Pollution*
13 *Control Act (33 U.S.C. 1313(d));*

14 *(8) the Chesapeake Basin Program partnership*
15 *has developed a rich body of environmental data*
16 *based on an extensive network of monitors, which pro-*
17 *vide a critical measure of success in attainment of the*
18 *goals of the restoration effort;*

19 *(9) the Chesapeake Basin Program partnership*
20 *has also developed some of the world's foremost water*
21 *quality and ecosystem computer models, which are in-*
22 *valuable planning tools for resource managers;*

23 *(10) the major pollutants affecting the water*
24 *quality of the Chesapeake Bay and related tidal wa-*
25 *ters are nitrogen, phosphorus, and sediment;*

1 (11) *the largest developed land use in the Chesapeake Basin, and 1 of the largest single-sector source of nitrogen, phosphorus, and sediment pollution, is agriculture;*

5 (12) *conservation practices have resulted in significant reductions in pollution loads from the agricultural sector;*

8 (13) *to speed continued progress in the agricultural sector, the Federal Government and State governments have initiated a number of agricultural conservation programs, including the Chesapeake Bay watershed initiative under section 1240Q of the Food Security Act of 1985 (16 U.S.C. 3839bb-4);*

14 (14) *atmospheric deposition of nitrogen oxides and ammonia on the Chesapeake Basin contributes as much as 1/3 of the nitrogen pollution in the Chesapeake Bay;*

18 (15) *the Clean Air Act (42 U.S.C. 7401 et seq.) has proven to be an effective tool in reducing a number of air pollutants, including air pollutants that result in the deposition of nitrogen in the waters and landscape of the Chesapeake Basin;*

23 (16) *final regulations under the Clean Air Act (42 U.S.C. 7401 et seq.) relating to stationary, local area, and mobile sources of air pollution are expected*

1 *to result in continuous reductions in the deposition of*
2 *nitrogen in the Chesapeake Basin that improves air*
3 *and water quality;*

4 *(17) for years, a steady stream of technology de-*
5 *velopment, increasingly stringent permit require-*
6 *ments, and multibillion dollar investment at waste-*
7 *water treatment plants in the Chesapeake Basin*
8 *States have resulted in a steady decline in the nitro-*
9 *gen and phosphorus pollution derived from waste-*
10 *water treatment plants in the Chesapeake Basin;*

11 *(18) polluted stormwater runoff from existing*
12 *and new suburban and urban development is the only*
13 *major source of pollution in the watershed that is in-*
14 *creasing;*

15 *(19) during the period beginning in 1990 and*
16 *ending in 2000, impervious cover, the hardened sur-*
17 *faces through which water cannot penetrate, increased*
18 *more rapidly than population growth;*

19 *(20) during that period, the watershed popu-*
20 *lation of the Chesapeake Basin grew by an average of*
21 *10 percent;*

22 *(21) the population of the watershed is estimated*
23 *to be growing by about 157,000 people per year;*

24 *(22) continuing at that rate, the population will*
25 *increase to nearly 20,000,000 by 2030;*

1 (23) overall, approximately 58 percent of the wa-
2 tershed of the Chesapeake Bay is undeveloped and
3 mostly forested, but as many as 100 hundred acres of
4 forest are lost to development each day;

5 (24) States, local governments, developers, and
6 nonprofit organizations have developed numerous low-
7 impact development techniques since the late 1990s,
8 which use natural area protection, infiltration, and
9 pervious surfaces to reduce stormwater runoff and as-
10 sociated sediment and nutrient pollution;

11 (25) urban and suburban redevelopment—

12 (A) are additional techniques for reducing
13 stormwater impacts; and

14 (B) generate less total stormwater runoff
15 and less runoff per housing unit because those
16 techniques—

17 (i) help absorb the demand for new
18 homes and businesses;

19 (ii) use less land area; and

20 (iii) do not displace currently natural,
21 agricultural, or open space land uses that
22 act as stormwater filters;

23 (26) many of those techniques are less expensive
24 than traditional stormwater pollution control man-
25 agement techniques and, combined with more tradi-

1 *tional techniques, have greatly reduced the polluted*
2 *runoff from new projects;*

3 *(27) the decline of key aquatic habitats and spe-*
4 *cies has resulted in a loss of the important water*
5 *quality benefits that the habitats and species tradi-*
6 *tionally provided;*

7 *(28) native oysters, the numbers of which have*
8 *declined precipitously in the Chesapeake Bay in sig-*
9 *nificant part because of diseases brought into the wa-*
10 *tershed by nonnative oysters, are natural filters that*
11 *once effectively filtered a volume of water equivalent*
12 *to that of the entire Chesapeake Bay in a matter of*
13 *days;*

14 *(29) although less well-understood, menhaden, a*
15 *species of fish found in the Chesapeake Bay, also pro-*
16 *vide important ecosystem functions;*

17 *(30) wetlands and floodplains are vital parts of*
18 *the Chesapeake Basin ecosystem, and wetlands in the*
19 *headwaters of a watershed, through their water hold-*
20 *ing capabilities, can substantially reduce flood peaks*
21 *and downstream erosion;*

22 *(31) studies have demonstrated that nontidal*
23 *wetlands near the Chesapeake Bay removed as much*
24 *as 89 percent of the nitrogen and 80 percent of the*

1 *phosphorus that entered the wetlands through upland*
2 *runoff, groundwater, and precipitation;*

3 *(32) riparian forests remove as much as 90 per-*
4 *cent of nitrogen and phosphorus that would otherwise*
5 *enter the water;*

6 *(33) the loss of forests and wetlands in the*
7 *Chesapeake Basin has resulted in diminished water*
8 *quality, loss of underwater bay grasses, and a decline*
9 *in the quantity of wildlife, fish, and other aquatic*
10 *species, among other effects;*

11 *(34)(A) the Chesapeake Basin supports more*
12 *than 3,600 plant and animal species, including wa-*
13 *terfowl, and commercially and recreationally impor-*
14 *tant fisheries; and*

15 *(B) restoration and protection of those living re-*
16 *sources—*

17 *(i) is important for ecological health, recre-*
18 *ation, and tourism; and*

19 *(ii) provides diverse economic benefits for*
20 *local communities;*

21 *(35)(A) less than 2 percent of the 11,700 miles*
22 *of shoreline of the tidal Chesapeake Bay is accessible*
23 *to the public;*

1 (B) with the population of the Chesapeake Basin
2 increasing and development converting land to roads
3 and subdivisions, that accessibility is decreasing;

4 (C) there exists a similar access gap to nontidal
5 rivers and streams throughout the Chesapeake Basin;
6 and

7 (D) it is critical to increase and enhance public
8 access opportunities for fishing, hunting, boating, and
9 other recreational pursuits as part of comprehensive
10 ecosystem restoration efforts;

11 (36) in certain locations in the Chesapeake
12 Basin, nutria, a nonnative species, have caused exten-
13 sive destruction of key wetlands;

14 (37) activities relating to commercial shipping
15 and recreational boating can adversely influence
16 water quality;

17 (38) the Chesapeake Bay is a multibillion dollar
18 economic force for the mid-Atlantic region;

19 (39) the Federal Water Pollution Control Act (33
20 U.S.C. 1251 et seq.) provides for State leadership in
21 protecting and restoring United States waters, with
22 the Environmental Protection Agency providing guid-
23 ance, technical and financial assistance, and over-
24 sight;

25 (40) the Department of Agriculture—

1 (A) has developed a rich body of approved
2 conservation practices for farms and ranchlands;

3 (B) provides critical technical assistance to
4 producers; and

5 (C) continues to play a critical role in sus-
6 taining the agricultural economy of the nation
7 while also improving the stewardship of the
8 lands and waters of the United States; and

9 (41) in spite of the achievements of the Ches-
10 apeake Basin Program partnership and increasing
11 knowledge about ecosystem functions, the restoration
12 of the Chesapeake Bay will require significantly
13 stronger tools to manage pollution levels and other
14 impediments to water quality.

15 **SEC. 3. CHESAPEAKE BASIN PROGRAM.**

16 Section 117 of the Federal Water Pollution Control Act
17 (33 U.S.C. 1267) is amended to read as follows:

18 **“SEC. 117. CHESAPEAKE BASIN PROGRAM.**

19 “(a) **DEFINITIONS.**—In this section:

20 “(1) **ADMINISTRATIVE COST.**—The term ‘admin-
21 istrative cost’ means the cost of salaries and fringe
22 benefits incurred in administering a grant under this
23 section.

24 “(2) **ASIAN OYSTER.**—The term ‘Asian oyster’
25 means the species *Crassostrea ariakensis*.

1 “(3) *BASELINE*.—*The term ‘baseline’—*

2 “(A) *means the basic standard or level of*
3 *the nutrient control requirements a credit seller*
4 *shall achieve to be eligible to generate saleable*
5 *nutrient credits; and*

6 “(B) *consists of the nutrient load reductions*
7 *required of individual sources to meet water*
8 *quality standards and load or waste load alloca-*
9 *tions under all applicable total maximum daily*
10 *loads and watershed implementation plans.*

11 “(4) *BASIN COMMISSIONS*.—*The term ‘basin*
12 *commissions’ means—*

13 “(A) *the Interstate Commission on the Poto-*
14 *mac River Basin established under the interstate*
15 *compact consented to and approved by Congress*
16 *under the Joint Resolution of July 11, 1940 (54*
17 *Stat. 748, chapter 579) and Public Law 91–407*
18 *(84 Stat. 856);*

19 “(B) *the Susquehanna River Basin Com-*
20 *mission established under the interstate compact*
21 *consented to and approved by Congress under*
22 *Public Law 91–575 (84 Stat. 1509) and Public*
23 *Law 99–468 (100 Stat. 1193); and*

24 “(C) *the Chesapeake Bay Commission, a*
25 *tri-State legislative assembly representing Mary-*

1 *land, Virginia, and Pennsylvania created in*
2 *1980 to coordinate Bay-related policy across*
3 *State lines and to develop shared solutions.*

4 “(5) *CHESAPEAKE BASIN.*—*The term ‘Chesa-*
5 *peake Basin’ means—*

6 “(A) *the Chesapeake Bay; and*

7 “(B) *the area consisting of 19 tributary ba-*
8 *sins within the Chesapeake Basin States through*
9 *which precipitation drains into the Chesapeake*
10 *Bay.*

11 “(6) *CHESAPEAKE BASIN ECOSYSTEM.*—*The term*
12 *‘Chesapeake Basin ecosystem’ means the ecosystem of*
13 *the Chesapeake Basin.*

14 “(7) *CHESAPEAKE BASIN PROGRAM.*—*The term*
15 *‘Chesapeake Basin Program’ means the program, for-*
16 *merly known as the ‘Chesapeake Bay Program’, di-*
17 *rected by the Chesapeake Executive Council in accord-*
18 *ance with the Chesapeake Bay Agreement (including*
19 *any successor programs).*

20 “(8) *CHESAPEAKE BASIN STATE.*—*The term*
21 *‘Chesapeake Basin State’ means any of—*

22 “(A) *the States of Delaware, Maryland,*
23 *New York, Pennsylvania, Virginia, and West*
24 *Virginia; or*

25 “(B) *the District of Columbia.*

1 “(9) *CHESAPEAKE BAY AGREEMENT.*—*The term*
2 *‘Chesapeake Bay Agreement’ means the formal, vol-*
3 *untary agreements executed to achieve the goal of re-*
4 *storing and protecting the Chesapeake Basin eco-*
5 *system and the living resources of the Chesapeake*
6 *Basin ecosystem and signed by the Chesapeake Execu-*
7 *tive Council.*

8 “(10) *CHESAPEAKE BAY TIDAL SEGMENT.*—*The*
9 *term ‘Chesapeake Bay tidal segment’ means any of*
10 *the 92 tidal segments that—*

11 “(A) *make up the Chesapeake Bay; and*

12 “(B) *are identified by a Chesapeake Basin*
13 *State pursuant to section 303(d).*

14 “(11) *CHESAPEAKE BAY TMDL.*—

15 “(A) *IN GENERAL.*—*The term ‘Chesapeake*
16 *Bay TMDL’ means the total maximum daily*
17 *load (including any revision) established or ap-*
18 *proved by the Administrator for nitrogen, phos-*
19 *phorus, and sediment loading to the waters in*
20 *the Chesapeake Bay and the Chesapeake Bay*
21 *tidal segments.*

22 “(B) *INCLUSIONS.*—*The term ‘Chesapeake*
23 *Bay TMDL’ includes nitrogen, phosphorus, and*
24 *sediment allocations in temporal units of great-*
25 *er-than-daily duration, if the allocations—*

1 “(i) are demonstrated to achieve water
2 quality standards; and

3 “(ii) do not lead to violations of other
4 applicable water quality standards for local
5 receiving waters.

6 “(12) *CHESAPEAKE EXECUTIVE COUNCIL*.—The
7 term ‘Chesapeake Executive Council’ means the sig-
8 natories to the Chesapeake Bay Agreement.

9 “(13) *CLEANING AGENT*.—The term ‘cleaning
10 agent’ means a laundry detergent, dishwashing com-
11 pound, household cleaner, metal cleaner, degreasing
12 compound, commercial cleaner, industrial cleaner,
13 phosphate compound, or other substance that is in-
14 tended to be used for cleaning purposes.

15 “(14) *CREDIT*.—The term ‘credit’ means a unit
16 provided for 1 pound per year of nitrogen, phos-
17 phorus, or sediment that is—

18 “(A) delivered to the tidal portion of the
19 Chesapeake Bay; and

20 “(B) eligible to be sold under the trading
21 programs established by this section.

22 “(15) *DIRECTOR*.—The term ‘director’ means the
23 Director of the Chesapeake Basin Program Office of
24 the Environmental Protection Agency.

1 “(16) *LOCAL GOVERNMENT*.—The term ‘local
2 government’ means any county, city, or other general
3 purpose political subdivision of a State with jurisdic-
4 tion over land use.

5 “(17) *MENHADEN*.—The term ‘menhaden’ means
6 members of stocks or populations of the species
7 *Brevoortia tyrannus*.

8 “(18) *NUTRIA*.—The term ‘nutria’ means the
9 species *Myocaster coypus*.

10 “(19) *OFFSET*.—The term ‘offset’ means a reduc-
11 tion of loading of nitrogen, phosphorous, or sediment,
12 as applicable, in a manner that ensures that the net
13 loading reaching the Chesapeake Bay and the Ches-
14 apeake Bay tidal segments from a source—

15 “(A) does not increase; or

16 “(B) is reduced.

17 “(20) *SIGNATORY JURISDICTION*.—The term ‘sig-
18 natory jurisdiction’ means a jurisdiction of a signa-
19 tory to the Chesapeake Bay Agreement.

20 “(21) *TRIBUTARY BASIN*.—The term ‘tributary
21 basin’ means an area of land or body of water that—

22 “(A) drains into any of the 19 Chesapeake
23 Bay tributaries or tributary segments; and

24 “(B) is managed through watershed imple-
25 mentation plans under this Act.

1 “(b) *RENAMING AND CONTINUATION OF CHESAPEAKE*
2 *BAY PROGRAM.*—

3 “(1) *IN GENERAL.*—*In cooperation with the*
4 *Chesapeake Executive Council (and as a member of*
5 *the Council), the Administrator shall—*

6 “(A) *rename the Chesapeake Bay Program,*
7 *as in existence on the date of enactment of the*
8 *Chesapeake Clean Water and Ecosystem Restora-*
9 *tion Act, as the ‘Chesapeake Basin Program’;*
10 *and*

11 “(B) *continue to carry out the Chesapeake*
12 *Basin Program.*

13 “(2) *MEETINGS.*—

14 “(A) *IN GENERAL.*—*The Chesapeake Execu-*
15 *tive Council shall meet not less frequently than*
16 *once each year.*

17 “(B) *OPEN TO PUBLIC.*—

18 “(i) *IN GENERAL.*—*Subject to clause*
19 *(ii), a meeting of the Chesapeake Executive*
20 *Council shall be held open to the public.*

21 “(ii) *EXCEPTION.*—*The Chesapeake*
22 *Executive Council may hold executive ses-*
23 *sions that are closed to the public.*

24 “(3) *PROGRAM OFFICE.*—

1 “(A) *IN GENERAL.*—*The Administrator*
2 *shall maintain in the Environmental Protection*
3 *Agency a Chesapeake Basin Program Office.*

4 “(B) *FUNCTION.*—*The Chesapeake Basin*
5 *Program Office shall provide support to the*
6 *Chesapeake Executive Council by—*

7 “(i) *implementing and coordinating*
8 *science, research, modeling, support services,*
9 *monitoring, data collection, and other ac-*
10 *tivities that support the Chesapeake Basin*
11 *Program;*

12 “(ii) *developing and making available,*
13 *through publications, technical assistance,*
14 *and other appropriate means, information*
15 *pertaining to the environmental quality*
16 *and living resources of the Chesapeake*
17 *Basin ecosystem;*

18 “(iii) *in cooperation with appropriate*
19 *Federal, State, and local authorities, assist-*
20 *ing the signatories to the Chesapeake Bay*
21 *Agreement in developing and implementing*
22 *specific action plans to carry out the re-*
23 *sponsibilities of the signatories to the Ches-*
24 *apeake Bay Agreement;*

1 “(iv) *coordinating the actions of the*
2 *Environmental Protection Agency with the*
3 *actions of the appropriate officials of other*
4 *Federal agencies and State and local au-*
5 *thorities in developing strategies to—*

6 “(I) *improve the water quality*
7 *and living resources in the Chesapeake*
8 *Basin ecosystem; and*

9 “(II) *obtain the support of the ap-*
10 *propriate officials of the agencies and*
11 *authorities in achieving the objectives*
12 *of the Chesapeake Bay Agreement; and*

13 “(v) *implementing outreach programs*
14 *for public information, education, and par-*
15 *ticipation to foster stewardship of the re-*
16 *sources of the Chesapeake Basin.*

17 “(c) *INTERAGENCY AGREEMENTS.—The Administrator*
18 *may enter into an interagency agreement with a Federal*
19 *agency to carry out this section.*

20 “(d) *TECHNICAL ASSISTANCE AND ASSISTANCE*
21 *GRANTS.—*

22 “(1) *IN GENERAL.—In cooperation with the*
23 *Chesapeake Executive Council, the Administrator*
24 *may provide technical assistance, and assistance*
25 *grants, to soil conservation districts, nonprofit orga-*

1 nizations, State and local governments, basin com-
2 missions, and institutions of higher education to
3 carry out this section, subject to such terms and con-
4 ditions as the Administrator considers appropriate.

5 “(2) FEDERAL SHARE.—

6 “(A) IN GENERAL.—Except as provided in
7 subparagraph (B), the Federal share of an assist-
8 ance grant provided under paragraph (1) shall
9 be determined by the Administrator in accord-
10 ance with guidance issued by the Administrator.

11 “(B) CHESAPEAKE BASIN STEWARDSHIP
12 GRANTS PROGRAM.—The Federal share of an as-
13 sistance grant provided under paragraph (1) to
14 carry out an implementing activity under sub-
15 section (h)(2) shall not exceed 75 percent of eligi-
16 ble project costs, as determined by the Adminis-
17 trator.

18 “(3) NON-FEDERAL SHARE.—An assistance grant
19 under paragraph (1) shall be provided on the condi-
20 tion that non-Federal sources provide the remainder
21 of eligible project costs, as determined by the Admin-
22 istrator.

23 “(4) NUTRIENT TRADING GUARANTEE PILOT
24 PROGRAM.—The project manager of the Chesapeake
25 nutrient trading guarantee program established under

1 *subsection (e)(1)(D) shall be eligible to receive tech-*
 2 *nical assistance or technical assistance grants under*
 3 *this subsection.*

4 “(e) *IMPLEMENTATION, MONITORING, AND CENTERS*
 5 *OF EXCELLENCE GRANTS.—*

6 “(1) *GRANTS.—*

7 “(A) *IMPLEMENTATION GRANTS.—The Ad-*
 8 *ministrator shall make an implementation grant*
 9 *to the Chesapeake Basin State, or a designee of*
 10 *a Chesapeake Basin State (including a soil con-*
 11 *servation district, nonprofit organization, local*
 12 *government, institution of higher education,*
 13 *basin commission, or interstate agency), for the*
 14 *purposes of implementing an approved water-*
 15 *shed implementation plan of the Chesapeake*
 16 *Basin State under subsection (i) and achieving*
 17 *the goals established under the Chesapeake Bay*
 18 *Agreement, subject to such terms and conditions*
 19 *as the Administrator considers to be appropriate.*

20 “(B) *MONITORING GRANTS.—The Adminis-*
 21 *trator may make a monitoring grant to—*

22 “(i) *a Chesapeake Basin State, des-*
 23 *ignee of a Chesapeake Basin State, soil con-*
 24 *servation district, nonprofit organization,*
 25 *local government, institution of higher edu-*

1 *cation, or basin commission for the purpose*
2 *of monitoring the ecosystem of freshwater*
3 *tributaries to the Chesapeake Bay; or*

4 *“(i) any of the States of Delaware,*
5 *Maryland, or Virginia (or a designee), the*
6 *District of Columbia (or a designee), non-*
7 *profit organization, local government, insti-*
8 *tution of higher education, or interstate*
9 *agency for the purpose of monitoring the*
10 *Chesapeake Bay, including the tidal waters*
11 *of the Chesapeake Bay.*

12 *“(C) CENTERS OF EXCELLENCE GRANTS.—*

13 *The Administrator, in consultation with the Sec-*
14 *retary of Agriculture, may make grants to insti-*
15 *tutions of higher education, consortia of such in-*
16 *stitutions, or public, non-affiliated nonprofit or-*
17 *ganizations for the purpose of establishing and*
18 *supporting centers of excellence for water quality*
19 *and agricultural practices—*

20 *“(i) to develop new technologies and*
21 *innovative policies and practices for agri-*
22 *cultural producers to reduce nitrogen, phos-*
23 *phorous, and sediment pollution;*

24 *“(ii) to quantify the expected load re-*
25 *ductions of those pollutants to be achieved*

1 *in the Chesapeake Basin through the imple-*
2 *mentation of current and newly developed*
3 *technologies, policies, and practices; and*

4 “(iii) *to provide to the Administrator*
5 *and the Secretary recommendations for—*

6 “(I) *the widespread deployment of*
7 *those technologies, policies, and prac-*
8 *tices among agricultural producers;*
9 *and*

10 “(II) *the application of those tech-*
11 *nologies, policies, and practices in*
12 *Chesapeake Basin computer models.*

13 “(D) *CHESAPEAKE NUTRIENT TRADING*
14 *GUARANTEE PILOT PROGRAM.—*

15 “(i) *IN GENERAL.—The Administrator,*
16 *in consultation with the Chesapeake Basin*
17 *States and the Secretary of Agriculture,*
18 *shall establish a Chesapeake nutrient trad-*
19 *ing guarantee pilot program (referred to in*
20 *this subparagraph as the ‘guarantee pilot*
21 *program’)* *to support the interstate trading*
22 *program established under subsection (j)(6).*

23 “(ii) *PURPOSES.—The purposes of the*
24 *guarantee pilot program are—*

1 “(I) to develop innovative policies
2 and practices to more efficiently and
3 effectively implement best management
4 practices, primarily on agricultural
5 land;

6 “(II) to leverage public funding to
7 raise private capital to accelerate the
8 restoration of the Chesapeake Bay by
9 providing a Federal guarantee on nu-
10 trient credit purchases; and

11 “(III) to support nutrient trading
12 throughout the Chesapeake Basin.

13 “(iii) *PROJECT MANAGER.*—

14 “(I) *IN GENERAL.*—The Adminis-
15 trator shall designate a project man-
16 ager to carry out the guarantee pilot
17 program.

18 “(II) *QUALIFICATIONS.*—The
19 project manager shall be an institution
20 of higher education, a nonprofit orga-
21 nization, or a basin commission that—

22 “(aa) demonstrates thorough
23 knowledge and understanding of
24 best management practices that

1 result in nutrient reductions in
2 the Chesapeake Basin;

3 “(bb) demonstrates thorough
4 knowledge and understanding of
5 the Chesapeake watershed com-
6 puter model of the Environmental
7 Protection Agency;

8 “(cc) demonstrates thorough
9 knowledge and understanding of
10 the relevant environmental regula-
11 tions relating to the Chesapeake
12 Basin;

13 “(dd) has a demonstrated
14 history of discharging fiduciary
15 responsibilities with transparency
16 and in accordance with all appli-
17 cable accounting standards; and

18 “(ee) has relevant experience
19 with pollution offsets and trans-
20 actions involving pollution offsets.

21 “(III) DUTIES.—

22 “(aa) IN GENERAL.—The
23 project manager shall provide
24 guarantees to purchasers of nutri-
25 ent credits under the interstate

1 trading program established
2 under subsection (j)(6).

3 “(bb) *MANAGERIAL DU-*
4 *TIES.—In carrying out the guar-*
5 *antee pilot program, the project*
6 *manager shall—*

7 “(AA) *identify best*
8 *management practices that*
9 *result in the greatest reduc-*
10 *tion in pollution levels;*

11 “(BB) *establish offset*
12 *metrics for calculation,*
13 *verification, and monitoring*
14 *protocols in collaboration*
15 *with Federal and State pro-*
16 *grams;*

17 “(CC) *manage and over-*
18 *see project verification and*
19 *monitoring processes;*

20 “(DD) *establish proce-*
21 *dures that minimize trans-*
22 *action costs and eliminate*
23 *unnecessary or duplicative*
24 *administrative processes;*

1 “(EE) take ownership of
2 the nutrient reduction offsets
3 from any private funding
4 source for an activity carried
5 out under this subparagraph;

6 “(FF) enter into agree-
7 ments with private funding
8 sources that enable a private
9 funding source, at the conclu-
10 sion of a project, to sell the
11 verified nutrient reduction
12 offset to the program man-
13 ager at an agreed upon
14 price, or to sell the verified
15 nutrient reduction offsets;
16 and

17 “(GG) manage the
18 Chesapeake Nutrient Trading
19 Guarantee Fund.

20 “(iv) CREDIT PURCHASER REQUIRE-
21 MENTS.—As a condition of receiving a
22 guarantee under this subparagraph, a pur-
23 chaser shall comply with—

1 “(I) the regulations promulgated
2 by the Administrator under subsection
3 (j)(6);

4 “(II) any application procedure
5 that the Administrator, in consultation
6 with the project manager, determines
7 to be necessary; and

8 “(III) any other applicable laws
9 (including regulations).

10 “(v) *TERMINATION.*—The guarantee
11 pilot program shall terminate on the date
12 that is 5 years after the date of the estab-
13 lishment of the interstate trading program
14 under subsection (j)(6).

15 “(vi) *REPORTS.*—

16 “(I) *IN GENERAL.*—The project
17 manager shall—

18 “(aa) ensure public trans-
19 parency for all nutrient trading
20 activities through a publicly
21 available trading registry; and

22 “(bb) submit an annual re-
23 port to the Administrator, the
24 Committee on Environment and
25 Public Works of the Senate, and

1 *the Committee on Transportation*
 2 *and Infrastructure of the House of*
 3 *Representatives.*

4 “(II) CONTENTS.—A report under
 5 subclause (I)(bb) shall include a de-
 6 scription of—

7 “(aa) the activities funded by
 8 the guarantee pilot program;

9 “(bb) the nutrient reductions
 10 achieved by each project carried
 11 out under the guarantee pilot pro-
 12 gram;

13 “(cc) the efficiency of each
 14 project carried out under the
 15 guarantee pilot program, meas-
 16 ured in pounds of pollution re-
 17 duced per dollar expended;

18 “(dd) the total quantity of
 19 nitrogen, phosphorus, and sedi-
 20 ment reduced; and

21 “(ee) the total amount of pri-
 22 vate funds leveraged.

23 “(E) CHESAPEAKE NUTRIENT TRADING
 24 GUARANTEE FUND.—

1 “(i) *ESTABLISHMENT OF FUND.*—There
2 is established in the Treasury of the United
3 States a fund to be known as the ‘Chesa-
4 peake Nutrient Trading Guarantee Fund’
5 (referred to in this subparagraph as the
6 ‘Fund’), to be administered by the Adminis-
7 trator, to be available for 5 years after the
8 date of the establishment of the interstate
9 trading program under subsection (j)(6)
10 and subject to appropriation, for the pur-
11 poses described in subparagraph (D)(ii).

12 “(ii) *TRANSFERS TO FUND.*—The Fund
13 shall consist of such amounts as are appro-
14 priated to the Fund under subsection
15 (p)(2)(v).

16 “(iii) *PROHIBITION.*—Amounts in the
17 Fund may not be made available for any
18 purpose other than a purpose described in
19 clause (i).

20 “(iv) *TERMINATION.*—Subject to clause
21 (v), the Fund shall terminate on the date
22 that is 5 years after the date of establish-
23 ment of the interstate trading program
24 under subsection (j)(6).

1 “(v) *UNOBLIGATED AMOUNTS.*—*On the*
2 *termination of the Fund, the Administrator*
3 *shall—*

4 “(I) *require the return of any un-*
5 *obligated amounts in the Fund to the*
6 *Secretary of the Treasury; or*

7 “(II) *reauthorize the use of the*
8 *Fund for the purposes described in*
9 *clause (i).*

10 “(vi) *ANNUAL REPORTS.*—

11 “(I) *IN GENERAL.*—*Not later than*
12 *60 days after the end of each fiscal*
13 *year beginning with the first fiscal*
14 *year after the date of the establishment*
15 *of the interstate trading program*
16 *under subsection (j)(6), the Adminis-*
17 *trator shall submit to the Committee*
18 *on Appropriations of the House of*
19 *Representatives, the Committee on Ap-*
20 *propriations of the Senate, the Com-*
21 *mittee on Environment and Public*
22 *Works of the Senate, and the Com-*
23 *mittee on Transportation and Infra-*
24 *structure of the House of Representa-*

1 *tives a report on the operation of the*
2 *Fund during the fiscal year.*

3 “(II) CONTENTS.—*Each report*
4 *shall include, for the fiscal year covered*
5 *by the report, the following:*

6 “(aa) *A statement of the*
7 *amounts deposited in the Fund.*

8 “(bb) *A description of the ex-*
9 *penditures made from the Fund*
10 *for the fiscal year, including the*
11 *purpose of the expenditures.*

12 “(cc) *Recommendations for*
13 *additional authorities to fulfill the*
14 *purpose of the Fund.*

15 “(dd) *A statement of the bal-*
16 *ance remaining in the Fund at*
17 *the end of the fiscal year.*

18 “(2) ADMINISTRATION.—

19 “(A) IN GENERAL.—*Subject to subpara-*
20 *graph (C), in making implementation grants to*
21 *each of the Chesapeake Basin States for a fiscal*
22 *year under this subsection, the Administrator*
23 *shall ensure that not less than—*

24 “(i) *10 percent of the funds available*
25 *to make such grants are made to the States*

1 *of Delaware, New York, and West Virginia*
2 *(or designees of those States); and*

3 “(ii) 20 percent of the funds available
4 to make such grants are made to States (or
5 designees of the States) for the sole purpose
6 of providing technical assistance to agricul-
7 tural producers and forest owners to access
8 conservation programs and other resources
9 devoted to improvements in, and protection
10 of, water quality in the Chesapeake Bay
11 and the tributaries of the Chesapeake Bay,
12 in accordance with subparagraph (B).

13 “(B) *TECHNICAL ASSISTANCE.*—A State (or
14 designees of a State) may use any soil conserva-
15 tion district, nonprofit organization, private sec-
16 tor vendor, or other appropriately qualified pro-
17 vider to deliver technical assistance to agricul-
18 tural producers and forest owners under sub-
19 paragraph (A)(ii).

20 “(C) *NONAPPLICABILITY TO DC.*—This
21 paragraph shall not apply to any implementa-
22 tion grant provided to the District of Columbia.

23 “(3) *PROPOSALS.*—

24 “(A) *IMPLEMENTATION GRANTS.*—

1 “(i) *IN GENERAL.*—A *Chesapeake*
2 *Basin State* described in paragraph (1)
3 *may apply for a grant under this subsection*
4 *for a fiscal year by submitting to the Ad-*
5 *ministrator a comprehensive proposal to*
6 *implement programs and achieve the goals*
7 *established under the Chesapeake Bay*
8 *Agreement.*

9 “(ii) *IMPLEMENTATION GRANT CON-*
10 *TENTS.*—A *proposal under clause (i) shall*
11 *include—*

12 “(I) *a description of the proposed*
13 *actions that the Chesapeake Basin*
14 *State commits to take within a speci-*
15 *fied time period, including 1 or more*
16 *of actions that are designed—*

17 “(aa) *to achieve and main-*
18 *tain all applicable water quality*
19 *standards, including standards*
20 *necessary to support the aquatic*
21 *living resources of the Chesapeake*
22 *Bay and related tributaries and*
23 *to protect human health;*

24 “(bb) *to restore, enhance, and*
25 *protect the finfish, shellfish, water-*

1 *fowl, and other living resources,*
2 *habitats of those species and re-*
3 *sources, and ecological relation-*
4 *ships to sustain all fisheries and*
5 *provide for a balanced ecosystem;*

6 *“(cc) to preserve, protect, and*
7 *restore those habitats and natural*
8 *areas that are vital to the survival*
9 *and diversity of the living re-*
10 *sources of the Chesapeake Bay*
11 *and associated rivers;*

12 *“(dd) to develop, promote,*
13 *and achieve sound land use prac-*
14 *tices that protect and restore wa-*
15 *tershed resources and water qual-*
16 *ity, reduce or maintain reduced*
17 *pollutant loadings for the Chesa-*
18 *peake Bay and related tributaries,*
19 *and restore and preserve aquatic*
20 *living resources;*

21 *“(ee) to promote individual*
22 *stewardship and assist individ-*
23 *uals, community-based organiza-*
24 *tions, businesses, local govern-*
25 *ments, and schools to undertake*

1 *initiatives to achieve the goals*
2 *and commitments of the Chesapeake Bay Agreement; or*

3 *“(ff) to provide technical as-*
4 *sistance to agricultural producers,*
5 *forest owners, and other eligible*
6 *entities, through technical infra-*
7 *structure, including activities,*
8 *processes, tools, and agency func-*
9 *tions needed to support delivery of*
10 *technical services, such as tech-*
11 *nical standards, resource inven-*
12 *tories, training, data, technology,*
13 *monitoring, and effects analyses;*

14 *“(II) except with respect to any*
15 *implementation grant proposal by the*
16 *District of Columbia, a commitment to*
17 *dedicate not less than 20 percent of the*
18 *grant funding for the Chesapeake Bay*
19 *under this subsection to support tech-*
20 *nical assistance for agricultural and*
21 *forest land or nutrient management*
22 *practices that protect and restore wa-*
23 *tershed resources and water quality, re-*
24 *duce or maintain reduced pollutant*
25

1 *loadings for the Chesapeake Bay and*
2 *related tributaries, and restore and*
3 *preserve aquatic living resources; and*

4 “(III) *the estimated cost of the ac-*
5 *tions proposed to be taken during the*
6 *year.*

7 “(B) *MONITORING GRANTS.—*

8 “(i) *IN GENERAL.—An eligible entity*
9 *described in paragraph (1)(B) may apply*
10 *for a grant under this subsection for a fiscal*
11 *year by submitting to the Administrator a*
12 *comprehensive proposal to monitor fresh-*
13 *water or estuarine ecosystems, including*
14 *water quality.*

15 “(ii) *MONITORING GRANT CONTENTS.—*

16 *A proposal under this subparagraph shall*
17 *include—*

18 “(I) *a description of the proposed*
19 *monitoring system;*

20 “(II) *certification by the Ches-*
21 *apeake Basin Program Director that*
22 *such a monitoring system includes*
23 *such parameters as the Chesapeake*
24 *Basin Program Director determines to*
25 *be necessary to assess progress toward*

1 *achieving the goals of the Chesapeake*
2 *Clean Water and Ecosystem Restora-*
3 *tion Act; and*

4 “(III) *the estimated cost of the*
5 *monitoring proposed to be conducted*
6 *during the year.*

7 “(iii) *CONCURRENCES.—The Adminis-*
8 *trator shall—*

9 “(I) *obtain the concurrence of the*
10 *Director of the United States Geologi-*
11 *cal Survey regarding the design and*
12 *implementation of the freshwater mon-*
13 *itoring systems established under this*
14 *subsection; and*

15 “(II) *obtain the concurrence of the*
16 *Director of the Chesapeake Bay Office*
17 *of the National Oceanic and Atmos-*
18 *pheric Administration regarding the*
19 *design and implementation of the estu-*
20 *arine monitoring systems established*
21 *under this subsection.*

22 “(iv) *CONSULTATION.—The Adminis-*
23 *trator shall—*

24 “(I) *with regard to the freshwater*
25 *monitoring system, consult with the*

1 *basin commissions, institutions with*
2 *expertise in clean water and agricul-*
3 *tural policy and practices, and the*
4 *Chesapeake Basin States regarding the*
5 *design and implementation of the mon-*
6 *itoring systems established under this*
7 *subsection—*

8 *“(aa) giving particular at-*
9 *tention through fine scale*
10 *instream and infield stream-edge*
11 *and groundwater analysis to the*
12 *measurement of the water quality*
13 *effectiveness of agricultural con-*
14 *servation program implementa-*
15 *tion, including the Chesapeake*
16 *Bay Watershed Initiative under*
17 *section 1240Q of the Food Secu-*
18 *rity Act of 1985 (16 U.S.C.*
19 *3839bb-4); and*

20 *“(bb) analyzing the effective-*
21 *ness of stormwater pollution con-*
22 *trol and mitigation using green*
23 *infrastructure techniques in sub-*
24 *watersheds that have high levels of*
25 *impervious surfaces;*

1 “(II) with regard to the estuarine
2 monitoring system, consult with insti-
3 tutions of higher education with exper-
4 tise in estuarine systems and the
5 Chesapeake Basin States regarding the
6 monitoring systems established under
7 this subsection;

8 “(III) consult with the Chesapeake
9 Basin Program Scientific and Tech-
10 nical Advisory Committee regarding
11 independent review of monitoring de-
12 signs giving particular attention to in-
13 tegrated freshwater and estuarine mon-
14 itoring strategies; and

15 “(IV) consult with Federal depart-
16 ments and agencies, including the De-
17 partment of Agriculture, regarding co-
18 operation in implementing monitoring
19 programs.

20 “(f) *FEDERAL FACILITIES COORDINATION.*—

21 “(1) *SUBWATERSHED PLANNING AND RESTORA-*
22 *TION.*—A Federal agency that owns or operates a fa-
23 cility (as defined by the Administrator) within the
24 Chesapeake Basin shall participate in regional and
25 subwatershed planning and restoration programs.

1 “(2) *COMPLIANCE WITH AGREEMENTS AND*
2 *PLANS.—The head of each Federal agency that owns*
3 *or occupies real property in the Chesapeake Basin*
4 *shall ensure that the property, and actions taken by*
5 *the agency with respect to the property, comply*
6 *with—*

7 “(A) *the Chesapeake Bay Agreement;*

8 “(B) *the Federal Agencies Chesapeake Eco-*
9 *system Unified Plan;*

10 “(C) *the Chesapeake Basin action plan de-*
11 *veloped in accordance with subparagraph*
12 *(g)(1)(A); and*

13 “(D) *any subsequent agreements and plans.*

14 “(3) *FOREST COVER AT FEDERAL FACILITIES.—*
15 *Not later than January 1, 2012, the Administrator,*
16 *with the advice of the Chief of the Forest Service and*
17 *the appropriate Chesapeake Basin State forester, shall*
18 *coordinate with the head of each Federal agency that*
19 *owns or operates a facility within the Chesapeake*
20 *Basin (as determined by the Administrator) to de-*
21 *velop plans to maximize forest cover at the facility*
22 *through—*

23 “(A) *the preservation of existing forest*
24 *cover; or*

1 “(B) with respect to a facility that has been
2 previously disturbed or developed, the develop-
3 ment of a reforestation plan.

4 “(g) FEDERAL ANNUAL ACTION PLAN AND PROGRESS
5 REPORT.—The Administrator, in accordance with Execu-
6 tive Order 13508 entitled ‘Chesapeake Bay Protection and
7 Restoration’ and signed on May 12, 2009 (74 Fed. Reg.
8 23099), shall—

9 “(1) make available to the public, not later than
10 March 31 of each year—

11 “(A) a Chesapeake Basin action plan de-
12 scribing, in the greatest practicable degree of de-
13 tail, how Federal funding proposed in the an-
14 nual budget of the United States submitted by
15 the President to Congress will be used to protect
16 and restore the Chesapeake Bay during the up-
17 coming fiscal year;

18 “(B) an annual progress report that—

19 “(i) assesses the key ecological at-
20 tributes that reflect the health of the Ches-
21 apeake Basin ecosystem;

22 “(ii) reviews indicators of environ-
23 mental conditions in the Chesapeake Bay;

1 “(iii) distinguishes between the health
2 of the Chesapeake Basin ecosystem and the
3 results of management measures;

4 “(iv) assesses implementation of the ac-
5 tion plan during the preceding fiscal year;

6 “(v) recommends steps to improve
7 progress in restoring and protecting the
8 Chesapeake Bay and tributaries; and

9 “(vi) describes how Federal funding
10 and actions will be coordinated with the ac-
11 tions of States, basin commissions, and oth-
12 ers; and

13 “(C) an annual report, detailed at the State
14 and sector level where applicable, submitted by
15 the Administrator to the Chesapeake Basin
16 States and the public on specific recently com-
17 pleted, pending, or proposed regulations, guid-
18 ance documents, permitting requirements, en-
19 forcement actions, and other activities carried
20 out in accordance with the Executive Order, in-
21 cluding actions relating to the Chesapeake Bay
22 TMDL and State watershed implementation
23 plans.

24 “(2) create and maintain, with the concurrence
25 of the Secretary of Agriculture, a Chesapeake Basin-

1 *wide database containing comprehensive data on im-*
2 *plementation of agricultural conservation manage-*
3 *ment practices in the Chesapeake Basin that—*

4 *“(A) includes conservation management*
5 *practice implementation data, including, to the*
6 *maximum extent feasible, all publicly and pri-*
7 *vately funded conservation practices, as of the ef-*
8 *fective date of the Chesapeake Clean Water and*
9 *Ecosystem Restoration Act;*

10 *“(B) includes data on subsequent conserva-*
11 *tion management practice implementation*
12 *projects funded by, or reported to, the Depart-*
13 *ment of Agriculture, the appropriate department*
14 *of any Chesapeake Basin State, a local soil and*
15 *water conservation district, or any similar insti-*
16 *tution;*

17 *“(C) except with respect to data associated*
18 *with a permit or recorded in the trading reg-*
19 *istry, as provided in subsection (j)(6)(B)(viii),*
20 *presents the required data to the Administrator*
21 *in statistical or aggregate form without identi-*
22 *fying any—*

23 *“(i) individual owner, operator, or*
24 *producer; or*

25 *“(ii) specific data gathering site;*

1 “(D) is made available to the public not
2 later than December 31, 2010; and

3 “(E) is updated not less frequently than
4 once every 2 years.

5 “(h) CHESAPEAKE BASIN PROGRAM.—

6 “(1) MANAGEMENT STRATEGIES.—The Adminis-
7 trator, in coordination with other members of the
8 Chesapeake Executive Council, shall ensure that man-
9 agement plans are developed and implemented by
10 Chesapeake Basin States to achieve and maintain—

11 “(A) for each of the Chesapeake Basin
12 States—

13 “(i) the sediment and nutrient goals of
14 the Chesapeake Bay Agreement for the
15 quantity of sediment, nitrogen, and phos-
16 phorus entering the Chesapeake Bay and the
17 tidal tributaries of the Chesapeake Bay; and

18 “(ii) the water quality requirements
19 necessary to restore living resources in the
20 Chesapeake Bay and the tidal tributaries of
21 the Chesapeake Bay; and

22 “(B) for the signatory States—

23 “(i) the Chesapeake Bay Basinwide
24 Toxins Reduction and Prevention Strategy
25 goal of reducing or eliminating the input of

1 *chemical contaminants from all controllable*
 2 *sources to levels that result in no toxic or*
 3 *bioaccumulative impact on the living re-*
 4 *sources of the Chesapeake Basin ecosystem*
 5 *or on human health;*

6 “(ii) *habitat restoration, protection,*
 7 *creation, and enhancement goals established*
 8 *by Chesapeake Bay Agreement for wetland,*
 9 *riparian forests, and other types of habitat*
 10 *associated with the Chesapeake Basin eco-*
 11 *system; and*

12 “(iii) *the restoration, protection, cre-*
 13 *ation, and enhancement goals established by*
 14 *the Chesapeake Bay Agreement for living*
 15 *resources associated with the Chesapeake*
 16 *Basin ecosystem.*

17 “(2) *CHESAPEAKE BASIN STEWARDSHIP GRANTS*
 18 *PROGRAM.—The Administrator, in cooperation with*
 19 *the Chesapeake Executive Council, shall—*

20 “(A) *establish a Chesapeake Basin Steward-*
 21 *ship Grants Program; and*

22 “(B) *in carrying out that program—*

23 “(i) *offer technical assistance and as-*
 24 *istance grants under subsection (d) to*
 25 *States (or designees of States), local govern-*

1 *ments, soil conservation districts, institu-*
2 *tions of higher education, nonprofit organi-*
3 *zations, basin commissions, and private en-*
4 *tities in the Chesapeake Basin region to im-*
5 *plement—*

6 *“(I) cooperative watershed strate-*
7 *gies that address the water quality,*
8 *habitat, and living resource needs in*
9 *the Chesapeake Basin;*

10 *“(II) locally based protection and*
11 *restoration programs or projects within*
12 *a watershed that complement the State*
13 *watershed implementation plans, in-*
14 *cluding the creation, restoration, or en-*
15 *hancement of habitat associated with*
16 *the Chesapeake Basin ecosystem;*

17 *“(III) activities for increased*
18 *spawning and other habitat for migra-*
19 *tory fish by removing barriers or con-*
20 *structing fish passage devices, restoring*
21 *streams with high habitat potential for*
22 *cold water fisheries such as native*
23 *brook trout, or other habitat enhance-*
24 *ments for fish and waterfowl;*

1 “(IV) activities for increased rec-
 2 reational access to the Chesapeake Bay
 3 and the tidal rivers and freshwater
 4 tributaries of the Chesapeake Bay; and

5 “(V) innovative nitrogen, phos-
 6 phorus, or sediment reduction efforts;
 7 and

8 “(ii) give preference to cooperative
 9 projects that involve local governments, soil
 10 conservation districts, and sportsmen asso-
 11 ciations, especially cooperative projects that
 12 involve public-private partnerships.

13 “(i) ACTIONS BY STATES.—

14 “(1) WATERSHED IMPLEMENTATION PLANS.—

15 “(A) PLANS.—

16 “(i) IN GENERAL.—Not later than No-
 17 vember 1, 2011, each Chesapeake Basin
 18 State, after providing for reasonable notice
 19 and 1 or more public meetings, may submit
 20 to the Administrator for approval a water-
 21 shed implementation plan for the Ches-
 22 apeake Basin State.

23 “(ii) TARGETS.—The watershed imple-
 24 mentation plan shall establish reduction
 25 targets, key actions, and schedules for reduc-

1 *ing, to levels that will attain water quality*
2 *standards, the loads of nitrogen, phos-*
3 *phorus, and sediment, including pollution*
4 *from—*

5 *“(I) point sources, including*
6 *point source stormwater discharges;*
7 *and*

8 *“(II) nonpoint sources.*

9 *“(iii) POLLUTION LIMITATIONS.—*

10 *“(I) IN GENERAL.—The pollution*
11 *limitations shall be the nitrogen, phos-*
12 *phorus, and sediment load and*
13 *wasteload allocations sufficient to meet*
14 *Chesapeake Bay and Chesapeake Bay*
15 *tidal segment water quality standards.*

16 *“(II) STRINGENCY.—A watershed*
17 *implementation plan shall be designed*
18 *to attain, at a minimum, the pollution*
19 *limitations described in subclause (I).*

20 *“(iv) PLAN REQUIREMENTS.—Each*
21 *watershed implementation plan shall—*

22 *“(I) include State-adopted man-*
23 *agement measures, including rules or*
24 *regulations, permits, consent decrees,*
25 *and other enforceable or otherwise*

1 *binding measures, to require and*
2 *achieve reductions from point and*
3 *nonpoint pollution sources;*

4 “(II) *include programs to achieve*
5 *voluntary reductions from pollution*
6 *sources, including an estimate of the*
7 *funding commitments necessary to im-*
8 *plement the programs and a plan for*
9 *working to secure the funding;*

10 “(III) *include any additional re-*
11 *quirements or actions that the Ches-*
12 *apeake Basin State determines to be*
13 *necessary to attain the pollution limi-*
14 *tations by the deadline established in*
15 *this paragraph;*

16 “(IV) *provide for enforcement*
17 *mechanisms, including a penalty*
18 *structure for failures, such as fees or*
19 *forfeiture of State funds, including*
20 *Federal funds distributed or otherwise*
21 *awarded by the State to the extent the*
22 *State is authorized to exercise inde-*
23 *pendent discretion in amounts of such*
24 *distributions or awards, for use in case*
25 *a permittee, local jurisdictions, or any*

1 *other party fails to adhere to assigned*
2 *pollutant limitations, implementation*
3 *schedules, or permit terms;*

4 *“(V) include a schedule for imple-*
5 *mentation that—*

6 *“(aa) is divided into 2-year*
7 *periods, along with computer*
8 *modeling, or other appropriate*
9 *analysis, to demonstrate the pro-*
10 *jected reductions in nitrogen,*
11 *phosphorus, and sediment loads*
12 *associated with each 2-year pe-*
13 *riod; and*

14 *“(bb) demonstrates reason-*
15 *able additional progress toward*
16 *achievement of the goals described*
17 *in—*

18 *“(AA) subclause*
19 *(VIII)(aa); and*

20 *“(BB) clauses (i) and*
21 *(ii) of subparagraph (B);*

22 *“(VI) include the stipulation of*
23 *alternate actions as contingencies;*

24 *“(VII) account for how the Chesa-*
25 *peake Basin State will address addi-*

1 *tional loadings from growth through*
2 *reserved allocations, offsets, planned fu-*
3 *ture controls, implementation of new*
4 *technologies, or other actions;*

5 *“(VIII) provide assurances that—*

6 *“(aa) if compared to an esti-*
7 *mated 2008 baseline based on*
8 *modeled loads, the initial plan*
9 *shall be designed to achieve, not*
10 *later than May 31, 2017, at least*
11 *60 percent of the nutrient and*
12 *sediment reduction requirements*
13 *described in clause (iii)(I)(bb);*

14 *“(bb) the Chesapeake Basin*
15 *State will have adequate per-*
16 *sonnel and funding (or a plan to*
17 *secure such personnel or funding),*
18 *and authority under State (and,*
19 *as appropriate, local) law to*
20 *carry out the implementation*
21 *plan, and is not prohibited by*
22 *any provision of Federal or State*
23 *law from carrying out the imple-*
24 *mentation plan; and*

1 “(cc) to the extent that a
2 Chesapeake Basin State has relied
3 on a local government for the im-
4 plementation of any plan provi-
5 sion, the Chesapeake Basin State
6 has the responsibility for ensuring
7 adequate implementation of the
8 provision;

9 “(IX) include adequate provisions
10 for public participation; and

11 “(X) upon the approval of the Ad-
12 ministrator, be made available to the
13 public on the Internet.

14 “(B) IMPLEMENTATION.—

15 “(i) IN GENERAL.—In implementing a
16 watershed implementation plan, each
17 Chesapeake Basin State shall follow a strat-
18 egy developed by the Administrator for the
19 implementation of adaptive management
20 principles to ensure full implementation of
21 all plan elements by not later than May 12,
22 2025, including—

23 “(I) biennial evaluations of State
24 actions;

1 “(II) progress made toward im-
2 plementation;

3 “(III) determinations of necessary
4 modifications to future actions in
5 order to achieve objectives including
6 achievement of water quality stand-
7 ards; and

8 “(IV) appropriate provisions to
9 adapt to climate changes.

10 “(i) *DEADLINE.*—Not later than May
11 12, 2025, each Chesapeake Basin State
12 shall—

13 “(I) fully implement the water-
14 shed implementation plan of the State;
15 and

16 “(II) have in place all the mecha-
17 nisms outlined in the plan that are
18 necessary to attain the applicable pol-
19 lutant limitations for nitrogen, phos-
20 phorus, and sediments.

21 “(C) *PROGRESS REPORTS.*—Not later than
22 May 12, 2014, and biennially thereafter, each
23 Chesapeake Basin State shall submit to the Ad-
24 ministrators a progress report that, with respect
25 to the 2-year period covered by the report—

1 “(i) includes a listing of all manage-
2 ment measures that were to be implemented
3 in accordance with the approved watershed
4 implementation plan of the Chesapeake
5 Basin State, including a description of the
6 extent to which those measures have been
7 fully implemented;

8 “(ii) includes a listing of all the man-
9 agement measures described in clause (i)
10 that the Chesapeake Basin State has failed
11 to fully implement in accordance with the
12 approved watershed implementation plan of
13 the Chesapeake Basin State;

14 “(iii) includes monitored and collected
15 water quality data;

16 “(iv) includes appropriate computer
17 modeling data or other appropriate anal-
18 yses that detail the nitrogen, phosphorus,
19 and sediment load reductions projected to be
20 achieved as a result of the implementation
21 of the management measures and mecha-
22 nisms carried out by the Chesapeake Basin
23 State;

24 “(v) demonstrates reasonable addi-
25 tional progress made by the State toward

1 *achievement of the requirements and dead-*
2 *lines described in subparagraph*
3 *(A)(iv)(VIII)(aa) and clauses (i) and (ii) of*
4 *subparagraph (B);*

5 *“(vi) includes, for the subsequent 2-*
6 *year period, implementation goals and*
7 *Chesapeake Basin Program computer mod-*
8 *eling data detailing the projected pollution*
9 *reductions to be achieved if the Chesapeake*
10 *Basin State fully implements the subsequent*
11 *round of management measures;*

12 *“(vii) identifies compliance informa-*
13 *tion, including violations, actions taken by*
14 *the Chesapeake Basin State to address the*
15 *violations, and dates, if any, on which com-*
16 *pliance was achieved; and*

17 *“(viii) specifies any revisions to the*
18 *watershed implementation plan submitted*
19 *under this paragraph that the Chesapeake*
20 *Basin State determines are necessary to at-*
21 *tain the applicable pollutant limitations for*
22 *nitrogen, phosphorus, and sediments.*

23 “(2) *ISSUANCE OF PERMITS.—*

24 “(A) *IN GENERAL.—Notwithstanding any*
25 *other provision of this Act (including any exclu-*

1 *sion or exception contained in a definition under*
2 *section 502) and in accordance with State laws*
3 *(including regulations), after providing appro-*
4 *priate opportunities for public comment, for the*
5 *purpose of achieving the nitrogen, phosphorus,*
6 *and sediment reductions required under a water-*
7 *shed implementation plan, a Chesapeake Basin*
8 *State, or, if the State is not authorized to ad-*
9 *minister the permit program under section 402,*
10 *the Administrator, may impose limitations or*
11 *other controls, including permit requirements, on*
12 *any discharge or runoff from a pollution source,*
13 *including point and nonpoint sources, located*
14 *within the Chesapeake Basin State that the pro-*
15 *gram administrator determines to be necessary.*

16 *“(B) ENFORCEMENT.—The Chesapeake*
17 *Basin States and the Administrator shall enforce*
18 *any permits issued in accordance with the wa-*
19 *tershed implementation plan in the same man-*
20 *ner as permits issued under section 402 are en-*
21 *forced.*

22 *“(C) ADDITIONAL ENFORCEMENT STAND-*
23 *ARDS.—No Federal enforcement action shall be*
24 *brought pursuant to section 309 against an agri-*
25 *cultural producer that is in compliance with all*

1 *of the applicable planning and scheduled imple-*
2 *mentation requirements of the following, as re-*
3 *quired by Federal, State, or other locally-appli-*
4 *cable law and consistent with an approved State*
5 *watershed implementation plan:*

6 “(i) *State permits issued pursuant to*
7 *section 402.*

8 “(ii) *A soil conservation plan approved*
9 *by the Federal Government or a State or*
10 *local government, soil conservation district,*
11 *or other applicable agency.*

12 “(iii) *A government-approved nutrient*
13 *management plan.*

14 “(iv) *A State or locally approved ero-*
15 *sion and sediment control plan.*

16 “(v) *Any other applicable requirement*
17 *described in an approved State watershed*
18 *implementation plan.*

19 “(D) *DE MINIMIS EXEMPTIONS.—The Ad-*
20 *ministrator (with respect to the District of Co-*
21 *lumbia) or a Chesapeake Basin State that is au-*
22 *thorized to administer a permit program under*
23 *section 402, after consultation with stakeholders*
24 *(including wastewater utilities, municipalities,*
25 *developers, agricultural producers, institutions of*

1 *higher education, and other interested parties)*
2 *shall establish de minimis exemptions for per-*
3 *mits issued under this paragraph.*

4 “(3) *STORMWATER PERMITS.*—

5 “(A) *IN GENERAL.*—*Effective beginning*
6 *January 1, 2013, the Chesapeake Basin State*
7 *shall provide assurances to the Administrator*
8 *that—*

9 “(i) *the owner or operator of any de-*
10 *velopment or redevelopment project pos-*
11 *sessing an impervious footprint that exceeds*
12 *a threshold to be determined by the Admin-*
13 *istrator through rulemaking, will use site*
14 *planning, design, construction, and mainte-*
15 *nance strategies for the property to main-*
16 *tain or restore, to the maximum extent tech-*
17 *nically feasible, the predevelopment hydro-*
18 *logy of the property with regard to the tem-*
19 *perature, rate, volume, and duration of*
20 *flow, using onsite infiltration,*
21 *evapotranspiration, and reuse approaches,*
22 *if feasible; and*

23 “(ii) *as a further condition of permit-*
24 *ting such a development or redevelopment,*
25 *the owner or operator of any development or*

1 *redevelopment project possessing an imper-*
2 *vious footprint that exceeds a threshold to be*
3 *determined by the Administrator through*
4 *rulemaking will compensate for any un-*
5 *avoidable impacts to the predevelopment hy-*
6 *drology of the property with regard to the*
7 *temperature, rate, volume, and duration of*
8 *flow, such that—*

9 *“(I) the compensation within the*
10 *affected subwatershed shall provide in-*
11 *kind or out-of-kind mitigation of func-*
12 *tion at ratios to be determined by the*
13 *Administrator through rulemaking;*

14 *“(II) the compensation outside the*
15 *affected subwatershed shall provide in-*
16 *kind or out-of-kind mitigation, at ra-*
17 *tios to be determined by the Adminis-*
18 *trator through rulemaking, within the*
19 *tributary watershed in which the*
20 *project is located; and*

21 *“(III) if mitigation of unavoi-*
22 *dable impacts is not feasible, the Ad-*
23 *ministrator may approve stringent fee-*
24 *in-lieu systems.*

25 *“(B) REGULATIONS.—*

1 “(i) *IN GENERAL.*—*Not later than May*
2 *12, 2011, the Administrator shall promul-*
3 *gate regulations that—*

4 “(I) *define the term*
5 *‘predevelopment hydrology’ for pur-*
6 *poses of subparagraph (A);*

7 “(II) *establish the thresholds*
8 *under subparagraph (A);*

9 “(III) *establish the compensation*
10 *ratios under items (I) and (II) of sub-*
11 *paragraph (A)(ii); and*

12 “(IV) *establish the fee-in-lieu sys-*
13 *tems under subparagraph (A)(ii)(III).*

14 “(ii) *REQUIREMENT.*—*In developing*
15 *the regulations under clause (i), including*
16 *establishing minimum standards for new*
17 *development and redevelopment, the Admin-*
18 *istrator shall take into consideration, based*
19 *on an evaluation of field science and prac-*
20 *tice, factors such as—*

21 “(I) *the benefit to—*

22 “(aa) *overall watershed pro-*
23 *tection and restoration of redevel-*
24 *opment of brownfields or other*

1 *previously developed or disturbed*
2 *sites; and*

3 *“(bb) water quality improve-*
4 *ment through lot-level stormwater*
5 *management.*

6 *“(iii) TREATMENT OF PENDING*
7 *STORMWATER PERMITS.—In consultation*
8 *with the Chesapeake Basin States and in-*
9 *terested stakeholders, and taking into con-*
10 *sideration any compliance schedules devel-*
11 *oped by any Chesapeake Basin State prior*
12 *to June 30, 2010, the Administrator shall*
13 *develop guidance regarding the treatment of*
14 *pending stormwater permits for the Ches-*
15 *apeake Basin States.*

16 *“(C) FAILURE TO PROVIDE ASSURANCES.—*
17 *If a Chesapeake Basin State that submits a Wa-*
18 *tershed Implementation Plan under this sub-*
19 *section fails to provide the assurances required*
20 *under subparagraph (A), effective beginning on*
21 *May 12, 2013, the Administrator may withhold*
22 *funds otherwise available to the Chesapeake*
23 *Basin State under this Act, in accordance with*
24 *subparagraphs (A) and (B) of subsection (j)(5).*

25 *“(4) PHOSPHATE BAN.—*

1 “(A) *PHOSPHORUS IN CLEANING AGENTS.*—
2 *Each Chesapeake Basin State shall provide to*
3 *the Administrator, not later than 3 years after*
4 *the date of enactment of the Chesapeake Clean*
5 *Water and Ecosystem Restoration Act, assur-*
6 *ances that within the jurisdiction, except as pro-*
7 *vided in subparagraph (B), a person may not*
8 *use, sell, manufacture, or distribute for use or*
9 *sale any cleaning agent that contains more than*
10 *0.0 percent phosphorus by weight, expressed as*
11 *elemental phosphorus, except for a quantity not*
12 *exceeding 0.5 percent phosphorus that is inci-*
13 *idental to the manufacture of the cleaning agent.*

14 “(B) *PROHIBITED QUANTITIES OF PHOS-*
15 *PHORUS.*—*Each Chesapeake Basin State shall*
16 *provide to the Administrator, not later than 3*
17 *years after the date of enactment of the Chesa-*
18 *apeake Clean Water and Ecosystem Restoration*
19 *Act, assurances that, within the jurisdiction, a*
20 *person may use, sell, manufacture, or distribute*
21 *for use or sale a cleaning agent that contains*
22 *greater than 0.0 percent phosphorus by weight,*
23 *but does not exceed 8.7 percent phosphorus by*
24 *weight, if the cleaning agent is a substance that*
25 *the Administrator, by regulation, excludes from*

1 *the limitation under subparagraph (A), based on*
2 *a finding that compliance with that subpara-*
3 *graph would—*

4 “(i) *create a significant hardship on*
5 *the users of the cleaning agent; or*

6 “(ii) *be unreasonable because of the*
7 *lack of an adequate substitute cleaning*
8 *agent.*

9 “(C) *FAILURE TO PROVIDE ASSURANCES.—*
10 *If a Chesapeake Basin State that submits a Wa-*
11 *tershed Implementation Plan under this sub-*
12 *section fails to provide the necessary assurances*
13 *under subparagraphs (A) and (B) by not later*
14 *than 3 years after the date of enactment of the*
15 *Chesapeake Clean Water and Ecosystem Restora-*
16 *tion Act, the Administrator may withhold funds*
17 *otherwise available to the Chesapeake Basin*
18 *State under this Act, in accordance with sub-*
19 *paragraphs (A) and (B) of subsection (j)(5).*

20 “(j) *ACTION BY ADMINISTRATOR.—*

21 “(1) *IN GENERAL.—Not later than 60 days after*
22 *the date of enactment of the Chesapeake Clean Water*
23 *and Ecosystem Restoration Act, the Administrator*
24 *shall establish any minimum criteria that the Admin-*
25 *istrator determines to be necessary that any proposed*

1 *watershed implementation plan must meet before the*
2 *Administrator may approve such a plan.*

3 “(2) *COMPLETENESS FINDING.—*

4 “(A) *IN GENERAL.—Not later than 60 days*
5 *after the date on which the Administrator re-*
6 *ceives a new or revised proposed watershed im-*
7 *plementation plan from a Chesapeake Basin*
8 *State, the Administrator shall make a complete-*
9 *ness determination based on whether the min-*
10 *imum criteria for the plan established under*
11 *paragraph (1) have been met.*

12 “(B) *EFFECT OF FINDING OF INCOMPLETE-*
13 *NESS.—If the Administrator determines under*
14 *subparagraph (A) that all or any portion of a*
15 *submitted watershed implementation plan does*
16 *not meet the minimum completeness criteria es-*
17 *tablished under paragraph (1), the Chesapeake*
18 *Basin State submitting the plan shall be treated*
19 *as not having made the submission.*

20 “(3) *APPROVAL AND DISAPPROVAL.—*

21 “(A) *DEADLINE.—Not later than 90 days*
22 *after determining that a watershed implementa-*
23 *tion plan meets minimum completeness criteria*
24 *in accordance with paragraph (2)(A), the Ad-*

1 *administrator shall approve or disapprove the*
2 *plan.*

3 “(B) *FULL AND PARTIAL APPROVAL AND*
4 *DISAPPROVAL.—In carrying out this paragraph,*
5 *the Administrator shall—*

6 “(i) *approve a watershed implementa-*
7 *tion plan if the Administrator determines*
8 *that the plan meets all applicable require-*
9 *ments under subsection (i)(1); and*

10 “(ii) *approve the plan in part and dis-*
11 *approve the plan in part if only a portion*
12 *of the watershed implementation plan meets*
13 *those requirements.*

14 “(C) *CONDITIONAL APPROVAL.—The Ad-*
15 *ministrator shall—*

16 “(i) *conditionally approve the original*
17 *or a revised watershed implementation plan*
18 *based on a commitment of the Chesapeake*
19 *Basin State submitting the plan to adopt*
20 *specific enforceable management measures*
21 *by not later than 1 year after the date of*
22 *approval of the plan revision; but*

23 “(ii) *treat a conditional approval as a*
24 *disapproval under this paragraph if the*
25 *Chesapeake Basin State fails to comply*

1 *with the commitment of the Chesapeake*
2 *Basin State.*

3 “(D) *SCOPE OF REVIEW.*—*In reviewing wa-*
4 *tershed implementation plans for approval or*
5 *disapproval, the Administrator shall—*

6 “(i) *limit the scope of the review to the*
7 *adequacy of the plan to attain water qual-*
8 *ity standards; and*

9 “(ii) *not impose, as a condition of ap-*
10 *proval, any additional requirements.*

11 “(E) *FULL APPROVAL REQUIRED.*—*An*
12 *original or revised watershed implementation*
13 *plan shall not be treated as meeting the require-*
14 *ments of this section until the Administrator ap-*
15 *proves the entire original or revised plan.*

16 “(F) *CORRECTIONS.*—*In any case in which*
17 *the Administrator determines that the action of*
18 *the Administrator approving, disapproving, or*
19 *conditionally approving any original or revised*
20 *State watershed implementation plan was in*
21 *error, the Administrator shall—*

22 “(i) *in the same manner as the ap-*
23 *proval, disapproval, conditional approval,*
24 *or promulgation, revise the action of the*
25 *Administrator, as appropriate, without re-*

1 *quiring any further submission from the*
2 *Chesapeake Basin State; and*

3 *“(ii) make the determination of the*
4 *Administrator, and the basis for that deter-*
5 *mination, available to the public.*

6 *“(G) EFFECTIVE DATE.—The provisions of*
7 *a State watershed implementation plan shall*
8 *take effect upon the date of approval of the plan.*

9 *“(4) CALLS FOR PLAN REVISION.—In any case*
10 *in which the Administrator determines that watershed*
11 *implementation plan for any area is inadequate to*
12 *attain or maintain applicable pollution limitations,*
13 *the Administrator—*

14 *“(A) shall notify the Chesapeake Basin*
15 *State of, and require the Chesapeake Basin State*
16 *to revise the plan to correct the inadequacies;*

17 *“(B) may establish reasonable deadlines*
18 *(not to exceed 180 days after the date on which*
19 *the Administrator provides the notification) for*
20 *the submission of a revised watershed implemen-*
21 *tation plan;*

22 *“(C) shall make the findings of the Admin-*
23 *istrator under paragraph (3) and notice pro-*
24 *vided under subparagraph (A) public;*

1 “(D) shall require as an element of any re-
2 vised plan by the Chesapeake Basin State that
3 the State adhere to the requirements applicable
4 under the original watershed implementation
5 plan, except that the Administrator may adjust
6 any dates (other than attainment dates) applica-
7 ble under those requirements, as appropriate;
8 and

9 “(E) shall disapprove any revised plan sub-
10 mitted by a Chesapeake Basin State that fails to
11 adhere to the requirements described in subpara-
12 graph (D).

13 “(5) *FEDERAL IMPLEMENTATION.*—If a Chesa-
14 peake Basin State that has submitted a watershed im-
15 plementation plan under (1)(A)(i) fails to submit a
16 required revised watershed implementation plan, sub-
17 mit a biennial report, correct a previously missed 2-
18 year commitment made in a watershed implementa-
19 tion plan, or remedy a disapproval of a watershed
20 implementation plan, the Administrator shall, by not
21 later than 30 days after the date of the failure and
22 after issuing a notice to the State and providing a pe-
23 riod of not less than 1 year during which the failure
24 may be corrected—

1 “(A) notwithstanding sections 601(a) and
2 603(g), reserve up to 75 percent of the amount
3 of the capitalization grant to the Chesapeake
4 Basin State for a water pollution control revolving
5 fund under section 603 for activities that
6 are—

7 “(i) selected by the Administrator; and

8 “(ii) consistent with the watershed im-
9 plementation plans described in subpara-
10 graphs (B) and (C);

11 “(B) withhold all funds otherwise available
12 to the Chesapeake Basin State (or a designee)
13 under this Act, except for the funds available
14 under title VI;

15 “(C) develop and administer a watershed
16 implementation plan for the Chesapeake Basin
17 State until the Chesapeake Basin State has rem-
18 edied the plan, reports, or achievements to the
19 satisfaction of the Administrator;

20 “(D) in addition to requiring compliance
21 with all other statutory and regulatory require-
22 ments, require that all permits issued under sec-
23 tion 402 for new or expanding discharges of ni-
24 trogen, phosphorus, or sediment shall acquire off-
25 sets that exceed, by a ratio to be determined by

1 *the Administrator through rulemaking, the quan-*
2 *tities of nitrogen, phosphorus, or sediment that*
3 *would be discharged under the permit, taking*
4 *into account attenuation, equivalency, and un-*
5 *certainty; and*

6 “(E) for the purposes of developing and im-
7 plementing a watershed implementation plan
8 under subparagraph (C)—

9 “(i) continue all applicable require-
10 ments for nonpoint sources included as part
11 of the most recently approved watershed im-
12 plementation plan of the Chesapeake Basin
13 State;

14 “(ii) issue such permits to point
15 sources as the Administrator determines to
16 be necessary to control pollution sufficient
17 to meet the pollution reductions required to
18 meet applicable water quality standards;

19 “(iii) enforce such nonpoint source re-
20 quirements in the same manner and with
21 the same stringency as required under most
22 recently approved watershed implementa-
23 tion plan of the Chesapeake Basin State;
24 and

1 “(iv) enforce such point source permits
2 in the same manner as other permits issued
3 under section 402 are enforced.

4 “(6) NITROGEN, PHOSPHORUS, AND SEDIMENT
5 TRADING PROGRAMS.—

6 “(A) ESTABLISHMENT.—Not later than
7 May 12, 2012, the Administrator, in cooperation
8 with each Chesapeake Basin State, shall estab-
9 lish, by regulation, an interstate nitrogen and
10 phosphorus trading program for the Chesapeake
11 Basin for the generation, trading, and use of ni-
12 trogen and phosphorus credits to facilitate the
13 attainment and maintenance of water quality
14 standards in the Chesapeake Bay and the Ches-
15 apeake Bay tidal segments.

16 “(B) TRADING SYSTEM.—The trading pro-
17 gram established under this subsection shall, at
18 a minimum—

19 “(i) define and standardize nitrogen
20 and phosphorus credits and establish proce-
21 dures or standards for ensuring equivalent
22 water quality benefits for all credits;

23 “(ii) establish procedures or standards
24 for certifying, verifying, and enforcing ni-
25 trogen and phosphorus credits to ensure

1 *that credit-generating practices from both*
2 *point sources and nonpoint sources are*
3 *achieving actual reductions in nitrogen and*
4 *phosphorus, including provisions for allow-*
5 *ing the use of third parties to verify and*
6 *certify credits sold within and across State*
7 *lines;*

8 *“(iii) establish procedures or standards*
9 *for generating, quantifying, trading, and*
10 *applying credits to meet regulatory require-*
11 *ments and allow for trading to occur be-*
12 *tween and across point source or nonpoint*
13 *sources, including a requirement that pur-*
14 *chasers of credits that propose to satisfy all*
15 *or part of the obligation to reduce nitrogen*
16 *and phosphorus through the use of credits*
17 *shall compensate, through further limita-*
18 *tions on the discharges of the purchaser or*
19 *through a new trade, for any deficiency in*
20 *those reductions that results from the failure*
21 *of a credit seller to carry out any activity*
22 *that was to generate the credits;*

23 *“(iv) establish baseline requirements*
24 *that a credit seller shall meet before becom-*
25 *ing eligible to generate saleable credits,*

1 *which shall be at least as stringent as appli-*
2 *cable water quality standards, total max-*
3 *imum daily loads (including applicable*
4 *wasteload and load allocations), and water-*
5 *shed implementation plans;*

6 *“(v) ensure that credits and trade re-*
7 *quirements are incorporated, directly or by*
8 *reference, into enforceable permit require-*
9 *ments under the national pollutant dis-*
10 *charge elimination system established under*
11 *section 402 or the system of the applicable*
12 *State permitting authority for all credit*
13 *purchasers covered by the permits;*

14 *“(vi) ensure that private contracts be-*
15 *tween credit buyers and credit sellers con-*
16 *tain adequate provisions to ensure enforce-*
17 *ability under applicable law;*

18 *“(vii) establish procedures or standards*
19 *to ensure public transparency for all nutri-*
20 *ent trading activities, including the estab-*
21 *lishment of a publicly available trading reg-*
22 *istry, which shall include—*

23 *“(I) the information used in the*
24 *certification and verification process;*
25 *and*

1 “(II) recorded trading trans-
2 actions (such as the establishment, sale,
3 amounts, and use of credits);

4 “(viii) in addition to requiring com-
5 pliance with all other statutory and regu-
6 latory requirements, ensure that, in any
7 case in which a segment of the Chesapeake
8 Basin is impaired with respect to the nutri-
9 ent being traded and a total maximum
10 daily load for that segment has not yet been
11 implemented for the impairment—

12 “(I) trades are required to result
13 in progress toward or the attainment
14 of water quality standards in that seg-
15 ment; and

16 “(II) sources in that segment may
17 not rely on credits produced outside of
18 the segment;

19 “(ix) require that the application of
20 credits to meet regulatory requirements
21 under this section not cause or contribute to
22 exceedances of water quality standards,
23 total maximum daily loads, or wasteload or
24 load allocations for affected receiving wa-

1 *ters, including avoidance of localized im-*
2 *pacts;*

3 *“(x) except as part of a consent agree-*
4 *ment, consent judgment, or enforcement*
5 *order, prohibit the purchase of credits from*
6 *any entity that is in significant noncompli-*
7 *ance with an enforceable permit issued*
8 *under section 402;*

9 *“(xi) consider and incorporate, to the*
10 *extent consistent with the minimum re-*
11 *quirements of this Act, as determined by the*
12 *Administrator, in consultation with the*
13 *Secretary of Agriculture, elements of State*
14 *trading programs in existence on the date of*
15 *enactment of the Chesapeake Clean Water*
16 *and Ecosystem Restoration Act;*

17 *“(xii) allow for, as appropriate, the*
18 *aggregation and banking of credits by third*
19 *parties; and*

20 *“(xiii) provide for appropriate tem-*
21 *poral consistency between the time period*
22 *during which the credit is generated and the*
23 *time period during which the credit is used.*

24 *“(C) FACILITATION OF TRADING.—In order*
25 *to attract market participants and facilitate the*

1 *cost-effective achievement of water-quality goals,*
2 *the Administrator, in consultation with the Sec-*
3 *retary of Agriculture, shall ensure that the trad-*
4 *ing program established under this paragraph—*

5 *“(i) includes measures to mitigate*
6 *credit buyer risk;*

7 *“(ii) makes use of the best available*
8 *science in order to minimize uncertainty*
9 *and related transaction costs to traders by*
10 *supporting research and other activities*
11 *that increase the scientific understanding of*
12 *nonpoint nutrient pollutant loading and the*
13 *ability of various structural and non-*
14 *structural alternatives to reduce the loads;*

15 *“(iii) eliminates unnecessary or dupli-*
16 *cative administrative processes; and*

17 *“(iv) incorporates a permitting ap-*
18 *proach under the national pollutant dis-*
19 *charge elimination system established under*
20 *section 402 that—*

21 *“(I) allows trading to occur with-*
22 *out requiring the reopening or*
23 *reissuance of the base permits to incor-*
24 *porate individual trades; and*

1 “(II) incorporates any such
2 trades, directly through a permit
3 amendment or addendum, or indirectly
4 by any appropriate mechanism, as en-
5 forceable terms of those permits on ap-
6 proval of the credit purchase by the
7 permitting authority, in accordance
8 with the requirements of the Chesa-
9 peake Basin Program, this Act, and
10 regulations promulgated pursuant to
11 this Act.

12 “(D) *SEDIMENT TRADING.*—

13 “(i) *IN GENERAL.*—Not later than 180
14 days after the date of enactment of the
15 Chesapeake Clean Water and Ecosystem
16 Restoration Act, the Administrator, in con-
17 sultation with the Secretary of Agriculture,
18 shall convene a task force, to be composed of
19 representatives from the Chesapeake Basin
20 States and public and private entities—

21 “(I) to identify any scientific,
22 technical, or other issues that would
23 hinder the rapid deployment of an
24 interstate sediment trading program;
25 and

1 “(II) to provide to the Adminis-
2 trator recommendations to overcome
3 any of the obstacles to rapid deploy-
4 ment of such a trading system.

5 “(ii) *INTERSTATE SEDIMENT TRADING*
6 *PROGRAM.*—

7 “(I) *ESTABLISHMENT.*—Based on
8 the recommendations of the task force
9 established under clause (i), the Ad-
10 ministrators, in cooperation with each
11 Chesapeake Basin State, shall establish
12 an interstate sediment trading pro-
13 gram for the Chesapeake Basin for the
14 generation, trading, and use of sedi-
15 ment credits to facilitate the attain-
16 ment and maintenance water quality
17 standards in the Chesapeake Bay and
18 the Chesapeake Bay tidal segments.

19 “(II) *REQUIREMENT.*—The inter-
20 state sediment trading program estab-
21 lished under subclause (I) shall in-
22 clude, at a minimum, definitions, pro-
23 cedures, standards, requirements, as-
24 surances, allowances, prohibitions, and
25 evaluations comparable to the inter-

1 *state nitrogen and phosphorus trading*
2 *program established under subpara-*
3 *graph (A).*

4 “(III) *DEADLINE.*—*Upon a find-*
5 *ing of the Administrator, based on the*
6 *recommendation of the task force estab-*
7 *lished under clause (i), that such a*
8 *sediment trading program would sub-*
9 *stantially advance the achievement of*
10 *Bay water quality objectives and*
11 *would be feasible, the interstate trading*
12 *program under this clause shall be es-*
13 *tablished by the later of—*

14 “(aa) *May 12, 2014; and*

15 “(bb) *the date on which each*
16 *issue described in clause (i) can be*
17 *feasibly overcome.*

18 “(E) *EVALUATION OF TRADING.*—

19 “(i) *REPORTS.*—*Not less frequently*
20 *than once every 5 years after the date of es-*
21 *tablishment of the interstate nitrogen and*
22 *phosphorus trading program under this*
23 *paragraph, the Administrator shall submit*
24 *to Congress a report describing the results of*
25 *the program with respect to enforceability,*

1 *transparency, achievement of water quality*
2 *results, and whether the program has re-*
3 *sulted in any localized water pollution*
4 *problem.*

5 “(ii) *IMPROVEMENTS.*—*Based on the*
6 *reports under clause (i), the Administrator*
7 *shall make improvements to the trading*
8 *program under this paragraph to ensure*
9 *achievement of the environmental and pro-*
10 *grammatic objectives of the program.*

11 “(F) *EFFECT ON OTHER TRADING SYS-*
12 *TEMS.*—*Nothing in this paragraph affects the*
13 *ability of a State to establish or implement an*
14 *applicable intrastate trading program.*

15 “(7) *AUTHORITY RELATING TO DEVELOPMENT.*—
16 *The Administrator shall—*

17 “(A) *establish, for projects resulting in im-*
18 *pervious development, guidance relating to site*
19 *planning, design, construction, and maintenance*
20 *strategies to ensure that the land maintains*
21 *predevelopment hydrology with regard to the*
22 *temperature, rate, volume, and duration of flow;*

23 “(B) *compile a database of best manage-*
24 *ment practices, model stormwater ordinances,*
25 *and guidelines with respect to the construction of*

1 *low-impact development infrastructure and non-*
2 *structural low-impact development techniques for*
3 *use by States, local governments, and private en-*
4 *tities; and*

5 “(C) *not later than 180 days after promul-*
6 *gation of the regulations under subsection*
7 *(i)(3)(B), issue guidance, model ordinances, and*
8 *guidelines to carry out this paragraph.*

9 “(8) *ASSISTANCE WITH RESPECT TO*
10 *STORMWATER DISCHARGES.—*

11 “(A) *GRANT PROGRAM.—The Administrator*
12 *may provide grants to any local government*
13 *within the Chesapeake Basin that adopts the*
14 *guidance, best management practices, ordi-*
15 *nances, and guidelines issued and compiled*
16 *under paragraph (7).*

17 “(B) *USE OF FUNDS.—A grant provided*
18 *under subparagraph (A) may be used by a local*
19 *government to pay costs associated with—*

20 “(i) *developing, implementing, and en-*
21 *forcing the guidance, best management*
22 *practices, ordinances, and guidelines issued*
23 *and compiled under paragraph (7); and*

1 “(ii) implementing projects designed to
2 reduce or beneficially reuse stormwater dis-
3 charges.

4 “(9) CONSUMER AND COMMERCIAL PRODUCT RE-
5 PORT.—Not later than 3 years after the date of enact-
6 ment of the Chesapeake Clean Water and Ecosystem
7 Restoration Act, the Administrator, in consultation
8 with the Chesapeake Executive Council, shall—

9 “(A) review consumer and commercial
10 products (such as lawn fertilizer), the use of
11 which may affect the water quality of the Chesa-
12 peake Basin or associated tributaries, to deter-
13 mine whether further product nutrient content
14 restrictions are necessary to restore or maintain
15 water quality in the Chesapeake Basin and those
16 tributaries; and

17 “(B) submit to the Committees on Appro-
18 priations, Environment and Public Works, and
19 Commerce, Science, and Transportation of the
20 Senate and the Committees on Appropriations,
21 Natural Resources, Energy and Commerce, and
22 Transportation and Infrastructure of the House
23 of Representatives a product nutrient report de-
24 tailing the findings of the review under subpara-
25 graph (A).

1 “(10) *AGRICULTURAL ANIMAL WASTE-TO-BIO-*
2 *ENERGY DEPLOYMENT PROGRAM.*—

3 “(A) *DEFINITIONS.*—*In this paragraph:*

4 “(i) *AGRICULTURAL ANIMAL WASTE.*—
5 *The term ‘agricultural animal waste’ means*
6 *manure from livestock, poultry, or aqua-*
7 *culture.*

8 “(ii) *ELIGIBLE TECHNOLOGY.*—*The*
9 *term ‘eligible technology’ means a tech-*
10 *nology that converts or proposes to convert*
11 *agricultural animal waste into—*

12 “(I) *heat;*

13 “(II) *power; or*

14 “(III) *biofuels.*

15 “(B) *GRANT PROGRAM.*—*The Adminis-*
16 *trator, in coordination with the Secretary of Ag-*
17 *riculture, may provide grants to any person or*
18 *partnership of persons for the purpose of car-*
19 *rying out projects to deploy an eligible tech-*
20 *nology in agricultural animal waste-to-bioenergy*
21 *treatment that has significant potential to reduce*
22 *agricultural animal waste volume, recover nutri-*
23 *ents, improve water quality, decrease pollution*
24 *potential, and recover energy.*

25 “(C) *PROJECT SELECTION.*—

1 “(i) *IN GENERAL.*—*In selecting appli-*
2 *cants for grants under this paragraph, the*
3 *Administrator shall select projects that—*

4 “(I) *reduce—*

5 “(aa) *impacts of agricultural*
6 *animal waste on surface and*
7 *groundwater quality;*

8 “(bb) *emissions to the ambi-*
9 *ent air; and*

10 “(cc) *the release of pathogens*
11 *and other contaminants to the en-*
12 *vironment; and*

13 “(II) *quantify—*

14 “(aa) *the degree of waste sta-*
15 *bilization to be realized by the*
16 *project; and*

17 “(bb) *nutrient reduction*
18 *credits that could contribute to the*
19 *nitrogen and phosphorus trading*
20 *program for the Chesapeake Basin*
21 *under this subsection.*

22 “(ii) *PRIORITIZATION.*—*The Adminis-*
23 *trator shall prioritize projects based on—*

24 “(I) *the level of nutrient reduction*
25 *achieved;*

1 “(II) *geographic diversity among*
2 *the Chesapeake Basin States; and*

3 “(III) *differing types of agricul-*
4 *tural animal waste.*

5 “(D) *FEDERAL SHARE.—The amount of a*
6 *grant awarded under this paragraph shall not*
7 *exceed 50 percent of the cost of the project to be*
8 *carried out using funds from the grant.*

9 “(k) *PROHIBITION ON INTRODUCTION OF ASIAN OYS-*
10 *TERS.—Not later than 2 years after the date of enactment*
11 *of the Chesapeake Clean Water and Ecosystem Restoration*
12 *Act, the Administrator shall promulgate regulations—*

13 “(1) *to designate the Asian oyster as a ‘biological*
14 *pollutant’ in the Chesapeake Bay and tidal waters*
15 *pursuant to section 502;*

16 “(2) *to prohibit the issuance of permits under*
17 *sections 402 and 404 for the discharge of the Asian*
18 *oyster into the Chesapeake Bay and Chesapeake Bay*
19 *tidal segments; and*

20 “(3) *to specify conditions under which scientific*
21 *research on Asian oysters may be conducted within*
22 *the Chesapeake Bay and Chesapeake Bay tidal seg-*
23 *ments.*

24 “(l) *CHESAPEAKE NUTRIA ERADICATION PROGRAM.—*

1 “(1) *GRANT AUTHORITY.*—Subject to the avail-
2 ability of appropriations, the Secretary of the Interior
3 (referred to in this subsection as the ‘Secretary’), may
4 provide financial assistance to the States of Delaware,
5 Maryland, and Virginia to carry out a program to
6 implement measures—

7 “(A) to eradicate or control nutria; and

8 “(B) to restore marshland damaged by nu-
9 tria.

10 “(2) *GOALS.*—The continuing goals of the pro-
11 gram shall be—

12 “(A) to eradicate nutria in the Chesapeake
13 Basin ecosystem; and

14 “(B) to restore marshland damaged by nu-
15 tria.

16 “(3) *ACTIVITIES.*—In the States of Delaware,
17 Maryland, and Virginia, the Secretary shall require
18 that the program under this subsection consist of
19 management, research, and public education activities
20 carried out in accordance with the document pub-
21 lished by the United States Fish and Wildlife Service
22 entitled ‘Eradication Strategies for Nutria in the
23 Chesapeake and Delaware Bay Watersheds’, dated
24 March 2002, or any updates to the document.

1 “(m) *REVIEW OF STUDIES ON THE IMPACTS OF MEN-*
2 *HADEN ON THE WATER QUALITY OF THE CHESAPEAKE*
3 *BAY.*—

4 “(1) *RESEARCH REVIEW.*—*The Administrator,*
5 *in cooperation and consultation with the Adminis-*
6 *trator of the National Oceanic and Atmospheric Ad-*
7 *ministration, shall—*

8 “(A) *prepare a report that reviews and*
9 *summarizes existing, peer reviewed research re-*
10 *lating to the impacts of menhaden on water*
11 *quality, including the role of menhaden as filter*
12 *feeders and the impacts on dissolved oxygen lev-*
13 *els, nutrient levels, phytoplankton, zooplankton,*
14 *detritus, and similar issues by menhaden at var-*
15 *ious life stages;*

16 “(B) *identify important data gaps or addi-*
17 *tional menhaden population studies, if any, re-*
18 *lating to the impacts of the menhaden popu-*
19 *lation on water quality; and*

20 “(C) *provide any recommendations for ad-*
21 *ditional research or study.*

22 “(2) *REPORT AND RECOMMENDATIONS.*—*Not*
23 *later than 5 years after the date of enactment of the*
24 *Chesapeake Clean Water and Ecosystem Restoration*

1 *Act, the Administrator shall submit the report and*
2 *recommendations required in paragraph (1) to—*

3 *“(A) the Committee on Commerce, Science,*
4 *and Transportation and the Committee on Envi-*
5 *ronment and Public Works Committee of the*
6 *Senate; and*

7 *“(B) the Committee on Natural Resources*
8 *and the Committee on Transportation and Infra-*
9 *structure Committee of the House of Representa-*
10 *tives.*

11 *“(n) EFFECT ON OTHER REQUIREMENTS.—*

12 *“(1) IN GENERAL.—Nothing in this section re-*
13 *moves or otherwise affects any other obligation for a*
14 *point source to comply with other applicable require-*
15 *ments under this Act.*

16 *“(2) VIOLATIONS BY STATES.—*

17 *“(A) ENFORCEMENT ACTION BY ADMINIS-*
18 *TRATOR.—The failure of a Chesapeake Basin*
19 *State that submits a watershed implementation*
20 *plan under subsection (i) to submit a biennial*
21 *report, meet or correct a previously missed 2-*
22 *year commitment made in a watershed imple-*
23 *mentation plan, or implement a watershed im-*
24 *plementation plan or permit program under this*
25 *section shall—*

1 “(i) constitute a violation of this Act;
2 and

3 “(ii) subject the State to an enforce-
4 ment action by the Administrator.

5 “(B) ENFORCEMENT ACTION BY CITI-
6 ZENS.—

7 “(i) IN GENERAL.—The failure of a
8 Chesapeake Basin State that submits a wa-
9 tershed implementation plan under sub-
10 section (i) to meet or correct a previously
11 missed 2-year commitment made in a wa-
12 tershed implementation plan or implement
13 a watershed implementation plan or permit
14 program under this section shall subject the
15 appropriate State officer to a civil action
16 seeking injunctive relief commenced by a
17 citizen on behalf of the citizen.

18 “(ii) JURISDICTION, VENUE, NOTICE,
19 AND LITIGATION COSTS.—

20 “(I) IN GENERAL.—A citizen may
21 commence a civil action on behalf of
22 the citizen against a State under
23 clause (i), subject to the requirements
24 for notice, venue, and intervention de-
25 scribed in subsections (b) and (c) of

1 *section 505 for a suit brought under*
2 *section 505(a)(1)(A).*

3 “(II) *JURISDICTION.*—*Jurisdic-*
4 *tion over a suit brought under sub-*
5 *clause (I) shall be the district courts,*
6 *as described in section 505(a).*

7 “(III) *LITIGATION COSTS.*—*The*
8 *court may award litigation costs for*
9 *suit brought under subclause (I), as de-*
10 *scribed in section 505(d).*

11 “(iii) *SAVINGS CLAUSE.*—*Nothing in*
12 *this subsection affects the ability of a citizen*
13 *to bring an action for civil enforcement on*
14 *behalf of the citizen under section 505.*

15 “(o) *EVALUATIONS.*—

16 “(1) *IN GENERAL.*—*The Inspectors General of the*
17 *Environmental Protection Agency and the Depart-*
18 *ment of Agriculture shall jointly evaluate and submit*
19 *to Congress reports describing the implementation of*
20 *this section not less frequently than once every 3*
21 *years.*

22 “(2) *INDEPENDENT REVIEWS.*—

23 “(A) *IN GENERAL.*—*The Administrator*
24 *shall enter into a contract with the National*
25 *Academy of Sciences or the National Academy of*

1 *Public Administration under which the Academy*
2 *shall conduct 2 reviews of the Chesapeake Basin*
3 *restoration efforts under this section.*

4 “(B) *INCLUSIONS.—Each review under sub-*
5 *paragraph (A) shall include an assessment of—*

6 “(i) *progress made toward meeting the*
7 *goals of this section;*

8 “(ii) *efforts by Federal, State, and*
9 *local governments and the private sector in*
10 *implementing this section;*

11 “(iii) *the methodologies (including*
12 *computer modeling) and data (including*
13 *monitoring data) used to support the imple-*
14 *mentation of this section; and*

15 “(iv) *the economic impacts, includ-*
16 *ing—*

17 “(I) *a comprehensive analysis of*
18 *the costs of compliance;*

19 “(II) *the benefits of restoration;*

20 “(III) *the value of economic losses*
21 *avoided; and*

22 “(IV) *a regional analysis of items*
23 *(I) through (III), by Chesapeake Basin*
24 *State and by sector, to the maximum*
25 *extent practicable.*

1 “(C) *REPORTS.*—*The National Academy of*
2 *Sciences or the National Academy of Public Ad-*
3 *ministration shall submit to the Administrator a*
4 *report describing the results of the reviews under*
5 *this paragraph, together with recommendations*
6 *regarding the reviews (including any rec-*
7 *ommendations with respect to efforts of the Envi-*
8 *ronmental Protection Agency or any other Fed-*
9 *eral or State agency required to implement ap-*
10 *pplicable water quality standards in the Chesa-*
11 *peake Basin and achieve those standards in the*
12 *Chesapeake Bay and Chesapeake Bay tidal seg-*
13 *ments), if any, by not later than—*

14 “(i) *May 12, 2015, with respect to the*
15 *first review required under this paragraph;*
16 *and*

17 “(ii) *May 12, 2020, with respect to the*
18 *second review required under this para-*
19 *graph.*

20 “(p) *AUTHORIZATION OF APPROPRIATIONS.*—

21 “(1) *CHESAPEAKE BASIN PROGRAM OFFICE.*—
22 *There is authorized to be appropriated to the Chesa-*
23 *peake Basin Program Office to carry out subsection*
24 *(b)(2) \$20,000,000 for each of fiscal years 2010*
25 *through 2015.*

1 “(2) *IMPLEMENTATION, MONITORING, AND CEN-*
2 *TERS OF EXCELLENCE GRANTS.—*

3 “(A) *AUTHORIZATION OF APPROPRIA-*
4 *TIONS.—In addition to amounts authorized to be*
5 *appropriated or otherwise made available to*
6 *carry out this section, there are authorized to be*
7 *appropriated to the Administrator—*

8 “(i) *to carry out a program to estab-*
9 *lish and support centers of excellence for*
10 *water quality and agricultural policies and*
11 *practices under subsection (e)(1)(C),*
12 *\$10,000,000 for each of fiscal years 2010*
13 *through 2015;*

14 “(ii) *to provide implementation grants*
15 *under subsection (e)(3)(A), \$80,000,000 for*
16 *each of fiscal years 2010 through 2015, to*
17 *remain available until expended;*

18 “(iii) *to carry out a freshwater moni-*
19 *toring program under subsection (e)(3)(B),*
20 *\$5,000,000 for each of fiscal years 2010*
21 *through 2015;*

22 “(iv) *to carry out a Chesapeake Bay*
23 *and tidal water monitoring program under*
24 *subsection (e)(3)(B), \$5,000,000 for each of*
25 *fiscal years 2010 through 2015; and*

1 “(v) to carry out the Chesapeake nutri-
2 ent trading guarantee pilot program under
3 subsection (e)(1)(D), \$20,000,000 for the pe-
4 riod of fiscal years 2010 through 2015.

5 “(B) COST SHARING.—The Federal share of
6 the cost of a program carried out using funds
7 from a grant provided—

8 “(i) under subparagraph (A)(ii) shall
9 not exceed—

10 “(I) 80 percent, with respect to
11 funds provided for the provision of
12 technical assistance to agricultural
13 producers and forest owners; and

14 “(II) with respect to all other ac-
15 tivities under that subparagraph—

16 “(aa) for the States of Dela-
17 ware, New York, and West Vir-
18 ginia, shall not exceed 75 percent;
19 and

20 “(bb) for the States of Mary-
21 land, Pennsylvania, and Virginia
22 and for the District of Columbia,
23 shall not exceed 50 percent; and

1 “(ii) under clauses (i), (iii), or (iv) of
2 subparagraph (A) shall not exceed 80 per-
3 cent.

4 “(3) CHESAPEAKE STEWARDSHIP GRANTS.—
5 There is authorized to be appropriated to carry out
6 subsection (h)(2) \$15,000,000 for each of fiscal years
7 2010 through 2015.

8 “(4) STORM WATER POLLUTION PLANNING AND
9 IMPLEMENTATION GRANTS.—

10 “(A) AUTHORIZATION OF APPROPRIA-
11 TIONS.—In addition to amounts authorized or
12 otherwise made available to carry out this sec-
13 tion, there are authorized to be appropriated to
14 the Administrator—

15 “(i) to carry out subsection
16 (j)(8)(B)(i), \$10,000,000; and

17 “(ii) to carry out subsection
18 (j)(8)(B)(ii), \$1,500,000,000.

19 “(B) COST-SHARING.—A grant provided for
20 a project under—

21 “(i) subsection (j)(8)(B)(i) may not be
22 used to cover more than 80 percent of the
23 cost of the project; and

1 “(i) subsection (j)(8)(B)(ii) may not
2 be used to cover more than 75 percent of the
3 cost of the project.

4 “(5) *NUTRIA ERADICATION GRANTS.*—

5 “(A) *IN GENERAL.*—*There is authorized to*
6 *be appropriated to the Secretary of the Interior*
7 *to provide financial assistance in the Chesapeake*
8 *Basin under subsection (l) \$4,000,000 for each of*
9 *fiscal years 2010 through 2015.*

10 “(B) *COST-SHARING.*—

11 “(i) *FEDERAL SHARE.*—*The Federal*
12 *share of the cost of carrying out the pro-*
13 *gram under subsection (l) may not exceed*
14 *75 percent of the total costs of the program.*

15 “(ii) *IN-KIND CONTRIBUTIONS.*—*The*
16 *non-Federal share of the cost of carrying out*
17 *the program under subsection (l) may be*
18 *provided in the form of in-kind contribu-*
19 *tions of materials or services.*

20 “(6) *AGRICULTURAL ANIMAL WASTE-TO-BIO-*
21 *ENERGY DEPLOYMENT GRANTS.*—*There is authorized*
22 *to be appropriated to carry out the agricultural ani-*
23 *mal waste-to-bioenergy deployment program under*
24 *subsection (j) \$30,000,000 for the period of fiscal*

1 *years 2010 to 2015, to remain available until ex-*
 2 *pended.*

3 “(7) *LIMITATION ON ADMINISTRATIVE COSTS.—*
 4 *Not more than 10 percent of the annual amount of*
 5 *any grant provided by the Administrator or Sec-*
 6 *retary under any program described in this sub-*
 7 *section may be used for administrative costs.*

8 “(8) *AVAILABILITY.—Amounts authorized to be*
 9 *appropriated under this subsection shall remain*
 10 *available until expended.*

11 “(q) *SEVERABILITY.—A determination that any provi-*
 12 *sions of this section is invalid, illegal, unenforceable, or in*
 13 *conflict with any other law shall not affect the validity, le-*
 14 *gality, or enforceability of the remaining provisions of this*
 15 *section.”.*

16 **SEC. 4. FEDERAL ENFORCEMENT.**

17 *Section 309 of the Federal Water Pollution Control Act*
 18 *(33 U.S.C. 1319) is amended—*

19 (1) *in subsection (a)—*

20 (A) *in paragraph (1), in the first sentence,*
 21 *by striking “section 402” and inserting “section*
 22 *117, 402,”;*

23 (B) *in paragraph (3), by inserting “section*
 24 *117 or” before “section 402”;*

1 (2) *in subsection (d), in the first sentence, by in-*
 2 *serting “section 117 or” after “a permit issued*
 3 *under”;* and

4 (3) *in subsection (g)—*

5 (A) *in paragraph (1)(A), by inserting “sec-*
 6 *tion 117 or” before “section 402”;* and

7 (B) *in paragraph (7), by striking “section*
 8 *402” and inserting “section 117, 402.”.*

9 **SEC. 5. FEDERAL RESPONSIBILITY TO PAY FOR**
 10 **STORMWATER PROGRAMS.**

11 *Section 313 of the Federal Water Pollution Control Act*
 12 *(33 U.S.C. 1323) is amended by adding at the end the fol-*
 13 *lowing:*

14 “(c) **REASONABLE SERVICE CHARGES.**—*Reasonable*
 15 *service charges described in subsection (a) include any re-*
 16 *quirement to pay a reasonable fee, assessment, or charge*
 17 *imposed by any State or local agency to defray or recover*
 18 *the cost of stormwater management in the same manner*
 19 *and to the same extent as any nongovernmental entity.*

20 “(d) **NO TREATMENT AS TAX OR LEVY.**—*A fee, assess-*
 21 *ment, or charge described in this section—*

22 (1) *shall not be considered to be a tax or other*
 23 *levy subject to an assertion of sovereign immunity;*
 24 and

25 (2) *may be paid using appropriated funds.”.*

1 **SEC. 6. RELATIONSHIP TO NATIONAL ESTUARY PROGRAM.**

2 *Section 320(b) of the Federal Water Pollution Control*
3 *Act (33 U.S.C. 1330(b)) is amended in the last sentence*
4 *by inserting “or section 117” after “this section”.*

5 **SEC. 7. SEPARATE APPROPRIATIONS ACCOUNT.**

6 *Section 1105(a) of title 31, United States Code, is*
7 *amended—*

8 *(1) by redesignating paragraphs (35) and (36)*
9 *as paragraphs (36) and (37), respectively;*

10 *(2) by redesignating the second paragraph (33)*
11 *(relating to obligational authority and outlays re-*
12 *quested for homeland security) as paragraph (35);*
13 *and*

14 *(3) by adding at the end the following:*

15 *“(38) a separate statement for the Chesapeake*
16 *Nutrient Trading Guarantee Fund established under*
17 *section 117(e)(1)(E) of the Federal Water Pollution*
18 *Control Act (33 U.S.C. 1267(e)(1)(E))(as amended by*
19 *the Chesapeake Clean Water and Ecosystem Restora-*
20 *tion Act), which shall include the estimated amount*
21 *of deposits into the Fund, obligations, and outlays*
22 *from the Fund.”.*

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[Report No. 111-333]

A BILL

To amend the Federal Water Pollution Control Act to improve and reauthorize the Chesapeake Bay Program.

SEPTEMBER 28, 2010

Reported with an amendment