

111TH CONGRESS
1ST SESSION

S. 1816

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

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”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the Chesapeake Bay and the tributary wa-
9 ters of the Chesapeake Bay are natural resources of

1 outstanding ecological, economic, and cultural im-
2 portance to the United States;

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

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

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

23 (5) the Chesapeake Bay Program partnership
24 has also developed some of the world's foremost

1 water quality and ecosystem computer models, which
2 are invaluable planning tools for resource managers;

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

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

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

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

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

23 (11) for years, a steady stream of technology
24 development and increasingly stringent permit re-
25 quirements have resulted in a steady decline in the

1 nitrogen and phosphorus pollution derived from
2 wastewater treatment plants in the Chesapeake Bay
3 watershed;

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

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

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

17 (15) the population of the watershed is esti-
18 mated to be growing by about 157,000 people per
19 year;

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

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

1 (18) States, local governments, developers, and
2 nonprofit organizations have developed numerous
3 low-impact development techniques since the late
4 1990s, which use natural area protection, infiltra-
5 tion, and pervious surfaces to reduce stormwater
6 runoff and associated sediment and nutrient pollu-
7 tion;

8 (19) many of those techniques are less expen-
9 sive than traditional pollution stormwater control
10 management techniques;

11 (20) the decline of key aquatic habitats and
12 species has resulted in a loss of the important water
13 quality benefits that the habitats and species tradi-
14 tionally provided;

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

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

1 (23) wetlands are a vital part of any major eco-
2 system;

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

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

11 (26) the loss of forests and wetlands in the
12 Chesapeake Bay has resulted in diminished water
13 quality, among other effects;

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

17 (28) in spite of the achievements of the Chesa-
18 peake Bay Program partnership and increasing
19 knowledge about ecosystem functions, the restora-
20 tion of the Chesapeake Bay will require significantly
21 stronger tools to manage pollution levels and other
22 impediments to water quality.

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

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

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

2 “(a) DEFINITIONS.—In this section:

3 “(1) ADMINISTRATIVE COST.—The term ‘ad-
4 ministrative cost’ means the cost of salaries and
5 fringe benefits incurred in administering a grant
6 under this section.

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

9 “(3) BASELINE.—The term ‘baseline’ means
10 the basic standard or level used for measuring (as
11 applicable)—

12 “(A) the nutrient control requirements
13 credit sellers must achieve before becoming eli-
14 gible to generate saleable nutrient credits; or

15 “(B) the nutrient load reductions required
16 of individual sources to meet water quality
17 standards or goals under a TMDL or watershed
18 implementation plan.

19 “(4) BASIN COMMISSIONS.—The term ‘basin
20 commissions’ means—

21 “(A) the Interstate Commission on the Po-
22 tomac River Basin established under the inter-
23 state compact consented to and approved by
24 Congress under the Joint Resolution of July
25 11, 1940 (54 Stat. 748, chapter 579) and Pub-
26 lic Law 91–407 (84 Stat. 856); and

1 “(B) the Susquehanna River Basin Com-
2 mission established under the interstate com-
3 pact consented to and approved by Congress
4 under Public Law 91–575 (84 Stat. 1509) and
5 Public Law 99–468 (100 Stat. 1193).

6 “(5) CHESAPEAKE BAY AGREEMENT.—The
7 term ‘Chesapeake Bay Agreement’ means the for-
8 mal, voluntary agreements executed to achieve the
9 goal of restoring and protecting the Chesapeake Bay
10 ecosystem and the living resources of the Chesa-
11 peake Bay ecosystem and signed by the Chesapeake
12 Executive Council.

13 “(6) CHESAPEAKE BAY ECOSYSTEM.—The term
14 ‘Chesapeake Bay ecosystem’ means the ecosystem of
15 the Chesapeake Bay watershed.

16 “(7) CHESAPEAKE BAY PROGRAM.—The term
17 ‘Chesapeake Bay Program’ means the program di-
18 rected by the Chesapeake Executive Council in ac-
19 cordance with the Chesapeake Bay Agreement.

20 “(8) CHESAPEAKE BAY STATE.—The term
21 ‘Chesapeake Bay 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 WATERSHED.—The
2 term ‘Chesapeake Bay watershed’ means the Ches-
3 apeake Bay and the area consisting of 19 tributary
4 basins within the Chesapeake Bay States through
5 which precipitation drains into the Chesapeake Bay.

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

9 “(11) 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 “(12) DIRECTOR.—The term ‘director’ means
16 the Director of the Chesapeake Bay Program Office
17 of the Environmental Protection Agency.

18 “(13) LOCAL GOVERNMENT.—The term ‘local
19 government’ means any county, city, or other gen-
20 eral purpose political subdivision of a State with ju-
21 risdiction over land use.

22 “(14) MENHADEN.—The term ‘menhaden’
23 means members of stocks or populations of the spe-
24 cies *Brevoortia tyrannus*.

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

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

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

7 “(B) has sufficient technical capacity and
8 legal authority to meet the obligations of the
9 entity under this Act.

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

13 “(18) TMDL.—

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

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

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

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

6 “(19) TRIBUTARY BASIN.—The term ‘tributary
7 basin’ means an area of land or body of water
8 that—

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

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

13 “(b) CONTINUATION OF CHESAPEAKE BAY PRO-
14 GRAM.—

15 “(1) IN GENERAL.—In cooperation with the
16 Chesapeake Executive Council (and as a member of
17 the Council), the Administrator shall continue the
18 Chesapeake Bay Program.

19 “(2) PROGRAM OFFICE.—

20 “(A) IN GENERAL.—The Administrator
21 shall maintain in the Environmental Protection
22 Agency a Chesapeake Bay Program Office.

23 “(B) FUNCTION.—The Chesapeake Bay
24 Program Office shall provide support to the
25 Chesapeake Executive Council by—

1 “(i) implementing and coordinating
2 science, research, modeling, support serv-
3 ices, monitoring, data collection, and other
4 activities that support the Chesapeake Bay
5 Program;

6 “(ii) developing and making available,
7 through publications, technical assistance,
8 and other appropriate means, information
9 pertaining to the environmental quality
10 and living resources of the Chesapeake
11 Bay ecosystem;

12 “(iii) in cooperation with appropriate
13 Federal, State, and local authorities, as-
14 sisting the signatories to the Chesapeake
15 Bay Agreement in developing and imple-
16 menting specific action plans to carry out
17 the responsibilities of the signatories to the
18 Chesapeake Bay Agreement;

19 “(iv) coordinating the actions of the
20 Environmental Protection Agency with the
21 actions of the appropriate officials of other
22 Federal agencies and State and local au-
23 thorities in developing strategies to—

1 “(I) improve the water quality
2 and living resources in the Chesapeake Bay ecosystem; and

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4 “(II) obtain the support of the
5 appropriate officials of the agencies
6 and authorities in achieving the objectives of the Chesapeake Bay Agreement; and

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9 “(v) implementing outreach programs
10 for public information, education, and participation to foster stewardship of the resources of the Chesapeake Bay.

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

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16 “(d) TECHNICAL ASSISTANCE AND ASSISTANCE
17 GRANTS.—

18 “(1) IN GENERAL.—In cooperation with the
19 Chesapeake Executive Council, the Administrator
20 may provide technical assistance, and assistance
21 grants, to nonprofit organizations, State and local
22 governments, colleges, universities, and interstate
23 agencies to carry out this section, subject to such
24 terms and conditions as the Administrator considers
25 appropriate.

1 “(2) FEDERAL SHARE.—

2 “(A) IN GENERAL.—Except as provided in
3 subparagraph (B), the Federal share of an as-
4 sistance grant provided under paragraph (1)
5 shall be determined by the Administrator in ac-
6 cordance with guidance issued by the Adminis-
7 trator.

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

15 “(3) NON-FEDERAL SHARE.—An assistance
16 grant under paragraph (1) shall be provided on the
17 condition that non-Federal sources provide the re-
18 mainder of eligible project costs, as determined by
19 the Administrator.

20 “(4) ADMINISTRATIVE COSTS.—Administrative
21 costs shall not exceed 10 percent of the annual grant
22 award.

23 “(e) IMPLEMENTATION AND MONITORING
24 GRANTS.—

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

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

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

17 “(i) a Chesapeake Bay State, or a
18 designee of a Chesapeake Bay State (such
19 as a soil conservation district, nonprofit or-
20 ganization, local government, college, uni-
21 versity, interstate basin commission, or
22 interstate agency), for the purpose of mon-
23 itoring the ecosystem of freshwater tribu-
24 taries to the Chesapeake Bay; or

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

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

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

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

24 “(3) PROPOSALS.—

25 “(A) IMPLEMENTATION GRANTS.—

1 “(i) IN GENERAL.—A Chesapeake
2 Bay State described in paragraph (1) may
3 apply for a grant under this subsection for
4 a fiscal year by submitting to the Adminis-
5 trator a comprehensive proposal to imple-
6 ment programs and achieve the goals es-
7 tablished 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 proposed ac-
13 tions that the Chesapeake Bay State
14 commits to take within a specified
15 time period that are designed—

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

23 “(bb) to restore, enhance,
24 and protect the finfish, shellfish,
25 waterfowl, and other living re-

1 sources, habitats of those species
2 and resources, and ecological re-
3 lationships to sustain all fisheries
4 and provide for a balanced eco-
5 system;

6 “(cc) to preserve, protect,
7 and restore those habitats and
8 natural areas that are vital to the
9 survival and diversity of the liv-
10 ing resources of the Chesapeake
11 Bay 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 tribu-
19 taries, and restore and preserve
20 aquatic 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
4 “(ff) to provide technical assistance to agricultural producers, foresters, and other eligible entities, through technical infrastructure, including activities, processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inventories, training, data, technology, monitoring, and effects analyses;

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16 “(II) a commitment to dedicate
17 not less than 20 percent of the grant
18 of the Chesapeake Bay under this
19 subsection to support technical assistance for agricultural and forestry land
20 or nutrient management practices
21 that protect and restore watershed resources and water quality, reduce or
22 maintain reduced pollutant loadings
23 for the Chesapeake Bay and related
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1 tributaries, and restore and preserve
2 aquatic living resources; and

3 “(III) the estimated cost of the
4 actions proposed to be taken during
5 the fiscal year.

6 “(B) MONITORING GRANTS.—

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

14 “(ii) MONITORING GRANT CON-
15 TENTS.—A proposal under this subpara-
16 graph shall include—

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

19 “(II) certification by the Chesa-
20 peake Bay Program Director that
21 such a monitoring system includes
22 such parameters as the Chesapeake
23 Bay Program Director determines to
24 be necessary to assess progress to-
25 ward achieving the goals of the Chesa-

1 peake Clean Water and Ecosystem
2 Restoration Act of 2009; and

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

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

8 “(I) obtain the concurrence of
9 the Director of the United States Geo-
10 logical Survey regarding the design
11 and implementation of the freshwater
12 monitoring systems established under
13 this subsection; and

14 “(II) obtain the concurrence of
15 the Director of the Chesapeake Bay
16 Office of the National Oceanic and
17 Atmospheric Administration regarding
18 the design and implementation of the
19 estuarine monitoring systems estab-
20 lished under this subsection.

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

23 “(I) consult with the Interstate
24 Commission on the Potomac River
25 Basin, the Susquehanna River Basin

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

15 “(II) consult with Old Dominion
16 University, the Virginia Institute of
17 Marine Science, the University of
18 Maryland Center for Environmental
19 Science, and the Chesapeake Bay
20 States regarding the estuarine moni-
21 toring systems established under this
22 subsection;

23 “(III) consult with the Chesa-
24 peake Bay Program Scientific and
25 Technical Advisory Committee regard-

1 ing independent review of monitoring
2 designs giving particular attention to
3 integrated freshwater and estuarine
4 monitoring strategies; and

5 “(IV) consult with Federal de-
6 partments and agencies regarding co-
7 operation in implementing monitoring
8 programs.

9 “(f) FEDERAL FACILITIES COORDINATION.—

10 “(1) SUBWATERSHED PLANNING AND RESTORA-
11 TION.—A Federal agency that owns or operates a
12 facility (as defined by the Administrator) within the
13 Chesapeake Bay watershed shall participate in re-
14 gional and subwatershed planning and restoration
15 programs.

16 “(2) COMPLIANCE WITH AGREEMENTS AND
17 PLANS.—The head of each Federal agency that owns
18 or occupies real property in the Chesapeake Bay wa-
19 tershed shall ensure that the property, and actions
20 taken by the agency with respect to the property,
21 comply with—

22 “(A) the Chesapeake Bay Agreement;

23 “(B) the Federal Agencies Chesapeake
24 Ecosystem Unified Plan;

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

4 “(D) any subsequent agreements and
5 plans.

6 “(g) FEDERAL ANNUAL ACTION PLAN AND
7 PROGRESS REPORT.—The Administrator, in accordance
8 with Executive Order 13508 entitled ‘Chesapeake Bay
9 Protection and Restoration’ and signed on May 12, 2009
10 (74 Fed. Reg. 23099), shall—

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

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

20 “(B) an annual progress report that—

21 “(i) assesses the key ecological at-
22 tributes that reflect the health of the
23 Chesapeake Bay ecosystem;

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

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

4 “(iv) assesses implementation of the
5 action plan during the preceding fiscal
6 year;

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

10 “(vi) describes how Federal funding
11 and actions will be coordinated with the
12 actions of States, basin commissions, and
13 others;

14 “(2) create and maintain, with the concurrence
15 of the Secretary of Agriculture, a Chesapeake Bay-
16 wide database containing comprehensive data on im-
17 plementation of conservation management practices
18 in the Chesapeake Bay watershed that—

19 “(A) includes baseline conservation man-
20 agement practice implementation data as of the
21 effective date of the Chesapeake Clean Water
22 and Ecosystem Restoration Act of 2009;

23 “(B) includes data on subsequent con-
24 servation management practice implementation

1 projects funded by or reported to the Agency or
2 the Department;

3 “(C) presents the required data in statis-
4 tical or aggregate form without identifying
5 any—

6 “(i) individual owner, operator, or
7 producer; or

8 “(ii) specific data gathering site; and

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

11 “(h) CHESAPEAKE BAY PROGRAM.—

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

18 “(A) the nutrient goals of the Chesapeake
19 Bay Agreement for the quantity of nitrogen and
20 phosphorus entering the Chesapeake Bay and
21 the watershed of the Chesapeake Bay;

22 “(B) the water quality requirements nec-
23 essary to restore living resources in the Chesa-
24 peake Bay ecosystem;

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

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

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

19 “(2) CHESAPEAKE BAY STEWARDSHIP GRANTS
20 PROGRAM.—The Administrator, in cooperation with
21 the Chesapeake Executive Council, shall—

22 “(A) establish a Chesapeake Bay Steward-
23 ship Grants Program; and

24 “(B) in carrying out that program—

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

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

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

19 “(III) innovative nitrogen, phos-
20 phorus, or sediment reduction efforts;
21 and

22 “(ii) give preference to cooperative
23 projects that involve local governments.

24 “(i) TOTAL MAXIMUM DAILY LOAD.—

25 “(1) TMDL.—

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

4 “(B) REQUIREMENTS.—The Administrator
5 shall not establish or approve a TMDL de-
6 scribed in subparagraph (A) unless the TMDL
7 includes—

8 “(i) wasteload allocations for nitrogen,
9 phosphorus, and sediment necessary to im-
10 plement the applicable water quality stand-
11 ards in the Chesapeake Bay watershed and
12 achieve those standards in the Chesapeake
13 Bay and the tidal tributaries of the Chesa-
14 peake Bay;

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

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

24 “(iv) a requirement for no net in-
25 crease of nitrogen, phosphorus, and sedi-

1 ment loads above the pollution limitations
2 necessary to meet water quality standards
3 for the Chesapeake Bay, including no net
4 projected increased pollutant loads from—

5 “(I) new or increased impervious
6 surfaces;

7 “(II) concentrated animal feeding
8 operations;

9 “(III) transportation systems;
10 and

11 “(IV) septic systems.

12 “(2) PERMITS.—

13 “(A) IN GENERAL.—Effective beginning on
14 January 1, 2011, a new or reissued permit
15 issued by the Administrator under section
16 402(a) or a State authorized to administer a
17 permit program under section 402(b) shall in-
18 clude limits consistent with all applicable
19 wasteload allocations in the Chesapeake Bay
20 TMDL.

21 “(B) PERMITS.—

22 “(i) IN GENERAL.—Effective begin-
23 ning on January 1, 2011, each Chesapeake
24 Bay State shall submit to the Adminis-
25 trator copies of any permit for discharges

1 of nitrogen, phosphorus, or sediment into
2 the Chesapeake Bay watershed that is al-
3 lowed to continue beyond 5 years pursuant
4 to a State law analogous to section 558(c)
5 of title 5, United States Code, not later
6 than 60 days after the expiration date of
7 the permit.

8 “(ii) REVIEW.—The Administrator
9 shall have the opportunity to review and
10 object to the continuance of the permit in
11 accordance with the process described in
12 section 402(d) for permits proposed to be
13 issued by a State.

14 “(j) ACTIONS BY STATES.—

15 “(1) WATERSHED IMPLEMENTATION PLANS.—

16 “(A) PLANS.—

17 “(i) IN GENERAL.—Not later than
18 May 12, 2011, each Chesapeake Bay State
19 shall, after providing for reasonable notice
20 and 1 or more public hearings, adopt and
21 submit to the Administrator for approval a
22 watershed implementation plan for the por-
23 tion of each of the 92 tidal water segments
24 that is subject to the jurisdiction of the

1 Chesapeake Bay State that together com-
2 prise the Chesapeake Bay.

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

10 “(I) agricultural runoff;

11 “(II) point sources, including
12 point source stormwater discharges;

13 “(III) nonpoint source
14 stormwater runoff; and

15 “(IV) septic systems and other
16 onsite sewage disposal systems.

17 “(iii) POLLUTION LIMITATIONS.—

18 “(I) IN GENERAL.—The tribu-
19 tary pollution limitations shall be the
20 nitrogen, phosphorous, and sediment
21 cap loads identified in the tributary
22 cap load agreement numbered EPA
23 903–R–03–007, date December 2003,
24 and entitled ‘Setting and Allocating
25 the Chesapeake Bay Basin Nutrient

1 and Sediment Loads: The Collaborative Process, Technical Tools and
2 Innovative Approaches,’ or a Chesapeake Bay TMDL established by the
3 Administrator.
4
5

6 “(II) STRINGENCY.—A watershed implementation plan shall be designed to attain, at a minimum, the
7 pollution limitations described in sub-
8 clause (I).
9
10

11 “(iv) PLAN REQUIREMENTS.—Each
12 watershed implementation plan shall—

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

20 “(II) include programs to achieve
21 voluntary reductions from pollution
22 sources, including funding commitments necessary to implement those
23 programs;
24

1 “(III) include any additional re-
2 quirements or actions that the Ches-
3 apeake Bay State determines to be nec-
4 essary to attain the pollution limita-
5 tions by the deadline established in
6 this paragraph;

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

20 “(V) include a schedule for im-
21 plementation divided into 2-year peri-
22 ods, along with computer modeling to
23 demonstrate the projected reductions
24 in nitrogen, phosphorus, and sediment

1 loads associated with each 2-year pe-
2 riod;

3 “(VI) include the stipulation of
4 alternate actions as contingencies;

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

9 “(VIII) provide assurances
10 that—

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

19 “(bb) the management
20 measures required to achieve a
21 50-percent reduction of nutrient
22 and sediment limitations shall be
23 in effect upon submission of the
24 plan;

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

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

18 “(B) IMPLEMENTATION.—

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

1 all plan elements by not later than May
2 12, 2025, including—

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

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

7 “(III) determinations of nec-
8 essary modifications to future actions
9 in order to achieve objectives; and

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

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

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

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

23 “(C) PROGRESS REPORTS.—Not later than
24 May 12, 2014, and biennially thereafter, each
25 Chesapeake Bay State shall submit to the Ad-

1 administrator a progress report that, with respect
2 to the 2-year period covered by the report—

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

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

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

18 “(iv) includes Chesapeake Bay Pro-
19 gram computer modeling data that detail
20 the nitrogen, phosphorus, and sediment
21 load reductions projected to be achieved as
22 a result of the implementation of the man-
23 agement measures and mechanisms carried
24 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 Chesa-
6 peake 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 Chesa-
2 peake Bay State fails to submit a watershed imple-
3 mentation plan, to submit a biennial report, or to
4 correct a previously missed 2-year commitment made
5 in a watershed implementation plan, the Adminis-
6 trator shall, after issuing a notice to the State and
7 providing a 90-day period in which the failure may
8 be corrected—

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

11 “(B) develop and administer a watershed
12 implementation plan for that Chesapeake Bay
13 State until such time as the Chesapeake Bay
14 State has remedied the plan, reports, or
15 achievements to the satisfaction of the Adminis-
16 trator;

17 “(C) require that all permits issued under
18 section 402 for new or expanding discharges of
19 nitrogen, phosphorus, or sediments acquire off-
20 sets that exceed by 100 percent an amount that
21 would otherwise be required, taking into ac-
22 count attenuation, equivalency, and uncertainty;
23 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 “(I) 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 tria.

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.”.

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