Calendar No. 370

105TH CONGRESS
2D SESSION

S. 1415

[Report No. 105–180]

A BILL

To reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes.

MAY 13, 1998

Ordered referred to the Committee on Finance, until 9:00 p.m. on Thursday, May 14, 1998, to report or be discharged

MAY 14 (legislative day, MAY 13), 1998

Reported with amendments

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[Report No. 105–180]

To reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 7, 1997

Mr. MCCAIN (for himself, Mr. HOLLINGS, Mr. BREAUX, and Mr. GORTON) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

MAY 1, 1998

Reported by Mr. MCCAIN, with an amendment in the nature of a substitute

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

MAY 13, 1998

Ordered referred to the Committee on Finance, until 9:00 p.m. on Thursday, May 14, 1998, to report or be discharged

MAY 14 (legislative day, MAY 13), 1998

Reported by Mr. ROTH, with amendments

[Omit the part in boldface brackets and insert the part printed in bold italic]

A BILL

To reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to

redress the adverse health effects of tobacco use, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

~~SECTION 1. SHORT TITLE; TABLE OF CONTENTS.~~

~~(a) SHORT TITLE.—This Act may be cited as the "Universal Tobacco Settlement Act".~~

~~(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:~~

~~Sec. 1. Short title; table of contents.~~
~~Sec. 2. Findings.~~
~~Sec. 3. Purposes.~~

~~TITLE I—REGULATION OF THE TOBACCO INDUSTRY~~

~~Sec. 100. Definitions.~~

~~Subtitle A—Restriction on Marketing and Advertising~~

~~Sec. 101. Prohibitions on advertising.~~
~~Sec. 102. General restrictions.~~
~~Sec. 103. Format and content requirements for labeling and advertising.~~
~~Sec. 104. Statement of intended use.~~
~~Sec. 105. Ban on nontobacco items and services, contests and games of chance, and sponsorship of events.~~
~~Sec. 106. Use of product descriptors.~~

~~Subtitle B—Warnings, Labeling and Packaging~~

~~Sec. 111. Cigarette warnings.~~
~~Sec. 112. Smokeless tobacco warnings.~~
~~Sec. 113. Ingredients.~~
~~Sec. 114. Enforcement, regulations, and construction.~~
~~Sec. 115. Preemption.~~
~~Sec. 116. Reports.~~
~~Sec. 117. Exports.~~
~~Sec. 118. Repeals.~~

~~Subtitle C—Restriction on Access to Tobacco Products~~

~~Sec. 121. Requirements relating to retailers.~~
~~Sec. 122. Manufacture, sale, and distribution.~~

~~Subtitle D—Licensing of Retail Tobacco Sellers~~

~~Sec. 131. Establishment of program.~~
~~Sec. 132. Requirements.~~

~~Sec. 133. Penalties, revocations and suspensions.~~
~~Sec. 134. Federal licensing of military and other entities.~~

~~Subtitle E—Regulation of Tobacco Product Development and Manufacturing~~

~~Sec. 141. Reference.~~
~~Sec. 142. Treatment of tobacco products as drugs.~~
~~Sec. 143. Health and safety regulation of tobacco products.~~

~~Subtitle F—Compliance Plans and Corporate Culture~~

~~Sec. 151. Compliance plans.~~
~~Sec. 152. Compliance programs.~~
~~Sec. 153. Whistleblower protections.~~
~~Sec. 154. Provisions relating to lobbying.~~
~~Sec. 155. Termination of certain entities.~~
~~Sec. 156. Enforcement.~~

~~TITLE II—REDUCTION IN UNDERAGE TOBACCO USE~~

~~Sec. 201. Purpose.~~
~~Sec. 202. Determination of underage use base percentages.~~
~~Sec. 203. Annual daily incidence of underage use of tobacco products.~~
~~Sec. 204. Required reduction in underage tobacco use.~~
~~Sec. 205. Application of surcharges.~~
~~Sec. 206. Abatement procedures.~~

~~TITLE III—STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE~~

~~Sec. 301. Definitions.~~
~~Sec. 302. Smoke-free environment policy.~~
~~Sec. 303. Citizen actions.~~
~~Sec. 304. Preemption.~~
~~Sec. 305. Regulations.~~
~~Sec. 306. Effective date.~~

~~TITLE IV—NATIONAL TOBACCO SETTLEMENT TRUST FUND~~

~~Sec. 401. Establishment of Trust Fund.~~
~~Sec. 402. Liability of industry sources.~~
~~Sec. 403. Enforcement.~~

~~TITLE V—PUBLIC HEALTH AND OTHER PROGRAMS~~

~~Subtitle A—Public Health Block Grant Program~~

~~Sec. 501. Public Health Trust Fund.~~
~~Sec. 502. Block grants to States.~~
~~Sec. 503. Allotments.~~
~~Sec. 504. Use of funds.~~
~~Sec. 505. Withholding of funds.~~

~~Subtitle B—Other Programs~~

~~Sec. 511. National Smoking Cessation Program.~~
~~Sec. 512. National Reduction in Tobacco Usage Program.~~
~~Sec. 513. National Tobacco-Free Public Education Program.~~
~~Sec. 514. National Event Sponsorship Program.~~

~~Sec. 515. National Community Action Program.~~
~~Sec. 516. National Cessation Research Program.~~
~~Sec. 517. Use of surcharge payments.~~

~~TITLE VI—CONSENT DECREES, NON-PARTICIPATING MANUFACTURERS, AND STATE ENFORCEMENT~~

~~Sec. 601. Purposes.~~

~~Subtitle A—Consent Decrees and Non-Participating Manufacturers~~

~~Sec. 611. Consent decrees.~~
~~Sec. 612. National tobacco control protocol.~~
~~Sec. 613. Non-participating manufacturers.~~

~~Subtitle B—State Enforcement~~

~~Sec. 621. Requirement of no sale to minors law.~~
~~Sec. 622. State reporting.~~
~~Sec. 623. Reduction in State payments.~~

~~TITLE VII—PROVISIONS RELATING TO TOBACCO-RELATED CIVIL ACTIONS~~

~~Sec. 701. General immunity.~~
~~Sec. 702. Civil liability for past conduct.~~
~~Sec. 703. Civil liability for future conduct.~~
~~Sec. 704. Non-participating manufacturers.~~

~~TITLE VIII—PUBLIC DISCLOSURE OF HEALTH RESEARCH~~

~~Sec. 801. Purpose.~~
~~Sec. 802. National Tobacco Document Depository.~~

~~TITLE IX—ASSISTANCE TO TOBACCO GROWERS AND COMMUNITIES~~

~~Sec. 1001. Short title; table of contents.~~
~~Sec. 1002. Definitions.~~

~~SUBTITLE A—TOBACCO COMMUNITY REVITALIZATION TRUST FUND~~

~~Sec. 1011. Establishment of Trust Fund.~~
~~Sec. 1012. Contributions by tobacco product manufacturers and importers.~~

~~SUBTITLE B—AGRICULTURAL MARKET TRANSITION ASSISTANCE~~

~~Sec. 1021. Payments for lost tobacco quota.~~
~~Sec. 1022. Industry payments for all Department costs associated with tobacco production.~~
~~Sec. 1023. Tobacco community economic development grants.~~
~~Sec. 1024. Modifications in Federal tobacco programs.~~

~~SUBTITLE C—FARMER AND WORKER TRANSITION ASSISTANCE~~

~~Sec. 1031. Tobacco worker transition program.~~
~~Sec. 1032. Farmer opportunity grants.~~

~~SUBTITLE D—IMMUNITY~~

~~Sec. 1041. General immunity for tobacco producers and warehousers.~~

~~TITLE IX—EFFECTIVE DATES AND OTHER PROVISIONS~~

~~Sec. 901. Effective dates.~~
~~Sec. 902. Native Americans.~~
~~Sec. 903. Preemption.~~

~~SEC. 2. FINDINGS.~~

~~(a) GENERAL FINDINGS.—Congress makes the following findings:~~

~~(1) The Food and Drug Administration and other public health authorities view the use of tobacco products by the nation's children as a "pediatric disease" of epic and worsening proportions that results in new generations of tobacco-dependent children and adults.~~

~~(2) There is a consensus within the scientific and medical communities that tobacco products are inherently dangerous and cause cancer, heart disease, and other serious adverse health effects.~~

~~(3) The Food and Drug Administration and other health authorities have concluded that virtually all new users of tobacco products are under the age of 18. Virtually all Federal, State, and local officials and entities believe that tobacco advertising and marketing contribute significantly to the use of nicotine-containing tobacco products by adolescents and as such, sweeping new restriction on the sale, pro-~~

~~motion, and distribution of such products are needed.~~

~~(4) Federal, State, and local governments lack many of the legal means and resources needed to address the societal problems caused by the use of tobacco products.~~

~~(5) Public health authorities believe that the societal benefits of enacting tobacco settlement legislation in human and economic terms would be vast. The Food and Drug Administration found that reducing underage tobacco use 50 percent "would prevent well over 60,000 early deaths". The Food and Drug Administration has estimated that the monetary value of the regulations promulgated as a result of this Act will be worth up to $43,000,000,000 per year in reduced medical costs, improved productivity, and the benefit of avoiding the premature death of loved ones.~~

~~(6) The unique position occupied by tobacco in the history and economy of the United States, the magnitude of the actual and potential tobacco-related litigation, the need to avoid the cost, expense, uncertainty, and inconsistency associated with such protracted litigation, the need to limit the sale, distribution, marketing, and advertising of tobacco~~

~~products to persons of legal age, and the need to educate the public (especially young people) of the health effects of using tobacco products all dictate that it would be in the public interest to enact legislation to facilitate a resolution of such matters.~~

~~(b) FINDINGS RELATED TO INTERSTATE COMMERCE AND THE JUDICIAL SYSTEM.—Congress makes the following findings:~~

~~(1) The sale, distribution, marketing, advertising, and use of tobacco products are activities substantially affecting interstate commerce. Such products are sold, marketed, advertised, and distributed in interstate commerce on a nationwide basis and have a substantial effect on the economy of the United States.~~

~~(2) The sale, distribution, marketing, advertising, and use of tobacco products are activities that substantially affect interstate commerce by virtue of the health care and other costs that Federal and State governmental authorities have incurred because of the usage of tobacco products.~~

~~(3) Various civil actions brought by State attorneys general, cities, counties, the Commonwealth of Puerto Rico, third-party payors, and other private classes and individuals to recover damages relating~~

~~to tobacco-related diseases, conditions and products are pending throughout the United States, of these actions are slow-moving, expensive, and burdensome not only for the litigants but also for Federal and State judicial systems.~~

~~SEC. 3. PURPOSES.~~

~~It is the purpose of this Act to—~~

~~(1) reiterate and enhance the authority of the Food and Drug Administration to regulate tobacco products and provide for tobacco industry funding of the oversight activities of the Administration;~~

~~(2) ban all outdoor tobacco advertising and ban all cartoon characters and human figures used in connection with tobacco advertising;~~

~~(3) provide for the funding by the tobacco industry of an aggressive Federal enforcement program relating to tobacco advertising and distribution, including a State-administered retail licensing system to prevent minors from obtaining tobacco products;~~

~~(4) subject the tobacco industry to severe financial penalties in the event that underage tobacco usage does not decline radically over the next 10 years;~~

~~(5) provide for the establishment of national standards to control the manufacturing of tobacco products and the ingredients used in such products;~~

~~(6) provide certain regulatory powers to the Food and Drug Administration to encourage the development and marketing by the tobacco industry of "less hazardous tobacco products", including the power to regulate the level of nicotine in such products;~~

~~(7) require the manufacturers of tobacco products to disclose all present and future non-public internal laboratory research regarding tobacco products;~~

~~(8) establish a minimum Federal standard to limit smoking in public places;~~

~~(9) provide for the establishment of a National Tobacco Settlement Trust Fund to be funded by the tobacco industry and used in accordance with this Act;~~

~~(10) provide for the establishment of a national education-oriented counter advertising and tobacco control campaign to be funded through the National Tobacco Settlement Trust Fund;~~

~~(11) provide annual payments to States to fund health benefits programs and to create a tobacco~~

~~products liability judgments and settlements fund to be funded through the National Tobacco Settlement Trust Fund; and~~

~~(12) provide for the establishment of a national program of smoking cessation to be funded through the National Tobacco Settlement Trust Fund.~~

~~TITLE I—REGULATION OF THE TOBACCO INDUSTRY~~

~~SEC. 100. DEFINITIONS.~~

~~In this Act:~~

~~(1) BRAND.—The term "brand" means a variety of a tobacco product distinguished by the tobacco used, tar content, nicotine content, flavoring used, size, filtration, or packaging.~~

~~(2) CIGAR.—The term "cigar" means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco which is a cigarette or cigarillo within the meaning of paragraph (3) or (4)).~~

~~(3) CIGARETTE.—The term "cigarette" means any product which contains nicotine, is intended to be burned under ordinary conditions of use, and consists of—~~

~~(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and~~

~~(B) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A).~~

~~(4) CIGARILLOS.—The term ''cigarillos'' means any roll of tobacco wrapped in leaf tobacco or any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of paragraph (3)) and as to which 1,000 units weigh not more than 3 pounds.~~

~~(5) CIGARETTE TOBACCO.—The term ''cigarette tobacco'' means any product that consists of loose tobacco that contains or delivers nicotine and is intended for use by persons in a cigarette. Unless otherwise stated, the requirements of this Act pertaining to cigarettes shall also apply to cigarette tobacco.~~

~~(6) COMMERCE.—The term ''commerce'' means—~~

~~(A) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American~~

~~Samoa, the Northern Mariana Islands or any territory or possession of the United States;~~

~~(B) commerce between points in any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands or any territory or possession of the United States; or~~

~~(C) commerce wholly within the District of Columbia, Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, or any territory or possession of the United States.~~

~~(7) COMMISSIONER.—The term ''Commissioner'' means the Commissioner of Food and Drugs.~~

~~(8) DISTRIBUTOR.—The term ''distributor'' means any person who furthers the distribution of tobacco products, whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption. Such term shall not include common carriers.~~

~~(9) LITTLE CIGAR.—The term ''little cigar'' means any roll of tobacco wrapped in leaf tobacco or any substance containing tobacco (other than any~~

~~roll of tobacco which is a cigarette within the meaning of subsection (1)) and as to which 1,000 units weigh not more than 3 pounds.~~

~~(10) MANUFACTURER.—The term "manufacturer" means any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a finished tobacco product.~~

~~(11) NICOTINE.—The term "nicotine" means the chemical substance named 3-(1-Methyl-2-pyrrolidinyl) pyridine or $C_{10}H_{14}N_2$, including any salt or complex of nicotine.~~

~~(12) PACKAGE.—The term "package" means a pack, box, carton, or container of any kind in which tobacco products are offered for sale, sold, or otherwise distributed to consumers.~~

~~(13) PERSON.—The term "person" means an individual, partnership, corporation, or any other business or legal entity.~~

~~(14) PIPE TOBACCO.—The term "pipe tobacco" means any loose tobacco that, because of its appearance, type, packaging, or labeling, is likely to be offered to, or purchased by, consumers as a tobacco product to be smoked in a pipe.~~

~~(15) POINT OF SALE.—The term "point of sale" means any location at which an individual can~~

~~purchase or otherwise obtain tobacco products for personal consumption.~~

~~(16) RETAILER.—The term "retailer" means any person who sells tobacco products to individuals for personal consumption, or who operates a facility where vending machines or self-service displays are permitted under this title.~~

~~(17) SALE.—The term "sale" includes the selling, providing samples of, or otherwise making tobacco products available for personal consumption in any place within the scope of this Act.~~

~~(18) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.~~

~~(19) SMOKELESS TOBACCO.—The term "smokeless tobacco" means any product that consists of cut, ground, powdered, or leaf tobacco that contains nicotine and that is intended to be placed in the oral or nasal cavity.~~

~~(20) STATE.—The term "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States. Such term includes any political division of any State.~~

~~(21) TOBACCO.—The term "tobacco" means tobacco in its unmanufactured form.~~

~~(22) TOBACCO PRODUCT.—The term "tobacco product" means cigars, cigarettes, cigarillos, cigarette tobacco, little cigars, pipe tobacco, and smokeless tobacco.~~

~~(23) TRUST FUND.—The term "Trust Fund" means the National Tobacco Settlement Trust Fund established under section 401.~~

~~Subtitle A—Restriction on Marketing and Advertising~~

~~SEC. 101. PROHIBITIONS ON ADVERTISING.~~

~~(a) PROHIBITION ON OUTDOOR ADVERTISING.—~~

~~(1) IN GENERAL.—No manufacturer, distributor, or retailer may use any form of outdoor tobacco product advertising, including billboards, posters, or placards.~~

~~(2) STADIA AND ARENAS.—Except as otherwise provided in this title, a manufacturer, distributor, or retailer shall not advertise tobacco products in any arena or stadium where athletic, musical, artistic, or other social or cultural events or activities occur.~~

~~(b) PROHIBITION ON USE OF HUMAN IMAGES AND CARTOONS.—No manufacturer, distributor, or retailer may use a human image or a cartoon character or cartoon-~~

~~type character in its advertising, labeling, or promotional material with respect to a tobacco product.~~

~~(c) PROHIBITION ON ADVERTISING ON THE INTERNET.—No manufacturer, distributor, or retailer may use the Internet to advertise tobacco products unless such an advertisement is inaccessible in or from the United States.~~

~~(d) PROHIBITION ON POINT-OF-SALE ADVERTISING.—~~

~~(1) IN GENERAL.—Except as otherwise provided in this subsection, no manufacturer, distributor, or retailer may use point-of-sale advertising of tobacco products.~~

~~(2) ADULT-ONLY STORES AND TOBACCO OUTLETS.—Paragraph (1) shall not apply to point of sale advertising at adult-only stores and tobacco outlets.~~

~~(3) PERMISSIBLE ADVERTISING.—~~

~~(A) IN GENERAL.—Each manufacturer of tobacco products may display not more than 2 separate point-of-sale advertisements in or at each location at which tobacco products are offered for sale.~~

~~(B) MARKET SHARE MANUFACTURERS.—A manufacturer with at least 25 percent of the market share of the tobacco product involved~~

~~may display an additional point-of-sale advertisement in or at each location at which tobacco products are offered for sale.~~

~~(C) RETAILERS.—A retailer may have not more than 1 point-of-sale advertisement relating to the retailer's own or its wholesaler's contracted retailer or private label brand of tobacco product. No manufacturer or distributor may enter into any arragenment with a retailer to limit the ability of the retailer to display any form of permissible point-of-sale advertisement or promotional material originating with another manufacturer or distributor.~~

~~(4) LIMITATIONS.—~~

~~(A) IN GENERAL.—A point of sale advertisement permitted under this subsection shall be comprised of a display area than is not larger than 576 square inches (either individually or in the aggregate) and shall consist only of black letters on a white background or other recognized typographical marks. Such advertisement shall not be attached to nor located within 2 feet of any fixture on which candy is displayed for sale.~~

~~(B) AUDIO AND VIDEO FORMATS.—Audio and video advertisements permitted under section 103(c) may be distributed to individuals who are 18 years of age or older at point of sale but may not be played or viewed at such point of sale.~~

~~(C) DISPLAY FIXTURES.—Display fixtures in the form of signs consisting of brand name and price and not larger than 2 inches in height are permitted.?~~

~~(5) DEFINITION.—For purposes of this subsection, the term "point-of-sale advertising" means all printed or graphical materials bearing the brand name (alone or in conjunction with any other word), logo, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification similar or identical to those used for tobacco products which, when used for its intended purpose, can reasonably be anticipated to be seen by customers at a location at which tobacco products are offered for sale.~~

~~SEC. 102. GENERAL RESTRICTIONS.~~

~~(a) RESTRICTION ON PRODUCT NAMES.—A manufacturer shall not use a trade or brand name of a non-tobacco product as the trade or brand name for a cigarette~~

~~or smokeless tobacco product, except for a tobacco product whose trade or brand name was on both a tobacco product and a nontobacco product that were sold in the United States on or before January 1, 1995.~~

~~(b) ADVERTISING LIMITED TO FDA SPECIFIED MEDIA.—~~

~~(1) IN GENERAL.—A manufacturer, distributor, or retailer may, in accordance with this title, disseminate or cause to be disseminated advertising or labeling which bears a tobacco product brand name (alone or in conjunction with any other word) or any other indicia of tobacco product identification only in newspapers, in magazines, in periodicals or other publications (whether periodic or limited distribution), on billboards, posters and placards in accordance with section 101(a), in nonpoint-of-sale promotional material (including direct mail), in point-of-sale promotional material, and in audio or video formats delivered at a point-of-sale.~~

~~(2) LIMITATION.—A manufacturer, distributor, or retailer that intends to disseminate, or to cause to be disseminated, advertising or labeling for a tobacco product in a medium that is not described in paragraph (1) shall notify the Commissioner not less than 30 days prior to the date on which such me-~~

~~dium is to be used. Such notice shall describe the medium and discuss the extent to which the advertising or labeling may be seen by individuals who are under 18 years of age.~~

~~(3) ACTION BY COMMISSIONER.—~~

~~(c) RESTRICTION ON PLACEMENT IN ENTERTAINMENT MEDIA.—~~

~~(1) IN GENERAL.—No payment shall be made by any manufacturer, distributor, or retailer for the placement of any tobacco product or tobacco product package or advertisement—~~

~~(A) as a prop in any television program or motion picture produced for viewing by the general public; or~~

~~(B) in a video or on a video game machine.~~

~~(2) VIDEO GAME.—The term "video game" means any electronic amusement device that utilizes a computer, microprocessor, or similar electronic circuitry and its own cathode ray tube, or is designed to be used with a television set or a monitor, that interacts with the user of the device.~~

~~(d) RESTRICTIONS ON GLAMORIZATION OF TOBACCO PRODUCTS.—No direct or indirect payment shall be made by any manufacturer, distributor, or retailer to any entity for the purpose of promoting the image or use of a tobacco~~

~~product through print or film media that appeals to individuals under 18 years of age or through a live performance by an entertainment artist that appeals to such individuals.~~

~~SEC. 103. FORMAT AND CONTENT REQUIREMENTS FOR LABELING AND ADVERTISING.~~

~~(a) IN GENERAL.—Except as provided in subsections (b) and (c), each manufacturer, distributor, and retailer advertising or causing to be advertised, disseminating or causing to be disseminated, any labeling or advertising for a tobacco product shall use only black text on a white background.~~

~~(b) CERTAIN ADVERTISING EXCEPTED.—~~

~~(1) IN GENERAL.—Subsection (a) shall not apply to advertising—~~

~~(A) in any facility where vending machines and self-service displays are permitted under this title if the advertising involved—~~

~~(i) is not visible from outside of the facility; and~~

~~(ii) is affixed to a wall or fixture in the facility;~~

~~(B) that appears in any publication (whether periodic, limited, or controlled dis-~~

~~tribution) that the manufacturer, distributor, or retailer demonstrates is an adult publication.~~

~~(2) ADULT PUBLICATION.—For purposes of paragraph (1)(B), the term "adult publication" means a newspaper, magazine, periodical, or other publication—~~

~~(A) whose readers under 18 years of age constitute 15 percent or less of the total readership as measured by competent and reliable survey evidence; and~~

~~(B) that is read by fewer than 2,000,000 individuals who are under 18 years of age as measured by competent and reliable survey evidence.~~

~~(c) AUDIO OR VIDEO FORMATS.—Each manufacturer, distributor, and retailer advertising or causing to be advertised any advertising for a tobacco product in an audio or video format shall comply with the following:~~

~~(1) With respect to an audio format, the advertising shall be limited to words only with no music or sound effects.~~

~~(2) With respect to a video format, the advertising shall be limited to static black text only on a white background. Any audio with the video adver-~~

~~tising shall be limited to words only with no music or sound effects.~~

~~SEC. 104. STATEMENT OF INTENDED USE.~~

~~(a) REQUIREMENT.—Each manufacturer, distributor, and retailer advertising or causing to be advertised, disseminating or causing to be disseminated, advertising concerning cigarettes, cigarette tobacco, or smokeless tobacco products otherwise permitted under this title shall include, as provided in section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352), the established name of the product and a statement of the intended use of the product as provided for in subsection (b).~~

~~(b) USE STATEMENTS.—~~

~~(1) CIGARETTES.—A statement of intended use for cigarettes or cigarette tobacco is as follows (whichever is appropriate):~~

~~Cigarettes—A Nicotine-Delivery Device for Persons 18 or Older.~~

~~Cigarette Tobacco—A Nicotine-Delivery Device for Persons 18 or Older.~~

~~(2) SMOKELESS TOBACCO.—A statement of intended use for a smokeless tobacco product is as follows (whichever is appropriate):~~

~~Loose Leaf Chewing Tobacco—A Nicotine-Delivery Device for Persons 18 or Older.~~

~~Plug Chewing Tobacco—A Nicotine-Delivery Device for Persons 18 or Older.~~

~~Twist Chewing Tobacco—A Nicotine-Delivery Device for Persons 18 or Older.~~

~~Moist Snuff—A Nicotine-Delivery Device for Persons 18 or Older.~~

~~Dry Snuff—A Nicotine-Delivery Device for Persons 18 or Older.~~

~~(c) TYPE AND LOCATION.—Requirements with respect to type size, style, font, and location shall be determined by the Commissioner.~~

~~SEC. 105. BAN ON NONTOBACCO ITEMS AND SERVICES, CONTESTS AND GAMES OF CHANCE, AND SPONSORSHIP OF EVENTS.~~

~~(a) BAN ON ALL NONTOBACCO MERCHANDISE.—No manufacturer, importer, distributor, or retailer shall market, license, distribute, sell, or cause to be marketed, licensed, distributed or sold any item (other than tobacco products) or service which bears the brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification similar or identifiable to those used for any brand of tobacco products.~~

~~(b) GIFTS, CONTESTS, AND LOTTERIES.—No manufacturer, distributor, or retailer shall offer or cause to be offered to any person purchasing tobacco products any gift or item (other than a tobacco product) in consideration of the purchase of such products, or to any person in consideration of furnishing evidence, such as credits, proofs-of-purchase, or coupons, of such a purchase.~~

~~(c) SPONSORSHIP.—~~

~~(1) IN GENERAL.—No manufacturer, distributor, or retailer shall sponsor or cause to be sponsored any athletic, musical, artistic, or other social or cultural event, or any entry or team in any event, in which the brand name (alone or in conjunction with any other word), logo, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification similar or identical to those used for tobacco products is used.~~

~~(2) USE OF CORPORATE NAME.—A manufacturer, distributor, or retailer may sponsor or cause to be sponsored any athletic, musical, artistic, or other social or cultural event in the name of the corporation which manufactures the tobacco product if—~~

~~(A) both the corporate name and the corporation were registered and in use in the United States prior to January 1, 1995; and~~

~~(B) the corporate name does not include any brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia or product identification identical or similar to, or identifiable with, those used for any brand of tobacco products.~~

~~SEC. 106. USE OF PRODUCT DESCRIPTORS.~~

~~(a) IN GENERAL.—With respect to a tobacco product, the label of which bears a product description (such as "light" or "low tar"), such label shall also contain, and any advertisement concerning such product shall contain, a mandatory disclaimer, to be established by the Secretary, that states that such product has not been shown to be less hazardous than another product of that type.~~

~~(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit the authority of the Food and Drug Administration with respect to words used as product descriptors.~~

~~Subtitle B—Warnings, Labeling and Packaging~~

~~SEC. 111. CIGARETTE WARNINGS.~~

~~(a) IN GENERAL.—~~

~~(1) PACKAGING.—It shall be unlawful for any person to manufacture, package, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:~~

~~WARNING: Cigarettes Are Addictive.~~

~~WARNING: Tobacco Smoke Can Harm Your Children.~~

~~WARNING: Cigarettes Cause Fatal Lung Disease.~~

~~WARNING: Cigarettes Cause Cancer.~~

~~WARNING: Cigarettes Cause Strokes And Heart Disease.~~

~~WARNING: Smoking During Pregnancy Can Harm Your Baby.~~

~~WARNING: Smoking Can Kill You.~~

~~WARNING: Tobacco Smoke Causes Fatal Lung Disease In Nonsmokers.~~

~~WARNING: Quitting Smoking Now Greatly Reduces Serious Risks To Your Health.~~

~~(2) ADVERTISING.—It shall be unlawful for any manufacturer or importer of cigarettes to advertise or cause to be advertised within the United States any cigarette unless the advertising bears, in accordance with the requirements of this section, one of the following labels:~~

~~WARNING: Cigarettes Are Addictive.~~

~~WARNING: Tobacco Smoke Can Harm Your Children.~~

~~WARNING: Cigarettes Cause Fatal Lung Disease.~~

~~WARNING: Cigarettes Cause Cancer.~~

~~WARNING: Cigarettes Cause Strokes And Heart Disease.~~

~~WARNING: Smoking During Pregnancy Can Harm Your Baby.~~

~~WARNING: Smoking Can Kill You.~~

~~WARNING: Tobacco Smoke Causes Fatal Lung Disease In Nonsmokers.~~

~~WARNING: Quitting Smoking Now Greatly Reduces Serious Risks To Your Health.~~

~~(b) REQUIREMENTS FOR LABELING.—~~

~~(1) LOCATION.—Each label statement required by paragraph (1) of subsection (a) shall be located on the upper portion of the front panel of the ciga-~~

~~rette package (or carton) and occupy not less than 25 percent of such front panel.~~

~~(2) TYPE AND COLOR.—With respect to each label statement required by paragraph (1) of subsection (a), the phrase "WARNING" shall appear in capital letters and the label statement shall be printed in 17 point type with adjustments as determined appropriate by the Commissioner to reflect the length of the required statement. All the letters in the label shall appear in conspicuous and legible type, in contrast by typography, layout, or color with all other printed material on the package, and be printed in an alternating black-on-white and white-on-black format as determined appropriate by the Commissioner.~~

~~(3) EXCEPTION.—The provisions of paragraph (1) shall not apply in the case of a flip-top cigarette package (offered for sale on the date of enactment of this Act) where the front portion of the flip-top does not comprise at least 25 percent of the front panel. In the case of such a package, the label statement required by paragraph (1) of subsection (a) shall occupy the entire front portion of the flip top.~~

~~(c) REQUIREMENTS FOR ADVERTISING.—~~

~~(1) LOCATION.—Each label statement required by paragraph (2) of subsection (a) shall occupy not less than 20 percent of the area of the advertisement involved.~~

~~(2) TYPE AND COLOR.—~~

~~(A) TYPE.—With respect to each label statement required by paragraph (2) of subsection (a), the phrase "WARNING" shall appear in capital letters and the label statement shall be printed in the following types:~~

~~(i) With respect to whole page advertisements on broadsheet newspaper—45 point type.~~

~~(ii) With respect to half page advertisements on broadsheet newspaper—39 point type.~~

~~(iii) With respect to whole page advertisements on tabloid newspaper—39 point type.~~

~~(iv) With respect to half page advertisements on tabloid newspaper—27 point type.~~

~~(v) With respect to DPS magazine advertisements—31.5 point type.~~

~~(vi) With respect to whole page magazine advertisements—31.5 point type.~~

~~(vii) With respect to 28cm x 3 column advertisements—22.5 point type.~~

~~(viii) With respect to 20cm x 2 column advertisements—15 point type.~~

~~The Commissioner may revise the required type sizes as the Commissioner determines appropriate within the 20 percent requirement.~~

~~(B) COLOR.—All the letters in the label under this paragraph shall appear in conspicuous and legible type, in contrast by typography, layout, or color with all other printed material on the package, and be printed in an alternating black-on-white and white-on-black format as determined appropriate by the Commissioner.~~

~~(d) ROTATION OF LABEL STATEMENTS.—~~

~~(1) IN GENERAL.—Except as provided in paragraph (2), the label statements specified in paragraphs (1) and (2) of subsection (a) shall be rotated by each manufacturer or importer of cigarettes quarterly in alternating sequence on packages of each brand of cigarettes manufactured by the manufacturer or importer and in the advertisements for each such brand of cigarettes in accordance with a plan~~

~~submitted by the manufacturer or importer and approved by the Federal Trade Commission. The Federal Trade Commission shall approve a plan submitted by a manufacturer or importer of cigarettes which will provide the rotation required by this subsection and which assures that all of the labels required by paragraphs (1) and (2) will be displayed by the manufacturer or importer at the same time.~~

~~(2) APPLICATION OF OTHER ROTATION REQUIREMENTS.—~~

~~(A) IN GENERAL.—A manufacturer or importer of cigarettes may apply to the Federal Trade Commission to have the label rotation described in subparagraph (C) apply with respect to a brand style of cigarettes manufactured or imported by such manufacturer or importer if—~~

~~(i) the number of cigarettes of such brand style sold in the fiscal year of the manufacturer or importer preceding the submission of the application is less than ¼ of 1 percent of all the cigarettes sold in the United States in such year; and~~

~~(ii) more than ½ of the cigarettes manufactured or imported by such manu-~~

~~facturer or importer for sale in the United States are packaged into brand styles which meet the requirements of clause (i). If an application is approved by the Commission, the label rotation described in subparagraph (C) shall apply with respect to the applicant during the 1-year period beginning on the date of the application approval.~~

~~(B) PLAN.—An applicant under subparagraph (A) shall include in its application a plan under which the label statements specified in paragraph (1) of subsection (a) will be rotated by the applicant manufacturer or importer in accordance with the label rotation described in subparagraph (C).~~

~~(C) OTHER ROTATION REQUIREMENTS.—Under the label rotation which the manufacturer or importer with an approved application may put into effect, each of the labels specified in paragraph (1) of subsection (a) shall appear on the packages of each brand style of cigarettes with respect to which the application was approved an equal number of times within the 12-month period beginning on the date of the approval by the Commission of the application.~~

~~(c) APPLICATION OF REQUIREMENT.—Subsection (a) does not apply to a distributor, a retailer of cigarettes who does not manufacture, package, or import cigarettes for sale or distribution within the United States.~~

~~(f) TELEVISION AND RADIO ADVERTISING.—It shall be unlawful to advertise cigarettes and little cigars on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.~~

~~SEC. 112. SMOKELESS TOBACCO WARNINGS.~~

~~(a) IN GENERAL.—~~

~~(1) PACKAGING.—It shall be unlawful for any person to manufacture, package, or import for sale or distribution within the United States any smokeless tobacco product the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:~~

~~WARNING: This Product May Cause Mouth Cancer.~~

~~WARNING: This Product May Cause Gum Disease And Tooth Loss.~~

~~WARNING: This Product Is Not A Safe Alternative To Cigarettes.~~

~~WARNING: Smokeless Tobacco Is Addictive.~~

~~(2) ADVERTISING.—It shall be unlawful for any manufacturer or importer of smokeless tobacco prod-~~

~~ucts to advertise or cause to be advertised within the United States any smokeless tobacco product unless the advertising bears, in accordance with the requirements of this section, one of the following labels:~~

~~WARNING: This Product May Cause Mouth Cancer.~~

~~WARNING: This Product May Cause Gum Disease And Tooth Loss.~~

~~WARNING: This Product Is Not A Safe Alternative To Cigarettes.~~

~~WARNING: Smokeless Tobacco Is Addictive.~~

~~(b) REQUIREMENTS FOR LABELING.—~~

~~(1) LOCATION.—Each label statement required by paragraph (1) of subsection (a) shall be located on the principal display panel of the product and occupy not less than 25 percent of such panel.~~

~~(2) TYPE AND COLOR.—With respect to each label statement required by paragraph (1) of subsection (a), the phrase "WARNING" shall appear in capital letters and the label statement shall be printed in 17 point type with adjustments as determined appropriate by the Commissioner to reflect the length of the required statement. All the letters in the label shall appear in conspicuous and legible type~~

~~in contrast by typography, layout, or color with all other printed material on the package and be printed in an alternating black on white and white on black format as determined appropriate by the Commissioner.~~

~~(c) ADVERTISING AND ROTATION.—The provisions of subsections (c) and (d)(1) of section 111 shall apply to advertisements for smokeless tobacco products and the rotation of the label statements required under subsection (a)(1) on such products.~~

~~(d) APPLICATION OF REQUIREMENT.—Subsection (a) does not apply to a distributor or a retailer of smokeless tobacco products who does not manufacture, package, or import such products for sale or distribution within the United States.~~

~~(e) TELEVISION AND RADIO ADVERTISING.—It shall be unlawful to advertise smokeless tobacco on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.~~

~~SEC. 113. INGREDIENTS.~~

~~Each person who manufactures, packages, or imports cigarettes or smokeless tobacco products shall annually provide the Secretary with the information required under section 910 of the Federal Food, Drug, and Cosmetic Act (as added by section 143(3) of this Act).~~

~~SEC. 114. ENFORCEMENT, REGULATIONS, AND CONSTRUCTION.~~

~~(a) ENFORCEMENT.—~~

~~(1) IN GENERAL.—A violation of section 111 or 112 or the regulations promulgated pursuant to this subtitle shall be considered a violation of section 5 of the Federal Trade Commission Act.~~

~~(2) FINES.—Any person who is found to violate any provision of sections 111, 112, or 113(a) shall be guilty of a misdemeanor and shall, on conviction thereof, be subject to a fine of not more than $10,000.~~

~~(b) INJUNCTIONS.—The several district courts of the United States are vested with jurisdiction, for cause shown, to prevent and restrain violations of this subtitle upon the application of the Federal Trade Commission in the case of a violation of section 111 or 112 or upon application of the Attorney General of the United States acting through the several United States attorneys in their several districts in the case of a violation of section 113.~~

~~(c) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, the Federal Trade Commission shall promulgate such regulations as it may require to implement sections 111 and 112.~~

~~(d) CONSTRUCTION.—Nothing in this subtitle (other than the requirements of sections 111, 112, and 113) shall~~

~~be construed to limit, restrict, or expand the authority of the Federal Trade Commission with respect to unfair or deceptive acts or practices in the advertising of cigarettes or smokeless tobacco products.~~

~~SEC. 115. PREEMPTION.~~

~~(a) FEDERAL ACTION.—No statement relating to the use of cigarettes or smokeless tobacco products and health, other than the statements required by sections 111 or 112, shall be required by any Federal agency to appear on any package or in any advertisement of cigarettes or a smokeless tobacco product.~~

~~(b) STATE AND LOCAL ACTION.—No statement relating to the use of cigarettes or smokeless tobacco products and health, other than the statements required by sections 111 and 112, shall be required by any State or local statute or regulation to be included on any package or in any advertisement of cigarettes or a smokeless tobacco product.~~

~~(c) EFFECT ON LIABILITY LAW.—Except as otherwise provided in this Act, nothing in this subtitle shall relieve any person from liability at common law or under State statutory law to any other person.~~

~~SEC. 116. REPORTS.~~

~~(a) SECRETARY'S REPORT.—Not later than 6 months after the date of enactment of this Act, and biennially~~

~~thereafter, the Secretary shall prepare and submit to Congress a report containing—~~

~~(1) a description of the effects of health education efforts on the use of cigarettes and smokeless tobacco products;~~

~~(2) a description of the use by the public of cigarettes and smokeless tobacco products;~~

~~(3) an evaluation of the health effects of cigarettes and smokeless tobacco products and the identification of areas appropriate for further research; and~~

~~(4) such recommendations for legislation and administrative action as the Secretary considers appropriate.~~

~~(b) FTC REPORT.—Not later than 6 months after the date of enactment of this Act, and biennially thereafter, the Federal Trade Commission shall prepare and submit to Congress a report containing—~~

~~(1) a description of the current sales, advertising, and marketing practices associated with cigarettes and smokeless tobacco products; and~~

~~(2) such recommendations for legislation and administrative action as the Commission deems appropriate.~~

SEC. 117. EXPORTS.

Packages of cigarettes or smokeless tobacco products manufactured, imported, or packaged—

(1) for export from the United States; or

(2) for delivery to a vessel or aircraft, as supplies, for consumption beyond the jurisdiction of the internal revenue laws of the United States;

shall be exempt from the requirements of this subtitle, but such exemptions shall not apply to cigarettes or smokeless tobacco products manufactured, imported, or packaged for sale or distribution to members or units of the Armed Forces of the United States located outside of the United States.

SEC. 118. REPEALS.

The following Acts are repealed:

(1) The Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1331 et seq.).

(2) The Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4401 et seq.).

Subtitle C—Restriction on Access to Tobacco Products

SEC. 121. REQUIREMENTS RELATING TO RETAILERS.

(a) SALES TO MINORS PROHIBITED.—No retailer may distribute a tobacco product to any individual who is under 18 years of age.

~~(b) PHOTO IDENTIFICATION.—~~

~~(1) REQUIREMENT.—Except as provided in paragraph (2), each retailer shall verify, by means of photographic identification containing the date of birth of the bearer, that no individual purchasing a tobacco product is under 18 years of age.~~

~~(2) EXCEPTION.—No verification under paragraph (1) is required for any individual who is at least 27 years of age.~~

~~(3) LOCATION OF PRODUCTS.—Except as provided in section 122(d), a retailer shall ensure that all tobacco products are located in areas where customers do not have access to the products.~~

~~(e) FACE-TO-FACE TRANSACTIONS.—Except as provided in section 122(e)(1), a retailer may sell tobacco products only in a direct, face-to-face exchange without the assistance of any electronic or mechanical device.~~

~~(d) OUT-OF-PACKAGE DISTRIBUTION.—No retailer may break or otherwise open a tobacco product to sell or distribute to individuals portions of such product (including individual cigarettes or a number of cigarettes that is smaller than the quantity in the minimum package size, or any quantity of cigarette tobacco or smokeless tobacco that is smaller than the smallest package distributed by the retailer for individual consumer use).~~

~~(e) RETAILER COMPLIANCE WITH RESPECT TO SELF-SERVICE.—Each retailer shall ensure that all tobacco-related self-service displays, advertising, labeling, and other items that are located in the establishment of the retailer and that do not comply with the requirements of this title are removed or are brought into compliance with the requirements of this title.~~

~~SEC. 122. MANUFACTURE, SALE, AND DISTRIBUTION.~~

~~(a) MINIMUM CIGARETTE PACKAGE SIZE.—Except as otherwise provided in this section, no manufacturer, distributor, or retailer may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than 20 cigarettes.~~

~~(b) PROHIBITION ON SAMPLING.—No manufacturer, distributor, or retailer may distribute or cause to be distributed any free samples of any tobacco product.~~

~~(c) PROHIBITION ON DISTRIBUTION THROUGH SELF-SERVICE MODES OF SALE.—~~

~~(1) VENDING MACHINES.—No manufacturer, distributor, or retailer may distribute or cause to be distributed any tobacco product through a vending machine.~~

~~(2) OTHER DISPLAYS.—Except as provided in subsection (d)(1)(B), no manufacturer, distributor,~~

~~or retailer may distribute or cause to be distributed any tobacco product through a self-service display.~~

~~(d) PERMITTED SELF-SERVICE MODES OF SALE.—~~

~~(1) IN GENERAL.—Notwithstanding this subtitle, the following methods of distributing tobacco products are permitted:~~

~~(A) Mail-order sales as provided for in paragraph (2), except that mail-order redemption of coupons and the distribution of free samples through the mail shall be prohibited.~~

~~(B) Self-service displays that are located in facilities where the retailer ensures that no individuals under 18 years of age are present or permitted to enter at any time.~~

~~(2) MAIL-ORDER SALES.—~~

~~(A) IN GENERAL.—A manufacturer, distributor, or retailer may distribute or cause to be distributed a tobacco product through mail-order sales only if such sales are subject to a procedure for verifying that no individual purchasing such products is under 18 years of age.~~

~~(B) REVIEW BY COMMISSIONER.—Not later than 2 years after the date of enactment of this Act, the Commissioner shall review the verification procedures implemented under sub-~~

~~paragraph (A) to determine whether individuals under 18 years of age are obtaining tobacco products through the mail. If the Commissioner determines that a significant number of underage individuals are obtaining such products through the mail, the Commissioner may promulgate regulations to ban the distribution of tobacco products through the mail.~~

~~Subtitle D—Licensing of Retail Tobacco Sellers~~

~~SEC. 131. ESTABLISHMENT OF PROGRAM.~~

~~(a) IN GENERAL.—The Commissioner, after consultation with the Secretary, shall establish a program under which an entity would be required to obtain a State or local license to sell or otherwise distribute tobacco products directly to consumers.~~

~~(b) PROHIBITION ON DISTRIBUTION.—No entity shall sell or otherwise distribute tobacco products directly to consumers unless such entity has in effect a tobacco license issued or renewed in accordance with the laws of the State in which the products are to be sold or otherwise distributed.~~

~~(c) ELIGIBILITY OF STATE FOR PAYMENTS.—To be eligible to receive a block grant under section 502, a State shall have in effect laws that meet the standards described~~

~~in this subtitle that provide for the licensing of entities engaged in the sale or distribution of tobacco products directly to consumers and shall enforce such laws in accordance with section 133.~~

~~SEC. 132. REQUIREMENTS.~~

~~(a) LICENSURE AND NOTICE.—~~

~~(1) IN GENERAL.—The State shall require that each person engaged in the sale or distribution of tobacco products directly to consumers obtain a license that is issued by the State. A separate license shall be required for each place of business where tobacco products are distributed or sold at retail.~~

~~(2) NOTICE.—The State shall notify every person in the State who is engaged in the distribution at retail of tobacco products of the license requirement of this section and of the date by which such person shall have obtained a license in order to distribute such products.~~

~~(b) FEE.—The State may assess an annual licensing fee with respect to each entity that desires to obtain a license under subsection (a). Amounts derived from such fees shall be used to offset the administrative costs incurred by the State in issuing and renewing licenses under this subtitle.~~

~~(c) APPLICATION.—~~

~~(1) IN GENERAL.—An entity shall prepare and submit to the State an application for a license (including the renewal of a license) under this section, on such form as the State may require, that shall set forth the name under which the applicant transacts or intends to transact business, the location of the place of business for which the license is to be issued, the street address to which all notices relevant to the license are to be sent (in this Act referred to as ''notice address''), and any other identifying information that the State may require.~~

~~(2) ACTION BY STATE.—~~

~~(A) IN GENERAL.—The State shall issue or renew a license or deny an application for a license or the renewal of a license within 30 days of receiving a properly completed application and the licensing fee. The State shall provide notice to an applicant of an action on an application denying the issuance of a license or refusing to renew a license.~~

~~(B) FINDING BY STATE.—The State shall deny the issuance or renewal of a license upon an application if the State determines that the applicant has failed to comply with the requirements of this title.~~

~~(3) SCOPE AND RENEWAL.—Every license issued by the State shall be valid for a period determined by the State and shall be renewed upon application except as otherwise provided in this section.~~

~~SEC. 133. PENALTIES, REVOCATIONS AND SUSPENSIONS.~~

~~(a) PENALTIES.—~~

~~(1) CRIMINAL PENALTIES APPLICABLE TO UNLICENSED SELLERS.—Any individual who sells or otherwise distributes tobacco products to a consumer without a tobacco license in effect as provided for in this subtitle shall be subject, under the applicable State law, to a fine of not less than $1,000, or imprisonment of not less than 6 months, or both. With respect to any corporate employer of such an individual, the corporation shall be subject to a fine of not more than $50,000.~~

~~(2) CIVIL PENALTIES APPLICABLE TO SELLERS IN VIOLATION OF LICENSE.—~~

~~(A) IN GENERAL.—In addition to any criminal penalties that may be imposed under paragraph (1), a State may, in accordance with subsection (b), impose civil penalties on any entity that has sold or distributed tobacco products in the State in violation of the State tobacco licensing laws.~~

~~(B) LIMITATIONS.—The civil penalties that may be imposed under subparagraph (A) shall not exceed the following:~~

~~(i) For the first offense within any 2-year period, $500, or a 3-day suspension of the tobacco license, or both.~~

~~(ii) For a second offense within any 2-year period, $1,000, or a 7-day suspension of the tobacco license, or both.~~

~~(iii) For a third offense within any 2-year period, $2,000, or a 30-day suspension of the tobacco license, or both.~~

~~(iv) For a fourth offense within any 2-year period, $5,000, or a 6-month suspension of the tobacco license, or both.~~

~~(v) For a fifth offense within any 2-year period, $10,000, or a 1-year suspension of the tobacco license, or both.~~

~~(vi) For a sixth and any subsequent offense within any 2-year period, $25,000, or a 3-year revocation of the tobacco license.~~

~~(vii) For a tenth offense within any 2-year period, the permanent revocation of the tobacco license.~~

~~(b) REVOCATION AND SUSPENSIONS.—~~

~~(1) NOTICE.—Upon a finding that a tobacco licensee has been determined by a court of competent jurisdiction to have violated a provision of State law under this subtitle during the license term, the State shall notify the licensee in writing, served personally or by registered mail at the principal place of business of the licensee, that any subsequent violation of such law at the same place of business may result in an administrative action to suspend the license for a period determined by the State in accordance with subsection (a)(2)(B).~~

~~(2) SUSPENSION.—Upon finding that a further violation by the tobacco licensee has occurred involving the same place of business for which the license was issued and the licensee has been provided notice under paragraph (1), the State may initiate an administrative action to suspend the license for a period to be determined in accordance with subsection (a)(2)(B). If an administrative action to suspend a license is initiated, the State shall immediately notify the licensee, in writing at the principal place of business of the licensee, of the initiation of the action and the reasons therefore and permit the licensee an opportunity, at least 30 days after written notice is~~

~~served personally or by registered mail upon the licensee, to show why suspension of the license would be unwarranted or unjust.~~

~~(3) REVOCATION.—The State may initiate an administrative action to revoke a tobacco license that previously has been suspended under paragraph (2) if, during the 2-year period described in subsection (a)(2)(B), a further violation of this subtitle is committed after the suspension by the licensee involving the same place of business for which the license was issued. If an administrative action to revoke a license is initiated, the State shall immediately notify the licensee, in writing at the principal place of business of the licensee, of the initiation of the action and the reasons therefore and permit the licensee an opportunity, at least 30 days after written notice is served personally or by registered mail upon the licensee, to show why revocation of the license would be unwarranted or unjust.~~

~~(c) JUDICIAL REVIEW.—A tobacco licensee may seek judicial review of an action of the State suspending, revoking, denying, or refusing to renew a license under this section by filing a complaint in a court of competent jurisdiction. A complaint shall be filed within 30 days after the~~

~~date on which notice of the action involved is received by the licensee. The court shall review the evidence de novo.~~

~~SEC. 134. FEDERAL LICENSING OF MILITARY AND OTHER ENTITIES.~~

~~(a) IN GENERAL.—The Commissioner, in consultation with the Secretary of Defense, Secretary of State, and other appropriate Federal officials, shall establish and implement a Federal tobacco licensing program to be applied to entities that sell or distribute tobacco products—~~

~~(1) on any military installation (as defined in section 2801(c)(2) of title X, United States Code);~~

~~(2) in any United States embassy;~~

~~(3) in any facility owned and operated by the Federal Government either in the United States or in a foreign country;~~

~~(4) in any duty-free shop located within the United States; or~~

~~(5) through any other Federal entity or on any other Federal property as determined appropriate by the Commissioner.~~

~~(b) REQUIREMENTS OF PROGRAM.—The program established under subsection (a) shall apply requirements (including those for penalties, suspensions, and revocations) similar to those required to be implemented by States under this subtitle.~~

~~(c) INDIAN TRIBES AND TRIBAL LANDS.—For purposes of applying and enforcing the provisions of this subtitle to entities that sell or otherwise distribute tobacco products on Indian reservations (as defined in section 403(9) of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3202(9))), an Indian tribe or tribal organization (as such terms are defined in section 4 of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b)) shall be treated as a State.~~

~~Subtitle E—Regulation of Tobacco Product Development and Manufacturing~~

~~SEC. 141. REFERENCE.~~

~~Whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).~~

~~SEC. 142. TREATMENT OF TOBACCO PRODUCTS AS DRUGS.~~

~~(a) DEFINITIONS.—~~

~~(1) DRUG.—~~

~~(A) IN GENERAL.—Section 201(g)(1) (21 U.S.C. 321(g)(1)) is amended by inserting be-~~

~~fore the first period "; and (E) tobacco products".~~

~~(B) EXCEPTION.—Section 201(p) of such Act is amended in paragraphs (1) and (2) by striking "(except a new animal drug" and inserting "(except a tobacco product, a new animal drug,".~~

~~(2) DEVICES.—Section 201(h) (21 U.S.C. 321(h)) is amended by adding at the end the following: "Such term includes a tobacco product which shall be classified as a class II device.".~~

~~(3) OTHER DEFINITIONS.—Section 201 (21 U.S.C. 321) is amended by adding at the end thereof the following new paragraphs:~~

~~"(ii) TOBACCO ADDITIVE.—The term 'tobacco additive' means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in the substance becoming a component of, or otherwise affecting the characteristics of, any tobacco product, including any substance that may have been removed from the tobacco product and then readded in the substance's original or modified form.~~

~~"(jj) TAR.—The term 'tar' means mainstream total articulate matter minus nicotine and water.~~

~~"(kk) TOBACCO PRODUCT.—The term 'tobacco product' has the meaning given such term in section 100(22) of the Universal Tobacco Settlement Act.".~~

~~(b) ENFORCEMENT.—Section 301 (21 U.S.C. 331) is amended by adding at the end thereof the following new subsection:~~

~~"(x) The manufacture, labeling, distribution, and sale of any adulterated or misbranded tobacco product in violation of—~~

~~"(1) regulations issued pursuant to section 903;~~

~~"(2) title I of the Universal Tobacco Settlement Act.".~~

~~(c) ADULTERATED OR MISBRANDED PROVISIONS.—~~

~~(1) ADULTERATION.—Section 501 (21 U.S.C. 351) is amended by adding at the end the following:~~

~~"(j) If it is a tobacco product and it does not comply with the provisions of chapter IX.".~~

~~(2) MISBRANDING.—Section 502 (21 U.S.C. 352) is amended by adding at the end the following:~~

~~"(u) If it is a tobacco product and its labeling does not comply with the provisions of chapter IX and the provisions of title I of the Universal Tobacco Settlement Act.".~~

~~(d) CLASSIFICATION OF TOBACCO PRODUCTS.—Section 512(a)(1)(B) (21 U.S.C. 360c(a)(1)(B)) is amended~~

~~by adding at the end the following: "For purposes of this Act, a tobacco product shall be classified as a class II device with performance standards applicable under chapter IX.".~~

~~SEC. 143. HEALTH AND SAFETY REGULATION OF TOBACCO PRODUCTS.~~

~~The Act (21 U.S.C. 301 et seq.) is amended—~~

~~(1) by redesignating chapter IX as chapter X;~~

~~(2) by redesignating sections 901, 902, 903, 904, and 905 as sections 1001, 1002, 1003, 1004, and 1005, respectively; and~~

~~(3) by adding after chapter VIII the following new chapter:~~

~~"CHAPTER IX—TOBACCO PRODUCTS~~

~~"SEC. 901. DEFINITIONS.~~

~~"For purposes of this chapter and in addition to the definitions contained in section 201, the definitions under section 100 of the Universal Tobacco Settlement Act shall apply.~~

~~"SEC. 902. PURPOSE.~~

~~"It is the purpose of this chapter to impose a regulatory scheme applicable to the development and manufacturing of cigarettes and smokeless tobacco products/tobacco products. Such scheme shall include the approval of the ingredients used in such products and the imposi-~~

~~tion of standards to reduce the level of certain constituents contained in such products, including nicotine.~~

~~"SEC. 903. PROMULGATION OF REGULATIONS.~~

~~"The Commissioner shall promulgate regulations governing the misbranding, adulteration, and dispensing of tobacco products that are consistent with this chapter and with the manner in which other products that are ingested into the body are regulated under this Act, except that the Commissioner may not promulgate a regulation that prohibits the sale and distribution of a tobacco product solely on the basis of the fact that tobacco causes disease. Such regulations shall be promulgated not later than 6 months after the date of enactment of the Universal Tobacco Settlement Act.~~

~~"SEC. 904. MINIMUM REQUIREMENTS.~~

~~"(a) MISBRANDING.—The regulations promulgated under section 903 shall at a minimum require that a tobacco product be deemed to be misbranded if the labeling of the package of such product is not in compliance with the provisions of this chapter, of other applicable provisions of this Act, or of sections 102(a), 103, 111, 112, and 113 (as applicable to the type of product involved) of the Universal Tobacco Settlement Act.~~

~~"(b) ADULTERATION.—The regulations promulgated under section 903 shall at a minimum require that a to-~~

~~bacco product be deemed to be adulterated if the Commissioner determines that any tobacco additive in such product, regardless of the amount of such tobacco additive, either by itself or in conjunction with any other tobacco additive or ingredient significantly increases the risk to human health or the risk of addiction to such product.~~

~~"SEC. 905. PERFORMANCE STANDARDS FOR TOBACCO PRODUCTS.~~

~~"(a) IN GENERAL.—With respect to tobacco products, the special controls required by section 513(a)(1)(B) shall include performance standards for such products as established in accordance with this section.~~

~~"(b) REQUIREMENTS.—A performance standard established under this section for a tobacco product—~~

~~"(1) shall include provisions to require the modification of the product to minimize the illness or injury that may result in consumers as a result of the use of such products, including the components of such products that produce dependence among such consumers; and~~

~~"(2) include, where appropriate—~~

~~"(A) provisions with respect to the construction, components, ingredients, and properties of the tobacco product;~~

~~"(B) provisions for the testing (on a sample basis or, if necessary, on an individual basis) of the tobacco product or, if it is determined that no other more practicable means are available to the Secretary to assure the conformity of the device to the standard, provisions for the testing (on a sample basis or, if necessary, on an individual basis) by the Secretary or by another person at the direction of the Secretary;~~

~~"(C) provisions for the measurement of the performance characteristics of the tobacco product;~~

~~"(D) provisions requiring that the results of each or of certain of the tests of the device required to be made under subparagraph (B) demonstrate that the tobacco product is in conformity with the portions of the standard for which the test or tests were required; and~~

~~"(E) a provision requiring that the sale and distribution of the device be restricted but only to the extent that the sale and distribution of a device may be otherwise restricted under this Act of title I of the Universal Tobacco Settlement Act.~~

~~"(c) EVALUATION.—The Secretary shall provide for the periodic evaluation of a performance standard established under this section to determine if such standards should be changed to reflect new medical, scientific, or other technological data.~~

~~"(d) PROCEDURES.—In carrying out this section, the Secretary shall, to the maximum extent practicable—~~

~~"(1) use personnel, facilities, and other technical support available in other Federal agencies;~~

~~"(2) consult with the Scientific Advisory Committee established under section 906 and other Federal agencies concerned with standard-setting and other nationally or internationally recognized standard-setting entities; and~~

~~"(3) invite appropriate participation, through joint or other conferences, workshops, or other means, by informed persons representative of scientific, professional, industry, or consumer organizations who in the judgment of the Secretary can make a significant contribution.~~

~~"(e) PROCEDURES.—~~

~~"(1) IN GENERAL.—The Secretary shall publish in the Federal Register a notice of proposed rulemaking for the establishment, amendment, or rev-~~

~~ocation of any performance standard under this section.~~

~~"(2) NOTICE REQUIREMENTS.—A notice of proposed rulemaking for the establishment or amendment of a performance standard under this section shall—~~

~~"(A) set forth a finding with supporting justification that the performance standard is appropriate under subsection (b)(1) with respect to the product; and~~

~~"(B) invite interested persons to submit an existing performance standard for the product, including a draft or proposed performance standard, for consideration by the Secretary.~~

~~"(3) COMMENT PERIOD.—The Secretary shall provide for a comment period of not less than 60 days.~~

~~"(4) APPLICABILITY OF SECTION 514.—The provisions of paragraphs (3) and (4) of section 514(b) shall apply to the establishment, amendment, or revocation of any performance standard under this section, except that any reference to an advisory committee shall be deemed to be a reference the Scientific Advisory Committee established under section 906.~~

1 ~~"(f) NICOTINE.—Except as provided in section 907,~~
2 ~~a performance standard established under this section~~
3 ~~may not require the elimination of nicotine from tobacco~~
4 ~~products.~~

5 ~~"(g) LIMITATION.—The Commissioner may not es-~~
6 ~~tablish a performance standard under this section that has~~
7 ~~the effect of prohibiting the sale and distribution, to indi-~~
8 ~~viduals who are at least 18 years of age, of traditional~~
9 ~~tobacco products in the basic form of the particular prod-~~
10 ~~uct as described in the definition of the particular product~~
11 ~~under section 100 of the Universal Tobacco Settlement~~
12 ~~Act.~~

13 **~~"SEC. 906. SCIENTIFIC ADVISORY COMMITTEE.~~**

14 ~~"(a) ESTABLISHMENT.—Not later than 1 year after~~
15 ~~the date of enactment of the Universal Tobacco Settlement~~
16 ~~Act, the Secretary shall establish an advisory committee,~~
17 ~~to be known as the 'Scientific Advisory Committee', to as-~~
18 ~~sist the Secretary in establishing, amending, or revoking~~
19 ~~a performance standard under section 905.~~

20 ~~"(b) MEMBERSHIP.—The Secretary shall appoint as~~
21 ~~members of the Scientific Advisory Committee any individ-~~
22 ~~uals with expertise in the medical, scientific, or other tech-~~
23 ~~nological data involving the manufacture and use of to-~~
24 ~~bacco products, and of appropriately diversified profes-~~
25 ~~sional backgrounds. The Secretary may not appoint to the~~

~~Committee any individual who is in the regular full-time employ of the Federal Government. The Secretary shall designate one of the members of each advisory committee to serve as chairperson of the Committee. The Committee shall include as nonvoting members a representative of consumer interests and a representative of interests of the device manufacturing industry.~~

~~"(c) COMPENSATION AND EXPENSES.—~~

~~"(1) COMPENSATION.—Members of the Scientific Advisory Committee who are not officers or employees of the United States, while attending conferences or meetings of the Committee or otherwise serving at the request of the Secretary, shall be entitled to receive compensation at rates to be fixed by the Secretary, which rates may not exceed the daily equivalent of the rate of pay for level 4 of the Senior Executive Schedule under section 5382 of title 5, United States Code, for each day (including travel-time) they are so engaged.~~

~~"(2) EXPENSES.—While conducting the business of the Scientific Advisory Committee away from their homes or regular places of business, each member may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 of the United States Code for per-~~

~~sons in the Government service employed intermittently.~~

~~"(d) DUTIES.—The Scientific Advisory Committee shall—~~

~~"(1) assist the Secretary in establishing, amending, or revoking performance standards under section 905;~~

~~"(2) examine and determine the effects of the alteration of the nicotine yield levels in tobacco products;~~

~~"(3) examine and determine whether there is a threshold level below which nicotine yields do not produce dependence on the tobacco product involved, and, if so, determine what that level is; and~~

~~"(4) review other safety, dependence or health issues relating to tobacco products as determined appropriate by the Secretary.~~

~~"SEC. 907. REQUIREMENTS RELATING TO NICOTINE AND OTHER CONSTITUENTS.~~

~~"(a) GENERAL RULE.—Except as provided in subsection (d), the Secretary, based on a finding under subsection (b), may adopt a performance standard under section 905 that requires the modification of a tobacco product in a manner that involves—~~

~~"(1) the gradual reduction of nicotine yields of the product; or~~

~~"(2) the reduction or elimination of other constituents or harmful components of the product.~~

~~"(b) REQUIRED FINDING.—~~

~~"(1) IN GENERAL.—A modification described in subsection (a) shall not be adopted unless the Secretary determines that the modification—~~

~~"(A) will result in a significant reduction in the health risks associated with the use of the tobacco product involved;~~

~~"(B) is technologically feasible; and~~

~~"(C) will not result in the creation of a significant demand for contraband products or other tobacco products that do not meet the performance standard that requires the modification.~~

~~"(2) CONTRABAND PRODUCTS.—For purposes of paragraph (1)(C), the Secretary, in determining whether a significant demand for contraband products will be created, shall take in account—~~

~~"(A) the estimated number of dependent tobacco product users residing in the United States on the date on which the proposed modification is being considered;~~

~~"(B) the availability to such users, or lack thereof, of alternative products; and~~

~~"(C) any other factors determined appropriate by the Secretary.~~

~~"(3) SUBSTANTIAL EVIDENCE.—A determination under paragraph (2) shall be based upon substantial evidence as demonstrated through an administrative record developed through formal rulemaking procedures as required under title 5, United States Code. Any such determination, and any determination by the Secretary with respect to a petition filed for an administrative review of the modification, shall be subject to judicial review in the United States District Court for the District of Columbia.~~

~~"(e) LIMITATION.—Effective on the date that is 3 years after the date of enactment of the Universal Tobacco Settlement Act, and notwithstanding any performance standard established under this chapter, no cigarette or tobacco product shall be sold or otherwise distributed in the United States that exceeds a 12 milligram tar yield, as determined using the testing methodology used by the Federal Trade Commission on such date of enactment.~~

~~"(d) 12-YEAR PROHIBITION.—During the 12-year period beginning on the date of enactment of the Universal Tobacco Settlement Act, the Secretary shall not adopt any~~

~~performance standard under section 905 that requires the complete elimination of nicotine yields in a tobacco product.~~

~~"(e) ACTION AFTER PROHIBITION.—~~

~~"(1) IN GENERAL.—After the expiration of the 12-year period referred to in subsection (d), the Secretary may establish or amend any performance standard to completely eliminate nicotine yields in a tobacco product.~~

~~"(2) DETERMINATION.—Any performance standard described in paragraph (1) shall not be adopted unless the Secretary determines that the standard—~~

~~"(A) will result in a significant overall reduction in the health risks associated with the use of the tobacco product involved by consumers, including individuals who continue to use tobacco products but use such products less often and individuals who stop using such products;~~

~~"(B) is technologically feasible; and~~

~~"(C) will not result in the creation of a significant demand for contraband products or other tobacco products that do not meet the performance standard.~~

~~"(3) HEALTH BENEFITS.—In making a determination with respect to health risks under paragraph (2)(A), the Secretary shall consider—~~

~~"(A) the number of dependent tobacco users residing in the United States on the date on which the proposed performance standard is being considered;~~

~~"(B) the availability and demonstrated market acceptance of alternative products;~~

~~"(C) the effectiveness of tobacco product cessation techniques and devices on the market on the date on which the proposed performance standard is being considered; and~~

~~"(D) any other factors determined appropriate by the Secretary.~~

~~"(4) PREPONDERANCE OF THE EVIDENCE.—A determination under paragraph (2) with respect to the elimination of nicotine, or an action that would have an effect comparable to the elimination of nicotine, shall be based upon a preponderance of the evidence as demonstrated, upon the request of a manufacturer, through a Part 12 hearing or notice and comment rulemaking as required under title 5, United States Code. Any such determination, and any determination by the Secretary with respect to~~

~~a petition filed for an administrative review of the modification, shall be subject to judicial review in the United States District Court for the District of Columbia.~~

~~"(5) PHASE-IN.—A performance standard described in paragraph (1) shall be implemented during a 2-year phase-in period beginning on the date on which all administrative or judicial action provided for under this chapter with respect to the standard is completed.~~

~~"(f) TOBACCO CONSTITUENTS.—The Secretary shall promulgate regulations for the testing, reporting and disclosure of tobacco smoke constituents that the Secretary determines the public should be informed of to protect public health, including tar, nicotine, and carbon monoxide. Such regulations may require label and advertising disclosures relating to tar and nicotine.~~

~~"SEC. 908. REDUCED RISK PRODUCTS.~~

~~"(a) MISBRANDING.—Except as provided in subsection (b), the regulations promulgated in accordance with section 904(a) shall require that a tobacco product be deemed to be misbranded if the labeling of the package of the product, or the claims of the manufacturer in connection with the product, can reasonably be interpreted by an objective consumer as stating or implying that the~~

~~product presents a reduced health risk as compared to other similar products.~~

~~"(b) EXCEPTION.—~~

~~"(1) IN GENERAL.—Subsection (a) shall not apply to the labeling of a tobacco product, or the claims of the manufacturer in connection with the product, if—~~

~~"(A) the manufacturer, based on scientific evidence, demonstrates to the Commissioner that the product significantly reduces the risk to the health of the user as compared to other similar tobacco products; and~~

~~"(B) the Commissioner approves the specific claim that will be made a part of the labeling of the product, or the specific claims of the manufacturer in connection with the product.~~

~~"(2) REDUCTION IN HARM.—The Commissioner shall promulgate regulations to permit the inclusion of scientifically-based specific health claims on the labeling of a tobacco product package, or the making of such claims by the manufacturer in connection with the product, where the Commissioner determines that the inclusion or making of such claims would reduce harm to consumers and otherwise promote public health.~~

~~"(c) DEVELOPMENT OF REDUCED RISK PRODUCT TECHNOLOGY.—~~

~~"(1) NOTIFICATION OF COMMISSIONER.—The manufacturer of a tobacco product shall provide written notice to the Commissioner upon the development or acquisition by the manufacturer of any technology that would reduce the risk of such products to the health of the user.~~

~~"(2) CONFIDENTIALITY.—The Commissioner shall promulgate regulations to provide a manufacturer with appropriate confidentiality protections with respect to technology that is the subject of a notification under paragraph (1) that contains evidence that the technology involved is in the early developmental stages.~~

~~"(3) LICENSING.—~~

~~"(A) IN GENERAL.—With respect to any technology developed or acquired under paragraph (1), the manufacturer shall permit the use of such technology by other manufacturers of tobacco products to which this chapter applies.~~

~~"(B) FEES.—The Commissioner shall promulgate regulations to provide for the payment of a commercially reasonable fee by each manu-~~

~~facturer that uses the technology described under subparagraph (A) to the manufacturer that submits the notice under paragraph (1) for such technology. Such regulations shall contain procedures for the resolution of fee disputes between manufacturers under this subparagraph.~~

~~"(d) REQUIREMENT OF MANUFACTURE AND MARKETING.—~~

~~"(1) PURPOSE.—It is the purpose of this subsection to provide for a mechanism to ensure that tobacco products that are designed to be less hazardous to the health of users are developed, tested, and made available to consumers.~~

~~"(2) DETERMINATION.—Upon a determination by the Commissioner that the manufacture of a tobacco product that is less hazardous to the health of users is technologically feasible, the Commissioner may, in accordance with this subsection, require that certain manufacturers of such products manufacture and market such less hazardous products.~~

~~"(3) MANUFACTURER.—~~

~~"(A) REQUIREMENT.—Except as provided in subparagraph (B), the requirement under paragraph (2) shall apply to any manufacturer that provides a notification to the Commissioner~~

~~under subsection (c)(1) concerning the technology that is the subject of the determination of the Commissioner.~~

~~"(B) EXCEPTION.—The requirement under subparagraph (A) shall not apply to a manufacturer if—~~

~~"(i) the manufacturer elects not to manufacture such products and provides notice to the Commissioner of such election; and~~

~~"(ii) the manufacturer agrees to provide the technology involved, for a commercially reasonable fee, to other manufacturers that enter into agreements to use such technology to manufacture and market tobacco products that are less hazardous to the health of users.~~

~~"(4) ACTION BY PUBLIC HEALTH SERVICE.—If no manufacturer elects or agrees to manufacture and market tobacco products that are less hazardous to the health of users through the use of technology available pursuant to this subsection within a reasonable period of time, as determined appropriate by the Commissioner, the Commissioner, in consultation with the Secretary and acting through the Public~~

~~Health Service, shall, either directly or through grants or contracts, provide for the manufacture and marketing of such products.~~

~~"SEC. 909. GOOD MANUFACTURING PRACTICE STANDARDS.~~

~~"(a) AUTHORITY.—~~

~~"(1) IN GENERAL.—The Secretary may, in accordance with paragraph (2), prescribe regulations requiring that the methods used in, and the facilities and controls used for, the manufacture, pre-production design validation (including a process to assess the performance of a tobacco product), packing, and storage of a tobacco product conform to current good manufacturing practice, as prescribed in such regulations, to ensure that such products will be in compliance with this chapter.~~

~~"(2) REQUIREMENTS PRIOR TO REGULATIONS.—Prior to the Secretary promulgating any regulation under paragraph (1) the Secretary shall—~~

~~"(A) afford the Scientific Advisory Committee established under section 906 an opportunity (with a reasonable time period) to submit recommendations with respect to the regulations proposed to be promulgated; and~~

~~"(B) afford opportunity for an oral hearing.~~

~~"(b) MINIMUM REQUIREMENTS.—The regulations promulgated under subsection (a) shall at a minimum require—~~

~~"(1) the implementation of a quality control system by the manufacturer of a tobacco product;~~

~~"(2) a process for the inspection of tobacco product material prior to the packaging of such product to be determined by the Commissioner;~~

~~"(3) procedures for the proper handling and storage of the packaged tobacco product;~~

~~"(4) after consultation with the Administrator of the Environmental Protection Agency, the development and adherence to applicable tolerances with respect to pesticide chemical residues in or on commodities used by the manufacturer in the manufacture of the finished tobacco product;~~

~~"(5) the inspection of facilities by officials of the Food and Drug Administration as otherwise provided for in this Act; and~~

~~"(6) record keeping and the reporting of certain information.~~

~~"(c) PETITIONS FOR EXEMPTIONS AND VARIANCES.—~~

~~"(1) IN GENERAL.—Any person subject to any requirement prescribed by regulations under subsection (a) may petition the Secretary for an exemption or variance from such requirement. Such a petition shall be submitted to the Secretary in such form and manner as the Secretary shall prescribe and shall—~~

~~"(A) in the case of a petition for an exemption from a requirement, set forth the basis for the petitioner's determination that compliance with the requirement is not required to ensure that the device is in compliance with this chapter;~~

~~"(B) in the case of a petition for a variance from a requirement, set forth the methods proposed to be used in, and the facilities and controls proposed to be used for, the manufacture, packing, and storage of the product in lieu of the methods, facilities, and controls prescribed by the requirement; and~~

~~"(C) contain such other information as the Secretary shall prescribe.~~

~~"(2) SCIENTIFIC ADVISORY COMMITTEE.—The Secretary may refer to the Scientific Advisory Committee established under section 906 any petition~~

~~submitted under paragraph (1). The Scientific Advisory Committee shall report its recommendations to the Secretary with respect to a petition referred to it within 60 days of the date of the petition's referral. Within 60 days after—~~

~~"(A) the date the petition was submitted to the Secretary under paragraph (1); or~~

~~"(B) if the petition was referred to the Scientific Advisory Committee, the expiration of the 60-day period beginning on the date the petition was referred to such Committee;~~

~~whichever occurs later, the Secretary shall by order either deny the petition or approve it.~~

~~"(3) APPROVAL OF PETITION.—~~

~~"(A) IN GENERAL.—The Secretary may approve—~~

~~"(i) a petition for an exemption for a tobacco product from a requirement if the Secretary determines that compliance with such requirement is not required to assure that the product will comply with this chapter; and~~

~~"(ii) a petition for a variance for a tobacco product from a requirement if the Secretary determines that the methods to~~

be used in, and the facilities and controls to be used for, the manufacture, packing, and storage of the product in lieu of the methods, controls, and facilities prescribed by the requirement are sufficient to ensure that the product will comply with this chapter.

"(B) CONDITIONS.—An order of the Secretary approving a petition for a variance shall prescribe such conditions respecting the methods used in, and the facilities and controls used for, the manufacture, packing, and storage of the tobacco product to be granted the variance under the petition as may be necessary to ensure that the product will comply with this chapter.

"(4) INFORMAL HEARING.—After the issuance of an order under paragraph (2) respecting a petition, the petitioner shall have an opportunity for an informal hearing on such order.

"(d) AGRICULTURAL PRODUCERS.—The Secretary may not promulgate any regulation under this section that has the effect of placing regulatory burdens on tobacco producers (as such term is used for purposes of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.)

and the Agricultural Act of 1949 (7 U.S.C. 1441 et seq.)) in excess of the regulatory burdens generally placed on other agricultural commodity producers.

"SEC. 910. DISCLOSURE AND REPORTING OF NONTOBACCO INGREDIENTS.

"(a) ANNUAL SUBMISSION.—

"(1) IN GENERAL.—Each manufacturer of a tobacco product shall annually provide the Secretary with—

"(A) a list of all ingredients, substances, and compounds (other than tobacco, water or reconstituted tobacco sheet made wholly from tobacco) that are added to the tobacco (and the paper or filter of the product if applicable) in the manufacture of the tobacco product, for each brand of tobacco product so manufactured; and

"(B) a description of the quantity of the ingredients, substances, and compounds that are listed under subparagraph (A) with respect to each brand of tobacco product.

"(2) GENERAL DISCLOSURE OF SAFETY.—With respect to each annual submission under paragraph (1) during the 5-year period beginning on the date of enactment of the Universal Tobacco Settlement

~~Act, the manufacturer shall, for each ingredient, substance, or compound contained on the list of the manufacturer for the year involved, disclose whether the manufacturer has determined that the ingredient, substance, or compound would be exempt from public disclosure under this section.~~

~~"(b) SAFETY ASSESSMENTS.—~~

~~"(1) REQUIREMENT.—Not later than 5 years after the date of enactment of the Universal Tobacco Settlement Act, and annually thereafter, each manufacturer shall submit to the Secretary a safety assessment for each ingredient, substance, or compound that is listed under subsection (a)(1)(A) with respect to each brand of tobacco product manufactured by each such manufacturer.~~

~~"(2) BASIS OF ASSESSMENT.—The safety assessment of an ingredient, substance, or compound described in paragraph (1) shall—~~

~~"(A) be based on the best scientific evidence available at the time of the submission of the assessment; and~~

~~"(B) result in a finding that there is a reasonable certainty in the minds of competent scientists that the ingredient, substance, or com-~~

~~pound is not harmful in the quantities used under the intended conditions of use.~~

~~"(c) PROHIBITION.—~~

~~"(1) REGULATIONS.—Not later than 12 months after the date of enactment of the Universal Tobacco Settlement Act, the Secretary shall promulgate regulations to prohibit the use of any ingredient, substance, or compound in the tobacco product of a manufacturer—~~

~~"(A) if no safety assessment has been submitted by the manufacturer for the ingredient, substance, or compound; or~~

~~"(B) if the Secretary disapproves of the safety of the ingredient, substance, or compound that was the subject of the assessment under paragraph (2).~~

~~"(2) REVIEW OF ASSESSMENTS.—~~

~~"(A) GENERAL REVIEW.—Not later than 90 days after the receipt of a safety assessment under subsection (b), the Secretary shall review the findings contained in such assessment.~~

~~"(B) APPROVAL OR DISAPPROVAL.—Not later than 90 days after the completion of a review under subparagraph (A), the Secretary shall approve or disapprove of the safety of the~~

~~ingredient, substance, or compound that was the subject of the assessment and provide notice to the manufacturer of such action.~~

~~"(C) INACTION BY SECRETARY.—If the Secretary fails to act with respect to an assessment during the 90-day period referred to in subparagraph (B), the safety of the ingredient, substance, or compound involved shall be deemed to be approved.~~

~~"(d) DISCLOSURE OF INGREDIENTS TO THE PUBLIC.—~~

~~"(1) INITIAL DISCLOSURE.—The regulations promulgated in accordance with section 904(a) shall, at a minimum, require that, during the 5-year period beginning on the date that is 6 months after the date of enactment of the Universal Tobacco Settlement Act, a tobacco product be deemed to be misbranded if the labeling of the package of such product does not disclose the ingredients of the product in accordance with the labeling provisions applicable to food ingredients under this Act.~~

~~"(2) DISCLOSURE OF ALL INGREDIENTS.—The regulations referred to in paragraph (1) shall, at a minimum, require that, subsequent to the 5-year period referred to in such paragraph, a tobacco prod-~~

~~uct be deemed to be misbranded if the labeling of the package of such product does not disclose all ingredients, substances, or compounds contained in the product in accordance with the labeling provisions applicable to food ingredients under this Act.~~

~~"(3) EXCEPTION.—Notwithstanding paragraph (1), the Secretary may require that any ingredient, substance, or compound contained in a tobacco product that is otherwise exempt from disclosure be disclosed if the Secretary determines that such ingredient, substance, or compound is not safe as provided for in subsection (c).~~

~~"(c) CONFIDENTIALITY.—Any information reported to or otherwise obtained by the Secretary under this section, and that is not required to be disclosed to the public under subsection (d), shall be exempt from disclosure pursuant to subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) of such section, shall be considered confidential and shall not be disclosed and may not be used by the Secretary as the basis for the establishment or amendment of a performance standard under section 905, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act.~~

“SEC. 911. NONAPPLICATION OF CERTAIN PROVISIONS.

“Sections 502(j), 516, 518, and 520(f) shall not apply to tobacco products to which this chapter applies.”.

Subtitle F—Compliance Plans and Corporate Culture

SEC. 151. COMPLIANCE PLANS.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, each manufacturer of a tobacco product shall prepare and submit to the Secretary a plan to ensure that the manufacturer complies with all applicable Federal, State, and local laws with respect to the manufacture and distribution of tobacco products.

(b) REQUIREMENTS.—A compliance plan submitted under subsection (a) shall—

(1) contain the assurances of the manufacturer that tobacco products will only be manufactured and distributed in accordance with this Act and the amendments made by this Act;

(2) identify methods to achieve the goals of—

(A) reducing the access of individuals under 18 years of age to tobacco products; and

(B) reducing the incidence of the underage consumption of tobacco products;

~~(3) provide for the implementation of internal incentives for achieving the reductions described in paragraph (2);~~

~~(4) provide for the implementation of internal incentives for the development of tobacco products with a reduced health risk;~~

~~(5) contain a description of the compliance programs implemented under section 152 and the effectiveness of such programs; and~~

~~(6) contain such other information as the Secretary may require.~~

~~SEC. 152. COMPLIANCE PROGRAMS.~~

~~(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, each manufacturer of a tobacco product shall establish and implement one or more compliance programs designed to ensure the compliance of the manufacturer with Federal, State, and local laws that limit the access of individuals under 18 years of age to tobacco products.~~

~~(b) REQUIREMENTS.—A compliance program established under subsection (a) shall—~~

~~(1) implement standards and procedures to be adhered to by employees and agents that are designed to reduce the incidence of violations of the laws described in subsection (a);~~

~~(2) provide for the assignment to 1 or more specific corporate executives of the overall responsibility for ensuring that the manufacturer complies with the standards and procedures applicable under this Act;~~

~~(3) ensure that due care is taken by the corporate executives designated under paragraph (2) to avoid delegating substantial discretionary authority to individuals who the executives know (or should have known through the exercise of due diligence) have a propensity to disregard corporate policy;~~

~~(4) include procedures to inform all employees and agents of the relevant standards and procedures applicable to the manufacturer and the tobacco products manufactured under this Act, including procedures for the implementation of training programs or the dissemination of informational materials;~~

~~(5) provide for the conduct of internal audits, and the establishment of hotlines and other measures to promote compliance with the laws described in subsection (a);~~

~~(6) provide for the application of appropriate disciplinary mechanisms and measures to employees who are directly or indirectly violating the laws de-~~

~~scribed in subsection (a) or otherwise not complying with this Act;~~

~~(7) include measures to respond appropriately where violations of laws described in subsection (a) are alleged to have occurred or are occurring;~~

~~(8) include the promulgation of corporate policy statements that express and explain the commitment of the manufacturer to—~~

~~(A) compliance with applicable Federal, State, and local laws;~~

~~(B) reducing the use of tobacco products by individuals who are under 18 years of age; and~~

~~(C) developing tobacco products that pose a reduced risk to the health of the user;~~

~~(9) provide for the designation of a specific corporate executive to serve as the compliance officer to promote efforts to fulfill the commitment of the manufacturer;~~

~~(10) include provisions for compiling reports on compliance with this Act and the laws described in paragraph (1) and including those reports in materials provided to stockholders; and~~

~~(11) include any other measures determined appropriate by the Secretary.~~

~~(c) REPORTING OF NONCOMPLIANCE.—Under the compliance program of a manufacturer, the manufacturer's employees shall be encouraged to report to the compliance officer any known or alleged violations of this Act (or an amendment made by this Act), including violations by distributors or retailers. The compliance officer shall furnish a copy of all such reports to the Secretary for reference to the appropriate Federal or State enforcement authority.~~

~~(d) RETAIL ESTABLISHMENTS.—As part of the compliance program established under this section, a manufacturer shall carry out efforts to encourage and assist (including retail compliance checks and financial incentives) retailers of the tobacco products manufactured by the manufacturer in compliance with the Federal, State, and local laws described in subsection (a).~~

~~SEC. 153. WHISTLEBLOWER PROTECTIONS.~~

~~(a) PROHIBITION OF REPRISALS.—An employee of any manufacturer, distributor, or retailer of a tobacco product may not be discharged, demoted, or otherwise discriminated against (with respect to compensation, terms, conditions, or privileges of employment) as a reprisal for disclosing to an employee of the Food and Drug Administration, the Department of Justice, or any State or local regulatory or enforcement authority, information relating~~

~~to a substantial violation of law related to this Act (or an amendment made by this Act) or a State or local law enacted to further the purposes of this Act.~~

~~(b) ENFORCEMENT.—Any employee or former employee who believes that such employee has been discharged, demoted, or otherwise discriminated against in violation of subsection (a) may file a civil action in the appropriate United States district court before the end of the 2-year period beginning on the date of such discharge, demotion, or discrimination.~~

~~(c) REMEDIES.—If the district court determines that a violation has occurred, the court may order the manufacturer, distributor, or retailer involved to—~~

~~(1) reinstate the employee to the employee's former position;~~

~~(2) pay compensatory damages; or~~

~~(3) take other appropriate actions to remedy any past discrimination.~~

~~(d) LIMITATION.—The protections of this section shall not apply to any employee who—~~

~~(1) deliberately causes or participates in the alleged violation of law or regulation; or~~

~~(2) knowingly or recklessly provides substantially false information to the Food and Drug Ad-~~

~~ministration, the Department of Justice, or any State or local regulatory or enforcement authority.~~

~~SEC. 154. PROVISIONS RELATING TO LOBBYING.~~

~~(a) DEFINITIONS.—For purposes of this section, the terms "lobbying activities", "lobbying firm", and "lobbyist" have the meanings given such terms by section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602).~~

~~(b) GENERAL REQUIREMENT.—A manufacturer, distributor, or retailer of a tobacco product shall require that any lobbyist or lobbying firm employed or retained by the manufacturer, distributor, or retailer, or any other individual who performs lobbying activities on behalf of the manufacturer, distributor, or retailer, as part of the employment or retainer agreement refrain from supporting or opposing any Federal or State legislation, or otherwise supporting or opposing any governmental action on any matter without the express consent of the manufacturer, distributor, or retailer.~~

~~(c) ADDITIONAL AGREEMENTS.—An individual shall not be employed or retained to perform lobbying activities on behalf of a manufacturer, distributor, or retailer of a tobacco product unless such individual enters into a signed agreement with the manufacturer, distributor, or retailer that acknowledges that the individual—~~

~~(1) is fully aware of, and will fully comply with, all applicable laws and regulations relating to the manufacture and distribution of tobacco products;~~

~~(2) has reviewed and will fully comply with the requirements of this Act (and the amendments made by this Act);~~

~~(3) has reviewed and will fully comply with any consent decree entered into under title VI as that decree applies to the manufacturer, distributor, or retailer involved; and~~

~~(4) has reviewed and will fully comply with the business conduct policies and other applicable policies and commitments (including those relating to the prevention of underage tobacco use) of the manufacturer, distributor, or retailer involved.~~

~~SEC. 155. TERMINATION OF CERTAIN ENTITIES.~~

~~(a) REQUIREMENT.—Not later than 90 days after the date of enactment of this Act, manufacturers, distributors, or retailers of tobacco products shall provide for the termination of the activities of the Tobacco Institute and the Council for Tobacco Research, U.S.A. and the Institute and Council shall be dissolved.~~

~~(b) ESTABLISHMENT OF OTHER ENTITIES.—~~

~~(1) AUTHORITY.—Manufacturers, distributors, or retailers of tobacco products may form or partici-~~

~~pate in any trade organization or other industry association only in accordance with this subsection.~~

~~(2) BOARD OF DIRECTORS.—A trade organization or other industry association formed or participated in under this subsection shall—~~

~~(A) shall be administered by an independent board of directors, of which—~~

~~(i) during the 10-year period beginning on the date on which the organization or association is formed or first participated in under this subsection, not less than 20 percent (at least 1 member) shall be individuals who are not current or former directors, officers, or employees of an entity terminated under subsection (a) or of the members of the association or organization; and~~

~~(ii) during the life of the association or organization, no member shall be a director of any of the members of the association or organization;~~

~~(B) be administered by officers who are appointed by the board of directors and who are not otherwise employed by any of the members of the association or organization; and~~

~~(C) be provided with legal advice by a legal adviser who is appointed by the board of directors and who is not otherwise employed by any of the members of the association or organization.~~

~~(3) BY-LAWS.—A trade organization or other industry association formed or participated in under this subsection shall adopt by-laws that—~~

~~(A) prohibit meetings by members of the association or organization who are competitors in the tobacco industry except under the sponsorship of the association or organization;~~

~~(B) require that every meeting of the board of directors, or a subcommittee of the board or other general committee, proceed under and strictly adhere to an agenda that is approved by the legal counsel and circulated in advance; and~~

~~(C) require the taking of minutes that describe the substance of any meeting of the members of the association or organization and the maintenance of such minutes in the records of the association or organization for a period of 5 years following the meeting.~~

~~(c) DEPARTMENT OF JUSTICE.—~~

~~(1) OVERSIGHT.—The Attorney General and, as appropriate, State antitrust authorities shall exercise oversight authority over any association or organization to which subsection (b) applies.~~

~~(2) ACCESS AND INSPECTION.—During the 10-year period beginning on the date on which an association or organization to which subsection (b) applies is formed, the Attorney General and, as appropriate State antitrust authorities shall, upon the provision of reasonable notice to the legal counsel of the association or organization, have access to—~~

~~(A) all books, records, meeting agenda and minutes, and other documents maintained by the association or organization; and~~

~~(B) the directors, officers, and employees of the association or organization for interview purposes.~~

~~(3) MULTI-STATE COMMITTEE.—Two or more States, acting through the attorney general of each such State, may establish a multi-State oversight committee to assist the Attorney General in exercising the oversight responsibilities under this section.~~

~~(4) CONFIDENTIALITY.—The Attorney General shall promulgate regulations to provide that mate-~~

~~rials provided under paragraph (2) are protected with appropriate confidentiality protections.~~

~~(d) ANTITRUST EXEMPTIONS.—The provisions of the Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (29 U.S.C. 52 et seq.), and any other Federal or State antitrust laws shall not apply to an association or organization to which subsection (b) applies.~~

~~SEC. 156. ENFORCEMENT.~~

~~(a) ASSESSMENT.—~~

~~(1) IN GENERAL.—The Secretary may assess a civil penalty against any manufacturer of a tobacco product of up to $25,000 per day of violation whenever, on the basis of any available information, the Secretary finds that such manufacturer has violated or is violating any requirement of this subtitle.~~

~~(2) LIMITATION.—The authority of the Secretary under this subsection shall be limited to matters where the total penalty sought does not exceed $200,000 and the first alleged date of violation occurred not more than 12 months prior to the initiation of the administrative action, except where the Secretary and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for action.~~

~~(3) JUDICIAL REVIEW.—Any determination by the Administrator and the Attorney General under paragraph (2) shall not be subject to judicial review.~~

~~(b) PROCEDURE.—~~

~~(1) IN GENERAL.—A civil penalty under subsection (a) shall be assessed by the Secretary by an order made after an opportunity for a hearing on the record in accordance with sections 554 and 556 of title 5 of the United States Code. The Secretary shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Secretary shall give written notice to the manufacturer against whom the assessment is being made of the Secretary's proposal to issue such an order and provide such manufacturer with an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such manufacturer.~~

~~(2) MODIFICATIONS.—The Secretary may compromise, modify, or remit, with or without conditions, any penalty which may be imposed under this section.~~

~~(c) FIELD CITATION PROGRAM.—~~

~~(1) IMPLEMENTATION.—The Secretary may provide for the implementation, after consultation~~

~~with the Attorney General and the States, of a field citation program through regulations establishing appropriate minor violations of this subtitle for which field citations, assessing civil penalties not to exceed $5,000 per day of violation, may be issued by officers or employees designated by the Secretary.~~

~~(2) HEARING.—Any manufacturer to which a field citation is assessed may, within a reasonable time as prescribed by the Secretary through regulation, elect to pay the penalty assessment or to request a hearing on the field citation. If a request for a hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final. Such hearing shall not be subject to section 554 or 556 of title 5 of the United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.~~

~~(3) NO DEFENSE.—Payment of a civil penalty required by a field citation under this paragraph shall not be a defense to further enforcement by the United States or a State to correct a violation, or to assess the statutory maximum penalty pursuant to other authorities in the subtitle, if the violation continues.~~

~~(d) JUDICIAL REVIEW.—~~

~~(1) RIGHT.—Any manufacturer against whom a civil penalty is assessed under subsection (c) or to which a penalty order is issued under subsection (a) may seek review of such assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred or in which the principal place of business of the manufacturer is located, by filing in such court within 30 days following the date the penalty order becomes final under subsection paragraph (b), the assessment becomes final under subsection (c), or a final decision following a hearing under subsection (c) is rendered, and by simultaneously sending a copy of the filing by certified mail to the Secretary and the Attorney General.~~

~~(2) FILING.—Within 30 days after a filing under paragraph (1), the Secretary shall file in the court involved a certified copy, or certified index, as appropriate, of the record on which the penalty order or assessment was issued.~~

~~(3) ACTION BY COURT.—A court shall not set aside or remand a penalty order or assessment under this section unless there is not substantial evidence in the record, taken as a whole, to support the~~

~~finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion.~~

~~(4) LIMITATION.—A penalty order or assessment under this section shall not be subject to review by any court except as provided in this subsection. In any such proceedings, the United States may seek to recover civil penalties ordered or assessed under this section.~~

~~(e) FAILURE TO PAY.—~~

~~(1) IN GENERAL.—If any manufacturer fails to pay an assessment of a civil penalty or fails to comply with an penalty order under this section—~~

~~(A) after the order or assessment has become final; or~~

~~(B) after a court, in an action brought under subsection (d), has entered a final judgment in favor of the Secretary;~~

~~the Secretary shall request the Attorney General to bring a civil action in an appropriate district court to enforce the order or to recover the amount ordered or assessed (plus interest at rates established pursuant to section 6621(a)(2) of the Internal Revenue Code of 1986 from the date of the final order or decision or the date of the final judgment, as the case may be). In such an action, the validity,~~

~~amount, and appropriateness of such order or assessment shall not be subject to review.~~

~~(2) ENFORCEMENT EXPENSES.—Any manufacturer who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including attorneys fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such manufacturer's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.~~

~~(f) SCARLET LETTER ADVERTISING.—~~

~~TITLE II—REDUCTION IN UNDERAGE TOBACCO USE~~

~~SEC. 201. PURPOSE.~~

~~It is the purpose of this title to encourage the achievement of dramatic and immediate reductions in the number of underage consumers of tobacco products through the imposition of substantial financial surcharges on manufacturers if certain underage tobacco-use reduction targets are not met.~~

~~SEC. 202. DETERMINATION OF UNDERAGE USE BASE PERCENTAGES.~~

~~(a) CIGARETTES.—For purposes of this section, the underage use base percentage for cigarettes shall be a percentage determined by the Secretary, weighted by the relative population of the age groups involved as determined using data compiled in 1995 by the Bureau of the Census, based on—~~

~~(1) the average of the percentages of 12th graders (individuals who are 16 or 17 years of age) who used cigarette products on a daily basis for each of the calendar years 1986 through 1996;~~

~~(2) the average of the percentages of 10th graders (individuals who are 14 or 15 years of age) who used cigarette products on a daily basis for each of the calendar years 1991 through 1996; and~~

~~(3) the average of the percentages of 8th graders (individuals who are 13 years of age) who used cigarette products on a daily basis for each of the calendar years 1991 through 1996.~~

~~(b) SMOKELESS TOBACCO.—For purposes of this section, the underage use base percentage for smokeless tobacco products shall be a percentage determined by the Secretary, weighted by the relative population of the age groups involved as determined using data compiled in 1995 by the Bureau of the Census, based on—~~

~~(1) the average of the percentages of 12th graders (individuals who are 16 or 17 years of age) who used smokeless tobacco products on a daily basis in 1996;~~

~~(2) the average of the percentages of 10th graders (individuals who are 14 or 15 years of age) who used smokeless tobacco products on a daily basis in 1996; and~~

~~(3) the average of the percentages of 8th graders (individuals who are 13 years of age) who used smokeless tobacco products on a daily basis in 1996.~~

~~(c) USE OF CERTAIN DATA OR METHODOLOGY.—For purposes of determining the percentages under paragraphs (1) through (3) of subsections (a) and (b), the Secretary shall use the data contained in the National High School Drug Use Survey entitled *Monitoring the Future* by the University of Michigan or such other comparable index, as determined appropriate by the Secretary after notice and an opportunity for a hearing, that utilizes methodology identical to that used by the University of Michigan in such survey.~~

~~SEC. 203. ANNUAL DAILY INCIDENCE OF UNDERAGE USE OF TOBACCO PRODUCTS.~~

~~(a) ANNUAL DETERMINATION.—Not later than the expiration of the 5-year period beginning on the date of~~

~~enactment of this Act, and annually thereafter, the Secretary shall determine the average annual incidence of the daily use of tobacco products by individuals who are under 18 years of age.~~

~~(b) CIGARETTES.—With respect to cigarette products, a determination under subsection (a) for a year shall be based on the percentage, as weighted by the relative population of the age groups involved as determined using data compiled in 1995 by the Bureau of the Census, of—~~

~~(1) 12th graders (individuals who are 16 or 17 years of age) who used cigarette products on a daily basis during the year involved;~~

~~(2) 10th graders (individuals who are 14 or 15 years of age) who used cigarette products on a daily basis during the year involved; and~~

~~(3) 8th graders (individuals who are 13 years of age) who used cigarette products on a daily basis during the year involved.~~

~~(c) SMOKELESS TOBACCO.—With respect to smokeless tobacco products, a determination under subsection (a) for a year shall be based on the percentage, as weighted by the relative population of the age groups involved as determined using data compiled in 1995 by the Bureau of the Census, of—~~

~~(1) 12th graders (individuals who are 16 or 17 years of age) who used smokeless tobacco products on a daily basis during the year involved;~~

~~(2) 10th graders (individuals who are 14 or 15 years of age) who used smokeless tobacco products on a daily basis during the year involved; and~~

~~(3) 8th graders (individuals who are 13 years of age) who used cigarette smokeless tobacco on a daily basis during the year involved.~~

~~(d) USE OF CERTAIN DATA OR METHODOLOGY.—~~

~~(1) IN GENERAL.—For purposes of determining the percentages under paragraphs (1) through (3) of subsections (b) and (c), the Secretary shall use the data contained in the National High School Drug Use Survey entitled *Monitoring the Future* by the University of Michigan (if such survey is still being undertaken) or such other comparable index, as determined appropriate by the Secretary after notice and an opportunity for a hearing, that utilizes methodology identical to that used by the University of Michigan in such survey.~~

~~(2) ALTERATION OF METHODOLOGY.—If the Secretary determines that the methodology used by the University of Michigan in the survey referred to in paragraph (1) has been altered in a material~~

~~manner from the methodoloy used during the period from 1986 to 1996 (including by altering States or regions on which the survey is based), the Secretary, after notice and an opportunity for a hearing, shall use percentages based on an index developed by the Secretary that utilizes methodology identical to that used by the University of Michigan in such survey.~~

~~SEC. 204. REQUIRED REDUCTION IN UNDERAGE TOBACCO USE.~~

~~(a) IN GENERAL.—For purposes of assessing surcharges under section 205, the Secretary shall determine whether the required percentage reduction in the underage use of tobacco products for a year (based on the tables contained in subsection (b)) has been achieved for the year involved. Such determination shall be based on—~~

~~(1) with respect to cigarette products, the average annual incidence of the daily use of tobacco products by individuals who are under 18 years of age for the year involved (as determined under section 203(b)) as compared to the underage use base percentage for cigarette products (as determined under section 202(a)); and~~

~~(2) with respect to smokeless tobacco products, the average annual incidence of the daily use of smokeless tobacco products by individuals who are~~

under 18 years of age for the year involved (as determined under section 203(c)) as compared to the underage use base percentage for smokeless tobacco products (as determined under section 202(b)).

(b) PERCENTAGE REDUCTION IN UNDERAGE USE OF TOBACCO PRODUCTS.—For purposes of subsection (a), the required percentage reduction in the underage use of tobacco products with respect to each tobacco product shall be determined according to the following tables:

(1) CIGARETTES.—

"Calender year after enactment—	**The percentage decrease in the use of cigarette products—**
Fifth	30
Sixth	30
Seventh	50
Eighth	50
Ninth	50
Tenth and thereafter	60 .

(2) SMOKELESS TOBACCO PRODUCTS.—

"Calender year after enactment—	**The percentage decrease in the use of smokeless tobacco products—**
Fifth	25
Sixth	25
Seventh	35
Eighth	35
Ninth	35
Tenth and thereafter	45 .

SEC. 205. APPLICATION OF SURCHARGES.

(a) IN GENERAL.—If the Secretary determines that the percentage reduction in the underage use of tobacco products for a year has not been achieved as required under section 204, the Secretary shall impose a surcharge on the manufacturers of the tobacco products involved.

~~(b) AMOUNT OF SURCHARGE.—~~

~~(1) IN GENERAL.—The amount of any surcharge to be imposed under this section for a calendar year shall be equal to the product of—~~

~~(A) $80,000,000; and~~

~~(B) the number of applicable surcharge percentage points as determined under subsection (c).~~

~~(2) ADJUSTMENTS.—The amount applicable under paragraph (1) shall be annually adjusted by the Secretary based on—~~

~~(A) with respect to subparagraph (A) of such paragraph—~~

~~(i) the proportional percentage increase or decrease, as compared to calendar year 1995, in the population of individuals residing in the United States who are at least 13 years of age but less than 18 years of age;~~

~~(ii) the proportional percentage increase or decrease, as compared to calendar year 1996, in the average profit per unit (measured in cents and weighted by annual sales) earned by tobacco manufacturers for the tobacco product involved (as~~

~~determined by the Secretary through a contract with a nationally recognized accounting firm having no connection to tobacco manufacturers); and~~

~~(B) any methodology utilized to avoid the double counting of underage individuals whose tobacco use has previously resulted in the imposition of a surcharge, limited to the extent that there were not other underage users of tobacco in such previous years for whom a surcharge was not paid because of the limitation contained in section 206.~~

~~(3) PROFIT PER UNIT.—For purposes of paragraph (2)(A)(ii), the average profit per unit for calendar 1996 shall be determined using the operating profit reported by manufacturers to the Securities and Exchange Commission.~~

~~(c) DETERMINATION OF APPLICABLE SURCHARGE PERCENTAGE POINTS.—~~

~~(1) IN GENERAL.—Except as provided in paragraph (2), with respect to a calendar year, the applicable surcharge percentage points shall be equal to the percentage point difference between—~~

~~(A) the required percentage reduction in the underage use of the tobacco product in-~~

~~volved for the year (based on the tables in section 204(b)); and~~

~~(B) the number of percentage points by which the average annual incidence of the daily use of the tobacco products involved by individuals who are under 18 years of age for the year (as determined under section 203) is less than the underage use base percentage for such products (as determined under section 202).~~

~~(2) ADJUSTMENT.—If for any calendar year the Secretary determines that the average annual incidence of the daily use of the tobacco products involved by individuals who are under 18 years of age (as determined under section 203) is greater than the underage use base percentage for such products (as determined under section 202), the applicable surcharge percentage point shall be equal to—~~

~~(A) the percentage point amount determined under paragraph (1)(A); and~~

~~(B) the number of percentage points by which the average annual incidence of the daily use of the tobacco products involved by individuals who are under 18 years of age (as determined under section 203) is greater that the~~

~~underage use base percentage for such products (as determined under section 202).~~

~~(3) TYPE OF PRODUCT.—Separate determinations shall be made under this section for cigarette products and smokeless tobacco products.~~

~~(d) LIMITATION.—The total amount of surcharges imposed with respect to each type of tobacco product (cigarette products or smokeless tobacco products) under this section shall not exceed $2,000,000,000 (adjusted each year by the Secretary to account for inflation) for any calendar year.~~

~~(e) JOINT AND SEVERAL OBLIGATION.—Any surcharge imposed under this section with respect to a tobacco product (cigarette products or smokeless tobacco products) shall be the joint and several obligation of all manufacturers of such product as allocated by the market share of each such manufacturer with respect to such product. The market share of each manufacturer for each such product shall be based on the actual Federal excise tax payments made by such manufacturers for each such product under the Internal Revenue Code of 1986.~~

~~(f) ASSESSMENT.—Not later than May 1 of each year in which a surcharge will be imposed under this section, the Secretary shall assess to each manufacturer the amount for which such manufacturer is obligated. Not~~

later than July 1 of any year in which a manufacturer receives an assessment under this section, the manufacturer shall pay such assessment in full or be subject to such interest on such amount as the Secretary may by regulation prescribe.

(g) USE OF AMOUNTS.—Amounts received under this section shall be used as provided for in section 517.

(h) PROHIBITION.—No stay or other injunctive relief may be granted by the Secretary or any court that has the effect of enjoining the imposition and collection of the surcharges to be applied under this section.

SEC. 206. ABATEMENT PROCEDURES.

(a) PETITIONS.—Upon payment by a manufacturer of the amount assessed to the manufacturer under section 205(f), the manufacturer may submit a petition to the Secretary for an abatement of the assessment. A notice of such abatement petition shall be submitted to the attorney general of each State.

(b) HEARING.—The Secretary shall provide for the conduct of a hearing on an abatement petition received under subsection (a) pursuant to the procedures described in sections 554, 556, and 557 of title 5, United States Code. The attorney general of any State shall be permitted to be heard at any hearing conducted under this subsection.

~~(c) BURDEN.—The burden at any hearing under subsection (b) shall be on the manufacturer to prove, by a preponderance of the evidence, that the manufacturer should be granted the abatement.~~

~~(d) BASIS OF DECISION.—Any decision regarding a petition for an abatement under this section shall be based on a determination as to whether—~~

~~(1) the manufacturer has acted in good faith and in full compliance with this Act (and any amendment made by this Act) and any regulations or State or local laws promulgated in furtherance of this Act;~~

~~(2) the manufacturer has pursued all reasonably available measures to attain the reductions;~~

~~(3) there is any evidence of any direct or indirect action by the manufacturer to undermine the achievement of the reductions required under section 204 or to undermine any other provision of this Act (or amendment); and~~

~~(4) the manufacturer has taken (or failed to take) any other action as determined appropriate by the Secretary.~~

~~(e) AMOUNT.—Upon a determination granting an abatement under this section, the Secretary shall order the abatement of not to exceed 75 percent of the amount paid~~

~~by the manufacturer, together with interest that may have accrued on such amount during the period between the date on which payment by the manufacturer was made and the date on which the abatement order was granted. Such interest shall be equal to that provided for the average 52-week Treasury Bill during the period involved.~~

~~(f) AGGRIEVED PARTIES.—Any manufacturer or attorney general of any State that is aggrieved by an abatement that is granted under this section may seek judicial review of the abatement decision within 30 days of the date of such decision in the Court of Appeals for the District of Columbia Circuit. Review in such cases shall be subject to the procedures described in sections 701 through 706 of title 5, United States Code.~~

~~(g) PROHIBITION.—A manufacturer may not file a petition under subsection (a) until such time as the manufacturer has fully paid the Secretary the amount assessed to the manufacturer under section 205(f).~~

~~TITLE III—STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE~~

~~SEC. 301. DEFINITIONS.~~

~~In this title—~~

~~(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Occupational Safety and Health Administration.~~

~~(2) PUBLIC FACILITY.—~~

~~(A) IN GENERAL.—The term "public facility" means any building regularly entered by 10 or more individuals at least 1 day per week, including any such building owned by or leased to a Federal, State, or local government entity. Such term shall not include any building or portion thereof regularly used for residential purposes.~~

~~(B) EXCLUSIONS.—Such term does not include a building which is used as a restaurant (other than a fast food restaurant), bar, private club, hotel guest room, casino, bingo parlor, tobacco merchant, or prison.~~

~~(C) FAST FOOD RESTAURANT.—The term "fast food restaurant" means any restaurant or chain of restaurants that primarily distributes food through a customer pick-up (either at a counter or drive-through window). The Administrator of the Occupational Safety and Health Administration may promulgate regulations to clarify this subparagraph to ensure that the in-~~

~~tended inclusion of establishments catering largely to individuals under 18 years of age is achieved.~~

~~(3) RESPONSIBLE ENTITY.—The term "responsible entity" means, with respect to any public facility, the owner of such facility except that, in the case of any such facility or portion thereof which is leased, such term means the lessee.~~

~~SEC. 302. SMOKE-FREE ENVIRONMENT POLICY.~~

~~(a) POLICY REQUIRED.—In order to protect children and adults from cancer, respiratory disease, heart disease, and other adverse health effects from breathing environmental tobacco smoke, the responsible entity for each public facility shall adopt and implement at such facility a smoke-free environment policy which meets the requirements of subsection (b).~~

~~(b) ELEMENTS OF POLICY.—~~

~~(1) IN GENERAL.—Each smoke-free environment policy for a public facility shall—~~

~~(A) prohibit the smoking of cigarettes, cigars, and pipes, and any other combustion of tobacco within the facility and on facility property within the immediate vicinity of the entrance to the facility; and~~

~~(B) post a clear and prominent notice of the smoking prohibition in appropriate and visible locations at the public facility.~~

~~(2) EXCEPTION.—The smoke-free environment policy for a public facility may provide an exception to the prohibition specified in paragraph (1) for 1 or more specially designated smoking areas within a public facility if such area or areas meet the requirements of subsection (c).~~

~~(c) SPECIALLY DESIGNATED SMOKING AREAS.—A specially designated smoking area meets the requirements of this subsection if—~~

~~(1) the area is ventilated in accordance with specifications promulgated by the Administrator that ensure that air from the area is directly exhausted to the outside and does not recirculate or drift to other areas within the public facility;~~

~~(2) the area is maintained at negative pressure, as compared to adjoined nonsmoking areas, as determined under regulations promulgated by the Administrator; and~~

~~(3) nonsmoking individuals do not have to enter the area for any purpose while smoking is occurring in such area.~~

~~Cleaning and maintenance work shall be conducted in such area only while no smoking is occurring in the area.~~

~~SEC. 303. CITIZEN ACTIONS.~~

~~(a) IN GENERAL.—An action may be brought to enforce the requirements of this title by any aggrieved person, any State or local government agency, or the Administrator.~~

~~(b) VENUE.—Any action to enforce this title may be brought in any United States district court for the district in which the defendant resides or is doing business to enjoin any violation of this title or to impose a civil penalty for any such violation in the amount of not more than $5,000 per day of violation. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce this title and to impose civil penalties under this title.~~

~~(c) NOTICE.—An aggrieved person shall give any alleged violator notice of at least 60 days prior to commencing an action under this section. No action may be commenced by an aggrieved person under this section if such alleged violator complies with the requirements of this title within such 60-day period and thereafter.~~

~~(d) COSTS.—The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and ex-~~

~~pert witness fees) to any prevailing plaintiff, whenever the court determines such award is appropriate.~~

~~(c) PENALTIES.—The court, in any action under this section to apply civil penalties, shall have discretion to order that such civil penalties be used for projects which further the policies of this title. The court shall obtain the view of the Administrator in exercising such discretion and selecting any such projects.~~

~~SEC. 304. PREEMPTION.~~

~~Nothing in this title shall preempt or otherwise affect any other Federal, State or local law which provides protection from health hazards from environmental tobacco smoke.~~

~~SEC. 305. REGULATIONS.~~

~~The Administrator is authorized to promulgate such regulations as the Administrator deems necessary to carry out this title.~~

~~SEC. 306. EFFECTIVE DATE.~~

~~The provisions of this title shall take effect on the date that is 1 year after the date of enactment of this Act.~~

~~TITLE IV—NATIONAL TOBACCO SETTLEMENT TRUST FUND~~

~~SEC. 401. ESTABLISHMENT OF TRUST FUND.~~

~~(a) CREATION.—~~

~~(1) IN GENERAL.—There is established in the Treasury of the United States a trust fund to be known as the "National Tobacco Settlement Trust Fund", consisting of such amounts as may be appropriated or credited to the Trust Fund.~~

~~(2) TRUSTEES.—The trustees of the Trust Fund shall be the Commissioner and the Secretary.~~

~~(b) TRANSFERS.—There are hereby appropriated and transferred to the Trust Fund—~~

~~(1) amounts repaid or recovered under section 205, including interest thereon;~~

~~(2) amounts equivalent to amounts received under section 402; and~~

~~(3) amounts paid as fines or penalties, including interest thereon, under section 403.~~

~~(c) REPAYABLE ADVANCES.—~~

~~(1) AUTHORIZATION.—There are authorized to be appropriated to the Trust Fund, as repayable advances, such sums as may from time to time be necessary to make the expenditures described in subsection (d).~~

~~(2) REPAYMENT WITH INTEREST.—Repayable advances made to the Trust Fund shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary of~~

~~the Treasury determined that moneys are available in the Trust Fund for such purposes.~~

~~(3) RATE OF INTEREST.—Interest on advances made pursuant to this subsection shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceeding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining period to maturity comparable to the anticipated period during which the advance will be outstanding.~~

~~(d) EXPENDITURES FROM TRUST FUND.—Amounts in the Trust Fund shall be available in each calendar year, as provided by appropriations Act, as follows:~~

~~(1) With respect to—~~

~~(A) the first and second years following the establishment of the Trust Fund, not less than $2,500,000,000 each year;~~

~~(B) the third year following the establishment of the Trust Fund, not less than $3,500,000,000;~~

~~(C) the fourth year following the establishment of the Trust Fund, not less than $4,000,000,000;~~

~~(D) the fifth year following the establishment of the Trust Fund, not less than $5,000,000,000; and~~

~~(E) the sixth year following the establishment of the Trust Fund, and each year thereafter, not less than $2,500,000,000,~~

~~of the amounts available in the Trust Fund shall be made available to the Secretary to makes grants to States to carry out subtitle A of title V.~~

~~(2) With respect to each of the first 4 years following the establishment of the Trust Fund, not less than $1,000,000,000, and with respect to each year thereafter, not less than $1,500,000,000, of the amounts available in the Trust Fund shall be made available to the Secretary to carry out the National Smoking Cessation Program under section 511.~~

~~(3) With respect to each of the first 3 years following the establishment of the Trust Fund, not less than $125,000,000, and with respect to each year thereafter, not less than $225,000,000, of the amounts available in the Trust Fund shall be made available to the Secretary to carry out the National Reduction in Tobacco Usage Program under section 512.~~

~~(4) Not less than $500,000,000 of the amounts available in the Trust Fund each year shall be made available to the Tobacco-Free Education Board to carry out activities under section 513.~~

~~(5) With respect to each of the first 10 years following the establishment of the Trust Fund, not less than $75,000,000 of the amounts available in the Trust Fund shall be made available to the Secretary to carry out the National Event Sponsorship Program under section 514.~~

~~(6) With respect to each of the first 2 years following the establishment of the Trust Fund, not less than $75,000,000, with respect to the third such year, not less than $100,000,000, and with respect to each year thereafter, not less than $125,000,000, of the amounts available in the Trust Fund shall be made available to the Secretary to carry out the National Community Action Program under section 515.~~

~~(7) Not less than $100,000,000 of the amounts available in the Trust Fund each year shall be made available to the Secretary to carry out the National Cessation Research Program under section 516.~~

~~(8) Not less than $300,000,000 of the amounts available in the Trust Fund each year shall be made~~

available to the Commissioner as reimbursement for the costs incurred by the Food and Drug Administration in implementing and enforcing requirements relating to tobacco products.

(9) Not less than the amount collected under section 205 and available each year shall be made available to the Secretary for use as provided for in section 517.

SEC. 402. LIABILITY OF INDUSTRY SOURCES.

(a) DEFINITION.—As used in this subtitle, the term ''industry sources'' means all entities which are signatories to the National Tobacco Control Protocol under section 612.

(b) PAYMENTS.—

(1) INITIAL PAYMENT.—Each industry source shall pay to the Trust Fund on the date of enactment of this Act, an amount that bears the same ratio to $10,000,000,000 as the relevant domestic tobacco product unit sales volume of the industry source (as defined in paragraph (3)) bears to the relevant domestic tobacco product unit volume of all industry sources for 1996.

(2) ANNUAL PAYMENTS.—Each industry source shall pay to the Trust Fund for each calendar year, beginning on December 31 of the year following the

~~year in which this Act is enacted, and each December 31 thereafter, an annual payment equal to—~~

~~(A) with respect to the first year for which payments are to be made, an amount that bears the same ratio to $8,500,000,000 as the relevant domestic tobacco product unit sales volume of the industry source (as defined in paragraph (3)) for the year involved bears to the relevant domestic tobacco product unit sales volume of all industry sources for such year;~~

~~(B) with respect to the second year for which payments are to be made, an amount that bears the same ratio to $9,500,000,000 as the relevant domestic tobacco product unit sales volume of the industry source (as defined in paragraph (3)) for the year involved bears to the relevant domestic tobacco product unit sales volume of all industry sources for such year;~~

~~(C) with respect to the third year for which payments are to be made, an amount that bears the same ratio to $11,500,000,000 as the relevant domestic tobacco product unit sales volume of the industry source (as defined in paragraph (3)) for the year involved bears to~~

~~the relevant domestic tobacco product unit sales volume of all industry sources for such year;~~

~~(D) with respect to the fourth year for which payments are to be made, an amount that bears the same ratio to $14,000,000,000 as the relevant domestic tobacco product unit sales volume of the industry source (as defined in paragraph (3)) for the year involved bears to the relevant domestic tobacco product unit sales volume of all industry sources for such year; and~~

~~(E) with respect to each of the fifth through 25th years for which payments are to be made, an amount that bears the same ratio to $15,000,000,000 as the relevant domestic tobacco product unit sales volume of the industry source (as defined in paragraph (3)) for the year involved bears to the relevant domestic tobacco product unit sales volume of all industry sources for such year.~~

~~(3) RELEVANT DOMESTIC TOBACCO PRODUCT UNIT SALES VOLUME.—~~

~~(A) IN GENERAL.—For purposes of this subsection, the relevant domestic tobacco product unit sales volume of an industry source for~~

~~a year shall be determined by the Commissioner based on data submitted by industry sources and other appropriate data.~~

~~(4) ADJUSTMENTS.—~~

~~(A) VOLUME DECREASE.—If the Commissioner makes a determination under paragraph (3)(B) that the total relevant domestic tobacco product unit sales volume has decreased, the Commissioner shall in subsequent years, make determinations as to sales volume based solely on adult use.~~

~~(B) INCREASE IN PROFITS.—~~

~~(i) IN GENERAL.—With respect to an industry source that experiences a decrease in the amount owed under paragraph (2) for a year as compared to the previous year, the industry source shall be subject to an increase in such amount (as provided for under clause (ii)) if the Commissioner determines that the net operating profits of the source derived from domestic sales of tobacco products has increased over that of the previous year.~~

~~(ii) AMOUNT OF INCREASE.—The amount by which the amount owed by an~~

~~industry source is increased under clause (i) shall be equal to 25 percent of the amount of the decrease involved.~~

~~(C) INFLATION.—Each of the amounts described in subparagraphs (B) through (E) of paragraph (2) shall be increased by 3 percent each year, or adjusted each year to reflect the increase in the Consumer Price Index for all urban consumers (as published by the Bureau of Labor Statistics) from the year previous to the year for which the adjustment is being applied, whichever is greater.~~

~~(c) AFFECT OF BANKRUPTCY.—Section 507(a) of title 11, United States Code, is amended by inserting after paragraph (9) the following:~~

~~"Tenth, payments required to be paid into the National Tobacco Settlement Trust Fund under section 402 of the Universal Tobacco Settlement Act.".~~

~~(d) PASS-THROUGH.—An industry source that is required to make payments under this section shall annually adjust the prices of the tobacco products sold by such source to reflect the amounts of such payments.~~

~~(e) TAX TREATMENT OF PAYMENTS.—For purposes of section 162 of the Internal Revenue Code of 1986, any payment to the Tobacco Settlement Trust Fund under~~

~~section 401 shall be considered to be an ordinary and necessary expense in carrying on a trade or business and shall be deductible in the taxable year in which paid.~~

~~SEC. 403. ENFORCEMENT.~~

~~(a) GENERAL RULE.—There is hereby imposed a penalty on the failure of any industry source to make any payment required under section 402.~~

~~(b) AMOUNT OF PENALTY.—The amount of the penalty imposed by subsection (a) on any failure with respect to an industry source shall be established by the Commissioner for each day during the noncompliance period.~~

~~(c) NONCOMPLIANCE PERIOD.—For purposes of this section, the term "noncompliance period" means, with respect to any failure to makes the payment required under section 402, the period—~~

~~(1) beginning on the due date for such payment; and~~

~~(2) ending on the date on which such payment is paid in full.~~

~~(d) LIMITATIONS.—~~

~~(1) IN GENERAL.—No penalty shall be imposed by subsection (a) on any failure to make payment under section 402 during any period for which it is established to the satisfaction of the Commissioner that none of the persons responsible for such failure~~

~~knew or, exercising reasonable diligence, would have known, that such failure existed.~~

~~(2) CORRECTIONS.—No penalty shall be imposed under subsection (a) on any failure to make payment under section 402 if—~~

~~(A) such failure was due to reasonable cause and not to willful neglect; and~~

~~(B) such failure is corrected during the 30-day period beginning on the 1st date that any of the persons responsible for such failure knew or, exercising reasonable diligence, would have known, that such failure existed.~~

~~(3) WAIVER.—In the case of any failure to make payment under section 402 that is due to reasonable cause and not to willful neglect, the Commissioner may waive all or part of the penalty imposed under subsection (a) to the extent that the Commissioner determines that the payment of such penalty would be excessive relative to the failure involved.~~

~~TITLE V—PUBLIC HEALTH AND OTHER PROGRAMS~~

~~Subtitle A—Public Health Block Grant Program~~

~~SEC. 501. PUBLIC HEALTH TRUST FUND.~~

~~(a) ESTABLISHMENT.—~~

~~(1) IN GENERAL.—The Secretary shall establish, as a separate fund within the Trust Fund established under section 401, a trust fund to be known as the "Public Health Trust Fund", consisting of such amounts as may be appropriated or credited to the Trust Fund.~~

~~(2) TRUSTEES.—The trustees of the Trust Fund shall be the Commissioner and the Secretary.~~

~~(b) TRANSFERS.—There are hereby appropriated and transferred to the Trust Fund the amounts described in section 401(d)(1) with respect to the year involved.~~

~~(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Public Health Trust Fund shall be available in each calendar year, as provided by appropriations Act, for block grants under section 502.~~

~~SEC. 502. BLOCK GRANTS TO STATES.~~

~~(a) IN GENERAL.—For the purpose described in subsection (b), the Secretary shall award a block grant to each State in each fiscal year in an amount based on the~~

~~allotment of the State as determined in accordance with section 503.~~

~~(b) AUTHORIZED ACTIVITIES.—A State shall use amounts received under a block grant only for the purpose of planning, carrying out, and evaluating activities as provided for in section 504.~~

~~(c) APPLICATION.—To be eligible to receive a grant under this subtitle a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including such assurances as the Secretary may require regarding the compliance of the State with the requirements of this Act.~~

~~SEC. 503. ALLOTMENTS.~~

~~(a) IN GENERAL.—Of the amounts appropriated and available for block grants for a fiscal year under section 502, the Secretary shall allot to each State an amount determined under the allotment formula under subsection (b).~~

~~(b) ALLOTMENT FORMULA.—~~

~~(c) REALLOTMENTS.—To the extent that all the funds appropriated under section 501(c) for a fiscal year and available for allotment in such fiscal year are not otherwise allotted to States because—~~

~~(1) one or more States have not submitted an application in accordance with section 502(c) for the fiscal year; or~~

~~(2) one or more States have notified the Secretary that they do not intend to use the full amount of their allotment;~~

~~such excess shall be reallotted among each of the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this subsection.~~

~~(d) INDIAN TRIBES AND TRIBAL ORGANIZATIONS.—~~

~~(1) IN GENERAL.—If the Secretary—~~

~~(A) receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under this subtitle be provided directly by the Secretary to such tribe or organization; and~~

~~(B) determines that the members of such tribe or tribal organization would be better served by means of grants made directly by the Secretary under this subtitle;~~

~~the Secretary shall reserve from amounts which would otherwise be allotted to such State under subsection (a) for the fiscal year the amount determined under paragraph (2).~~

~~(2) AMOUNT.—The Secretary shall reserve for the purpose of paragraph (1) from amounts that would otherwise be allotted to such State under subsection (a) an amount to be determined by a formula developed by the Secretary after consultation with the Secretary of the Interior.~~

~~(3) GRANT.—The amount reserved by the Secretary on the basis of a determination under this subsection shall be granted to the Indian tribe or tribal organization serving the individuals for whom such a determination has been made.~~

~~(4) PLAN.—In order for an Indian tribe or tribal organization to be eligible for a grant for a fiscal year under this subsection, it shall submit to the Secretary a plan for such fiscal year which meets such criteria as the Secretary may prescribe.~~

~~(5) DEFINITIONS.—The terms "Indian tribe" and "tribal organization" shall have the same meaning given such terms in section 4(b) and section 4(c) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(b) and (c)).~~

~~SEC. 504. USE OF FUNDS.~~

~~(a) IN GENERAL.—Amounts provided to a State under a grant under this subtitle shall be used—~~

~~(1) to reimburse the State for expenses incurred by the State under the State program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) relating to the treatment of tobacco-related illnesses or conditions;~~

~~(2) to reimburse the State for other expenses incurred by the State in providing directly, or reimbursing others for the provision of, treatment for tobacco-related illnesses or conditions;~~

~~(3) to provide health care coverage, either directly or through arrangements with other entities, for uninsured individuals under 18 years of age who reside in the State;~~

~~(4) to establish a State tobacco products liability judgments and settlement fund, as provided for in subsection (c);~~

~~(5) to reimburse the State for expenses incurred in carrying out the tobacco licensure requirements of subtitle D of title I; and~~

~~(6) to carry out any other activities determined appropriate by the State.~~

~~(b) LIMITATIONS ON USES.—A State may not use amounts provided under a grant under this subtitle for programs or projects not approved of by the Secretary.~~

~~(c) JUDGMENT AND SETTLEMENT FUND.—~~

~~(1) IN GENERAL.—Each State that receives a grant under this subtitle shall establish a fund for the purpose of making payments under paragraph (2).~~

~~(2) PAYMENTS.—The fund established under paragraph (1) shall be used to make payments to individuals who have obtained a judgment in a tobacco-related action brought in a State court, or who have entered into a settlement of such an action, of the amount of any award under such judgment or settlement that represents punitive damages.~~

~~SEC. 505. WITHHOLDING OF FUNDS.~~

~~(a) AUTHORITY.—~~

~~(1) IN GENERAL.—The Secretary shall, after adequate notice and an opportunity for a hearing conducted within the affected State, withhold funds from any State which does not use its allotment in accordance with the requirements of this subtitle. The Secretary shall withhold such funds until the Secretary finds that the reason for the withholding has been removed and there is reasonable assurance that it will not recur.~~

~~(2) INVESTIGATION.—The Secretary may not institute proceedings to withhold funds under paragraph (1) unless the Secretary has conducted an in-~~

~~vestigation concerning whether the State has used its allotment in accordance with the requirements of this subtitle. Investigations required by this paragraph shall be conducted within the affected State by qualified investigators.~~

~~(3) RESPONSE TO COMPLAINTS.—The Secretary shall respond in an expeditious manner to complaints of a substantial or serious nature that a State has failed to use funds in accordance with the requirements of this subtitle.~~

~~(4) MINOR FAILURE.—The Secretary may not withhold funds under paragraph (1) from a State for a minor failure to comply with the requirements of this subtitle.~~

~~(b) INVESTIGATIONS.—The Secretary shall conduct in several States in each fiscal year investigations of the use of funds received by the States under this subtitle in order to evaluate compliance with the requirements of this subtitle.~~

~~(c) AVAILABILITY OF INFORMATION.—Each State, and each entity which has received funds from an allotment made to a State under this subtitle, shall make available to the Secretary, for examination, copying, or mechanical reproduction on or off the premises, appropriate~~

books, documents, papers, and records of the entity upon a reasonable request therefore.

Subtitle B—Other Programs

SEC. 511. NATIONAL SMOKING CESSATION PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall establish a program to be known as the ''National Smoking Cessation Program'' under which the Secretary may award grants to eligible public and nonprofit entities and individuals for smoking cessation purposes.

(b) ELIGIBILITY.—

(1) OF ENTITIES.—To be eligible to receive a grant under this section an entity shall—

(A) be a public or nonprofit private entity;

(B) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require;

(C) provide assurances that amounts received under the grant will be used in accordance with subsection (c)(1); and

(D) meet any other requirements determined appropriate by the Secretary.

(2) OF INDIVIDUALS.—To be eligible to receive a grant under this section an individual shall—

~~(A) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require;~~

~~(B) provide assurances that amounts received under the grant will be used only in accordance with subsection (c)(2); and~~

~~(C) meet any other requirements determined appropriate by the Secretary.~~

~~(c) USE OF FUNDS.—~~

~~(1) BY ENTITIES.—An entity that receives a grant under this section shall use amounts provided under the grant to establish or administer tobacco product use cessation programs that are approved in accordance with subsection (d).~~

~~(2) BY INDIVIDUALS.—An individual that receive a grant under this section shall use amounts provided under the grant to enroll in a tobacco product use cessation program or to purchase a tobacco product cessation device that has been approved in accordance with subsection (d). Grants to individuals under this section may be in the form of vouchers that may be used to pay the costs of enrollment in an approved program or to purchase an approved device.~~

~~(d) APPROVAL OF CESSATION PROGRAM OR DEVICES.—Using the best available scientific information, the Secretary shall promulgate regulations to provide for the approval of tobacco product use cessation programs and devices. Such regulations shall be designed to ensure that tobacco product users, if requested, are provided with reasonable access to safe and effective cessation programs and devices. Such regulations shall ensure that such individuals have access to a broad range of cessation options that are tailored to the needs of the individual tobacco user.~~

~~(e) FUNDING.—The Secretary shall use amounts available under section 401(d)(2) to carry out this section.~~

~~SEC. 512. NATIONAL REDUCTION IN TOBACCO USAGE PROGRAM.~~

~~(a) ESTABLISHMENT.—The Secretary shall establish a program to be known as the "National Reduction in Tobacco Usage Program" under which the Secretary may award grants to eligible public and nonprofit entities to carry out activities designed to reduce the use of tobacco products.~~

~~(b) ELIGIBILITY.—To be eligible to receive a grant under this section an entity shall—~~

~~(1) be a State health department, other public entity, or a nonprofit private entity;~~

~~(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require;~~

~~(3) provide assurances that amounts received under the grant will be used in accordance with subsection (c); and~~

~~(4) meet any other requirements determined appropriate by the Secretary.~~

~~(c) USE OF FUNDS.—An entity that receives a grant under this section shall use amounts provided under the grant to—~~

~~(1) carry out media-based and nonmedia-based education, prevention and cessation campaigns designed to discourage the use of tobacco products by individuals who are under 18 years of age and to encourage those who use such products to quit;~~

~~(2) carry out research concerning, and provide for the development and public dissemination of, technologies and methods to reduce the risk of dependence and injury from tobacco product usage and exposure;~~

~~(3) provide for the identification, testing, and evaluation of the health effects of both tobacco and non-tobacco constituents of tobacco products; or~~

~~(4) carry out any other activities determined by the Secretary to be consistent with the purposes of this Act.~~

~~(d) FUNDING.—The Secretary shall use amounts available under section 401(d)(3) to carry out this section.~~

~~SEC. 513. NATIONAL TOBACCO-FREE PUBLIC EDUCATION PROGRAM.~~

~~(a) ESTABLISHMENT OF BOARD.—~~

~~(1) IN GENERAL.—The Secretary shall establish an independent board to be known as the "Tobacco-Free Education Board" (referred to in this section as the "Board") to enter into contracts with or award grants to eligible public and nonprofit private entities to carry out public informational and educational activities designed to reduce the use of tobacco products.~~

~~(2) APPOINTMENT.—The Board shall be composed of 9 members to be appointed by the Secretary, of which—~~

~~(A) at least 3 such members shall be an individual who is widely recognized by the general public for achievement in the athletic, cultural, entertainment, educational, business, or political field; and~~

~~(B) at least 3 of whom shall be individuals who are heads of a major public health organizations.~~

~~(3) TERMS AND VACANCIES.—The members of the Board shall serve staggered terms as determined appropriate at the time of appointment by the Secretary. Any vacancy in the Board shall not affect its powers, but shall be filled in the same manner as the original appointment.~~

~~(4) POWERS.—~~

~~(A) HEARINGS.—The Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Board considers advisable to carry out the purposes of this section.~~

~~(B) INFORMATION FROM FEDERAL AGENCIES.—The Board may secure directly from any Federal department or agency such information as the Board considers necessary to carry out the provisions of this section.~~

~~(5) PERSONNEL MATTERS.—~~

~~(A) COMPENSATION.—Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual~~

~~rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Board. All members of the Board who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.~~

~~(B) TRAVEL EXPENSES.—The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.~~

~~(b) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a program to be known as the "National Tobacco-Free Public Education Program" under which the Board may enter into contracts with or award grants to eligible public and nonprofit private entities to carry out public informational and educational activities designed to reduce the use of tobacco products.~~

~~(c) ELIGIBILITY.—To be eligible to receive a grant under this section an entity shall—~~

~~(1) be a—~~

~~(A) public entity or a State health department; or~~

~~(B) nonprofit private entity that—~~

~~(i) is not affiliated with a tobacco product manufacturer or importer;~~

~~(ii) has a demonstrated record of working effectively to reduce tobacco product use; and~~

~~(iii) has expertise in conducting a multi-media communications campaign;~~

~~(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including a description of the activities to be conducted using amounts received under the grant or contract;~~

~~(3) provide assurances that amounts received under the grant will be used in accordance with subsection (d); and~~

~~(4) meet any other requirements determined appropriate by the Secretary.~~

~~(d) USE OF FUNDS.—An entity that receives a grant or contract under this section shall use amounts provided under the grant or contract to conduct multi-media public educational or informational campaigns that are designed to discourage and de-glamorize the use of tobacco products. Such campaigns shall be designed to discourage the initiation of tobacco use by minors and encourage those using such products to quit.~~

~~(e) NEEDS OF CERTAIN POPULATIONS.—In awarding grants and contracts under this section, the Board shall take into consideration the needs of particular populations.~~

~~(f) FUNDING.—The Secretary shall use amounts available under section 401(d)(4) to carry out this section.~~

~~SEC. 514. NATIONAL EVENT SPONSORSHIP PROGRAM.~~

~~(a) ESTABLISHMENT.—The Secretary shall establish a program to be known as the "National Event Sponsorship Program" under which the Secretary may award grants to eligible entities or individuals for the sponsorship of activities described in subsection (c).~~

~~(b) ELIGIBILITY.—To be eligible to receive a grant under this section an entity or individual shall—~~

~~(1) prepare and submit to the Secretary an application at such time, in such manner, and contain-~~

~~ing such information as the Secretary may require, including—~~

~~(A) a description of the event, activity, team, or entry for which the grant is to be provided;~~

~~(B) documentation that the event, activity, team, or entry involved was sponsored or otherwise funded by a tobacco manufacturer or distributor prior to the date of the application; and~~

~~(C) a certification that the applicant is unable to secure funding for the event, activity, team, or entry involved from sources other than those described in paragraph (2);~~

~~(2) provide assurances that amounts received under the grant will be used in accordance with subsection (d); and~~

~~(3) meet any other requirements determined appropriate by the Secretary.~~

~~(c) PERMISSIBLE SPONSORSHIP ACTIVITIES.—Events, activities, teams, or entries for which a grant may be provided under this section include—~~

~~(1) an athletic, musical, artistic, or other social or cultural event or activity that was sponsored in whole or in part by a tobacco manufacturer or distributor prior to the date of enactment of this Act;~~

~~(2) the participation of a team that was sponsored in whole or in part by a tobacco manufacturer or distributor prior to the date of enactment of this Act, in an athletic event or activity; and~~

~~(3) the payment of a portion or all of the entry fees of, or other financial or technical support provided to, an individual or team by a tobacco manufacturer or distributor prior to the date of enactment of this Act, for participation of the individual in an athletic, musical, artistic, or other social or cultural event.~~

~~(d) USE OF FUNDS.—Amounts received under a grant under this section shall be used to—~~

~~(1)(A) pay the costs associated with the sponsorship of an event or activity described in subsection (c)(1);~~

~~(B) provide for the sponsorship of an individual or team;~~

~~(C) pay the required entry fees associated with the participation of an individual or team in an event or activity described in subsection (c)(3);~~

~~(D) provide financial or technical support to an individual or team in connection with the participation of that individual or team in an activity described in subsection (c)(3); or~~

~~(E) for any other purposes determined appropriate by the Secretary; and~~

~~(2) promote images or activities to discourage individuals from using tobacco products or encourage individuals who use such products to quit.~~

~~(c) ALLOCATION OF UNEXPENDED FUNDS.—Amounts available for purposes of carrying out this section and remaining available at the end of the 10-year period described in section 401(d)(5), shall be used as follows:~~

~~(1) 50 percent of such amounts shall be used to supplement amounts available for multi-media campaigns under section 512;~~

~~(2) 25 percent of such amounts shall be used to supplement amounts available for enforcement purposes under section 401(d)(8); and~~

~~(3) 25 percent of such amounts shall be used to supplement amounts available for community action programs under section 515.~~

~~(f) FUNDING.—The Secretary shall use amounts available under section 401(d)(5) to carry out this section.~~

~~SEC. 515. NATIONAL COMMUNITY ACTION PROGRAM.~~

~~(a) ESTABLISHMENT.—The Secretary shall establish a program to be known as the "National Community Action Program" under which the Secretary may award~~

~~grants to eligible State and local governmental entities to carry out community-based tobacco control efforts that are designed to encourage community involvement in reducing tobacco product use.~~

~~(b) ELIGIBILITY.—To be eligible to receive a grant under this section an entity shall—~~

~~(1) be a State or local public entity;~~

~~(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require;~~

~~(3) provide assurances that amounts received under the grant will be used in accordance with the purposes of this section; and~~

~~(4) meet any other requirements determined appropriate by the Secretary.~~

~~(c) FUNDING.—The Secretary shall use amounts available under section 401(d)(6) to carry out this section.~~

~~SEC. 516. NATIONAL CESSATION RESEARCH PROGRAM.~~

~~(a) ESTABLISHMENT.—The Secretary shall establish a program to be known as the "National Cessation Research Program" under which the Secretary may award grants to eligible entities for research concerning, and the development of methods, drugs, and devices to discourage individuals from using tobacco products and to assist individuals who use such products in quitting such use.~~

~~(b) ELIGIBILITY.—~~

~~(c) USE OF FUNDS.—~~

~~(d) ADDITIONAL REQUIREMENTS.—~~

~~(e) FUNDING.—The Secretary shall use amounts available under section 401(d)(7) to carry out this section.~~

~~SEC. 517. USE OF SURCHARGE PAYMENTS.~~

~~(a) IN GENERAL.—Of the amount made available to the Secretary each year under section 401(d)(9), the Secretary shall—~~

~~(1) use not less than 90 percent of such amount to award grants to State and local governmental and public health agencies to carry out activities to further reduce the use of tobacco products by individuals who are under 18 years of age; and~~

~~(2) use not more than 10 percent of such amount for the administrative costs associated with the administration of title II and of chapter IX of the Federal Food, Drug and Cosmetic Act (as added by section 143(3)).~~

~~(b) TRANSFER OF CERTAIN AMOUNTS.—If the Secretary determines that the administrative costs described in subsection (a)(2) are less than the amount available under section subsection, the Secretary may—~~

~~(1) transfer any such excess amount to other Federal, State, or local agencies to meet the needs~~

~~associated with the reduction of underage tobacco usage; or~~

~~(2) expend such amounts directly for activities to expedite the reduction of underage tobacco use.~~

~~(c) ELIGIBILITY.—To be eligible to receive a grant under this section an entity shall—~~

~~(1) be a State or local governmental or public health agency;~~

~~(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require;~~

~~(3) provide assurances that amounts received under the grant will be used in accordance with this section; and~~

~~(4) meet any other requirements determined appropriate by the Secretary.~~

~~(d) FUNDING.—The Secretary shall use amounts available under section 401(d)(9) to carry out this section.~~

~~TITLE VI—CONSENT DECREES, NON-PARTICIPATING MANUFACTURERS, AND STATE ENFORCEMENT~~

~~SEC. 601. PURPOSES.~~

~~It is the purpose of this title to provide for the establishment of consent decrees and the imposition of certain~~

payment provisions, in addition to those otherwise provided for under Federal or State laws, to encourage manufacturers, distributors, and retailers to comply with this Act, and to otherwise provide for the enforcement of this Act with respect to non-participating manufacturers.

Subtitle A—Consent Decrees and Non-Participating Manufacturers

SEC. 611. CONSENT DECREES.

(a) REQUIREMENT.—To be eligible to receive payments under title V, a State, and to be eligible to receive liability protections under title VII, a tobacco manufacturer or distributor, shall enter into consent decrees under this section to be effective on the date of enactment of this Act.

(b) TERMS AND CONDITIONS.—

(1) IN GENERAL.—The terms and conditions contained in the consent decrees described in subsection (a) shall contain provisions to clarify the application and requirements of this Act (and the amendments made by this Act), including provisions relating to—

(A) restrictions on tobacco product advertising and marketing and youth access to such products;

~~(B) the termination, establishment, and operation of trade associations;~~

~~(C) restrictions on tobacco lobbying;~~

~~(D) the disclosure of tobacco smoke constituents;~~

~~(E) the disclosure of nontobacco ingredients found in tobacco products;~~

~~(F) the disclosure of existing and future documents relating to health, toxicity, and addition related to tobacco product usage;~~

~~(G) compliance and corporate culture;~~

~~(H) the obligation of manufacturers to make payments for the benefit of States;~~

~~(I) the obligation of manufacturers to interact only with distributors and retailers that operate in compliance with the applicable provisions of Federal, State, or local law regarding the marketing and sale of tobacco products;~~

~~(J) requirements for warnings, labeling, and packaging of tobacco products;~~

~~(K) the dismissal of pending litigation as required under title VII and as agreed to by the parties to the decree; and~~

~~(L) any other matter determined appropriate by the Secretary or the parties involved.~~

~~(2) LIMITATIONS.—The terms and conditions contained in the consent decrees described in subsection (a) shall not contain provisions relating to—~~

~~(A) tobacco product design, performance, or modification;~~

~~(B) manufacturing standards and good manufacturing practices;~~

~~(C) testing and regulation with respect to toxicity and ingredients approval; and~~

~~(D) the required percentage reductions in the underage use of tobacco products for a year under section 204.~~

~~(3) WAIVER OF CONSTITUTIONAL CLAIMS.—The terms and conditions contained in the consent decrees described in subsection (a) shall include a provision waiving the Federal or State constitutional claims of the parties and providing for the severability of the provisions of the decree.~~

~~(4) CONSTRUCTION.—The terms and conditions contained in the consent decrees described in subsection (a) shall provide that the terms of the decree will be construed in a manner that is consistent with the provision of this Act.~~

~~(c) APPROVAL.—To be valid under this section, the provisions of a consent decree must be approved by the Secretary prior to approval or entry by a court.~~

~~(d) ENFORCEMENT.—~~

~~(1) CHANGES IN LAW.—The provisions of a consent decree entered under this section shall remain in effect and enforceable regardless of whether the provisions of this Act are amended, except that any amendments to this Act that—~~

~~(A) establish Federal requirements that are in conflict with obligations contained in the consent decrees shall render such obligations unenforceable;~~

~~(B) require allocations of funds that are in conflict with the allocation contained in the consent decrees shall render such consent decree allocation unenforceable; and~~

~~(C) require warnings, labeling, or packaging that conflicts with the warning, labeling, or packaging requirements of the consent decree, shall require that modifications be made in the consent decree to conform with such amendments.~~

~~(2) BY STATE.—~~

~~(A) IN GENERAL.—A State may bring an action to enforce the provisions of any consent decree under this section in any appropriate State court. Such proceedings may seek injunctive relief only and may not seek criminal or monetary sanctions. Enforcement of any injunctive relief provided under a State action under this section shall be permitted under any applicable State law.~~

~~(B) CONSISTENCY.—The Secretary, in consultation with the Attorney General, shall promulgate regulations to ensure the consistency of State court ruling with respect to conduct under a consent decree that is not exclusively local in nature.~~

~~SEC. 612. NATIONAL TOBACCO CONTROL PROTOCOL.~~

~~(a) REQUIREMENT.—Not later than 6 months after the date of enactment of this Act, each tobacco manufacturer to which this Act applies shall enter into a National Tobacco Control Protocol.~~

~~(b) TERMS AND CONDITIONS.—The Protocol referred to in subsection (a) shall be—~~

~~(1) developed by the Secretary as a binding and enforceable contract that embodies the terms of this Act; and~~

~~(2) designed to be enforceable in Federal or State courts.~~

~~SEC. 613. NON-PARTICIPATING MANUFACTURERS.~~

~~(a) IN GENERAL.—With respect to a manufacturer that elects not to enter into a consent decree under section 602, such manufacturer shall not be eligible to receive the liability protections under title VII.~~

~~(b) IMPOSITION OF USER FEE.—~~

~~(1) IN GENERAL.—Each manufacturer that elects not to enter into a consent decree under section 602 and not to become a signatory to the National Tobacco Control Protocol under section 603 shall be subject to an annual fee established under this subsection.~~

~~(2) AMOUNT OF FEE.—~~

~~(A) TOTAL.—The total amount of all fees established under this subsection for a year shall be equal to the amounts provided under paragraphs (1) and (8) of section 401(d) for the year.~~

~~(B) PER MANUFACTURER.—The Secretary shall promulgate regulations for the purpose of assessing fees under this subsection and determining the amount of the fee to be assessed to each manufacturer.~~

~~(c) SETTLEMENT RESERVE FUND.—~~

~~(1) IN GENERAL.—Each manufacturer to which subsection (b)(1) applies shall annually deposit into an escrowed reserve fund an amount equal to 150 percent of the amount that such manufacturer would have paid under section 402 (except for that portion of the payments that would have been made available under paragraphs (1) and (8) of section 401(d)) for the year in which the manufacturer is making such deposit if the manufacturer had been a signatory to the National Tobacco Control Protocol under section 603.~~

~~(2) USE.—Amounts contained in the reserve fund of a manufacturer under paragraph (1) shall be used solely for tobacco-related liability payments. The manufacturer may reclaim any amounts remaining in the fund (with interest) at the end of the 35-year period beginning on the date on which such fund is established.~~

~~Subtitle B—State Enforcement~~

~~SEC. 621. REQUIREMENT OF NO SALE TO MINORS LAW.~~

~~(a) RELEVANT LAW.—~~

~~(1) IN GENERAL.—Subject to paragraph (2), for each calendar year, the Secretary may not make any payments to a State under section 403 unless~~

~~the State involved has in effect a law providing that it is unlawful for any manufacturer, retailer, or distributor of tobacco products to sell or distribute any such product to any individual under the age of 18 that meets the requirements of this section.~~

~~(2) DELAYED APPLICABILITY FOR CERTAIN STATES.—In the case of a State whose legislature does not convene a regular session in fiscal year 1997, and in the case of a State whose legislature does not convene a regular session in fiscal year 1998, the requirement described in paragraph (1) as a condition of a receipt of payments under section 403 shall apply only for fiscal year 1999 and subsequent fiscal years.~~

~~(b) REQUIREMENTS.—A State law described in subsection (a) shall comply with the following:~~

~~(1) PROHIBITION ON SALE.—Such law shall provide that it is unlawful for any manufacturer, retailer, or distributor of tobacco products to sell or distribute any such product within the State to any individual under the age of 18 years.~~

~~(2) PURCHASE, RECEIPT OR POSSESSION.—~~

~~(A) IN GENERAL.—Such law shall provide that an individual under 18 years of age shall not purchase or attempt to purchase, receive or~~

~~attempt to receive, possess or attempt to possess, smoke or attempt to smoke, or otherwise use or consume or attempt to use or consume a tobacco product in a public place.~~

~~(B) EMPLOYMENT.—Such law may permit an individual under the age of 18 to possess a tobacco product during regular working hours and in the course of such individual's employment if the tobacco product is not possessed for such individual's consumption.~~

~~(3) INSPECTIONS.—~~

~~(A) IN GENERAL.—Such law shall provide that the State Police of a State, or such local law enforcement authority duly designated by the State Police, shall enforce this law in a manner that can reasonably be expected to reduce the extent to which tobacco products are distributed to individuals under 18 years of age and shall, at least monthly, conduct random, unannounced inspections in accordance with regulations promulgated by the Secretary under this section to ensure compliance with this law.~~

~~(B) CONDUCT.—Inspections under this paragraph shall be conducted in communities geographically and statistically representative of~~

~~the entire State and the youth population of the State. Not less than 250 such inspections shall be conducted with respect to each 1,000,000 residents of the State.~~

~~SEC. 622. STATE REPORTING.~~

~~(a) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, and annually thereafter, the State shall prepare and submit to the Secretary a reduction in tobacco product usage report. Such report shall, except as provided in subsection (b)(3), be made available to the general public of the State.~~

~~(b) CONTENTS.—A report submitted under subsection (a) shall include—~~

~~(1) a detailed description of the enforcement activities undertaken by the State and the political subdivisions of the State concerning tobacco product usage laws for the year for which the report is being prepared;~~

~~(2) a detailed description of the progress of the State in reducing the availability of tobacco products to individuals under 18 years of age, including the detailed statistical results of the compliance inspection required under section 621;~~

~~(3) a detailed description of the methods used in such compliance inspection and in identifying out-~~

~~lets which were tested (the Secretary shall provide protections for the confidentiality of information provided under this paragraph);~~

~~(4) a detailed description of the strategies that the State intends to utilize in the current and succeeding years to make further progress on reducing the availability of tobacco products to individuals under 18 years of age; and~~

~~(5) the identity of a single State agency that is responsible for administering the requirements of title III in the State.~~

~~SEC. 623. REDUCTION IN STATE PAYMENTS.~~

~~(a) ANNUAL DETERMINATION.—Beginning with respect to the fifth full fiscal year after the date of enactment of this Act, and each fiscal year thereafter the Secretary shall make a determination as to whether each State has pursued all reasonably available measures to enforce the law described in section 621.~~

~~(b) PRESUMPTIVE FINDING.—The Secretary shall find presumptively that a State has not pursued all reasonably available measures to enforce the law described in section 621 if the Secretary determines that the State has not achieved the following compliance rate results based on the findings of the retail compliance inspections conducted under the State law:~~

~~(1) With respect to each of the fifth and sixth fiscal years following the date of enactment, 75 percent compliance with State law.~~

~~(2) With respect to each of the seventh through ninth fiscal years following the date of enactment, 85 percent compliance with State law.~~

~~(3) With respect to the tenth and each subsequent fiscal year following the date of enactment, 90 percent compliance with State law.~~

~~(c) AMOUNT OF REDUCTION.—~~

~~(1) IN GENERAL.—With respect to a State that the Secretary determines does not meet the compliance rates described in subsection (b), the Secretary may reduce the amount that the State may be eligible for under section 501. The amount of any such reduction shall not exceed an amount equal to 1 percent of the amount for which the State is eligible for under section 501 for the fiscal year involved for each 1 percentage point by which the State's compliance performance is below the applicable compliance rate.~~

~~(2) LIMITATION.—In no event shall the amount of any reduction under this section exceed an amount equal to 20 percent of the amount for which~~

~~the State is eligible for under section 501 for the fiscal year involved.~~

~~(3) REALLOTMENT.—The Secretary shall reallot any amounts withheld under this subsection to States with compliance rates that exceed the rates applicable under subsection (b) in amounts to be determined by the Secretary as appropriate to reward States with the highest compliance rates.~~

~~(d) REVIEW.—~~

~~(1) PETITION FOR RELEASE.—Not later than 90 days after the date on which a notice from the Secretary that the Secretary intends to make a reduction under subsection (c) is received, a State may petition the Secretary for a release and disbursement of such amount (referred to in this subsection as the "withhold amount"). The State shall give prompt written notice of such petition to the State attorney general.~~

~~(2) ACTION BY SECRETARY.—~~

~~(A) HOLDING AND INVESTING OF FUNDS.—Upon receipt of a petition under paragraph (1), the Secretary shall designate the withhold amount as subject to a petition and invest such amount in interest-bearing securities~~

~~of the United States subject to a final disposition of the petition.~~

~~(B) BASIS FOR DETERMINATION.—In considering a petition received under paragraph (1), the Secretary shall consider—~~

~~(i) whether the State has acted in good faith and in full compliance with the provisions of this Act (and the amendments made by this Act) and any regulations promulgated in furtherance of this Act;~~

~~(ii) whether the State has pursued all reasonably available measures to achieve the compliance rates applicable under subsection (b) and the goals of this Act for reducing the underage use of tobacco products;~~

~~(iii) whether there is any evidence of any direct or indirect action taken by the State to undermine the achievement of the compliance rates and goals described in clause (ii); and~~

~~(iv) any other evidence determined appropriate by the Secretary.~~

~~(C) BURDEN.—With respect to any action by the Secretary on a petition under paragraph (1), the burden shall be on the State to prove, by a preponderance of the evidence, that the State should be granted a release and disbursement under the petition.~~

~~(D) HEARING.—The Secretary shall hold a hearing, with notice and an opportunity to be heard provided to the attorney general of the State and to manufacturers, prior to making any determination as to a petition under paragraph (1).~~

~~(E) RELEASE OF FUNDS.—Upon a determination by the Secretary that the State has met the burden imposed under subparagraph (C) with respect to a petition, the Secretary shall disburse not to exceed 75 percent of the withhold amount (and any interest accrued on such amount) to the State. The Secretary may consider all relevant evidence in determining the amount to disburse to the State under this subparagraph.~~

~~(3) APPEALS.—~~

~~(A) IN GENERAL.—Any manufacturer or State attorney general aggrieved by a decision~~

~~of the Secretary under paragraph (2) may, within 30 days of the date of such decision, seek judicial review of the decision in the United States Court of Appeals for the District of Columbia Circuit. The provisions of sections 701 through 706 of title 5, United States Code, shall apply to appeals filed under this paragraph.~~

~~(B) LIMITATION.—No stay or other injunctive relief that has the effect of enjoining the withholding of amounts under this section shall be permitted during the pendency of an appeal filed under this paragraph.~~

~~(C) FINALITY.—The decision of the Court of Appeals in an action under this paragraph shall be final.~~

~~TITLE VII—PROVISIONS RELATING TO TOBACCO-RELATED CIVIL ACTIONS~~

~~SEC. 701. GENERAL IMMUNITY.~~

~~(a) STATE ATTORNEY GENERAL ACTIONS.—~~

~~(1) PENDING ACTIONS.—Civil actions that have been commenced by a State or local governmental entity, or on behalf of such an entity, against a manufacturer, distributor, or retailer that is a signa-~~

~~tory to the National Tobacco Control Protocol under section 612, and that are pending on the date of enactment of this Act are terminated.~~

~~(2) FUTURE ACTIONS.—A manufacturer, distributor or retailer that is a signatory to the National Tobacco Control Protocol under section 612 shall be immune from any civil action commenced after the date of enactment of this Act by a Federal, State, or local governmental entity, or on behalf of such an entity, for all claims arising from the use of a tobacco product.~~

~~(b) OTHER ACTIONS.—~~

~~(1) CLASS ACTIONS.—~~

~~(A) PENDING ACTIONS.—Class actions for claims arising from the use of a tobacco product that are pending against a manufacturer, distributor, or retailer that is a signatory to the National Tobacco Control Protocol under section 612, are terminated.~~

~~(B) FUTURE ACTIONS.—A manufacturer, distributor, or retailer that is a signatory to the National Tobacco Control Protocol under section 612 shall be immune from any class action commenced after the date of enactment of this~~

~~Act for all claims arising from the use of a tobacco product.~~

~~(2) ADDICTION AND DEPENDENCE CLAIMS.—~~

~~(A) PENDING ACTIONS.—Any civil action for claims based on addition to or dependence on a tobacco product that are pending against a manufacturer, distributor, or retailer that is a signatory to the National Tobacco Control Protocol under section 612, are terminated.~~

~~(B) FUTURE ACTIONS.—A manufacturer, distributor, or retailer that is a signatory to the National Tobacco Control Protocol under section 612 shall be immune from any civil action commenced after the date of enactment of this Act for all claims based on addition to or dependence on a tobacco product.~~

~~(c) PRESERVATION.—All personal injury claims arising from the use of a tobacco product by an individual shall be preserved.~~

~~SEC. 702. CIVIL LIABILITY FOR PAST CONDUCT.~~

~~(a) APPLICATION.—The provisions of this section shall apply to all civil actions permitted under section 701 for relief arising from the conduct of a manufacturer, distributor, or retailer that is a signatory to the National To-~~

~~bacco Control Protocol under section 612 that occurred prior to the date of enactment of this Act.~~

~~(b) PUNITIVE DAMAGES PROHIBITED.—No punitive damages shall be awarded in any claim described in subsection (a).~~

~~(c) INDIVIDUAL TRIALS.—No class action suits, joinder of parties, aggregation of claims, consolidation of actions, extrapolations, or other devices to resolve cases other than on the basis of individual actions shall be permitted without the consent of the defendant. Any defendant, in an action that involves a violation of this subsection, may remove such action to an appropriate Federal court.~~

~~(d) JOINT SHARING AGREEMENT.—As part of the National Tobacco Control Protocol under section 612, all signatories shall agree to the joint sharing of any civil liability for actions for damages arising from the use of tobacco products. Such signatories shall not be jointly and severally liable for damages involving nonsignatories. Actions involving both signatories and nonsignatories shall be severed.~~

~~(e) PERMISSIBLE PARTIES.—~~

~~(1) PLAINTIFFS.—The following individuals may be plaintiffs in a civil action to which this section applies:~~

~~(A) Individuals bringing claims, or claims derivative of such claims, on their own behalf for a tobacco-related injury, or the heirs of such individuals.~~

~~(B) Third-party payors for claims not based on subrogation that were pending on June 9, 1997.~~

~~(C) Third-party payors for claims based on subrogation of individual claims permitted under subparagraph (A).~~

~~(2) DEFENDANTS.—This section shall apply only to actions brought against a signatory of the National Tobacco Control Protocol under section 612, a successor or assign of such a signatory, any future fraudulent transferees, or any entity for suit designated to survive a defunct signatory. Such signatories shall be vicariously liable for the actions of their agents.~~

~~(f) REMOVAL.—Except as provided in subsection (c), there shall be no removal of a action to which this section applies.~~

~~(g) DISCOVERY.—The development, after the date of enactment of this Act, of any tobacco product that reduces the risk of injury or illness to a user shall not be admissible or discoverable.~~

~~(h) CAPS ON SETTLEMENTS.—~~

~~(1) AGGREGATE ANNUAL CAP.—With respect to a calendar year, the aggregate amount of all tobacco claims judgments or settlements to which this section applies, that the signatories of the National Tobacco Control Protocol under section 612 shall be required to pay, shall not exceed an amount equal to 33 percent of the annual payment required under section 402 for the year involved.~~

~~(2) PAYMENT OF EXCESS.—If the amount of the judgments and settlements described in paragraph (1) exceed an amount equal to 33 percent of the annual payment required under section 402 for the year involved, such excess amount shall be paid in the following year.~~

~~(3) AFFECT OF SETTLEMENT.—The signatories described in paragraph (1) shall receive a credit, to be applied against the amount owed by such signatories to the National Tobacco Settlement Trust Fund for the year involved, in an amount equal to 80 percent of the aggregate amounts paid under judgments or settlements of tobacco-related claims to which this section applies for such year.~~

~~(4) INDIVIDUAL CAP.—With respect to an action to which this section applies, any amount~~

~~awarded in excess of $1,000,000 may be paid in the year following the year in which the judgment or settlement was entered, except that this paragraph shall not apply if all other awards under judgments or settlements entered in the first year can be paid without exceeding the aggregate annual cap under paragraph (1). Such excess amount shall carry over from year to year with no payments in any single year exceeding $1,000,000 and no interest accruing on such amounts until such time as the annual aggregate cap is not exceeded.~~

~~(5) UNUSED PORTION OF CREDIT.—~~

~~(i) DEFENSE COSTS.—The signatories of the National Tobacco Control Protocol under section 612 shall be responsible for the payment of all attorneys' fees and other costs associated with being a defendant in an action to which this section applies.~~

~~SEC. 703. CIVIL LIABILITY FOR FUTURE CONDUCT.~~

~~(a) APPLICATION.—The provisions of this section shall apply to all civil actions permitted under section 701 for relief arising from the conduct of a manufacturer, distributor, or retailer that is a signatory to the National Tobacco Control Protocol under section 612 that occurs after the date of enactment of this Act.~~

~~(b) GENERAL PROVISIONS.—The provisions of subsections (c) and (e) through (i) of section 702 shall apply to actions under this section.~~

~~(c) THIRD-PARTY PAYOR CLAIMS.—Third-party payor claims that are not based on subrogation shall not be commenced under this section.~~

~~SEC. 704. NON-PARTICIPATING MANUFACTURERS.~~

~~The provisions of this title shall not apply to any manufacturer, distributor, or retailer that is not a signatory to the National Tobacco Control Protocol under section 612.~~

~~TITLE VIII—PUBLIC DISCLOSURE OF HEALTH RESEARCH~~

~~SEC. 801. PURPOSE.~~

~~It is the purpose of this title to provide for the disclosure of previously nonpublic or confidential documents by manufacturers of tobacco products, including the results of internal health research, and to provide for a procedure to settle claims of attorney-client privilege, work product, or trade secrets with respect to such documents.~~

~~SEC. 802. NATIONAL TOBACCO DOCUMENT DEPOSITORY.~~

~~(a) ESTABLISHMENT.—To be eligible to receive the protections provided under title VII, manufacturers of tobacco products, acting in conjunction with the Tobacco Institute and the Council for Tobacco Research, U.S.A.~~

~~(prior to the termination of such entities under section 155), shall, not later than 180 days after the date of enactment of this Act, establish and maintain a National Tobacco Document Depository (in this title referred to as the "Depository"). Such Depository shall be located in the Washington, D.C. area and be open to the public.~~

~~(b) USE OF DEPOSITORY.—The Depository shall be maintained in a manner that permits the Depository to be used as a resource for litigants, public health groups, and any other individuals who have an interest in the corporate records and research of the manufacturers concerning smoking and health, addiction or nicotine dependency, safer or less hazardous cigarettes, and underage tobacco use and marketing.~~

~~(c) CONTENTS.—The Depository shall include (and manufacturers and the Tobacco Institute and the Council for Tobacco Research, U.S.A. shall provide)—~~

~~(1) within 180 days of the date of enactment of this Act, all documents provided by such entities to plaintiffs in—~~

~~(A) civil or criminal actions brought by State attorneys general (including all documents selected by plaintiffs from the Guilford Repository of the United Kingdom);~~

~~(B) Philip Morris Companies Inc.'s defamation action against Capital Cities/American Broadcasting Company News;~~

~~(C) the Federal Trade Commission's investigation concerning Joe Camel and underage marketing;~~

~~(D) the *Haines* and *Cippollone* actions; and~~

~~(E) the *Butler* action in Mississippi;~~

~~(2) within 90 days after the date of enactment of this Act, any exiting documents discussing or referring to health research, addiction or dependency, safer or less hazardous cigarettes, studies of the smoking habits of minors, and the relationship between advertising or promotion and youth smoking, that the entities described in subsection (a) have not completed producing as required in the actions described in paragraph (1);~~

~~(3) within 180 days of the date of enactment of this Act, all documents relating to indices (as defined by the court in the Minnesota Attorney General action) of documents relating to smoking and health, including all indices identified by the manufacturers in the Washington, Texas, and Minnesota Attorney General actions;~~

~~(4) upon the settlement of any action referred to in this subsection, and after a good-faith, de novo, document-by-document review of all documents previously withheld from production in any actions on the grounds of attorney-client privilege, all documents determined to be outside of the scope of the privilege;~~

~~(5) all existing or future documents relating to original laboratory research concerning the health or safety of tobacco products, including all laboratory research results relating to methods used to make tobacco products less hazardous to consumers;~~

~~(6) a comprehensive new attorney-client privilege log of all documents, itemized in sufficient detail so as to enable any interested individual to determine whether the individual will challenge the claim of privilege, that the entities described in subsection (a) (based on the de novo review of such documents by such entities) claim are protected from disclosure under the attorney-client privilege;~~

~~(7) all existing or future documents relating to studies of the smoking habits of minors or documents referring to any relationship between advertising and promotion and underage smoking; and~~

~~(8) all other documents determined appropriate under regulations promulgated by the Secretary.~~

~~(d) DISPUTE RESOLUTION PANEL.—~~

~~(1) ESTABLISHMENT.—The Judicial Conference of the United States shall establish a Tobacco Documents Dispute Resolution Panel, to be composed of three Federal judges to be appointed by the Conference, to resolve all disputes involving claims of attorney-client, work product, or trade secrets privilege with respect to documents required to be deposited into the Depository under subsection (c) that may be brought by Federal, State, or local governmental officials or the public or asserted in any action by a manufacturer.~~

~~(2) BASIS FOR DETERMINATIONS.—The determinations of the Panel established under paragraph (1) shall be based on—~~

~~(A) the American Bar Association/American Law Institute Model Rules or the principals of Federal law with respect to attorney-client or work product privilege; and~~

~~(B) the Uniform Trade Secrets Act with respect to trade secrecy.~~

~~(3) DECISION.—Any decision of the Panel established under paragraph (1) shall be final and binding upon all Federal and State courts.~~

~~(4) ASSESSING OF FEES.—As part of a determination under this subsection, the Panel established under paragraph (1) shall determined whether a claimant of the privilege acted in good faith and had a factual and legal basis for asserting the claim. If the Panel determines that the claimant did not act in good faith, the Panel may assess costs against the claimant, including a reasonable attorneys' fee, and may apply such other sanctions as the Panel determines appropriate.~~

~~(5) ACCELERATED REVIEW.—The Panel established under paragraph (1) shall establish procedures for the accelerated review of challenges to a claim of privilege. Such procedures shall include assurances that an individual filing a challenge to such a claim need not make a prima facie showing of any kind as a prerequisite to an in camera review of the documents at issue.~~

~~(6) SPECIAL MASTERS.—The Panel established under paragraph (1) may appoint Special Masters in accordance with Rule 53 of the Federal Rules of Civil Procedure. The cost relating to any Special~~

~~Master shall be assessed to the manufacturers as part of a fee process to be established under regulations promulgated by the Secretary.~~

~~(e) OTHER PROVISIONS.—~~

~~(1) NO WAIVER OF PRIVILEGE.—Compliance with this section by the entities described in subsection (a) shall not be deemed to be a waiver on behalf of such entities of any applicable privilege or protection.~~

~~(2) AVOIDANCE OF DESTRUCTION.—In establishing the Depository, procedures shall be implemented to protect against the destruction of documents.~~

~~(3) DEEMED PRODUCED.—Any documents contained in the Depository shall be deemed to have been produced for purposes of any tobacco-related litigation in the United States.~~

~~(f) DOCUMENTS.—For purposes of this section, the term "documents" shall include any paper documents that may be printed using data that is contained in computer files.~~

~~TITLE IX—ASSISTANCE TO TOBACCO GROWERS AND COMMUNITIES~~

~~SEC. 901. SHORT TITLE.~~

~~This title may be cited as the "Long-Term Economic Assistance for Farmers Act" or the "LEAF Act".~~

~~SEC. 902. DEFINITIONS.~~

~~In this title:~~

~~(1) ACTIVE TOBACCO PRODUCER.—The term "active tobacco producer" means a quota holder, quota lessee, or quota tenant.~~

~~(2) QUOTA HOLDER.—The term "quota holder" means a producer that owns a farm for which a tobacco farm marketing quota or farm acreage allotment was established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1994, 1995, or 1996 crop years.~~

~~(3) QUOTA LESSEE.—The term "quota lessee" means—~~

~~(A) a producer that owns a farm that produced tobacco pursuant to a lease and transfer to that farm of all or part of a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment~~

~~Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1994, 1995, or 1996 crop years; or~~

~~(B) a producer that rented land from a farm operator to produce tobacco under a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1994, 1995, or 1996 crop years.~~

~~(4) QUOTA TENANT.—The term "quota tenant" means a producer who—~~

~~(A) is the principal producer, as determined by the Secretary, of tobacco on a farm where tobacco is produced pursuant to a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1994, 1995, or 1996 crop years; and~~

~~(B) is not a quota holder or quota lessee.~~

~~(5) SECRETARY.—The term "Secretary" means—~~

~~(A) in titles I and II, the Secretary of Agriculture; and~~

~~(B) in section 301, the Secretary of Labor.~~

~~(6) TOBACCO PRODUCT IMPORTER.—The term "tobacco product importer" has the meaning given the term "importer" in section 5702 of the Internal Revenue Code of 1986.~~

~~(7) TOBACCO PRODUCT MANUFACTURER.—~~

~~(A) IN GENERAL.—The term "tobacco product manufacturer" has the meaning given the term "manufacturer of tobacco products" in section 5702 of the Internal Revenue Code of 1986.~~

~~(B) EXCLUSION.—The term "tobacco product manufacturer" does not include a person that manufactures cigars or pipe tobacco.~~

~~(8) TRUST FUND.—The term "Trust Fund" means the Tobacco Community Revitalization Trust Fund established under section 101.~~

~~SUBTITLE A—TOBACCO COMMUNITY REVITALIZATION TRUST FUND~~

~~SEC. 911. ESTABLISHMENT OF TRUST FUND.~~

~~(a) IN GENERAL.—There is established in the Treasury of the United States a trust fund to be known as the "Tobacco Community Revitalization Trust Fund", consisting of such amounts as may be appropriated or credited to the Trust Fund. The Trust Fund shall be administered by the Secretary.~~

~~(b) TRANSFERS TO TRUST FUND.—There are appropriated and transferred to the Trust Fund for each fiscal year—~~

~~(1) amounts contributed by tobacco product manufacturers and tobacco product importers under section 102; and~~

~~(2) amounts made available to the Trust Fund out of funds allocated through national tobacco settlement legislation.~~

~~(c) REPAYABLE ADVANCES.—~~

~~(1) AUTHORIZATION.—There are authorized to be appropriated to the Trust Fund, as repayable advances, such sums as may from time to time be necessary to make expenditures under subsection (d).~~

~~(2) REPAYMENT WITH INTEREST.—Repayable advances made to the Trust Fund shall be repaid, and interest on the advances shall be paid, to the general fund of the Treasury when the Secretary of the Treasury determines that moneys are available in the Trust Fund to make the payments.~~

~~(3) RATE OF INTEREST.—Interest on an advance made under this subsection shall be at a rate determined by the Secretary of Treasury (as of the close of the calendar month preceding the month in which the advance is made) that is equal to the cur-~~

~~rent average market yield on outstanding marketable obligations of the United States with remaining period to maturity comparable to the anticipated period during which the advance will be outstanding.~~

~~(d) EXPENDITURES FROM TRUST FUND.—Amounts in the Trust Fund shall be available for making expenditures after October 1, 1998, to meet those necessary obligations of the Federal Government that are authorized to be paid under—~~

~~(1) section 201 for payments for lost tobacco quota for each of fiscal years 1999 through 2023, but not to exceed $1,600,000,000 for any fiscal year except to the extent the payments are made in accordance with section 201(j);~~

~~(2) section 202 for industry payments for all costs of the Department of Agriculture associated with the production of tobacco;~~

~~(3) section 203 for tobacco community economic development grants, but not to exceed—~~

~~(A) $400,000,000 for each of fiscal years 1999 through 2008, less any amount required to be paid under section 202 for the fiscal year; and~~

~~(B) $450,000,000 for each of fiscal year 2009 through 2023, less any amount required~~

~~to be paid under section 202 during the fiscal year;~~

~~(4) section 301 for assistance provided under the tobacco worker transition program, but not to exceed $50,000,000 for any fiscal year; and~~

~~(5) subpart 9 of part A of title IV of the Higher Education Act of 1965 for farmer opportunity grants, but not to exceed—~~

~~(A) $42,500,000 for each of the academic years 1999–2000 through 2003–2004;~~

~~(B) $50,000,000 for each of the academic years 2004–2005 through 2008–2009;~~

~~(C) $57,500,000 for each of the academic years 2009–2010 through 2013–2014;~~

~~(D) $65,000,000 for each of the academic years 2014–2015 through 2018–2019; and~~

~~(E) $72,500,000 for each of the academic years 2019–2020 through 2023–2024.~~

~~(c) BUDGETARY TREATMENT.—This section constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide payments to States and eligible persons in accordance with this title.~~

~~SEC. 912. CONTRIBUTIONS BY TOBACCO PRODUCT MANUFACTURERS AND IMPORTERS.~~

~~(a) DEFINITION OF MARKET SHARE.—In this section, the term "market share" means the ratio of—~~

~~(1) the tax liability of a tobacco product manufacturer or tobacco product importer (as defined in section 2) for a calendar year under section 5703 of the Internal Revenue Code of 1986; to~~

~~(2) the tax liability of all tobacco product manufacturers or tobacco product importers (as defined in section 2) for the calendar year under section 5703 of the Internal Revenue Code of 1986.~~

~~(b) DETERMINATIONS.—Not later than September 30 of each fiscal year, the Secretary of the Treasury shall—~~

~~(1) determine—~~

~~(A) the market share of each tobacco product manufacturer or tobacco product importer during the most recent calendar year;~~

~~(B) the total amount of assessments payable for the subsequent fiscal year under subsection (c); and~~

~~(C) the amount of an assessment payable by the tobacco product manufacturer or tobacco product importer for the fiscal year under subsection (d); and~~

~~(2) notify each tobacco product manufacturer and tobacco product importer of the determinations made under paragraph (1) with respect to the manufacturer or importer.~~

~~(c) TOTAL AMOUNT OF ASSESSMENTS.—~~

~~(1) IN GENERAL.—The total amount of assessments payable by all tobacco product manufacturers and tobacco product importers into the Trust Fund for a fiscal year shall be equal to—~~

~~(A) the amount of the contribution to the Trust Fund for the fiscal year required under paragraph (2); less~~

~~(B) any amount made available during the preceding fiscal year to the Trust Fund out of funds allocated through national tobacco settlement legislation.~~

~~(2) TRUST FUND CONTRIBUTIONS.—The amount of the contribution to the Trust Fund shall be—~~

~~(A) $2,100,000,000 for each of fiscal years 1999 through 2008;~~

~~(B) $500,000,000 for each of fiscal years 2009 through 2023; and~~

~~(C) for fiscal year 2024 and each subsequent fiscal year, the amount payable under section 202.~~

~~(d) INDIVIDUAL AMOUNT OF ASSESSMENTS.—The amount of an assessment payable by each tobacco product manufacturer and tobacco product importer into the Trust Fund for a fiscal year shall be equal to the product obtained by multiplying—~~

~~(1) the total amount of assessments payable by all tobacco product manufacturers and tobacco product importers for the fiscal year under subsection (c); by~~

~~(2) the market share of the tobacco product manufacturer or tobacco product importer during the most recent calendar year determined under subsection (b)(1)(A).~~

~~SUBTITLE B—AGRICULTURAL MARKET TRANSITION ASSISTANCE~~

~~SEC. 921. PAYMENTS FOR LOST TOBACCO QUOTA.~~

~~(a) IN GENERAL.—Beginning with the 1999 marketing year, the Secretary shall make payments for lost tobacco quota to eligible quota holders, quota lessees, and quota tenants as reimbursement for lost tobacco quota as~~

~~a result of a decrease in demand for domestically produced tobacco.~~

~~(b) ELIGIBILITY.—To be eligible to receive payments under this section, a quota holder, quota lessee, or quota tenant shall—~~

~~(1) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including information sufficient to make the demonstration required under paragraph (2); and~~

~~(2) demonstrate to the satisfaction of the Secretary that, with respect to the 1996 marketing year—~~

~~(A) the producer was a quota holder and realized income from the production of tobacco through—~~

~~(i) the active production of tobacco;~~

~~(ii) the lease and transfer of tobacco quota to another farm;~~

~~(iii) the rental of all or part of the farm of the quota holder, including the right to produce tobacco, to another tobacco producer; or~~

~~(iv) the hiring of a quota tenant to produce tobacco;~~

~~(B) the producer was a quota lessee; or~~

~~(C) the producer was a quota tenant.~~

~~(c) BASE QUOTA LEVEL.—~~

~~(1) IN GENERAL.—The Secretary shall determine, for each quota holder, quota lessee, and quota tenant, the base quota level for the 1994 through 1996 marketing years.~~

~~(2) QUOTA HOLDERS.—The base quota level for a quota holder shall be equal to the average tobacco farm marketing quota established for the farm owned by the quota holder for the 1994 through 1996 marketing years.~~

~~(3) QUOTA LESSEES.—The base quota level for a quota lessee shall be equal to—~~

~~(A) 50 percent of the average number of pounds of tobacco quota established for a farm for the 1994 through 1996 marketing years—~~

~~(i) that was leased and transferred to a farm owned by the quota lessee; or~~

~~(ii) for which the rights to produce the tobacco were rented to the quota lessee; less~~

~~(B) 25 percent of the average number of pounds of tobacco quota described in paragraph~~

~~(A) for which a quota tenant was the principal producer of the tobacco quota.~~

~~(4) QUOTA TENANTS.—The base quota level for a quota tenant shall be equal to the sum of—~~

~~(A) 50 percent of the average number of pounds of tobacco quota established for a farm for the 1994 through 1996 marketing years—~~

~~(i) that was owned by a quota holder; and~~

~~(ii) for which the quota tenant was the principal producer of the tobacco on the farm; and~~

~~(B) 25 percent of the average number of pounds of tobacco quota for the 1994 through 1996 marketing years—~~

~~(i)(I) that was leased and transferred to a farm owned by the quota lessee; or~~

~~(II) for which the rights to produce the tobacco were rented to the quota lessee; and~~

~~(ii) for which the quota tenant was the principal producer of the tobacco on the farm.~~

~~(5) MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—For each kind of tobacco for which~~

there is a marketing quota or allotment (on an acreage basis), the base quota level for each quota holder, quota lessee, or quota tenant shall be determined in accordance with this subsection (based on a poundage conversion) in an amount equal to the product obtained by multiplying—

(A) the average tobacco farm marketing quota or allotment for the 1994 through 1996 marketing years; by

(B) the average county yield per acre for the county in which the farm is located for the kind of tobacco for the marketing years.

(d) PAYMENTS.—Except as otherwise provided in this section, during any marketing year in which the national marketing quota for a kind of tobacco is less than the average national marketing quota level for the kind of tobacco for the 1994 through 1996 marketing years, the Secretary shall make payments for lost tobacco quota to each quota holder, quota lessee, and quota tenant that is eligible under subsection (b) in an amount that is equal to the product obtained by multiplying—

(1) the percentage by which the national marketing quota for the kind of tobacco is less than the average national marketing quota level for the kind

~~of tobacco for the 1994 through 1996 marketing years; by~~

~~(2) the base quota level for the quota holder, quota lessee, or quota tenant; by~~

~~(3) $4 per pound.~~

~~(e) LIFETIME LIMITATION ON PAYMENTS.—Except as otherwise provided in this section, the total amount of payments made under this section to a quota holder, quota lessee, or quota tenant during the lifetime of the holder, lessee, or tenant shall not exceed the product obtained by multiplying—~~

~~(1) the base quota level for the quota holder, quota lessee, or quota tenant; by~~

~~(2) $8 per pound.~~

~~(f) LIMITATIONS ON AGGREGATE ANNUAL PAYMENTS.—~~

~~(1) IN GENERAL.—Except as otherwise provided in this subsection, the total amount payable under this section for any marketing year shall not exceed $1,600,000,000.~~

~~(2) ACCELERATED PAYMENTS.—Paragraph (1) shall not apply if accelerated payments for lost tobacco quota are made in accordance with subsection (j).~~

~~(3) REDUCTIONS.—If the amount determined under subsection (d) for a marketing year exceeds the amount described in paragraph (1), the Secretary shall make a pro rata reduction in the amounts payable to quota holders, quota lessees, and quota tenants under this section to ensure that the total amount of the payments for lost tobacco quota does not exceed the limitation established under paragraph (1).~~

~~(4) ROLLOVER OF PAYMENTS FOR LOST TOBACCO QUOTA.—Subject to paragraph (1), if the Secretary makes a reduction in accordance with paragraph (3), the amount of the reduction shall be applied to the next marketing year and added to the payments for lost tobacco for the marketing year.~~

~~(g) SUBSEQUENT SALE AND TRANSFER OF QUOTA.—Effective beginning January 1, 1999, on the sale and transfer of a farm marketing quota under section 316(g) or 319(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b(g), 1314c(g))—~~

~~(1) the person who sold and transferred the quota shall have—~~

~~(A) the base quota level attributable to the person reduced by the base quota level attrib-~~

~~utable to the quota that is sold and transferred; and~~

~~(B) the lifetime limitation on payments established under subsection (e) attributable to the person reduced by the product obtained by multiplying—~~

~~(i) the base quota level attributable to the quota; by~~

~~(ii) $8 per pound; and~~

~~(2) the person who acquired the quota shall have—~~

~~(A) the base quota level attributable to the person increased by the base quota level attributable to the quota that was sold and transferred; and~~

~~(B) the lifetime limitation on payments established under subsection (e) attributable to the person—~~

~~(i) increased by the product obtained by multiplying—~~

~~(I) the base quota level attributable to the quota; by~~

~~(II) $8 per pound; but~~

~~(ii) decreased by any payments for lost tobacco quota previously made that~~

~~are attributable to the quota that was sold and transferred.~~

~~(h) SALE OR TRANSFER OF FARM.—On the sale or transfer of ownership of a farm that is owned by a quota holder, the base quota level established under subsection (c), the right to payments under subsection (d), and the lifetime limitation on payments established under subsection (e) shall transfer to the new owner of the farm to the same extent and in the same manner as those subsections applied to the previous quota holder.~~

~~(i) DEATH OF QUOTA LESSEE OR QUOTA TENANT.—If a quota lessee or quota tenant who is entitled to payments under this section dies and is survived by a spouse or 1 or more dependents, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the surviving dependents in equal shares.~~

~~(j) ACCELERATION OF PAYMENTS.—~~

~~(1) IN GENERAL.—On the occurrence of any of the events described in paragraph (2), the Secretary shall make an accelerated lump sum payment for lost tobacco quota to each quota holder, quota lessee, and quota tenant for any affected kind of tobacco in accordance with paragraph (3).~~

~~(2) TRIGGERING EVENTS.—The Secretary shall make accelerated payments under paragraph (1) if after the date of enactment of this title—~~

~~(A) for 3 consecutive marketing years, the national marketing quota for a kind of tobacco is less than 50 percent of the national marketing quota for the kind of tobacco for the 1996 marketing year; or~~

~~(B) Congress repeals or makes ineffective, directly or indirectly, any provision of—~~

~~(i) section 316(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b(g));~~

~~(ii) section 319(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314c(g));~~

~~(iii) section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445);~~

~~(iv) section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1); or~~

~~(v) section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2).~~

~~(3) AMOUNT.—The amount of the accelerated payments made to each quota holder, quota lessee,~~

~~and quota tenant under this subsection shall be equal to—~~

~~(A) the amount of the lifetime limitation established for the quota holder, quota lessee, or quota tenant under subsection (c); less~~

~~(B) any payments for lost tobacco quota received by the quota holder, quota lessee, or quota tenant before the occurrence of any of the events described in paragraph (2).~~

~~SEC. 922. INDUSTRY PAYMENTS FOR ALL DEPARTMENT COSTS ASSOCIATED WITH TOBACCO PRODUCTION.~~

~~(a) IN GENERAL.—The Secretary shall use such amounts as are necessary from the Trust Fund at the end of each fiscal year to reimburse the Secretary for—~~

~~(1) costs associated with the administration of programs established under this title and amendments made by this title;~~

~~(2) costs associated with the administration of the tobacco quota and price support programs administered by the Secretary;~~

~~(3) costs to the Federal Government of carrying out crop insurance programs for tobacco;~~

~~(4) costs associated with all agricultural research, extension, or education activities associated with tobacco;~~

~~(5) costs associated with the administration of loan association and cooperative programs for tobacco producers, as approved by the Secretary; and~~

~~(6) any other costs incurred by the Department of Agriculture associated with the production of tobacco.~~

~~(b) LIMITATIONS.—Amounts made available under subsection (a) may not be used—~~

~~(1) to provide direct benefits to quota holders, quota lessees, or quota tenants; or~~

~~(2) in a manner that results in a decrease, or an increase relative to other crops, in the amount of the crop insurance premiums assessed to active tobacco producers under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).~~

~~(c) DETERMINATIONS.—Not later than September 30, 1998, and each fiscal year thereafter, the Secretary shall determine—~~

~~(1) the amount of costs described in subsection (a); and~~

~~(2) the amount that will be provided under this section as reimbursement for the costs.~~

~~**SEC. 923. TOBACCO COMMUNITY ECONOMIC DEVELOPMENT GRANTS.**~~

~~(a) AUTHORITY.—The Secretary shall make grants to tobacco-growing States in accordance with this section to enable the States to carry out economic development initiatives in tobacco-growing communities.~~

~~(b) APPLICATION.—To be eligible to receive payments under this section, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including—~~

~~(1) a description of the activities that the State will carry out using amounts received under the grant;~~

~~(2) a designation of an appropriate State agency to administer amounts received under the grant; and~~

~~(3) a description of the steps to be taken to ensure that the funds are distributed in accordance with subsection (c).~~

~~(c) AMOUNT OF GRANT.—~~

~~(1) IN GENERAL.—From the amounts available to carry out this section for a fiscal year, the Secretary shall allot to each State an amount that bears the same ratio to the amounts available as the total income of the State derived from the production of~~

~~tobacco during the 1994 through 1996 marketing years (as determined under paragraph (2)) bears to the total income of all States derived from the production of tobacco during the 1994 through 1996 marketing years.~~

~~(2) TOBACCO INCOME.—For the 1994 through 1996 marketing years, the Secretary shall determine the amount of income derived from the production of tobacco in each State and in all States.~~

~~(d) PAYMENTS.—~~

~~(1) IN GENERAL.—A State that has an application approved by the Secretary under subsection (b) shall be entitled to a payment under this section in an amount that is equal to its allotment under subsection (c).~~

~~(2) FORM OF PAYMENTS.—The Secretary may make payments under this section to a State in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.~~

~~(3) REALLOTMENTS.—Any portion of the allotment of a State under subsection (c) that the Secretary determines will not be used to carry out this section in accordance with an approved State appli-~~

~~cation required under subsection (b), shall be reallotted by the Secretary to other States in proportion to the original allotments to the other States.~~

~~(c) USE AND DISTRIBUTION OF FUNDS.—~~

~~(1) IN GENERAL.—Amounts received by a State under this section shall be used to carry out economic development activities, including—~~

~~(A) rural business enterprise activities described in subsections (c) and (e) of section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932);~~

~~(B) down payment loan assistance programs that are similar to the program described in section 310E of the Consolidated Farm and Rural Development Act (7 U.S.C. 1935);~~

~~(C) activities designed to help create productive farm or off-farm employment in rural areas to provide a more viable economic base and enhance opportunities for improved incomes, living standards, and contributions by rural individuals to the economic and social development of tobacco communities;~~

~~(D) activities that expand existing infrastructure, facilities, and services to capitalize on opportunities to diversify economies in tobacco~~

~~communities and that support the development of new industries or commercial ventures;~~

~~(E) activities by agricultural organizations that provide assistance directly to active tobacco producers to assist in developing other agricultural activities that supplement tobacco-producing activities;~~

~~(F) initiatives designed to create or expand locally owned value-added processing and marketing operations in tobacco communities; and~~

~~(G) technical assistance activities by persons to support farmer-owned enterprises, or agriculture-based rural development enterprises, of the type described in section 252 or 253 of the Trade Act of 1974 (19 U.S.C. 2342, 2343).~~

~~(2) TOBACCO-GROWING COUNTIES.—Assistance may be provided by a State under this section only to assist a county in the State that has been determined by the Secretary to have in excess of $100,000 in income derived from the production of tobacco during 1 or more of the 1994 through 1996 marketing years.~~

~~(3) DISTRIBUTION.—~~

~~(A) ECONOMIC DEVELOPMENT ACTIVITIES.—Not less than 20 percent of the amounts~~

~~received by a State under this section shall be used to carry out—~~

~~(i) economic development activities described in subparagraph (E) or (F) of paragraph (1); or~~

~~(ii) agriculture-based rural development activities described in paragraph (1)(G).~~

~~(B) TECHNICAL ASSISTANCE ACTIVITIES.—Not less than 4 percent of the amounts received by a State under this section shall be used to carry out technical assistance activities described in paragraph (1)(G).~~

~~(C) TOBACCO-GROWING COUNTIES.—To be eligible to receive payments under this section, a State shall demonstrate to the Secretary that funding will be provided, during each 5-year period for which funding is provided under this section, for activities in each county in the State that has been determined under paragraph (2) to have in excess of $100,000 in income derived from the production of tobacco, in amounts that are at least equal to the product obtained by multiplying—~~

~~(i) the ratio that the tobacco production income in the county determined under paragraph (2) bears to the total tobacco production income for the State determined under subsection (c); by~~

~~(ii) 50 percent of the total amounts received by a State under this section during the 5-year period.~~

~~(f) PREFERENCES IN HIRING.—A State may require recipients of funds under this section to provide a preference in employment to—~~

~~(1) an individual who—~~

~~(A) during the 1996 calendar year, was employed in the manufacture, processing, or warehousing of tobacco or tobacco products, or resided, in a county described in subsection (c)(2); and~~

~~(B) is eligible for assistance under the tobacco worker transition program established under section 301; or~~

~~(2) an individual who—~~

~~(A) during the 1996 marketing year, carried out tobacco quota or relevant tobacco production activities in a county described in subsection (c)(2);~~

~~(B) is eligible for a farmer opportunity grant under subpart 9 of part A of title IV of the Higher Education Act of 1965; and~~

~~(C) has successfully completed a course of study at an institution of higher education.~~

~~SEC. 924. MODIFICATIONS IN FEDERAL TOBACCO PROGRAMS.~~

~~(a) PROGRAM REFERENDA.—Section 312(c) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1312(c)) is amended—~~

~~(1) by striking "(c) Within thirty" and inserting the following:~~

~~"(c) REFERENDA ON QUOTAS.—~~

~~"(1) IN GENERAL.—Not later than 30"; and~~

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

~~"(2) REFERENDA ON PROGRAM CHANGES.—~~

~~"(A) IN GENERAL.—In the case of any kind of tobacco for which marketing quotas are in effect, on the receipt of a petition from more than 5 percent of the producers of that kind of tobacco in a State, the Secretary shall conduct a statewide referendum on any proposal related to the lease and transfer of tobacco quota within a State requested by the petition that is authorized under this part.~~

~~"(B) APPROVAL OF PROPOSALS.—If a majority of producers of the kind of tobacco in the State approve a proposal in a referendum conducted under subparagraph (A), the Secretary shall implement the proposal in a manner that applies to all producers and quota holders of that kind of tobacco in the State.".~~

~~(b) PURCHASE REQUIREMENTS.—Section 320B of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314h) is amended—~~

~~(1) in subsection (c), by striking paragraph (1) and inserting the following:~~

~~"(1) 105 percent of the average market price for the kind of tobacco involved during the preceding marketing year; by"; and~~

~~(2) by striking subsection (d) and inserting the following:~~

~~"(d) USE OF PENALTY PAYMENTS.—An amount equivalent to each penalty collected by the Secretary under this section shall be transmitted by the Secretary to the Secretary of the Treasury for deposit in the Tobacco Community Revitalization Trust Fund established under section 101 of the LEAF Act.".~~

~~(c) ELIMINATION OF TOBACCO MARKETING ASSESSMENT.—~~

~~(1) IN GENERAL.—Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445(g)) is amended by striking subsection (g).~~

~~(2) CONFORMING AMENDMENT.—Section 422(c) of the Uruguay Round Agreements Act (Public Law 103–465; 7 U.S.C. 1445 note) is amended by striking "section 106(g), 106A, or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445(g), 1445–1, or 1445–2)" and inserting "section 106A or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–1, 1445–2)".~~

~~SUBTITLE C—FARMER AND WORKER TRANSITION ASSISTANCE~~

~~SEC. 931. TOBACCO WORKER TRANSITION PROGRAM.~~

~~(a) GROUP ELIGIBILITY REQUIREMENTS.—~~

~~(1) CRITERIA.—A group of workers (including workers in any firm or subdivision of a firm involved in the manufacture, processing, or warehousing of tobacco or tobacco products) shall be certified as eligible to apply for adjustment assistance under this section pursuant to a petition filed under subsection (b) if the Secretary of Labor determines that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the~~

firm have become totally or partially separated, or are threatened to become totally or partially separated, and—

(A) the sales or production, or both, of such firm or subdivision have decreased absolutely; and

(B) the implementation of the national tobacco settlement contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm or subdivision.

(2) DEFINITION OF CONTRIBUTED IMPORTANTLY.—In paragraph (1)(B), the term ''contributed importantly'' means a cause that is important but not necessarily more important than any other cause.

(3) REGULATIONS.—The Secretary shall issue regulations relating to the application of the criteria described in paragraph (1) in making preliminary findings under subsection (b) and determinations under subsection (c).

(b) PRELIMINARY FINDINGS AND BASIC ASSISTANCE.—

(1) FILING OF PETITIONS.—A petition for certification of eligibility to apply for adjustment assist-

~~ance under this section may be filed by a group of workers (including workers in any firm or subdivision of a firm involved in the manufacture, processing, or warehousing of tobacco or tobacco products) or by their certified or recognized union or other duly authorized representative with the Governor of the State in which such workers' firm or subdivision thereof is located.~~

~~(2) FINDINGS AND ASSISTANCE.—Upon receipt of a petition under paragraph (1), the Governor shall—~~

~~(A) notify the Secretary that the Governor has received the petition;~~

~~(B) within 10 days after receiving the petition—~~

~~(i) make a preliminary finding as to whether the petition meets the criteria described in subsection (a)(1); and~~

~~(ii) transmit the petition, together with a statement of the finding under clause (i) and reasons for the finding, to the Secretary for action under subsection (c); and~~

~~(C) if the preliminary finding under subparagraph (B)(i) is affirmative, ensure that~~

~~rapid response and basic readjustment services authorized under other Federal laws are made available to the workers.~~

~~(c) REVIEW OF PETITIONS BY SECRETARY; CERTIFICATIONS.—~~

~~(1) IN GENERAL.—The Secretary, within 30 days after receiving a petition under subsection (b)(2)(B)(ii), shall determine whether the petition meets the criteria described in subsection (a)(1). Upon a determination that the petition meets such criteria, the Secretary shall issue to workers covered by the petition a certification of eligibility to apply for the assistance described in subsection (d).~~

~~(2) DENIAL OF CERTIFICATION.—Upon the denial of a certification with respect to a petition under paragraph (1), the Secretary shall review the petition in accordance with the requirements of other applicable assistance programs to determine if the workers may be certified under such other provisions.~~

~~(d) COMPREHENSIVE ASSISTANCE.—~~

~~(1) IN GENERAL.—Workers covered by a certification issued by the Secretary under subsection (c)(1) shall be provided with benefits and services described in paragraph (2) in the same manner and~~

~~to the same extent as workers covered under a certification under subchapter A of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.), except that the total amount of payments under this section for any fiscal year shall not exceed $50,000,000.~~

~~(2) BENEFITS AND SERVICES.—The benefits and services described in this paragraph are the following:~~

~~(A) Employment services of the type described in section 235 of the Trade Act of 1974 (19 U.S.C. 2295).~~

~~(B) Training described in section 236 of the Trade Act of 1974 (19 U.S.C. 2296), except that notwithstanding the provisions of section 236(a)(2)(A) of such Act, the total amount of payments for training under this section for any fiscal year shall not exceed $25,000,000.~~

~~(C) Tobacco worker readjustment allowances, which shall be provided in the same manner as trade readjustment allowances are provided under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2291 et seq.), except that—~~

~~(i) the provisions of sections 231(a)(5)(C) and 231(c) of such Act (19~~

~~U.S.C. 2291(a)(5)(C), 2291(c)), authorizing the payment of trade readjustment allowances upon a finding that it is not feasible or appropriate to approve a training program for a worker, shall not be applicable to payment of allowances under this section; and~~

~~(ii) notwithstanding the provisions of section 233(b) of such Act (19 U.S.C. 2293(b)), in order for a worker to qualify for tobacco readjustment allowances under this section, the worker shall be enrolled in a training program approved by the Secretary of the type described in section 236(a) of such Act (19 U.S.C. 2296(a)) by the later of—~~

~~(I) the last day of the 16th week of such worker's initial unemployment compensation benefit period; or~~

~~(II) the last day of the 6th week after the week in which the Secretary issues a certification covering such worker.~~

~~In cases of extenuating circumstances relating to enrollment of a worker in a train-~~

~~ing program under this section, the Secretary may extend the time for enrollment for a period of not to exceed 30 days.~~

~~(D) Job search allowances of the type described in section 237 of the Trade Act of 1974 (19 U.S.C. 2297).~~

~~(E) Relocation allowances of the type described in section 238 of the Trade Act of 1974 (19 U.S.C. 2298).~~

~~(e) INELIGIBILITY OF INDIVIDUALS RECEIVING PAYMENTS FOR LOST TOBACCO QUOTA.—No benefits or services may be provided under this section to any individual who has received payments for lost tobacco quota under section 201.~~

~~(f) FUNDING.—Of the amounts in the Trust Fund, the Secretary may use not to exceed $50,000,000 for each of fiscal years 1999 through 2008 to provide assistance under this section.~~

~~(g) EFFECTIVE DATE.—This section shall take effect on the date that is the later of—~~

~~(1) October 1, 1998; or~~

~~(2) the date on which legislation implementing the national tobacco settlement is enacted.~~

(h) TERMINATION DATE.—No assistance, vouchers, allowances, or other payments may be provided under this section after the date that is the earlier of—

(1) the date that is 10 years after the effective date of this section under subsection (g); or

(2) the date on which legislation establishing a program providing dislocated workers with comprehensive assistance substantially similar to the assistance provided by this section becomes effective.

SEC. 932. FARMER OPPORTUNITY GRANTS.

Part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) is amended by adding at the end the following:

"Subpart 9—Farmer Opportunity Grants

"SEC. 420D. STATEMENT OF PURPOSE.

"It is the purpose of this subpart to assist in making available the benefits of postsecondary education to eligible students (determined in accordance with section 420F) in institutions of higher education by providing farmer opportunity grants to all eligible students.

"SEC. 420E. PROGRAM AUTHORITY; AMOUNT AND DETERMINATIONS; APPLICATIONS.

"(a) PROGRAM AUTHORITY AND METHOD OF DISTRIBUTION.—

~~"(1) PROGRAM AUTHORITY.—From amounts made available under section 101(d)(5) of the LEAF Act, the Secretary, during the period beginning July 1, 1999, and ending September 30, 2024, shall pay to each eligible institution such sums as may be necessary to pay to each eligible student (determined in accordance with section 420F) for each academic year during which that student is in attendance at an institution of higher education, as an undergraduate, a farmer opportunity grant in the amount for which that student is eligible, as determined pursuant to subsection (b). Not less than 85 percent of such sums shall be advanced to eligible institutions prior to the start of each payment period and shall be based upon an amount requested by the institution as needed to pay eligible students, except that this sentence shall not be construed to limit the authority of the Secretary to place an institution on a reimbursement system of payment.~~

~~"(2) CONSTRUCTION.—Nothing in this section shall be construed to prohibit the Secretary from paying directly to students, in advance of the beginning of the academic term, an amount for which the students are eligible, in cases where the eligible in-~~

~~stitution elects not to participate in the disbursement system required by paragraph (1).~~

~~"(3) DESIGNATION.—Grants made under this subpart shall be known as 'farmer opportunity grants'.~~

~~"(b) AMOUNT OF GRANTS.—~~

~~"(1) AMOUNTS.—~~

~~"(A) IN GENERAL.—The amount of the grant for a student eligible under this subpart shall be—~~

~~"(i) $1,700 for each of the academic years 1999–2000 through 2003–2004;~~

~~"(ii) $2,000 for each of the academic years 2004–2005 through 2008–2009;~~

~~"(iii) $2,300 for each of the academic years 2009–2010 through 2013–2014;~~

~~"(iv) $2,600 for each of the academic years 2014–2015 through 2018–2019; and~~

~~"(v) $2,900 for each of the academic years 2019–2020 through 2023–2024.~~

~~"(B) PART-TIME RULE.—In any case where a student attends an institution of higher education on less than a full-time basis (including a student who attends an institution of higher education on less than a half-time basis)~~

~~during any academic year, the amount of the grant for which that student is eligible shall be reduced in proportion to the degree to which that student is not so attending on a full-time basis, in accordance with a schedule of reductions established by the Secretary for the purposes of this subparagraph, computed in accordance with this subpart. Such schedule of reductions shall be established by regulation and published in the Federal Register.~~

~~"(2) MAXIMUM.—No grant under this subpart shall exceed the cost of attendance (as described in section 472) at the institution at which that student is in attendance. If, with respect to any student, it is determined that the amount of a grant exceeds the cost of attendance for that year, the amount of the grant shall be reduced to an amount equal to the cost of attendance at such institution.~~

~~"(3) PROHIBITION.—No grant shall be awarded under this subpart to any individual who is incarcerated in any Federal, State, or local penal institution.~~

~~"(c) PERIOD OF ELIGIBILITY FOR GRANTS.—~~

~~"(1) IN GENERAL.—The period during which a student may receive grants shall be the period required for the completion of the first undergraduate~~

~~baccalaureate course of study being pursued by that student at the institution at which the student is in attendance, except that any period during which the student is enrolled in a noncredit or remedial course of study as described in paragraph (2) shall not be counted for the purpose of this paragraph.~~

~~"(2) CONSTRUCTION.—Nothing in this section shall be construed to—~~

~~"(A) exclude from eligibility courses of study that are noncredit or remedial in nature and that are determined by the institution to be necessary to help the student be prepared for the pursuit of a first undergraduate baccalaureate degree or certificate or, in the case of courses in English language instruction, to be necessary to enable the student to utilize already existing knowledge, training, or skills; and~~

~~"(B) exclude from eligibility programs of study abroad that are approved for credit by the home institution at which the student is enrolled.~~

~~"(3) PROHIBITION.—No student is entitled to receive farmer opportunity grant payments concur-~~

~~rently from more than 1 institution or from the Secretary and an institution.~~

~~"(d) APPLICATIONS FOR GRANTS.—~~

~~"(1) IN GENERAL.—The Secretary shall from time to time set dates by which students shall file applications for grants under this subpart. The filing of applications under this subpart shall be coordinated with the filing of applications under section 401(c).~~

~~"(2) INFORMATION AND ASSURANCES.—Each student desiring a grant for any year shall file with the Secretary an application for the grant containing such information and assurances as the Secretary may deem necessary to enable the Secretary to carry out the Secretary's functions and responsibilities under this subpart.~~

~~"(e) DISTRIBUTION OF GRANTS TO STUDENTS.—Payments under this section shall be made in accordance with regulations promulgated by the Secretary for such purpose, in such manner as will best accomplish the purpose of this section. Any disbursement allowed to be made by crediting the student's account shall be limited to tuition and fees and, in the case of institutionally owned housing, room and board. The student may elect to have~~

the institution provide other such goods and services by crediting the student's account.

"(f) INSUFFICIENT FUNDING.—If, for any fiscal year, the funds made available to carry out this subpart from the Tobacco Community Revitalization Trust Fund are insufficient to satisfy fully all grants for students determined to be eligible under section 420F, the amount of the grant provided under subsection (b) shall be reduced on a pro rata basis among all eligible students.

"(g) TREATMENT OF INSTITUTIONS AND STUDENTS UNDER OTHER LAWS.—Any institution of higher education that enters into an agreement with the Secretary to disburse to students attending that institution the amounts those students are eligible to receive under this subpart shall not be deemed, by virtue of such agreement, to be a contractor maintaining a system of records to accomplish a function of the Secretary. Recipients of farmer opportunity grants shall not be considered to be individual grantees for purposes of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.).

"SEC. 420F. STUDENT ELIGIBILITY.

"(a) IN GENERAL.—In order to receive any grant under this subpart, a student shall—

"(1) be a member of a tobacco farm family in accordance with subsection (b);

~~"(2) be enrolled or accepted for enrollment in a degree, certificate, or other program (including a program of study abroad approved for credit by the eligible institution at which such student is enrolled) leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with section 487, and not be enrolled in an elementary or secondary school;~~

~~"(3) if the student is presently enrolled at an institution of higher education, be maintaining satisfactory progress in the course of study the student is pursuing in accordance with subsection (c);~~

~~"(4) not owe a refund on grants previously received at any institution of higher education under this title, or be in default on any loan from a student loan fund at any institution provided for in part D, or a loan made, insured, or guaranteed by the Secretary under this title for attendance at any institution;~~

~~"(5) file with the institution of higher education that the student intends to attend, or is attending, a document, that need not be notarized, but that shall include—~~

~~"(A) a statement of educational purpose stating that the money attributable to such~~

~~grant will be used solely for expenses related to attendance or continued attendance at such institution; and~~

~~"(B) such student's social security number; and~~

~~"(6) be a citizen of the United States.~~

~~"(b) TOBACCO FARM FAMILIES.—~~

~~"(1) IN GENERAL.—For the purpose of subsection (a)(1), a student is a member of a tobacco farm family if during calendar year 1996 the student was—~~

~~"(A) an individual who—~~

~~"(i) is an active tobacco producer (as defined in section 2 of the LEAF Act); or~~

~~"(ii) is otherwise actively engaged in the production of tobacco;~~

~~"(B) a spouse, son, daughter, stepson, or stepdaughter of an individual described in subparagraph (A);~~

~~"(C) an individual—~~

~~"(i) who was a brother, sister, stepbrother, stepsister, son-in-law, or daughter-in-law of an individual described in subparagraph (A); and~~

~~"(ii) whose principal place of residence was the home of the individual described in subparagraph (A); or~~

~~"(D) an individual who was a dependent (within the meaning of section 152 of the Internal Revenue Code of 1986) of an individual described in subparagraph (A).~~

~~"(2) ADMINISTRATION.—On request, the Secretary of Agriculture shall provide to the Secretary such information as is necessary to carry out this subsection.~~

~~"(c) SATISFACTORY PROGRESS.—~~

~~"(1) IN GENERAL.—For the purpose of subsection (a)(3), a student is maintaining satisfactory progress if—~~

~~"(A) the institution at which the student is in attendance reviews the progress of the student at the end of each academic year, or its equivalent, as determined by the institution; and~~

~~"(B) the student has at least a cumulative C average or its equivalent, or academic standing consistent with the requirements for graduation, as determined by the institution, at the end of the second such academic year.~~

~~"(2) SPECIAL RULE.—Whenever a student fails to meet the eligibility requirements of subsection (a)(3) as a result of the application of this subsection and subsequent to that failure the student has academic standing consistent with the requirements for graduation, as determined by the institution, for any grading period, the student may, subject to this subsection, again be eligible under subsection (a)(3) for a grant under this subpart.~~

~~"(3) WAIVER.—Any institution of higher education at which the student is in attendance may waive paragraph (1) or (2) for undue hardship based on—~~

~~"(A) the death of a relative of the student;~~

~~"(B) the personal injury or illness of the student; or~~

~~"(C) special circumstances as determined by the institution.~~

~~"(d) STUDENTS WHO ARE NOT SECONDARY SCHOOL GRADUATES.—In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate, to be eligible for any assistance under this subpart, the student shall meet either 1 of the following standards:~~

~~"(1) EXAMINATION.—The student shall take an independently administered examination and shall achieve a score, specified by the Secretary, demonstrating that such student can benefit from the education or training being offered. Such examination shall be approved by the Secretary on the basis of compliance with such standards for development, administration, and scoring as the Secretary may prescribe in regulations.~~

~~"(2) DETERMINATION.—The student shall be determined as having the ability to benefit from the education or training in accordance with such process as the State shall prescribe. Any such process described or approved by a State for the purposes of this section shall be effective 6 months after the date of submission to the Secretary unless the Secretary disapproves such process. In determining whether to approve or disapprove such process, the Secretary shall take into account the effectiveness of such process in enabling students without secondary school diplomas or the recognized equivalent to benefit from the instruction offered by institutions utilizing such process, and shall also take into account the cultural diversity, economic circumstances, and~~

educational preparation of the populations served by the institutions.

"(e) SPECIAL RULE FOR CORRESPONDENCE COURSES.—A student shall not be eligible to receive a grant under this subpart for a correspondence course unless such course is part of a program leading to an associate, bachelor, or graduate degree.

"(f) COURSES OFFERED THROUGH TELECOMMUNICATIONS.—

"(1) RELATION TO CORRESPONDENCE COURSES.—A student enrolled in a course of instruction at an eligible institution of higher education (other than an institute or school that meets the definition in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)(C))) that is offered in whole or in part through telecommunications and leads to a recognized associate, bachelor, or graduate degree conferred by such institution shall not be considered to be enrolled in correspondence courses unless the total amount of telecommunications and correspondence courses at such institution equals or exceeds 50 percent of such courses.

"(2) RESTRICTION OR REDUCTIONS OF FINANCIAL AID.—A student's eligibility to receive a grant

~~under this subpart may be reduced if a financial aid officer determines under the discretionary authority provided in section 479A that telecommunications instruction results in a substantially reduced cost of attendance to such student.~~

~~"(3) DEFINITION.—For the purposes of this subsection, the term 'telecommunications' means the use of television, audio, or computer transmission, including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, computer conferencing, or video cassettes or discs, except that such term does not include a course that is delivered using video cassette or disc recordings at such institution and that is not delivered in person to other students of that institution.~~

~~"(g) STUDY ABROAD.—Nothing in this subpart shall be construed to limit or otherwise prohibit access to study abroad programs approved by the home institution at which a student is enrolled. An otherwise eligible student who is engaged in a program of study abroad approved for academic credit by the home institution at which the student is enrolled shall be eligible to receive a grant under this subpart, without regard to whether such study abroad program is required as part of the student's degree program.~~

~~"(h) VERIFICATION OF SOCIAL SECURITY NUMBER.—The Secretary, in cooperation with the Commissioner of Social Security, shall verify any social security number provided by a student to an eligible institution under subsection (a)(5)(B) and shall enforce the following conditions:~~

~~"(1) PENDING VERIFICATION.—Except as provided in paragraphs (2) and (3), an institution shall not deny, reduce, delay, or terminate a student's eligibility for assistance under this subpart because social security number verification is pending.~~

~~"(2) DENIAL OR TERMINATION.—If there is a determination by the Secretary that the social security number provided to an eligible institution by a student is incorrect, the institution shall deny or terminate the student's eligibility for any grant under this subpart until such time as the student provides documented evidence of a social security number that is determined by the institution to be correct.~~

~~"(3) CONSTRUCTION.—Nothing in this subsection shall be construed to permit the Secretary to take any compliance, disallowance, penalty, or other regulatory action against—~~

~~"(A) any institution of higher education with respect to any error in a social security~~

~~number, unless such error was a result of fraud on the part of the institution; or~~

~~"(B) any student with respect to any error in a social security number, unless such error was a result of fraud on the part of the student.".~~

~~SUBTITLE D—IMMUNITY~~

~~SEC. 941. GENERAL IMMUNITY FOR TOBACCO PRODUCERS AND WAREHOUSERS.~~

~~Notwithstanding any other provision of this title, an active tobacco producer, tobacco-related growers association, or tobacco warehouse owner or employee may not be subject to liability in any Federal or State court for any cause of action resulting from the failure of any tobacco product manufacturer, distributor, or retailer to comply with national tobacco settlement legislation.~~

~~TITLE X—EFFECTIVE DATES AND OTHER PROVISIONS~~

~~SEC. 1001. EFFECTIVE DATES.~~

~~(a) IN GENERAL.—Except as provided in subsection (b), and as otherwise provided in this Act, the provisions of this Act shall take effect on the date of enactment of this Act.~~

~~(b) EXCEPTIONS.—The following provisions shall become effective as follows:~~

~~(1) The retail tobacco product display provisions under subtitle A of title I shall be applicable to retailers on the date that is 9 months after the date of enactment of this Act.~~

~~(2) The provisions relating to the display of tobacco product signs and displays by retailers under subtitle A of title I shall be applicable to retailers on the date that is 5 months after the date of enactment of this Act.~~

~~(3) The provisions of subtitle A of title I relating to advertising shall be applicable on the date that is 9 months after the date of enactment of this Act.~~

~~(4) The labeling requirements of subtitle A of title I and of chapter 9 of the Federal Food, Drug and Cosmetic Act (as added by section 143(3) of this Act) shall be applicable (as determined under regulations promulgated by the Secretary) with respect to—~~

~~(A) ⅓ of all tobacco product packages, on the date that is 90 days after the date of enactment of this Act;~~

~~(B) ⅓ of all tobacco product packages, on the date that is 120 days after the date of enactment of this Act; and~~

~~(C) ⅓ of all tobacco product packages, on the date that is 180 days after the date of enactment of this Act.~~

~~(5) The provisions of section 105 relating to the sponsorship of events shall be applicable on December 31, 1998.~~

~~(6) The provisions of section 121 shall be applicable on the date that is 3 months after the date of enactment of this Act.~~

~~(7) The provisions of section 122 relating to vending machines shall be applicable on the date that is 12 months after the date of enactment of this Act.~~

~~(8) The provisions of section 122 relating to minimum package size shall be applicable on the date that is 3 months after the date of enactment of this Act.~~

~~(9) The provisions of section 122 relating to vending machines shall be applicable on the date that is 12 months after the date of enactment of this Act.~~

~~(10) The provisions of section 122 relating to sampling shall be applicable on the date that is 3 months after the date of enactment of this Act.~~

~~(11) The provisions of section 909 of the Federal Food, Drug and Cosmetic Act (as added by section 143(3) of this Act) relating to good manufacturing practices shall be applicable on the date that is 24 months after the date of enactment of this Act or on a date determined appropriate by the Secretary.~~

~~(12) The provisions of subtitle F of title I relating to corporate compliance shall be applicable on the date that is 12 months after the date of enactment of this Act.~~

~~SEC. 1002. NATIVE AMERICANS.~~

~~(a) INDIAN COUNTRY.—The provisions of this Act (or an amendment made by this Act) shall apply to the manufacture, distribution, and sale of tobacco products within Indian country.~~

~~(b) INDIAN TRIBES.—To the extent that an Indian tribe or tribal organization engages in the manufacture, distribution, or sale of tobacco products, the provisions of this Act (or an amendment made by this Act) shall apply to such tribe or organization.~~

~~(c) PAYMENTS TO TRUST FUND.—Any Indian tribe or tribal organization that engages in the manufacturer of tobacco products shall be subject to liability under section 402, or shall be considered a non-participating manu-~~

~~facturer for purposes of section 613, and shall be subject to surcharges under section 205.~~

~~(d) APPLICATION OF FDA REQUIREMENTS.—~~

~~(1) IN GENERAL.—The Secretary shall promulgate regulations to provide for the application of the requirements of the Food, Drug and Cosmetic Act to tobacco products manufactured, distributed, or sold within Indian country.~~

~~(2) ELIGIBILITY FOR ASSISTANCE.—Under the regulations promulgated under paragraph (1), the Secretary may provide assistance to an Indian tribe or tribal organization in meeting and enforcing the requirements under such regulations if—~~

~~(A) the tribe or organization has a governing body that has powers and carries out duties that are similar to the powers and duties of State or local governments;~~

~~(B) the functions to be exercised through the use of such assistance relate to activities on lands within the jurisdiction of the tribe or organization; and~~

~~(C) the tribe or organization is reasonably expected to be capable of carrying out the functions required by the Secretary.~~

~~(e) RETAIL LICENSING REQUIREMENTS.—~~

~~(1) IN GENERAL.—The requirements of subtitle D of title I shall apply to retailers that sell tobacco products within Indian country.~~

~~(2) SELF-REGULATION.—The Secretary shall promulgate regulations to permit the Indian tribe or tribal organization with jurisdiction over the lands involved to implement a tribal licensing program that is at least as strict as the program in operation in the State in which the land involved is located.~~

~~(3) IMPLEMENTATION BY SECRETARY.—If the Secretary determines that the Indian tribe or tribal organization is not qualified to administer the requirements of subtitle D of title I, the Secretary shall implement such requirements on behalf of the tribe or organization or delegate such authority to the State involved.~~

~~(f) ELIGIBILITY FOR PUBLIC HEALTH PAYMENTS.—~~

~~(1) IN GENERAL.—Except as provided in paragraph (2), an Indian tribe or tribal organization shall be considered a State for purposes of eligibility under title V.~~

~~(2) PUBLIC HEALTH PROGRAM.—~~

~~(A) IN GENERAL.—Each State that receives a payment under section 502 shall set-aside an appropriate portion, as determined~~

~~under regulations prescribed by the Secretary, of such payment for use by Indian tribes or tribal organizations within the State.~~

~~(B) AMOUNT.—The amount of any funds under subparagraph for which an Indian tribe or tribal organization is eligible shall be determined by the State based on the proportion of the registered members of the tribe involved as compared to the total population of all such registered members in the State.~~

~~(C) USE.—Amounts provided to a tribe or organization under this paragraph shall be used as provided for in section 504 and in accordance with a plan submitted by the tribe or organization and approved by the Secretary as being in compliance with this Act.~~

~~(D) REALLOTMENT.—Any amounts set-aside and not expended under this paragraph shall be reallotted among other eligible tribes and organizations.~~

~~(g) OBLIGATION OF MANUFACTURERS.—~~

~~(1) PROHIBITION.—A manufacturer shall not engage in any activity within Indian country that is otherwise prohibited under this Act (or an amendment made by this Act).~~

~~(2) LIMITATION ON SALE.—A manufacturer shall not sell or otherwise distribute a tobacco product for subsequent manufacture, distribution, or sale to an Indian tribe or tribal organization, or provide such products to a manufacturer, distributor, or retailer that is subject to the jurisdiction of a tribe or organization, except under the same terms and conditions as the manufacturer imposes on other manufacturers, distributors, or retailers.~~

~~(h) DEFINITIONS.—In this section:~~

~~(1) INDIAN COUNTRY.—The term "Indian country" has the meaning given such term by section 1151 of title 18, United States Code.~~

~~(2) INDIAN TRIBE.—The term "Indian tribe" has the meaning given to such term by section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).~~

~~(3) TRIBAL ORGANIZATION.—The term "tribal organization" has the meaning given such term in section 4 of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b).~~

~~SEC. 1003. PREEMPTION.~~

~~(a) GENERAL PREEMPTION.—Except as otherwise provided for in this section, nothing in this Act shall be construed as prohibiting a State from imposing require-~~

~~ments, prohibitions, penalties or other measures to further the purposes of this Act that are in addition to the requirements, prohibitions, or penalties required under this Act. To the extent not inconsistent with the purposes of this Act, State and local governments may impose additional tobacco product control measures to further restrict or limit the use of such products by minors.~~

~~(b) ENFORCEMENT.—A State may not impose obligations or requirements relating to the enforcement of this Act in a manner that conflicts with the provisions of title VI.~~

~~(c) PUBLIC EXPOSURE TO SMOKE.—Nothing in title III shall be construed to preempt or otherwise affect any other Federal, State or local law which provides greater protection from the health hazards of environmental tobacco smoke.~~

~~(d) TAXES.—Nothing in this Act shall be construed to prohibit a State from imposing taxes on tobacco products or tobacco product manufacturers, distributors, or retailers.~~

~~(e) NATIVE AMERICANS.—Except as provided in section 902, a State may not impose obligations or requirements relating to the application of this Act to Indian tribes and tribal organizations.~~

1 ***SECTION 1. SHORT TITLE; TABLE OF CONTENTS.***

2 *(a) SHORT TITLE.—This Act may be cited as the "Na-*
3 *tional Tobacco Policy and Youth Smoking Reduction Act".*

4 *(b) TABLE OF CONTENTS.—The table of contents for*
5 *this Act is as follows:*

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Purpose.
Sec. 4. Scope and effect.
Sec. 5. Non-preemption of more restrictive laws.
Sec. 6. Definitions.
Sec. 7. Notification if youthful cigarette smoking restrictions increase youthful pipe and cigar smoking.
Sec. 8. Liability limitations disappear if manufacturers challenge advertising limits.
Sec. 9. FTC jurisdiction not affected.
Sec. 10. Congressional review provisions.

TITLE I—REGULATION OF THE TOBACCO INDUSTRY

Subtitle A—Jurisdiction, Etc., of Food and Drug Administration

Sec. 101. Amendment of Federal Food, Drug, and Cosmetic Act of 1938.

"CHAPTER IX—TOBACCO PRODUCTS

"Sec. 901. FDA authority over tobacco products
"Sec. 902. Adulterated tobacco products.
"Sec. 903. Misbranded tobacco products.
"Sec. 904. Submission of health information to the Secretary.
"Sec. 905. Registration.
"Sec. 906. General provisions respecting control of tobacco products.
"Sec. 907. Performance standards.
"Sec. 908. Notification and other remedies
"Sec. 909. Records and reports on tobacco products.
"Sec. 910. Premarket review of certain tobacco products.
"Sec. 911. Judicial review.
"Sec. 912. Postmarket surveillance
"Sec. 913. Reduced risk tobacco products.
"Sec. 914. Preservation of State and local authority.
"Sec. 915. Tobacco Products Scientific Advisory Committee.
"Sec. 916. Equal treatment of retail outlets.
Sec. 102. Conforming and other amendments to general provisions.

Subtitle B—Advertising

Sec. 121. Advertising provisions in protocol.
Sec. 122. Tobacco product labeling and advertising .
Sec. 123. Point-of-sale restrictions.

TITLE II—REDUCTIONS IN UNDERAGE TOBACCO USE

Subtitle A—Underage Use

Sec. 201. Goals for reducing underage tobacco use.
[Sec. 202. Look-back assessment.]
Sec. 203. Substantial non-attainment of required reductions.
Sec. 204. Definitions.

Subtitle B—State Enforcement Incentives

[Sec. 211. Compliance bonus fund.]
Sec. 212. Block grants.
Sec. 213. State enforcement incentives.
Sec. 214. Conforming change.

Subtitle C—Other Programs

Sec. 221. National smoking cessation program.
Sec. 222. National tobacco-free public education program.
Sec. 223. National community action program.
Sec. 224. State retail licensing program.

TITLE III—TOBACCO PRODUCT WARNINGS AND SMOKE CONSTITUENT DISCLOSURE

Subtitle A—Product Warnings, Labeling and Packaging

Sec. 301. Cigarette label and advertising warnings.
"Sec. 4. Labeling.
Sec. 302. Authority to revise cigarette warning label statements.
Sec. 303. Smokeless tobacco labels and advertising warnings.
"Sec. 3. Smokeless tobacco warning.
Sec. 304. Authority to revise smokeless tobacco product warning label statements.
Sec. 305. Tar, nicotine, and other smoke constituent disclosure to the public.

Subtitle B—Testing and Reporting of Tobacco Product Smoke Constituents

Sec. 311. Regulation requirement.

TITLE IV—NATIONAL TOBACCO SETTLEMENT TRUST FUND

[Subtitle A—General Payment Provisions

[Sec. 401. Establishment of trust fund.
[Sec. 402. State litigation settlement account.
[Sec. 403. Payments by industry
[Sec. 404. Adjustments.
[Sec. 405. Tax treatment of payments.
[Sec. 406. Enforcement for nonpayment.
[Sec. 407. Administrative provisions.]

Subtitle B—General Spending Provisions

Sec. 411. Implementing and enforcement funds.
[Sec. 412. Improving child care and early childhood development.]

TITLE V—STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE

Sec. 501. Definitions.
Sec. 502. Smoke-free environment policy.
Sec. 503. Citizen actions.
Sec. 504. Preemption.
Sec. 505. Regulations.
Sec. 506. Effective date.
Sec. 507. State choice.

TITLE VI—APPLICATION TO INDIAN TRIBES

Sec. 601. Short title.
Sec. 602. Findings and purposes.
Sec. 603. Application of tobacco-related provisions to native Americans.
Sec. 604. State tobacco excise tax compliance.

TITLE VII—CIVIL LIABILITY OF MANUFACTURERS OF TOBACCO PRODUCTS

Sec. 701. Definitions.
Sec. 702. Application.
Sec. 703. Preemption and relationship to other law.
Sec. 704. Governmental claims and Castano civil actions.
Sec. 705. Concurrent jurisdiction; Federal cause of action; actions; damages; liability.
Sec. 706. Payment of tobacco claim settlements and judgments.
Sec. 707. Attorney's fees and expenses.
Sec. 708. Non-participating manufacturers.
Sec. 709. Conforming amendments.

TITLE VIII—TOBACCO INDUSTRY COMPLIANCE AND EMPLOYEE PROTECTION FROM REPRISALS

Sec. 801. Tobacco industry compliance accountability requirements.
Sec. 802. Tobacco product manufacturer employee protection.

TITLE IX—PUBLIC DISCLOSURE OF TOBACCO INDUSTRY DOCUMENTS

Sec. 901. Findings.
Sec. 902. Applicability.
Sec. 903. National Tobacco Document Depository.
Sec. 904. Privilege and trade secret claims.
Sec. 905. Disclosure by the depository.
Sec. 906. National Tobacco Documents Review Board.
Sec. 907. Resolution of disputed privilege and trade secret claims.
Sec. 908. Appeal of board decision.
Sec. 909. Miscellaneous.
Sec. 910. Penalties.
Sec. 911. Definitions.

TITLE X—LONG-TERM ECONOMIC ASSISTANCE FOR FARMERS

Sec. 1001. Short title.
Sec. 1002. Definitions.

[*Subtitle A—Tobacco Community Revitalization Trust Fund*

[*Sec. 1011. Establishment of trust fund.*
[*Sec. 1012. Contributions by tobacco product manufacturers and importers.*]

Subtitle B—Tobacco Market Transition Assistance

Sec. 1021. Payments for lost tobacco quota.
Sec. 1022. Industry payments for all department costs associated with tobacco production.
Sec. 1023. Tobacco community economic development grants.
Sec. 1024. Flue-cured tobacco production permits.
"Sec. 317a. Flue-cured tobacco production permits.
Sec. 1025. Modifications in federal tobacco programs.

Subtitle C—Farmer and Worker Transition Assistance

Sec. 1031. Tobacco worker transition program.
Sec. 1032. Farmer opportunity grants.

"Subpart 9—Farmer Opportunity Grants

"Sec. 420d. Statement of purpose.
"Sec. 420e. Program authority; amount and determinations; applications.
"Sec. 420f. Student eligibility.

Subtitle D—Immunity

Sec. 1041. General immunity for tobacco producers and tobacco warehouse owners.

TITLE XI—MISCELLANEOUS

Subtitle A—Prohibitions Relating to Tobacco Products and Children

Sec. 1101. Short title.
Sec. 1102. Prohibitions relating to tobacco products and children.
"Sec. 804. Prohibition on sale or distribution of tobacco products to children.
"Sec. 805. Labeling.
Sec. 1103. Enforcement.
Sec. 1104. Reward.
Sec. 1105. Definitions.
Sec. 1106. Amendments to Public Health Service Act.

"TITLE XXVIII—NATIONAL EFFORTS TO REDUCE YOUTH SMOKING

"Subtitle E—Reducing Youth Smoking and Tobacco-Related Diseases Through Research

"Sec. 2801. Study by the Institute of Medicine.
"Sec. 2802. National tobacco task force.
"Sec. 2803. Research activities of the Centers for Disease Control and Prevention.
"Sec. 2804. Research activities of the National Institutes of Health.
Sec. 1107. Ban on distribution of tobacco products produced by child labor.

Subtitle B—Federal Licensing of Tobacco Product Distribution

Sec. 1121. Licensing of Tobacco Product Distribution.

Subtitle C—International Provisions

[*Sec. 1131. International tobacco control trust fund.*]
Sec. 1131. International enforcement.
Sec. 1132. American center on global health and tobacco.
Sec. 1133. Prohibition on use of funds to facilitate the exportation or promotion of tobacco.
[Sec. 1134. Harmonization with United States international commitments and obligations.]

Subtitle D—Prevention of Tobacco Smuggling

Sec. 1141. Definitions.
Sec. 1142. Tobacco product labeling requirements.
Sec. 1143. Requirements for the tracking of tobacco products.
Sec. 1144. Tobacco product permits.
Sec. 1145. Prohibitions.
Sec. 1146. Pricing and labeling of products sold on military installations or by native Americans.
Sec. 1147. Prohibition against sale of tobacco products in or to duty-free shops or forwarding through or manufacture in trade zones.
Sec. 1148. Jurisdiction; penalties; compromise of liability.
Sec. 1149. Amendments to the Contraband Cigarette Trafficking Act.
Sec. 1150. Authorization of appropriations.

Subtitle E—Antitrust Exemption

Sec. 1161. Limited Antitrust Exemption.

Subtitle F—Special Provisions Concerning Programs for Women, Minorities, and Others

Sec. 1171. Research related to patterns of smoking by women and minorities.
Sec. 1172. Counter-advertising programs.
Sec. 1173. Prevention activities of community and migrant health centers.

Subtitle G—Sense of the Senate

Sec. 1181. Sense of the Senate.

Subtitle H—Ban On Sale Of Tobacco Products Through The Use Of Vending Machines

Sec. 1191. Ban of sale of tobacco products through the use of vending machines.

[TITLE XII—TOBACCO ASBESTOS TRUST FUND

[Sec. 1201. Definitions.
[Sec. 1202. Tobacco Asbestos Trust Fund.
[Sec. 1203. Payments from fund I.
[Sec. 1204. Payments from fund II.
[Sec. 1205. Transfers from National Tobacco Settlement Trust Fund.
[Sec. 1206. Rules for claims against asbestos trusts, asbestos defendants, and tobacco companies.]

TITLE XIII—VETERANS' BENEFITS

Sec. 1301. Recovery by secretary of veterans affairs.

"PART VII—RECOVERY OF COMPENSATION COSTS FOR TOBACCO-RELATED DISABILITY OR DEATH

"CHAPTER 91—TORT LIABILITY FOR DISABILITY OR DEATH DUE TO TOBACCO USE

"§ 9101. Recovery by Secretary of Veterans Affairs
"§ 9102. Regulations
"§ 9103. Limitation or repeal of other provisions for recovery of compensation
"§ 9104. Exemption from annual limitation on damages

TITLE XIV—REVENUE AND OTHER PROVISIONS

Subtitle A—Taxes on Tobacco Products

Sec. 1400. Amendment of 1986 Code.
Sec. 1401. Taxes on tobacco products.
Sec. 1402. Excise tax on failure to meet underage smoking reduction goals.
Sec. 1403. Establishment of Trust Fund.

Subtitle B—Women's Health and Cancer Rights

Sec. 1411. Short title.
Sec. 1412. Findings.
Sec. 1413. Amendments to the Employee Retirement Income Security Act of 1974.
Sec. 1414. Amendments to the Public Health Service Act relating to the group market.
Sec. 1415. Amendment to the Public Health Service Act relating to the individual market.
Sec. 1416. Amendments to the Internal Revenue Code of 1986.
Sec. 1417. Research study on the management of breast cancer.

Subtitle C—Limitations Applicable to Other Provisions

Sec. 1421. Limitations on expenditures and obligations.
Sec. 1422. Limitation on user fees.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The use of tobacco products by the Nation's children is a pediatric disease of epic and worsening proportions that results in new generations of tobacco-dependent children and adults.

(2) A consensus exists within the scientific and medical communities that tobacco products are inher-

ently dangerous and cause cancer, heart disease, and other serious adverse health effects.

(3) Nicotine is an addictive drug.

(4) Virtually all new users of tobacco products are under the minimum legal age to purchase such products.

(5) Tobacco advertising and marketing contribute significantly to the use of nicotine-containing tobacco products by adolescents.

(6) Because past efforts to restrict advertising and marketing of tobacco products have failed adequately to curb tobacco use by adolescents, comprehensive restrictions on the sale, promotion, and distribution of such products are needed.

(7) Federal and State governments have lacked the legal and regulatory authority and resources they need to address comprehensively the public health and societal problems caused by the use of tobacco products.

(8) Federal and State public health officials, the public health community, and the public at large recognize that the tobacco industry should be subject to ongoing oversight.

(9) Under Article I, Section 8 of the Constitution, the Congress is vested with the responsibility for

regulating interstate commerce and commerce with Indian tribes.

(10) The sale, distribution, marketing, advertising, and use of tobacco products are activities in and substantially affecting interstate commerce. Such products are sold, marketed, advertised, and distributed in interstate commerce on a nationwide basis, and have a substantial effect on the Nation's economy.

(11) The sale, distribution, marketing, advertising, and use of such products substantially affect interstate commerce through the health care and other costs attributable to the use of tobacco products.

(12) Civil actions against tobacco product manufacturers and others are pending in Federal and State courts arising from the use, marketing, and sale of tobacco products. Among these actions are cases brought by the attorneys general of more than 40 States, certain cities and counties, and the Commonwealth of Puerto Rico, and other parties, including Indian tribes, and class actions brought by private claimants (such as in the Castano Civil Actions), seeking to recover monies expended to treat tobacco-related diseases and for the protection of minors and consumers, as well as penalties and other relief for violations of

antitrust, health, consumer protection, and other laws.

(13) Civil actions have been filed throughout the United States against tobacco product manufacturers and their distributors, trade associations, law firms, and consultants on behalf of individuals or classes of individuals claiming to be dependent upon and injured by tobacco products.

(14) These civil actions are complex, time-consuming, expensive, and burdensome for both the litigants and Federal and State courts. To date, these civil actions have not resulted in sufficient redress for smokers or non-governmental third-party payers. To the extent that governmental entities have been or may in the future be compensated for tobacco-related claims they have brought, it is not now possible to identify what portions of such past or future recoveries can be attributed to their various antitrust, health, consumer protection, or other causes of action.

(15) It is in the public interest for Congress to adopt comprehensive public health legislation because of tobacco's unique position in the Nation's history and economy; the need to prevent the sale, distribution, marketing and advertising of tobacco products to persons under the minimum legal age to purchase

such products; and the need to educate the public, especially young people, regarding the health effects of using tobacco products.

(16) The public interest requires a timely, fair, equitable, and consistent result that will serve the public interest by (A) providing that a portion of the costs of treatment for diseases and adverse health effects associated with the use of tobacco products is borne by the manufacturers of these products, and (B) restricting throughout the Nation the sale, distribution, marketing, and advertising of tobacco products only to persons of legal age to purchase such products.

(17) Public health authorities estimate that the benefits to the Nation of enacting Federal legislation to accomplish these goals would be significant in human and economic terms.

(18) Reducing the use of tobacco by minors by 50 percent would prevent well over 60,000 early deaths each year and save up to $43 billion each year in reduced medical costs, improved productivity, and the avoidance of premature deaths.

(19) Advertising, marketing, and promotion of tobacco products have been especially directed to attract young persons to use tobacco products and these efforts have resulted in increased use of such products

by youth. Past efforts to oversee these activities have not been successful in adequately preventing such increased use.

(20) In 1995, the tobacco industry spent close to $4,900,000,000 to attract new users, retain current users, increase current consumption, and generate favorable long-term attitudes toward smoking and tobacco use.

(21) Tobacco product advertising often misleadingly portrays the use of tobacco as socially acceptable and healthful to minors.

(22) Tobacco product advertising is regularly seen by persons under the age of 18, and persons under the age of 18 are regularly exposed to tobacco product promotional efforts.

(23) Through advertisements during and sponsorship of sporting events, tobacco has become strongly associated with sports and has become portrayed as an integral part of sports and the healthy lifestyle associated with rigorous sporting activity.

(24) Children are exposed to substantial and unavoidable tobacco advertising that leads to favorable beliefs about tobacco use, plays a role in leading young people to overestimate the prevalence of tobacco

use, and increases the number of young people who begin to use tobacco.

(25) Tobacco advertising increases the size of the tobacco market by increasing consumption of tobacco products including increasing tobacco use by young people.

(26) Children are more influenced by tobacco advertising than adults, they smoke the most advertised brands, and children as young as 3 to 6 years old can recognize a character associated with smoking at the same rate as they recognize cartoons and fast food characters.

(27) Tobacco company documents indicate that young people are an important and often crucial segment of the tobacco market.

(28) Comprehensive advertising restrictions will have a positive effect on the smoking rates of young people.

(29) Restrictions on advertising are necessary to prevent unrestricted tobacco advertising from undermining legislation prohibiting access to young people and providing for education about tobacco use.

(30) International experience shows that advertising regulations that are stringent and comprehensive have a greater impact on overall tobacco use and

young people's use than weaker or less comprehensive ones. Text-only requirements, while not as stringent as a ban, will help reduce underage use of tobacco products while preserving the informational function of advertising.

(31) It is in the public interest for Congress to adopt legislation to address the public health crisis created by actions of the tobacco industry.

(32) If, as a direct or indirect result of this Act, the consumption of tobacco products in the United States is reduced significantly, then tobacco farmers, their families, and their communities may suffer economic hardship and displacement, notwithstanding their lack of involvement in the manufacturing and marketing of tobacco products.

SEC. 3. PURPOSE.

The purposes of this Act are—

(1) to confirm the authority of the Food and Drug Administration to regulate tobacco products under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), by recognizing it as the primary Federal regulatory authority with respect to the manufacture, marketing, and distribution of tobacco products;

(2) to require the tobacco industry to fund both Federal and State oversight of the tobacco industry from on-going payments by tobacco product manufacturers;

(3) to require tobacco product manufacturers to provide ongoing funding to be used for an aggressive Federal, State, and local enforcement program and for a nationwide retail licensing system to prevent minors from obtaining tobacco products, while expressly permitting the States to adopt additional measures that further restrict or eliminate the products' use;

(4) to ensure that the Food and Drug Administration and the States may continue to address issues of particular concern to public health officials, especially the use of tobacco by young people and dependence on tobacco;

(5) to impose severe financial surcharges on tobacco product manufacturers if they do not substantially reduce tobacco use by young people during the next decade;

(6) to authorize appropriate agencies of the Federal government to set national standards controlling the manufacture of tobacco products and the identity,

public disclosure, and amount of ingredients used in such products;

(7) to provide new and flexible enforcement authority to ensure that the tobacco industry makes efforts to develop and introduce less harmful tobacco products;

(8) to confirm the Food and Drug Administration's authority to regulate the levels of tar, nicotine, and other harmful components of tobacco products;

(9) in order to ensure that adults are better informed, to require tobacco product manufacturers to disclose all research which has not previously been made available, as well as research generated in the future, relating to the health and dependency effects or safety of tobacco products;

(10) to impose on tobacco product manufacturers the obligation to provide funding for a variety of public health initiatives;

(11) to establish a minimum Federal standard for stringent restrictions on smoking in public places, with funding to enforce such standard derived from payments made by tobacco product manufacturers, while also to permit State, Tribal, and local governments to enact additional and more stringent stand-

ards or elect not to be covered by the Federal standard;

(12) to authorize and fund from payments by tobacco product manufacturers a continuing national counter-advertising and tobacco control campaign which seeks to educate consumers and discourage children and adolescents from beginning to use tobacco products, and which encourages current users of tobacco products to discontinue using such products;

(13) to establish a mechanism to compensate the States in settlement of their various claims against tobacco product manufacturers;

(14) to authorize and to fund from payments by tobacco product manufacturers a nationwide program of smoking cessation administered through State and Tribal governments and the private sector;

(15) to establish and fund from payments by tobacco product manufacturers a National Tobacco Settlement Fund;

(16) to affirm the rights of individuals to access to the courts, to civil trial by jury, and to damages to compensate them for harm caused by tobacco products;

(17) to continue to permit the sale of tobacco products to adults in conjunction with measures to

ensure that they are not sold or accessible to underage purchasers;

(18) to impose appropriate regulatory controls on the tobacco industry; and

(19) to protect tobacco farmers and their communities from the economic impact of this Act by providing full funding for and the continuation of the Federal tobacco program and by providing funds for farmers and communities to develop new opportunities in tobacco-dependent communities.

SEC. 4. SCOPE AND EFFECT.

(a) INTENDED EFFECT.—This Act is not intended to—

(1) establish a precedent with regard to any other industry, situation, circumstance, or legal action;

(2) express any position of the Congress with regard to the imposition of punitive damages in general or as applied to any specific industry, case, controversy, or product other than as provided in this Act;

(3) provide any authority regarding the imposition of, or the appropriateness of imposing, punitive damages; or

(4) except as provided in this Act, affect any action pending in State, Tribal, or Federal court, or

any agreement, consent decree, or contract of any kind.

(b) TAXATION.—Notwithstanding any other provision of law, this Act and the amendments made by this Act shall not affect any authority of the Secretary of the Treasury (including any authority assigned to the Bureau of Alcohol, Tobacco and Firearms) or of State or local governments with regard to taxation for tobacco or tobacco products.

(c) AGRICULTURAL ACTIVITIES.—The provisions of this Act which authorize the Secretary to take certain actions with regard to tobacco and tobacco products shall not be construed to affect any authority of the Secretary of Agriculture under existing law regarding the growing, cultivation, or curing of raw tobacco.

SEC. 5. NON-PREEMPTION OF MORE RESTRICTIVE LAWS.

(a) AGE RESTRICTIONS.—Nothing in this Act or the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), as amended by this Act, shall prevent a Federal agency (including the Armed Forces), a State or its political subdivisions, or the government of an Indian tribe from adopting and enforcing additional measures that further restrict or prohibit tobacco product sale to, use by, and accessibility to persons under the legal age of purchase established by such agency, State, subdivision, or government of an Indian tribe.

(b) ADDITIONAL MEASURES.—Except as otherwise expressly provided in this Act, nothing in this Act, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), or rules promulgated under such Acts, shall limit the authority of a Federal agency (including the Armed Forces), a State or its political subdivisions, or the government of an Indian tribe to enact, adopt, promulgate, and enforce any law, rule, regulation, or other measure with respect to tobacco products, including laws, rules, regulations, or other measures relating to or prohibiting the sale, distribution, possession, exposure to, or use of tobacco products by persons of any age that are in addition to the provisions of this Act and the amendments made by this Act. No provision of this Act or amendment made by this Act shall limit or otherwise affect any State, Tribal, or local taxation of tobacco products.

(c) STATE LAW NOT AFFECTED.—Except as otherwise expressly provided in this Act, nothing in this Act, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), or rules promulgated under such Acts, shall supersede the authority of the States, pursuant to State law, to expend funds provided by this Act.

SEC. 6. DEFINITIONS.

In this Act:

(1) BRAND.—The term "brand" means a variety of tobacco product distinguished by the tobacco used, tar content, nicotine content, flavoring used, size, filtration, or packaging, logo, registered trademark or brand name, identifiable pattern of colors, or any combination of such attributes.

(2) CIGARETTE.—The term "cigarette" has the meaning given that term by section 3(1) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(1)), but also includes tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette or as roll-your-own tobacco.

(3) CIGARETTE TOBACCO.—The term "cigarette tobacco" means any product that consists of loose tobacco that is intended for use by consumers in a cigarette. Unless otherwise stated, the requirements for cigarettes shall also apply to cigarette tobacco.

(4) COMMERCE.—The term "commerce" has the meaning given that term by section 3(2) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(2)).

(5) CONSENT DECREE.—The term "consent decree" means a consent decree among participating tobacco product manufacturers whose substantive terms are substantially equivalent to the form consent decree published for purposes of this paragraph in the Congressional Record.

(6) DISTRIBUTOR.—The term "distributor" as regards a tobacco product means any person who furthers the distribution of cigarette or smokeless tobacco, whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption. Common carriers are not considered distributors for purposes of this Act.

(7) INDIAN COUNTRY; INDIAN LANDS.—The terms "Indian country" and "Indian lands" have the meaning given the term "Indian country" by section 1151 of title 18, United States Code, and includes lands under the jurisdiction of an Indian tribe or tribal organization.

(8) INDIAN TRIBE.—The term "Indian tribe" has the meaning given such term in section 4(e) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(9) LITTLE CIGAR.—The term "little cigar" has the meaning given that term by section 3(7) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(7)).

(10) TOBACCO PRODUCT MANUFACTURER.—Except in title VII, the term "tobacco product manufacturer" means any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a finished cigarette or smokeless tobacco product.

(11) NICOTINE.—The term "nicotine" means the chemical substance named 3-(1-Methyl-2-pyrrolidinyl) pyridine or C[10]H[14]N[2], including any salt or complex of nicotine.

(12) PACKAGE.—The term "package" means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane), in which cigarettes or smokeless tobacco are offered for sale, sold, or otherwise distributed to consumers.

(13) POINT-OF-SALE.—The term "point-of-sale" means any location at which a consumer can purchase or otherwise obtain cigarettes or smokeless tobacco for personal consumption.

(14) RETAILER.—The term "retailer" means any person who sells cigarettes or smokeless tobacco to in-

dividuals for personal consumption, or who operates a facility where self-service displays of tobacco products are permitted.

(15) ROLL-YOUR-OWN TOBACCO.—The term "roll-your-own tobacco" means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

(16) SECRETARY.—Except in title VII and where the context otherwise requires, the term "Secretary" means the Secretary of Health and Human Services.

(17) SMOKELESS TOBACCO.—The term "smokeless tobacco" means any product that consists of cut, ground, powdered, or leaf tobacco that contains nicotine and that is intended to be placed in the oral cavity.

(18) STATE.—The term "State" means any State of the United States and, for purposes of this Act, includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

(19) TOBACCO PRODUCT.—The term "tobacco product" means cigarettes, cigarette tobacco, smokeless tobacco, little cigars, roll-your-own tobacco, and fine cut products.

(20) UNITED STATES.—The term "United States" means the 50 States of the United States of America and the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

(21) MASTER SETTLEMENT AGREEMENT.— The term "Master Settlement Agreement" means the agreement either previously entered or to be entered into by the States, the participating tobacco product manufacturers, and the Trade Associations implementing the June 20, 1997, Proposed Resolution, and published in the Congressional Record for purposes of this Act.

(22) PARTICIPATING TOBACCO PRODUCT MANUFACTURER.— The term "participating tobacco product manufacturer" means—

(A) a tobacco product manufacturer that, within 45 days after the date of enactment of

this Act (or within 45 days after the date on which such manufacturer first manufactures tobacco products for sale or distribution in the United States, if such date is after the date of enactment of this Act)—

(i) becomes a signatory to the Master Settlement Agreement; and

(ii) enters into consent decrees with each State that made a request within the time period described in section 704(b); or

(B) a surviving entity established by a participating tobacco product manufacturer.

(23) NON-PARTICIPATING TOBACCO PRODUCT MANUFACTURER.— The term "non-participating tobacco product manufacturer" means a tobacco product manufacturer that is not a participating tobacco product manufacturer.

(24) PROTOCOL.— The term "Protocol" means the agreement to be entered into by the Secretary of Health and Human Services with the participating tobacco product manufacturers under this Act.

(25) NATIONAL TOBACCO SETTLEMENT TRUST FUND.—The term "National Tobacco Settlement Trust Fund" means the trust

fund established in section 9512 of the Internal Revenue Code of 1986.

SEC. 7. NOTIFICATION IF YOUTHFUL CIGARETTE SMOKING RESTRICTIONS INCREASE YOUTHFUL PIPE AND CIGAR SMOKING.

The Secretary shall notify the Congress if the Secretary determines that a decrease in underage use of tobacco products resulting from the enactment of this Act has produced an increase in underage use of pipe tobacco and cigars.

SEC. 8. LIABILITY LIMITATIONS DISAPPEAR IF TOBACCO PRODUCT MANUFACTURER CHALLENGES ADVERTISING LIMITS.

If a tobacco product manufacturer, or any party acting on behalf of, in collusion with, or at the request of, a tobacco product manufacturer brings an action to have the advertising restrictions imposed on tobacco products under this Act, or the amendments made by this Act, or the application of those regulations to any person or circumstance held to be unconstitutional or otherwise invalid under the laws of the United States then the provisions of title VII relating to limitations on liability shall not apply to that manufacturer, beginning on the date on which the action is filed in a court of competent jurisdiction, and continuing until such time as the action is withdrawn or dismissed.

SEC. 9. FTC JURISDICTION NOT AFFECTED.

(a) IN GENERAL.—Except where expressly provided in this Act, nothing in this Act shall be construed as limiting or diminishing the authority of the Federal Trade Commission to enforce the laws under its jurisdiction with respect to the advertising, sale, or distribution of tobacco products.

(b) ENFORCEMENT BY FTC.—Any advertising that violates this Act, part 897 of title 21, Code of Federal Regulations, or the Protocol is an unfair or deceptive act or practice under section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) and shall be considered a violation of a rule promulgated under section 18 of that Act (15 U.S.C. 57a).

SEC. 10. CONGRESSIONAL REVIEW PROVISIONS.

In accordance with section 801 of title 5, United States Code, the Congress shall review, and may disapprove, any rule under this Act that is subject to section 801. This section does not apply to the rule set forth in part 897 of title 21, Code of Federal Regulations.

TITLE I—REGULATION OF THE TOBACCO INDUSTRY

Subtitle A—Jurisdiction, etc., of Food and Drug Administration

SEC. 101. AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT OF 1938.

(a) DEFINITION OF TOBACCO PRODUCTS.—Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

"(kk) The term 'tobacco product' means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product).".

(b) FDA AUTHORITY OVER TOBACCO PRODUCTS.—The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) is amended—

(1) by redesignating chapter IX as chapter X;

(2) by redesignating sections 901 through 907 as sections 1001 through 1007; and

(3) by inserting after section 803 the following:

"CHAPTER IX—TOBACCO PRODUCTS

"SEC. 901. FDA AUTHORITY OVER TOBACCO PRODUCTS.

"(a) IN GENERAL.—Tobacco products shall be regulated by the Secretary under this chapter and shall not be subject to the provisions of chapter V, unless—

"(1) such products are intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease (within the meaning of section 201(g)(1)(B) or section 201(h)(2)); or

"(2) a health claim is made for such products under section 201(g)(1)(C) or 201(h)(3).

"(b) APPLICABILITY.—This chapter shall apply to all tobacco products subject to the provisions of part 897 of title 21, Code of Federal Regulations, and to any other tobacco products that the Secretary by regulation deems to be subject to this chapter.

"(c) FDA RULE IN EFFECT.—The provisions of part 897 of title 21, Code of Federal Regulations, shall be deemed to be lawful and to have been lawfully promulgated under the authority of this chapter. The provisions of such part that are not in effect on the date of enactment of this chapter shall take effect as in such part or upon such later date as determined by the Secretary by order.

"(d) SCOPE.—

"(1) Nothing in this chapter shall be construed to affect the regulation of drugs and devices under chapter V that are not tobacco products by the Secretary under the Federal Food, Drug and Cosmetic Act.

"(2) The provisions of this chapter shall not apply to tobacco leaf that is not in the possession of the manufacturer, or to the producers of tobacco leaf, including tobacco growers, tobacco warehouses, and tobacco grower cooperatives, nor shall any employee of the Food and Drug Administration have any authority whatsoever to enter onto a farm owned by a producer of tobacco leaf without the written consent of such producer. Notwithstanding any other provision of this subparagraph, if a producer of tobacco leaf is also a tobacco product manufacturer or controlled by a tobacco product manufacturer, the producer shall be subject to this chapter in the producer's capacity as a manufacturer. Nothing in this chapter shall be construed to grant the Secretary authority to promulgate regulations on any matter that involves the production of tobacco leaf or a producer thereof, other than activities by a manufacturer affecting production. For purposes of the preceding sentence, the term 'controlled by' means a member of the same controlled

group of corporations as that term is used in section 52(a) of the Internal Revenue Code of 1986, or under common control within the meaning of the regulations promulgated under section 52(b) of such Code.

"SEC. 902. ADULTERATED TOBACCO PRODUCTS.

"A tobacco product shall be deemed to be adulterated if—

"(1) it consists in whole or in part of any filthy, putrid, or decomposed substance, or is otherwise contaminated by any poisonous or deleterious substance that may render the product injurious to health;

"(2) it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health;

"(3) its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

"(4) it is, or purports to be or is represented as, a tobacco product which is subject to a performance standard established under section 907 unless such tobacco product is in all respects in conformity with such standard;

"(5) it is required by section 910(a) to have premarket approval, is not exempt under section 906(f), and does not have an approved application in effect;

"(6) the methods used in, or the facilities or controls used for, its manufacture, packing or storage are not in conformity with applicable requirements under section 906(e)(1) or an applicable condition prescribed by an order under section 906(e)(2); or

"(7) it is a tobacco product for which an exemption has been granted under section 906(f) for investigational use and the person who was granted such exemption or any investigator who uses such tobacco product under such exemption fails to comply with a requirement prescribed by or under such section.

"SEC. 903. MISBRANDED TOBACCO PRODUCTS.

"(a) IN GENERAL.—A tobacco product shall be deemed to be misbranded—

"(1) if its labeling is false or misleading in any particular;

"(2) if in package form unless it bears a label containing—

"(A) the name and place of business of the tobacco product manufacturer, packer, or distributor; and

"(B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count,

except that under subparagraph (B) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary;

"(3) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements or designs in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

"(4) if it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name prominently printed in type as required by the Secretary by regulation;

"(5) if the Secretary has issued regulations requiring that its labeling bear adequate directions for use, or adequate warnings against use by children, that are necessary for the protection of users unless its labeling conforms in all respects to such regulations;

"(6) if it was manufactured, prepared, propagated, compounded, or processed in any State in an establishment not duly registered under section 905(b), if it was not included in a list required by section 905(i), if a notice or other information respecting it was not provided as required by such section or section 905(j), or if it does not bear such symbols from the uniform system for identification of tobacco products prescribed under section 905(e) as the Secretary by regulation requires;

"(7) if, in the case of any tobacco product distributed or offered for sale in any State—

"(A) its advertising is false or misleading in any particular; or

"(B) it is sold, distributed, or used in violation of regulations prescribed under section 906(d);

"(8) unless, in the case of any tobacco product distributed or offered for sale in any State, the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that tobacco product—

"(A) a true statement of the tobacco product's established name as defined in paragraph (4) of this subsection, printed prominently; and

"(B) a brief statement of—

"(i) the uses of the tobacco product and relevant warnings, precautions, side effects, and contraindications; and

"(ii) in the case of specific tobacco products made subject to a finding by the Secretary after notice and opportunity for comment that such action is necessary to protect the public health, a full description of the components of such tobacco product or the formula showing quantitatively each ingredient of such tobacco product to the extent required in regulations which shall be issued by the Secretary after an opportunity for a hearing;

"(9) if it is a tobacco product subject to a performance standard established under section 907, unless it bears such labeling as may be prescribed in such performance standard; or

"(10) if there was a failure or refusal—

"(A) to comply with any requirement prescribed under section 904 or 908;

"(B) to furnish any material or information required by or under section 909; or

"(C) to comply with a requirement under section 912.

"(b) PRIOR APPROVAL OF STATEMENTS ON LABEL.—The Secretary may, by regulation, require prior approval of statements made on the label of a tobacco product. No regulation issued under this subsection may require prior approval by the Secretary of the content of any advertisement and no advertisement of a tobacco product, published after the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act shall, with respect to the matters specified in this section or covered by regulations issued hereunder, be subject to the provisions of sections 12 through 15 of the Federal Trade Commission Act (15 U.S.C. 52 through 55). This subsection does not apply to any printed matter which the Secretary determines to be labeling as defined in section 201(m).

"SEC. 904. SUBMISSION OF HEALTH INFORMATION TO THE SECRETARY.

"(a) REQUIREMENT.—Not later than 6 months after the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act, each tobacco product manufacturer or importer of tobacco products, or agents thereof, shall submit to the Secretary the following information:

"(1) A listing of all tobacco ingredients, substances and compounds that are, on such date, added by the manufacturer to the tobacco, paper, filter, or other component of each tobacco product by brand and by quantity in each brand and subbrand.

"(2) A description of the content, delivery, and form of nicotine in each tobacco product measured in milligrams of nicotine.

"(3) All documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) on the health, behavioral, or physiologic effects of tobacco products, their constituents, ingredients, and components, and tobacco additives, described in paragraph (1).

"(4) All documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer that relate to the issue of whether a reduction in risk to health from tobacco products can occur upon the employment of technology available or known to the manufacturer.

"(5) All documents (including underlying scientific information) relating to marketing research involving the use of tobacco products.

An importer of a tobacco product not manufactured in the United States shall supply the information required of a tobacco product manufacturer under this subsection.

"(b) ANNUAL SUBMISSION.—A tobacco product manufacturer or importer that is required to submit information under subsection (a) shall update such information on an annual basis under a schedule determined by the Secretary.

"(c) TIME FOR SUBMISSION.—

"(1) NEW PRODUCTS.—At least 90 days prior to the delivery for introduction into interstate commerce of a tobacco product not on the market on the date of enactment of this chapter, the manufacturer of such product shall provide the information required under subsection (a) and such product shall be subject to the annual submission under subsection (b).

"(2) MODIFICATION OF EXISTING PRODUCTS.—If at any time a tobacco product manufacturer adds to its tobacco products a new tobacco additive, increases or decreases the quantity of an existing tobacco additive or the nicotine content, delivery, or form, or eliminates a tobacco additive from any tobacco product, the manufacturer shall within 60 days of such

action so advise the Secretary in writing and reference such modification in submissions made under subsection (b).

"SEC. 905. ANNUAL REGISTRATION.

"(a) DEFINITIONS.—As used in this section—

"(1) the term 'manufacture, preparation, compounding, or processing' shall include repackaging or otherwise changing the container, wrapper, or labeling of any tobacco product package in furtherance of the distribution of the tobacco product from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user; and

"(2) the term 'name' shall include in the case of a partnership the name of each partner and, in the case of a corporation, the name of each corporate officer and director, and the State of incorporation.

"(b) REGISTRATION BY OWNERS AND OPERATORS.—On or before December 31 of each year every person who owns or operates any establishment in any State engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products shall register with the Secretary the name, places of business, and all such establishments of that person.

"(c) REGISTRATION OF NEW OWNERS AND OPERATORS.—Every person upon first engaging in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products in any establishment owned or operated in any State by that person shall immediately register with the Secretary that person's name, place of business, and such establishment.

"(d) REGISTRATION OF ADDED ESTABLISHMENTS.—Every person required to register under subsection (b) or (c) shall immediately register with the Secretary any additional establishment which that person owns or operates in any State and in which that person begins the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products.

"(e) UNIFORM PRODUCT IDENTIFICATION SYSTEM.—The Secretary may by regulation prescribe a uniform system for the identification of tobacco products and may require that persons who are required to list such tobacco products under subsection (i) of this section shall list such tobacco products in accordance with such system.

"(f) PUBLIC ACCESS TO REGISTRATION INFORMATION.—The Secretary shall make available for inspection, to any person so requesting, any registration filed under this section.

"(g) BIENNIAL INSPECTION OF REGISTERED ESTABLISHMENTS.—Every establishment in any State registered with the Secretary under this section shall be subject to inspection under section 704, and every such establishment engaged in the manufacture, compounding, or processing of a tobacco product or tobacco products shall be so inspected by one or more officers or employees duly designated by the Secretary at least once in the 2-year period beginning with the date of registration of such establishment under this section and at least once in every successive 2-year period thereafter.

"(h) FOREIGN ESTABLISHMENTS MAY REGISTER.—Any establishment within any foreign country engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products, may register under this section under regulations promulgated by the Secretary. Such regulations shall require such establishment to provide the information required by subsection (i) of this section and shall include provisions for registration of any such establishment upon condition that adequate and effective means are available, by arrangement with the government of such foreign country or otherwise, to enable the Secretary to determine from time to time whether tobacco products manufactured, prepared, compounded, or processed in such establishment, if imported or offered for import into

the United States, shall be refused admission on any of the grounds set forth in section 801(a).

"(i) REGISTRATION INFORMATION.—

"(1) PRODUCT LIST.—Every person who registers with the Secretary under subsection (b), (c), or (d) of this section shall, at the time of registration under any such subsection, file with the Secretary a list of all tobacco products which are being manufactured, prepared, compounded, or processed by that person for commercial distribution and which has not been included in any list of tobacco products filed by that person with the Secretary under this paragraph or paragraph (2) before such time of registration. Such list shall be prepared in such form and manner as the Secretary may prescribe and shall be accompanied by—

"(A) in the case of a tobacco product contained in the applicable list with respect to which a performance standard has been established under section 907 or which is subject to section 910, a reference to the authority for the marketing of such tobacco product and a copy of all labeling for such tobacco product;

"(B) in the case of any other tobacco product contained in an applicable list, a copy of all

consumer information and other labeling for such tobacco product, a representative sampling of advertisements for such tobacco product, and, upon request made by the Secretary for good cause, a copy of all advertisements for a particular tobacco product; and

"(C) if the registrant filing a list has determined that a tobacco product contained in such list is not subject to a performance standard established under section 907, a brief statement of the basis upon which the registrant made such determination if the Secretary requests such a statement with respect to that particular tobacco product.

"(2) BIANNUAL REPORT OF ANY CHANGE IN PRODUCT LIST.—Each person who registers with the Secretary under this section shall report to the Secretary once during the month of June of each year and once during the month of December of each year the following:

"(A) A list of each tobacco product introduced by the registrant for commercial distribution which has not been included in any list previously filed by that person with the Secretary under this subparagraph or paragraph (1) of

this subsection. A list under this subparagraph shall list a tobacco product by its established name and shall be accompanied by the other information required by paragraph (1).

"(B) If since the date the registrant last made a report under this paragraph that person has discontinued the manufacture, preparation, compounding, or processing for commercial distribution of a tobacco product included in a list filed under subparagraph (A) or paragraph (1), notice of such discontinuance, the date of such discontinuance, and the identity of its established name.

"(C) If since the date the registrant reported under subparagraph (B) a notice of discontinuance that person has resumed the manufacture, preparation, compounding, or processing for commercial distribution of the tobacco product with respect to which such notice of discontinuance was reported, notice of such resumption, the date of such resumption, the identity of such tobacco product by established name, and other information required by paragraph (1), unless the registrant has previously reported such resumption to the Secretary under this subparagraph.

"(D) Any material change in any information previously submitted under this paragraph or paragraph (1).

"(j) REPORT PRECEDING INTRODUCTION OF CERTAIN SUBSTANTIALLY EQUIVALENT PRODUCTS INTO INTERSTATE COMMERCE.—

"(1) IN GENERAL.—Each person who is required to register under this section and who proposes to begin the introduction or delivery for introduction into interstate commerce for commercial distribution of a tobacco product intended for human use that was not commercially marketed (other than for test marketing) in the United States as of August 11, 1995, as defined by the Secretary by regulation shall, at least 90 days before making such introduction or delivery, report to the Secretary (in such form and manner as the Secretary shall by regulation prescribe)—

"(A) the basis for such person's determination that the tobacco product is substantially equivalent, within the meaning of section 910, to a tobacco product commercially marketed (other than for test marketing) in the United States as of August 11, 1995, that is in compliance with the requirements of this Act; and

"(B) action taken by such person to comply with the requirements under section 907 that are applicable to the tobacco product.

"(2) APPLICATION TO CERTAIN POST-AUGUST 11TH PRODUCTS.—A report under this subsection for a tobacco product that was first introduced or delivered for introduction into interstate commerce for commercial distribution in the United States after August 11, 1995, and before the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act shall be submitted to the Secretary within 6 months after the date of enactment of that Act.

"SEC. 906. GENERAL PROVISIONS RESPECTING CONTROL OF TOBACCO PRODUCTS.

"(a) IN GENERAL.—Any requirement established by or under section 902, 903, 905, or 909 applicable to a tobacco product shall apply to such tobacco product until the applicability of the requirement to the tobacco product has been changed by action taken under section 907, section 910, or subsection (d) of this section, and any requirement established by or under section 902, 903, 905, or 909 which is inconsistent with a requirement imposed on such tobacco product under section 907, section 910, or subsection (d) of this section shall not apply to such tobacco product.

"(b) INFORMATION ON PUBLIC ACCESS AND COMMENT.—Each notice of proposed rulemaking under section 907, 908, 909, or 910, or under this section, any other notice which is published in the Federal Register with respect to any other action taken under any such section and which states the reasons for such action, and each publication of findings required to be made in connection with rulemaking under any such section shall set forth—

"(1) the manner in which interested persons may examine data and other information on which the notice or findings is based; and

"(2) the period within which interested persons may present their comments on the notice or findings (including the need therefor) orally or in writing, which period shall be at least 60 days but may not exceed 90 days unless the time is extended by the Secretary by a notice published in the Federal Register stating good cause therefor.

"(c) LIMITED CONFIDENTIALITY OF INFORMATION.—Any information reported to or otherwise obtained by the Secretary or the Secretary's representative under section 904, 907, 908, 909, or 910 or 704, or under subsection (e) or (f) of this section, which is exempt from disclosure under subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) of that section shall be consid-

ered confidential and shall not be disclosed, except that the information may be disclosed to other officers or employees concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

"(d) RESTRICTIONS.—

"(1) The Secretary may by regulation require that a tobacco product be restricted to sale, distribution, or use upon such conditions, including restrictions on the access to, and the advertising and promotion of, the tobacco product, as the Secretary may prescribe in such regulation if, because of its potentiality for harmful effect or the collateral measures necessary to its use, the Secretary determines that such regulation would be appropriate for the protection of the public health. The finding as to whether such regulation would be appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users of the tobacco product, and taking into account—

"(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

"(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

No such condition may require that the sale or distribution of a tobacco product be limited to the written or oral authorization of a practitioner licensed by law to prescribe medical products.

"(2) The label of a tobacco product shall bear such appropriate statements of the restrictions required by a regulation under subsection (a) as the Secretary may in such regulation prescribe.

"(3) Because of the importance of any decision by the Secretary to restrict the sale of any class of tobacco products on the market on the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act to specified categories of retail outlets, it is appropriate for the Congress to have the opportunity to review such a decision. Therefore, any such restriction may not take effect before the date that is 2 years after the President notifies the Congress that a final regulation imposing the restriction has been issued.

"(e) GOOD MANUFACTURING PRACTICE REQUIREMENTS.—

"(1) METHODS, FACILITIES, AND CONTROLS TO CONFORM.—

"(A) The Secretary may, in accordance with subparagraph (B), prescribe regulations requiring that the methods used in, and the facilities and controls used for, the manufacture, preproduction design validation (including a process to assess the performance of a tobacco product), packing and storage of a tobacco product, conform to current good manufacturing practice, as prescribed in such regulations, to assure that the public health is protected and that the tobacco product is in compliance with this chapter.

"(B) The Secretary shall—

"(i) before promulgating any regulation under subparagraph (A), afford the Tobacco Products Scientific Advisory Committee established under section 915 an opportunity to submit recommendations with respect to the regulation proposed to be promulgated;

"(ii) before promulgating any regulation under subparagraph (A), afford opportunity for an oral hearing;

"(iii) provide the advisory committee a reasonable time to make its recommendation with respect to proposed regulations under subparagraph (A); and

"(iv) in establishing the effective date of a regulation promulgated under this subsection, take into account the differences in the manner in which the different types of tobacco products have historically been produced, the financial resources of the different tobacco product manufacturers, and the state of their existing manufacturing facilities; and shall provide for a reasonable period of time for such manufacturers to conform to good manufacturing practices.

"(2) EXEMPTIONS; VARIANCES.—

"(A) Any person subject to any requirement prescribed under paragraph (1) may petition the Secretary for a permanent or temporary exemption or variance from such requirement. Such a petition shall be submitted to the Secretary in such form and manner as the Secretary shall prescribe and shall—

"(i) in the case of a petition for an exemption from a requirement, set forth the

basis for the petitioner's determination that compliance with the requirement is not required to assure that the tobacco product will be in compliance with this chapter;

"(ii) in the case of a petition for a variance from a requirement, set forth the methods proposed to be used in, and the facilities and controls proposed to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, facilities, and controls prescribed by the requirement; and

"(iii) contain such other information as the Secretary shall prescribe.

"(B) The Secretary may refer to the Tobacco Products Scientific Advisory Committee established under section 915 any petition submitted under subparagraph (A). The advisory committee shall report its recommendations to the Secretary with respect to a petition referred to it within 60 days after the date of the petition's referral. Within 60 days after—

"(i) the date the petition was submitted to the Secretary under subparagraph (A); or

"(ii) the day after the petition was referred to an advisory committee,

whichever occurs later, the Secretary shall by order either deny the petition or approve it.

"(C) The Secretary may approve—

"(i) a petition for an exemption for a tobacco product from a requirement if the Secretary determines that compliance with such requirement is not required to assure that the tobacco product will be in compliance with this chapter; and

"(ii) a petition for a variance for a tobacco product from a requirement if the Secretary determines that the methods to be used in, and the facilities and controls to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, controls, and facilities prescribed by the requirement are sufficient to assure that the tobacco product will be in compliance with this chapter.

"(D) An order of the Secretary approving a petition for a variance shall prescribe such conditions respecting the methods used in, and the facilities and controls used for, the manufacture,

packing, and storage of the tobacco product to be granted the variance under the petition as may be necessary to assure that the tobacco product will be in compliance with this chapter.

"(E) After the issuance of an order under subparagraph (B) respecting a petition, the petitioner shall have an opportunity for an informal hearing on such order.

"(3) Compliance with requirements under this subsection shall not be required before the period ending 3 years after the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act.

"(f) EXEMPTION FOR INVESTIGATIONAL USE.—The Secretary may exempt tobacco products intended for investigational use from this chapter under such conditions as the Secretary may prescribe by regulation .

"(g) RESEARCH AND DEVELOPMENT.—The Secretary may enter into contracts for research, testing, and demonstrations respecting tobacco products and may obtain tobacco products for research, testing, and demonstration purposes without regard to section 3324(a) and (b) of title 31, United States Code, and section 5 of title 41, United States Code.

"SEC. 907. PERFORMANCE STANDARDS.

"(a) IN GENERAL.—

"(1) FINDING REQUIRED.—The Secretary may adopt performance standards for a tobacco product if the Secretary finds that a performance standard is appropriate for the protection of the public health. This finding shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users of the tobacco product, and taking into account—

"(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

"(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

"(2) CONTENT OF PERFORMANCE STANDARDS.—A performance standard established under this section for a tobacco product—

"(A) shall include provisions to provide performance that is appropriate for the protection of the public health, including provisions, where appropriate—

"(i) for the reduction or elimination of nicotine yields of the product;

"(ii) for the reduction or elimination of other constituents or harmful components of the product; or

"(iii) relating to any other requirement under (B);

"(B) shall, where necessary to be appropriate for the protection of the public health, include—

"(i) provisions respecting the construction, components, ingredients, and properties of the tobacco product;

"(ii) provisions for the testing (on a sample basis or, if necessary, on an individual basis) of the tobacco product;

"(iii) provisions for the measurement of the performance characteristics of the tobacco product;

"(iv) provisions requiring that the results of each or of certain of the tests of the tobacco product required to be made under clause (ii) show that the tobacco product is in conformity with the portions of the standard for which the test or tests were required; and

"(v) a provision requiring that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d); and

"(C) shall, where appropriate, require the use and prescribe the form and content of labeling for the proper use of the tobacco product.

"(3) PERIODIC RE-EVALUATION OF PERFORMANCE STANDARDS.—The Secretary shall provide for periodic evaluation of performance standards established under this section to determine whether such standards should be changed to reflect new medical, scientific, or other technological data. The Secretary may provide for testing under paragraph (2) by any person.

"(4) INVOLVEMENT OF OTHER AGENCIES; INFORMED PERSONS.—In carrying out duties under this section, the Secretary shall, to the maximum extent practicable—

"(A) use personnel, facilities, and other technical support available in other Federal agencies;

"(B) consult with other Federal agencies concerned with standard-setting and other nationally or internationally recognized standard-setting entities; and

"(C) invite appropriate participation, through joint or other conferences, workshops, or other means, by informed persons representative of scientific, professional, industry, or consumer organizations who in the Secretary's judgment can make a significant contribution.

"(b) ESTABLISHMENT OF STANDARDS.—

"(1) NOTICE.—

"(A) The Secretary shall publish in the Federal Register a notice of proposed rulemaking for the establishment, amendment, or revocation of any performance standard for a tobacco product.

"(B) A notice of proposed rulemaking for the establishment or amendment of a performance standard for a tobacco product shall—

"(i) set forth a finding with supporting justification that the performance standard is appropriate for the protection of the public health;

"(ii) set forth proposed findings with respect to the risk of illness or injury that

the performance standard is intended to reduce or eliminate; and

"(iii) invite interested persons to submit an existing performance standard for the tobacco product, including a draft or proposed performance standard, for consideration by the Secretary.

"(C) A notice of proposed rulemaking for the revocation of a performance standard shall set forth a finding with supporting justification that the performance standard is no longer necessary to be appropriate for the protection of the public health.

"(D) The Secretary shall consider all information submitted in connection with a proposed standard, including information concerning the countervailing effects of the performance standard on the health of adolescent tobacco users, adult tobacco users, or non-tobacco users, such as the creation of a significant demand for contraband or other tobacco products that do not meet the requirements of this chapter and the significance of such demand, and shall issue the standard if the Secretary determines that the standard

would be appropriate for the protection of the public health.

"(E) The Secretary shall provide for a comment period of not less than 60 days.

"(2) PROMULGATION.—

"(A) After the expiration of the period for comment on a notice of proposed rulemaking published under paragraph (1) respecting a performance standard and after consideration of such comments and any report from the Tobacco Products Scientific Advisory Committee under section 915, the Secretary shall—

"(i) promulgate a regulation establishing a performance standard and publish in the Federal Register findings on the matters referred to in paragraph (1); or

"(ii) publish a notice terminating the proceeding for the development of the standard together with the reasons for such termination.

"(B) A regulation establishing a performance standard shall set forth the date or dates upon which the standard shall take effect, but no such regulation may take effect before one year after the date of its publication unless the Sec-

retary determines that an earlier effective date is necessary for the protection of the public health. Such date or dates shall be established so as to minimize, consistent with the public health, economic loss to, and disruption or dislocation of, domestic and international trade.

"(3) SPECIAL RULE FOR STANDARD BANNING CLASS OF PRODUCT OR ELIMINATING NICOTINE CONTENT.—Because of the importance of a decision of the Secretary to issue a regulation establishing a performance standard—

"(A) eliminating all cigarettes, all smokeless tobacco products, or any similar class of tobacco products, or

"(B) requiring the reduction of nicotine yields of a tobacco product to zero,

it is appropriate for the Congress to have the opportunity to review such a decision. Therefore, any such standard may not take effect before a date that is 2 years after the President notifies the Congress that a final regulation imposing the restriction has been issued.

"(4) AMENDMENT; REVOCATION.—

"(A) The Secretary, upon the Secretary's own initiative or upon petition of an interested

person may by a regulation, promulgated in accordance with the requirements of paragraphs (1) and (2)(B) of this subsection, amend or revoke a performance standard.

"(B) The Secretary may declare a proposed amendment of a performance standard to be effective on and after its publication in the Federal Register and until the effective date of any final action taken on such amendment if the Secretary determines that making it so effective is in the public interest.

"(5) REFERENCE TO ADVISORY COMMITTEE.—The Secretary—

"(A) may, on the Secretary's own initiative, refer a proposed regulation for the establishment, amendment, or revocation of a performance standard; or

"(B) shall, upon the request of an interested person which demonstrates good cause for referral and which is made before the expiration of the period for submission of comments on such proposed regulation,

refer such proposed regulation to the Tobacco Products Scientific Advisory Committee established under section 915, for a report and recommendation with

respect to any matter involved in the proposed regulation which requires the exercise of scientific judgment. If a proposed regulation is referred under this subparagraph to the advisory committee, the Secretary shall provide the advisory committee with the data and information on which such proposed regulation is based. The advisory committee shall, within 60 days after the referral of a proposed regulation and after independent study of the data and information furnished to it by the Secretary and other data and information before it, submit to the Secretary a report and recommendation respecting such regulation, together with all underlying data and information and a statement of the reason or basis for the recommendation. A copy of such report and recommendation shall be made public by the Secretary.

"SEC. 908. NOTIFICATION AND OTHER REMEDIES.

"(a) NOTIFICATION.—If the Secretary determines that—

"(1) a tobacco product which is introduced or delivered for introduction into interstate commerce for commercial distribution presents an unreasonable risk of substantial harm to the public health; and

"(2) notification under this subsection is necessary to eliminate the unreasonable risk of such

harm and no more practicable means is available under the provisions of this chapter (other than this section) to eliminate such risk,

the Secretary may issue such order as may be necessary to assure that adequate notification is provided in an appropriate form, by the persons and means best suited under the circumstances involved, to all persons who should properly receive such notification in order to eliminate such risk. The Secretary may order notification by any appropriate means, including public service announcements. Before issuing an order under this subsection, the Secretary shall consult with the persons who are to give notice under the order.

"(b) NO EXEMPTION FROM OTHER LIABILITY.—Compliance with an order issued under this section shall not relieve any person from liability under Federal or State law. In awarding damages for economic loss in an action brought for the enforcement of any such liability, the value to the plaintiff in such action of any remedy provided under such order shall be taken into account.

"(c) RECALL AUTHORITY.—

"(1) IN GENERAL.—If the Secretary finds that there is a reasonable probability that a tobacco product contains a manufacturing or other defect not ordinarily contained in tobacco products on the market

that would cause serious, adverse health consequences or death, the Secretary shall issue an order requiring the appropriate person (including the manufacturers, importers, distributors, or retailers of the tobacco product) to immediately cease distribution of such tobacco product. The order shall provide the person subject to the order with an opportunity for an informal hearing, to be held not later than 10 days after the date of the issuance of the order, on the actions required by the order and on whether the order should be amended to require a recall of such tobacco product. If, after providing an opportunity for such a hearing, the Secretary determines that inadequate grounds exist to support the actions required by the order, the Secretary shall vacate the order.

"(2) AMENDMENT OF ORDER TO REQUIRE RECALL.—

"(A) If, after providing an opportunity for an informal hearing under paragraph (1), the Secretary determines that the order should be amended to include a recall of the tobacco product with respect to which the order was issued, the Secretary shall, except as provided in subparagraph (B), amend the order to require a recall. The Secretary shall specify a timetable in

which the tobacco product recall will occur and shall require periodic reports to the Secretary describing the progress of the recall.

"(B) An amended order under subparagraph (A)—

"(i) shall not include recall of a tobacco product from individuals; and

"(ii) shall provide for notice to persons subject to the risks associated with the use of such tobacco product.

In providing the notice required by clause (ii), the Secretary may use the assistance of retailers and other persons who distributed such tobacco product. If a significant number of such persons cannot be identified, the Secretary shall notify such persons under section 705(b).

"(3) REMEDY NOT EXCLUSIVE.—The remedy provided by this subsection shall be in addition to remedies provided by subsection (a) of this section.

"SEC. 909. RECORDS AND REPORTS ON TOBACCO PRODUCTS.

"(a) IN GENERAL.—Every person who is a tobacco product manufacturer or importer of a tobacco product shall establish and maintain such records, make such reports, and provide such information, as the Secretary may

by regulation reasonably require to assure that such tobacco product is not adulterated or misbranded and to otherwise protect public health. Regulations prescribed under the preceding sentence—

"(1) may require a tobacco product manufacturer or importer to report to the Secretary whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed tobacco products may have caused or contributed to a serious unexpected adverse experience associated with the use of the product or any significant increase in the frequency of a serious, expected adverse product experience;

"(2) shall require reporting of other significant adverse tobacco product experiences as determined by the Secretary to be necessary to be reported;

"(3) shall not impose requirements unduly burdensome to a tobacco product manufacturer or importer, taking into account the cost of complying with such requirements and the need for the protection of the public health and the implementation of this chapter;

"(4) when prescribing the procedure for making requests for reports or information, shall require that each request made under such regulations for submis-

sion of a report or information to the Secretary state the reason or purpose for such request and identify to the fullest extent practicable such report or information;

"(5) when requiring submission of a report or information to the Secretary, shall state the reason or purpose for the submission of such report or information and identify to the fullest extent practicable such report or information; and

"(6) may not require that the identity of any patient or user be disclosed in records, reports, or information required under this subsection unless required for the medical welfare of an individual, to determine risks to public health of a tobacco product, or to verify a record, report, or information submitted under this chapter.

In prescribing regulations under this subsection, the Secretary shall have due regard for the professional ethics of the medical profession and the interests of patients. The prohibitions of paragraph (6) of this subsection continue to apply to records, reports, and information concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

"(b) REPORTS OF REMOVALS AND CORRECTIONS.—

(1) Except as provided in paragraph (3), the Secretary shall by regulation require a tobacco product manufacturer or importer of a tobacco product to report promptly to the Secretary any corrective action taken or removal from the market of a tobacco product undertaken by such manufacturer or importer if the removal or correction was undertaken—

"(A) to reduce a risk to health posed by the tobacco product; or

"(B) to remedy a violation of this chapter caused by the tobacco product which may present a risk to health.

A tobacco product manufacturer or importer of a tobacco product who undertakes a corrective action or removal from the market of a tobacco product which is not required to be reported under this subsection shall keep a record of such correction or removal.

"(2) No report of the corrective action or removal of a tobacco product may be required under paragraph (1) if a report of the corrective action or removal is required and has been submitted under subsection (a) of this section.

"SEC. 910. PREMARKET REVIEW OF CERTAIN TOBACCO PRODUCTS.

"(a) IN GENERAL.—

"(1) PREMARKET APPROVAL REQUIRED.—

"(A) NEW PRODUCTS.—Approval under this section of an application for premarket approval for any tobacco product that is not commercially marketed (other than for test marketing) in the United States as of August 11, 1995, is required unless the manufacturer has submitted a report under section 905(j), and the Secretary has issued an order that the tobacco product is substantially equivalent to a tobacco product commercially marketed (other than for test marketing) in the United States as of August 11, 1995, that is in compliance with the requirements of this Act.

"(B) PRODUCTS INTRODUCED BETWEEN AUGUST 11, 1995, AND ENACTMENT OF THIS CHAPTER.—Subparagraph (A) does not apply to a tobacco product that—

"(i) was first introduced or delivered for introduction into interstate commerce for commerce for commercial distribution in the United States after August 11, 1995, and before the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act; and

"(ii) for which a report was submitted under section 905(j) within 6 months after such date,

until the Secretary issues an order that the tobacco product is substantially equivalent for purposes of this section or requires premarket approval.

"(2) SUBSTANTIALLY EQUIVALENT DEFINED.—

"(A) For purposes of this section and section 905(j), the term 'substantially equivalent' or 'substantial equivalence' mean, with respect to the tobacco product being compared to the predicate tobacco product, that the Secretary by order has found that the tobacco product—

"(i) has the same characteristics as the predicate tobacco product; or

"(ii) has different characteristics and the information submitted contains information, including clinical data if deemed necessary by the Secretary, that demonstrates that it is not appropriate to regulate the product under this section because the product does not raise different questions of public health.

"(B) For purposes of subparagraph (A), the term 'characteristics' means the materials, ingredients, design, composition, heating source, or other features of a tobacco product.

"(C) A tobacco product may not be found to be substantially equivalent to a predicate tobacco product that has been removed from the market at the initiative of the Secretary or that has been determined by a judicial order to be misbranded or adulterated.

"(3) HEALTH INFORMATION.—

"(A) As part of a submission under section 905(j) respecting a tobacco product, the person required to file a premarket notification under such section shall provide an adequate summary of any health information related to the tobacco product or state that such information will be made available upon request by any person.

"(B) Any summary under subparagraph (A) respecting a tobacco product shall contain detailed information regarding data concerning adverse health effects and shall be made available to the public by the Secretary within 30 days of the issuance of a determination that such tobacco

product is substantially equivalent to another tobacco product.

"(b) APPLICATION.—

"(1) CONTENTS.—An application for premarket approval shall contain—

"(A) full reports of all information, published or known to or which should reasonably be known to the applicant, concerning investigations which have been made to show the health risks of such tobacco product and whether such tobacco product presents less risk than other tobacco products;

"(B) a full statement of the components, ingredients, and properties, and of the principle or principles of operation, of such tobacco product;

"(C) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of, such tobacco product;

"(D) an identifying reference to any performance standard under section 907 which would be applicable to any aspect of such tobacco product, and either adequate information to show that such aspect of such tobacco product

fully meets such performance standard or adequate information to justify any deviation from such standard;

"(E) such samples of such tobacco product and of components thereof as the Secretary may reasonably require;

"(F) specimens of the labeling proposed to be used for such tobacco product; and

"(G) such other information relevant to the subject matter of the application as the Secretary may require.

"(2) REFERENCE TO ADVISORY COMMITTEE.—Upon receipt of an application meeting the requirements set forth in paragraph (1), the Secretary—

"(A) may, on the Secretary's own initiative; or

"(B) shall, upon the request of an applicant,

refer such application to the Tobacco Products Scientific Advisory Committee established under section 915 and for submission (within such period as the Secretary may establish) of a report and recommendation respecting approval of the application, together with all underlying data and the reasons or basis for the recommendation.

"(c) ACTION ON APPLICATION.—

"(1) DEADLINE.—

"(A) As promptly as possible, but in no event later than 180 days after the receipt of an application under subsection (b) of this section, the Secretary, after considering the report and recommendation submitted under paragraph (2) of such subsection, shall—

"(i) issue an order approving the application if the Secretary finds that none of the grounds for denying approval specified in paragraph (2) of this subsection applies; or

"(ii) deny approval of the application if the Secretary finds (and sets forth the basis for such finding as part of or accompanying such denial) that one or more grounds for denial specified in paragraph (2) of this subsection apply.

"(B) An order approving an application for a tobacco product may require as a condition to such approval that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco

product may be restricted under a regulation under section 906(d).

"(2) DENIAL OF APPROVAL.—The Secretary shall deny approval of an application for a tobacco product if, upon the basis of the information submitted to the Secretary as part of the application and any other information before the Secretary with respect to such tobacco product, the Secretary finds that—

"(A) there is a lack of a showing that permitting such tobacco product to be marketed would be appropriate for the protection of the public health;

"(B) the methods used in, or the facilities or controls used for, the manufacture, processing, or packing of such tobacco product do not conform to the requirements of section 906(e);

"(C) based on a fair evaluation of all material facts, the proposed labeling is false or misleading in any particular; or

"(D) such tobacco product is not shown to conform in all respects to a performance standard in effect under section 907, compliance with which is a condition to approval of the application, and there is a lack of adequate information to justify the deviation from such standard.

"(3) DENIAL INFORMATION.—Any denial of an application shall, insofar as the Secretary determines to be practicable, be accompanied by a statement informing the applicant of the measures required to place such application in approvable form (which measures may include further research by the applicant in accordance with one or more protocols prescribed by the Secretary).

"(4) BASIS FOR FINDING.—For purposes of this section, the finding as to whether approval of a tobacco product is appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users of the tobacco product, and taking into account—

"(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

"(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

"(5) BASIS FOR ACTION.—

"(A) For purposes of paragraph (2)(A), whether permitting a tobacco product to be marketed would be appropriate for the protection of

the public health shall, when appropriate, be determined on the basis of well-controlled investigations, which may include one or more clinical investigations by experts qualified by training and experience to evaluate the tobacco product.

"(B) If the Secretary determines that there exists valid scientific evidence (other than evidence derived from investigations described in subparagraph (A)) which is sufficient to evaluate the tobacco product the Secretary may authorize that the determination for purposes of paragraph (2)(A) be made on the basis of such evidence.

"(d) WITHDRAWAL AND TEMPORARY SUSPENSION.—

"(1) IN GENERAL.—The Secretary shall, upon obtaining, where appropriate, advice on scientific matters from the Tobacco Products Scientific Advisory Committee established under section 915, and after due notice and opportunity for informal hearing to the holder of an approved application for a tobacco product, issue an order withdrawing approval of the application if the Secretary finds—

"(A) that the continued marketing of such tobacco product no longer is appropriate for the protection of the public health;

"(B) that the application contained or was accompanied by an untrue statement of a material fact;

"(C) that the applicant—

"(i) has failed to establish a system for maintaining records, or has repeatedly or deliberately failed to maintain records or to make reports, required by an applicable regulation under section 909;

"(ii) has refused to permit access to, or copying or verification of, such records as required by section 704; or

"(iii) has not complied with the requirements of section 905;

"(D) on the basis of new information before the Secretary with respect to such tobacco product, evaluated together with the evidence before the Secretary when the application was approved, that the methods used in, or the facilities and controls used for, the manufacture, processing, packing, or installation of such tobacco product do not conform with the requirements of section 906(e) and were not brought into conformity with such requirements within a reason-

able time after receipt of written notice from the Secretary of nonconformity;

"(E) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when the application was approved, that the labeling of such tobacco product, based on a fair evaluation of all material facts, is false or misleading in any particular and was not corrected within a reasonable time after receipt of written notice from the Secretary of such fact; or

"(F) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when the application was approved, that such tobacco product is not shown to conform in all respects to a performance standard which is in effect under section 907, compliance with which was a condition to approval of the application, and that there is a lack of adequate information to justify the deviation from such standard.

"(2) APPEAL.—The holder of an application subject to an order issued under paragraph (1) withdrawing approval of the application may, by petition filed on or before the thirtieth day after the date upon

which he receives notice of such withdrawal, obtain review thereof in accordance with subsection (e) of this section.

"(3) TEMPORARY SUSPENSION.—If, after providing an opportunity for an informal hearing, the Secretary determines there is reasonable probability that the continuation of distribution of a tobacco product under an approved application would cause serious, adverse health consequences or death, that is greater than ordinarily caused by tobacco products on the market, the Secretary shall by order temporarily suspend the approval of the application approved under this section. If the Secretary issues such an order, the Secretary shall proceed expeditiously under paragraph (1) to withdraw such application.

"(e) SERVICE OF ORDER.—An order issued by the Secretary under this section shall be served—

"(1) in person by any officer or employee of the department designated by the Secretary; or

"(2) by mailing the order by registered mail or certified mail addressed to the applicant at the applicant's last known address in the records of the Secretary.

"SEC. 911. JUDICIAL REVIEW.

"(a) IN GENERAL.—Not later than 30 days after—

"(1) the promulgation of a regulation under section 907 establishing, amending, or revoking a performance standard for a tobacco product; or

"(2) a denial of an application for approval under section 910(c),

any person adversely affected by such regulation or order may file a petition with the United States Court of Appeals for the District of Columbia or for the circuit wherein such person resides or has his principal place of business for judicial review of such regulation or order. A copy of the petition shall be transmitted by the clerk of the court to the Secretary or other officer designated by the Secretary for that purpose. The Secretary shall file in the court the record of the proceedings on which the Secretary based the Secretary's regulation or order and each record or order shall contain a statement of the reasons for its issuance and the basis, on the record, for its issuance. For purposes of this section, the term 'record' means all notices and other matter published in the Federal Register with respect to the regulation or order reviewed, all information submitted to the Secretary with respect to such regulation or order, proceedings of any panel or advisory committee with respect to such regulation or order, any hearing held with respect to such regulation or order, and any other information identified by the Secretary, in the administrative proceeding held

with respect to such regulation or order, as being relevant to such regulation or order.

"(b) COURT MAY ORDER THE SECRETARY TO MAKE ADDITIONAL FINDINGS.—If the petitioner applies to the court for leave to adduce additional data, views, or arguments respecting the regulation or order being reviewed and shows to the satisfaction of the court that such additional data, views, or arguments are material and that there were reasonable grounds for the petitioner's failure to adduce such data, views, or arguments in the proceedings before the Secretary, the court may order the Secretary to provide additional opportunity for the oral presentation of data, views, or arguments and for written submissions. The Secretary may modify the Secretary's findings, or make new findings by reason of the additional data, views, or arguments so taken and shall file with the court such modified or new findings, and the Secretary's recommendation, if any, for the modification or setting aside of the regulation or order being reviewed, with the return of such additional data, views, or arguments.

"(c) STANDARD OF REVIEW.—Upon the filing of the petition under subsection (a) of this section for judicial review of a regulation or order, the court shall have jurisdiction to review the regulation or order in accordance with chapter 7 of title 5, United States Code, and to grant appro-

priate relief, including interim relief, as provided in such chapter. A regulation or order described in paragraph (1) or (2) of subsection (a) of this section shall not be affirmed if it is found to be unsupported by substantial evidence on the record taken as a whole.

"(d) FINALITY OF JUDGMENT.—The judgment of the court affirming or setting aside, in whole or in part, any regulation or order shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

"(e) OTHER REMEDIES.—The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by law.

"(f) REGULATIONS AND ORDERS MUST RECITE BASIS IN RECORD.—To facilitate judicial review under this section or under any other provision of law of a regulation or order issued under section 906, 907, 908, 909, 910, or 914, each such regulation or order shall contain a statement of the reasons for its issuance and the basis, in the record of the proceedings held in connection with its issuance, for its issuance.

"SEC. 912. POSTMARKET SURVEILLANCE.

"(a) DISCRETIONARY SURVEILLANCE.—The Secretary may require a tobacco product manufacturer to conduct

postmarket surveillance for a tobacco product of the manufacturer if the Secretary determines that postmarket surveillance of the tobacco product is necessary to protect the public health or is necessary to provide information regarding the health risks and other safety issues involving the tobacco product.

"(b) SURVEILLANCE APPROVAL.—Each tobacco product manufacturer required to conduct a surveillance of a tobacco product under subsection (a) of this section shall, within 30 days after receiving notice that the manufacturer is required to conduct such surveillance, submit, for the approval of the Secretary, a protocol for the required surveillance. The Secretary, within 60 days of the receipt of such protocol, shall determine if the principal investigator proposed to be used in the surveillance has sufficient qualifications and experience to conduct such surveillance and if such protocol will result in collection of useful data or other information necessary to protect the public health. The Secretary may not approve such a protocol until it has been reviewed by an appropriately qualified scientific and technical review committee established by the Secretary.

"SEC. 913. REDUCED RISK TOBACCO PRODUCTS.

"(a) REQUIREMENTS.—

"(1) IN GENERAL.—For purposes of this section, the term 'reduced risk tobacco product' means a to-

bacco product designated by the Secretary under paragraph (2).

"(2) DESIGNATION.—

"(A) IN GENERAL.—A product may be designated by the Secretary as a reduced risk tobacco product if the Secretary finds that the product will significantly reduce harm to individuals caused by a tobacco product and is otherwise appropriate to protect public health, based on an application submitted by the manufacturer of the product (or other responsible person) that—

"(i) demonstrates through testing on animals and short-term human testing that use of such product results in ingestion or inhalation of a substantially lower yield of toxic substances than use of conventional tobacco products in the same category as the proposed reduced risk product; and

"(ii) if required by the Secretary, includes studies of the long-term health effects of the product.

If such studies are required, the manufacturer may consult with the Secretary regarding protocols for conducting the studies.

"(B) BASIS FOR FINDING.—In making the finding under subparagraph (A), the Secretary shall take into account—

"(i) the risks and benefits to the population as a whole, including both users of tobacco products and non-users of tobacco products;

"(ii) the increased or decreased likelihood that existing users of tobacco products will stop using such products including reduced risk tobacco products;

"(iii) the increased or decreased likelihood that those who do not use tobacco products will start to use such products, including reduced risk tobacco products; and

"(iii) the risks and benefits to consumers from the use of a reduced risk tobacco product as compared to the use of products approved under chapter V to reduce exposure to tobacco.

"(3) MARKETING REQUIREMENTS.—A tobacco product may be marketed and labeled as a reduced risk tobacco product if it—

"(A) has been designated as a reduced risk tobacco product by the Secretary under paragraph (2);

"(B) bears a label prescribed by the Secretary concerning the product's contribution to reducing harm to health; and

"(C) complies with requirements prescribed by the Secretary relating to marketing and advertising of the product, and other provisions of this chapter as prescribed by the Secretary.

"(b) REVOCATION OF DESIGNATION.—At any time after the date on which a tobacco product is designated as a reduced risk tobacco product under this section the Secretary may, after providing an opportunity for an informal hearing, revoke such designation if the Secretary determines, based on information not available at the time of the designation, that—

"(1) the finding made under subsection (a)(2) is no longer valid; or

"(2) the product is being marketed in violation of subsection (a)(3).

"(c) LIMITATION.—A tobacco product that is designated as a reduced risk tobacco product that is in compliance with subsection (a) shall not be regulated as a drug or device.

"(d) DEVELOPMENT OF REDUCED RISK TOBACCO PRODUCT TECHNOLOGY.—A tobacco product manufacturer shall provide written notice to the Secretary upon the development or acquisition by the manufacturer of any technology that would reduce the risk of a tobacco product to the health of the user for which the manufacturer is not seeking designation as a 'reduced risk tobacco product' under subsection (a).

"SEC. 914. PRESERVATION OF STATE AND LOCAL AUTHORITY.

"(a) ADDITIONAL REQUIREMENTS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), nothing in this Act shall be construed as prohibiting a State or political subdivision thereof from adopting or enforcing a requirement applicable to a tobacco product that is in addition to, or more stringent than, requirements established under this chapter.

"(2) PREEMPTION OF CERTAIN STATE AND LOCAL REQUIREMENTS.—

"(A) Except as provided in subparagraph (B), no State or political subdivision of a State may establish or continue in effect with respect to a tobacco product any requirement which is different from, or in addition to, any require-

ment applicable under the provisions of this chapter relating to performance standards, premarket approval, adulteration, misbranding, registration, reporting, good manufacturing standards, or reduced risk products.

"(B) Subparagraph (A) does not apply to requirements relating to the sale, use, or distribution of a tobacco product including requirements related to the access to, and the advertising and promotion of, a tobacco product.

"(b) RULE OF CONSTRUCTION REGARDING PRODUCT LIABILITY.—No provision of this chapter relating to a tobacco product shall be construed to modify or otherwise affect any action or the liability of any person under the product liability law of any State.

"(c) WAIVERS.—Upon the application of a State or political subdivision thereof, the Secretary may, by regulation promulgated after notice and an opportunity for an oral hearing, exempt from subsection (a), under such conditions as may be prescribed in such regulation, a requirement of such State or political subdivision applicable to a tobacco product if—

"(1) the requirement is more stringent than a requirement applicable under the provisions described in subsection (a)(3) which would be applicable to the

tobacco product if an exemption were not in effect under this subsection; or

"(2) the requirement—

"(A) is required by compelling local conditions; and

"(B) compliance with the requirement would not cause the tobacco product to be in violation of any applicable requirement of this chapter.

"SEC. 915. TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.

"(a) ESTABLISHMENT.—Not later than 1 year after the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act, the Secretary shall establish a 9-member advisory committee, to be known as the 'Tobacco Products Scientific Advisory Committee'.

"(b) MEMBERSHIP.—

"(1) IN GENERAL.—The Secretary shall appoint as members of the Tobacco Products Scientific Advisory Committee individuals who are technically qualified by training and experience in the medicine, medical ethics, science, or technology involving the manufacture, evaluation, or use of tobacco products, who are of appropriately diversified professional backgrounds. The committee shall be composed of—

"(A) 3 individuals who are officers or employees of a State or local government, or of the Federal government;

"(B) 2 individuals as representatives of interests of the tobacco manufacturing industry;

"(C) 2 individuals as representatives of interests of physicians and other healthcare professionals; and

"(D) 2 individuals as representatives of the general public.

"(2) LIMITATION.—The Secretary may not appoint to the Advisory Committee any individual who is in the regular full-time employ of the Food and Drug Administration or any agency responsible for the enforcement of this Act. The Secretary may appoint Federal officials as ex-officio members.

"(3) CHAIRPERSON.—The Secretary shall designate 1 of the members of the Advisory Committee to serve as chairperson.

"(c) DUTIES.—The Tobacco Products Scientific Advisory Committee shall provide advice, information, and recommendations to the Secretary—

"(1) as provided in this chapter;

"(2) on the effects of the alteration of the nicotine yields from tobacco products;

"(3) on whether there is a threshold level below which nicotine yields do not produce dependence on the tobacco product involved; and

"(4) on its review of other safety, dependence, or health issues relating to tobacco products as requested by the Secretary.

"(d) COMPENSATION; SUPPORT; FACA.—

"(1) COMPENSATION AND TRAVEL.—Members of the Advisory Committee who are not officers or employees of the United States, while attending conferences or meetings of the committee or otherwise engaged in its business, shall be entitled to receive compensation at rates to be fixed by the Secretary, which may not exceed the daily equivalent of the rate in effect for level 4 of the Senior Executive Schedule under section 5382 of title 5, United States Code, for each day (including travel time) they are so engaged; and while so serving away from their homes or regular places of business each member may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(2) ADMINISTRATIVE SUPPORT.—The Secretary shall furnish the Advisory Committee clerical and other assistance.

"(3) NONAPPLICATION OF FACA.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) does not apply to the Advisory Committee.

"(e) PROCEEDINGS OF ADVISORY PANELS AND COMMITTEES.—The Advisory Committee shall make and maintain a transcript of any proceeding of the panel or committee. Each such panel and committee shall delete from any transcript made under this subsection information which is exempt from disclosure under section 552(b) of title 5, United States Code.

"SEC. 916. EQUAL TREATMENT OF RETAIL OUTLETS.

–"The Secretary shall issue regulations to require that retail establishments for which the predominant business is the sale of tobacco products comply with any advertising restrictions applicable to retail establishments accessible to individuals under the age of 18.".

SEC. 102. CONFORMING AND OTHER AMENDMENTS TO GENERAL PROVISIONS.

(a) AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.—Except as otherwise expressly provided, whenever in this section an amendment is expressed in terms of an amendment to, or repeal of, a section or other provi-

sion, the reference is to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(b) SECTION 301.—Section 301 (21 U.S.C. 331) is amended—

(1) by inserting "tobacco product," in subsection (a) after "device,";

(2) by inserting "tobacco product," in subsection (b) after "device,";

(3) by inserting "tobacco product," in subsection (c) after "device,";

(4) by striking "515(f), or 519" in subsection (e) and inserting "515(f), 519, or 909";

(5) by inserting "tobacco product," in subsection (g) after "device,";

(6) by inserting "tobacco product," in subsection (h) after "device,";

(7) by striking "708, or 721" in subsection (j) and inserting "708, 721, 904, 905, 906, 907, 908, or 909";

(8) by inserting "tobacco product," in subsection (k) after "device,";

(9) by striking subsection (p) and inserting the following:

"(p) The failure to register in accordance with section 510 or 905, the failure to provide any information required by section 510(j), 510(k), 905(i), or 905(j), or the failure to provide a notice required by section 510(j)(2) or 905(J)(2).";

(10) by striking subsection (q)(1) and inserting the following:

"(q)(1) The failure or refusal—

"(A) to comply with any requirement prescribed under section 518, 520(g), 906(f), or 908;

"(B) to furnish any notification or other material or information required by or under section 519, 520(g), 904, 906(f), or 909; or

"(C) to comply with a requirement under section 522 or 912.";

(11) by striking "device," in subsection (q)(2) and inserting "device or tobacco product,"; and

(12) by inserting "or tobacco product" in subsection (r) after "device" each time that it appears.

(c) SECTION 303.—Section 303(f)(1)(A) (21 U.S.C. 333(f)(1)(A)) is amended by inserting "or tobacco products" after "devices".

(d) SECTION 304.—Section 304 (21 U.S.C. 334) is amended—

(1) by striking "and" before "(D)" in subsection (a)(2);

(2) by striking "device." in subsection (a)(2) and inserting a comma and "(E) Any adulterated or misbranded tobacco product.";

(3) by inserting "tobacco product," in subsection (d)(1) after "device,";

(4) by inserting "or tobacco product" in subsection (g)(1) after "device" each place it appears; and

(5) by inserting "or tobacco product" in subsection (g)(2)(A) after "device" each place it appears.

(e) SECTION 702.—Section 702(a) (21 U.S.C. 372(a)) is amended—

(1) by inserting "(1)" after "(a)"; and

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

"(2) For a tobacco product, to the extent feasible, the Secretary shall contract with the States in accordance with paragraph (1) to carry out inspections of retailers in connection with the enforcement of this Act.".

(f) SECTION 703.—Section 703 (21 U.S.C. 373) is amended—

(1) by inserting "tobacco product," after "device," each place it appears; and

(2) by inserting "tobacco products," after "devices," each place it appears.

(g) SECTION 704.—Section 704 (21 U.S.C. 374) is amended—

(1) by inserting "tobacco products," in subsection (a)(1)(A) after "devices," each place it appears;

(2) by inserting "or tobacco products" in subsection (a)(1)(B) after "restricted devices" each place it appears; and

(3) by inserting "tobacco product," in subsection (b) after "device,".

(h) SECTION 705.—Section 705(b) (21 U.S.C. 375(b)) is amended by inserting "tobacco products," after "devices,".

(i) SECTION 709.—Section 709 (21 U.S. C. 379) is amended by inserting "or tobacco product" after "device".

(j) SECTION 801.—Section 801 (21 U.S.C. 381) is amended—

(1) by inserting "tobacco products," after "devices," in subsection (a) the first time it appears;

(2) by inserting "or subsection (j) of section 905" in subsection (a) after "section 510"; and

(3) by striking "drugs or devices" each time it appears in subsection (a) and inserting "drugs, devices, or tobacco products";

(4) by inserting "tobacco product," in subsection (e)(1) after "device,";

(2) by redesignating paragraph (4) of subsection (e) as paragraph (5) and inserting after paragraph (3), the following:

"(4) Paragraph (1) does not apply to any tobacco product—

"(A) which does not comply with an applicable requirement of section 907 or 910; or

"(B) which under section 906(f) is exempt from either such section.

This paragraph does not apply if the Secretary has determined that the exportation of the tobacco product is not contrary to the public health and safety and has the approval of the country to which it is intended for export or the tobacco product is eligible for export under section 802.".

(k) SECTION 802.—Section 802 (21 U.S.C. 382) is amended—

(1) by striking "device—" in subsection (a) and inserting "device or tobacco product—";

(2) by striking "and" after the semicolon in subsection (a)(1)(C);

(3) by striking subparagraph (C) of subsection (a)(2) and all that follows in that subsection and inserting the following:

"(C) is a banned device under section 516; or

"(3) which, in the case of a tobacco product—

"(A) does not comply with an applicable requirement of section 907 or 910; or

"(B) under section 906(f) is exempt from either such section,

is adulterated, misbranded, and in violation of such sections or Act unless the export of the drug, device, or tobacco product is, except as provided in subsection (f), authorized under subsection (b), (c), (d), or (e) of this section or section 801(e)(2) or 801(e)(4). If a drug, device, or tobacco product described in paragraph (1), (2), or (3) may be exported under subsection (b) and if an application for such drug or device under section 505, 515, or 910 of this Act or section 351 of the Public Health Service Act (42 U.S.C. 262) was disapproved, the Secretary shall notify the appropriate public health official of the country to

which such drug, device, or tobacco product will be exported of such disapproval.";

(4) by inserting "or tobacco product" in subsection (b)(1)(A) after "device" each time it appears;

(5) by inserting "or tobacco product" in subsection (c) after "device" and inserting "or section 906(f)" after "520(g).";

(6) by inserting "or tobacco product" in subsection (f) after "device" each time it appears; and

(7) by inserting "or tobacco product" in subsection (g) after "device" each time it appears.

(l) SECTION 1003.—Section 1003(d)(2)(C) (as redesignated by section 101(a)) is amended—

(1) by striking "and" after "cosmetics,"; and

(2) inserting a comma and "and tobacco products" after "devices".

Subtitle B—Advertising

SEC. 121. ADVERTISING PROVISIONS IN PROTOCOL.

The Protocol shall contain provisions enforceable at law under which tobacco product manufacturers commit to observe limitations on advertising that meet the requirements set forth in this subtitle.

SEC. 122. TOBACCO PRODUCT LABELING AND ADVERTISING.

(a) IN GENERAL.—The Protocol shall require that no tobacco product will be sold or distributed in the United States—

(1) unless its advertising and labeling (including the package)—

(A) contain no human image, animal image, or cartoon character;

(B) are not outdoor advertising, including advertising in enclosed stadia and advertising from within a retail establishment that is directed toward or visible from the outside of the establishment;

(C) are accompanied by a disclaimer in the advertising that words such as "light" or "low tar" describing the product do not render the product less hazardous than any other tobacco product, in addition to such other requirements as the Secretary may impose;

(D) at the time the advertising or labeling is first used are submitted to the Secretary so that the Secretary may conduct regular review of the advertising and labeling;

(E) comply with any applicable requirement of the Federal Food, Drug, and Cosmetic

Act, the Federal Cigarette Labeling and Advertising Act, and any regulation promulgated under either of those Acts;

(F) do not appear on the international computer network of both Federal and non-Federal interoperable packet switches data networks (the "Internet"), unless such advertising is designed to be inaccessible in or from the United States to all individuals under the age of 18 years;

(G) use only black text on white background, other than—

(i) those locations where self-service displays are permitted under subsection 123, if the advertising is not visible from outside the establishment and is affixed to a wall or fixture in the establishment; and

(ii) advertisements appearing in any publication which the tobacco product manufacturer, distributor, or retailer demonstrates to the Secretary is a newspaper, magazine, periodical, or other publication whose readers under the age of 18 years constitute 15 percent or less of the total readership as measured by competent and reliable survey evidence, and that is read by

less than 2 million persons under the age of 18 years as measured by competent and reliable survey evidence;

(H) for video formats, use only static black text on a white background, and any accompanying audio uses only words without music or sound effects; and

(I) for audio formats, use only words without music or sound effects;

(2) if a logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification of the tobacco product is contained in a movie, program, or video game for which a direct or indirect payment has been made to ensure its placement;

(3) if a direct or indirect payment has been made by any tobacco product manufacturer, distributor, or retailer to any entity for the purpose of promoting the image or use of the tobacco product through print or film media that appeals to individuals under the age of 18 years or through a live performance by an entertainment artist that appeals to such individuals;

(4) if a logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indi-

cia or product identification identical to, similar to, or identifiable with the tobacco product is used for any item (other than a tobacco product) or service marketed, licensed, distributed or sold or caused to be marketed, licensed, distributed, or sold by the tobacco product manufacturer or distributor of the tobacco product;

(5) unless its package label and advertising bear the product's established name and a statement of its intended use, as follows:

(A) "Cigarettes-A Nicotine Delivery Device";

(B) "Cigarette Tobacco-A Nicotine Delivery Device"; or

(C)" Loose Leaf Chewing Tobacco", "Plug Chewing Tobacco", "Twist Chewing Tobacco", "Moist Snuff", or "Dry Snuff", whichever is appropriate for the product, followed by "-A Nicotine Delivery Device"; and

(6)(A) except as provided in subparagraph (B), if advertising or labeling for such product that is otherwise in accordance with the requirements of this section bears a tobacco product brand name (alone or in conjunction with any other word) or any other indicia of tobacco product identification and is dissemi-

nated in a medium other than newspapers, magazines, periodicals or other publications (whether periodic or limited distribution), nonpoint-of-sale promotional material (including direct mail), point-of-sale promotional material, or audio or video formats delivered at a point-of-sale; but

(B) notwithstanding subparagraph (A), advertising or labeling for cigarettes or smokeless tobacco may be disseminated in a medium that is not specified in paragraph (1) if the tobacco product manufacturer, distributor, or retailer notifies the Secretary not later than 30 days prior to the use of such medium, and the notice describes the medium and the extent to which the advertising or labeling may be seen by persons under the age of 18 years.

(b) COLOR PRINT ADS ON MAGAZINES.—The Protocol shall also provide that no tobacco product may be sold or distributed in the United States if any advertising for that product on the outside back cover of a magazine appears in any color or combination of colors.

SEC. 123. POINT-OF-SALE RESTRICTIONS.

(a) IN GENERAL.—Except as provided in subsection (b), the Protocol shall provide that no participating tobacco product manufacturer, distributor, or retailer shall engage in point-of-sale advertising of any tobacco product in any

retail establishment (other than an establishment that sells only tobacco products) in which an individual under 18 years of age is present, or permitted to enter, at any time.

(b) PERMITTED POS LOCATIONS.—

(1) PLACEMENT.—A retailer may place 1 point-of-sale advertisement in or at each retail establishment for its brand or the contracted house retailer or private label brand of its wholesaler.

(2) SIZE.—The display area of any such point-of-sale advertisement (either individually or in the aggregate) shall not be larger than 576 square inches and shall consist of black letters on white background or another recognized typography.

(3) PROXIMITY TO CANDY.—Any such point-of-sale advertisement shall not be attached to or located within 2 feet of any display fixture on which candy is displayed for sale.

(c) AUDIO OR VIDEO.—Any audio or video format permitted under regulations promulgated by the Secretary may be distributed at the time of sale of a tobacco product to individuals over the age of 18 years, but no such format may be played or shown in or at any location where tobacco products are offered for sale.

(d) NO RESTRICTIVE COVENANTS.—No participating tobacco product manufacturer or distributor of tobacco

products may enter into any arrangement with a retailer that limits the retailer's ability to display any form of advertising or promotional material originating with another supplier and permitted by law to be displayed in a retail establishment.

(e) DEFINITIONS.—As used in this section, the terms "point-of-sale advertisement" and "point-of-sale advertising" mean all printed or graphical materials bearing the brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of cigarettes or smokeless tobacco, which, when used for its intended purpose, can reasonably be anticipated to be seen by customers at a location where tobacco products are offered for sale.

TITLE II—REDUCTIONS IN UNDERAGE TOBACCO USE

Subtitle A—Underage Use

SEC. 201. GOALS FOR REDUCING UNDERAGE TOBACCO USE.

(a) GOALS.—As part of a comprehensive national tobacco control policy, the Secretary, working in cooperation with State, Tribal, and local governments and the private sector, shall take all actions under this Act necessary to ensure that the required percentage reductions in underage use of tobacco products set forth in this title are achieved.

(b) REQUIRED REDUCTIONS FOR CIGARETTES.—With respect to cigarettes, the required percentage reduction in underage use, as set forth in ***[****section 202****]*** ***section 5771 of the Internal Revenue Code of 1986****, means—*

Calendar Year After Date of Enactment	*Required Percentage Reduction as a Percentage of Base Incidence Percentage in Underage Cigarette Use*
Years 3 and 4	*15 percent*
Years 5 and 6	*30 percent*
Years 7, 8, and 9	*50 percent*
Year 10 and thereafter	*60 percent*

(c) REQUIRED REDUCTIONS FOR SMOKELESS TOBACCO.—With respect to smokeless tobacco products, the required percentage reduction in underage use, as set forth in ***[****section 202****]*** ***section 5771 of the Internal Revenue Code of 1986****, means—*

Calendar Year After Date of Enactment	*Required Percentage Reduction as a Percentage of Base Incidence Percentage in Underage Smokeless Tobacco Use*
Years 3 and 4	*12.5 percent*
Years 5 and 6	*25 percent*
Years 7, 8, and 9	*35 percent*
Year 10 and thereafter	*45 percent*

[SEC. 202. LOOK-BACK ASSESSMENT.

[*(a) DETERMINATION OF UNDERAGE USE.—Upon the conclusion of the third calendar year after the date of enactment of this Act, and annually thereafter, the Secretary shall determine the percent incidence of underage use of cigarettes and of smokeless tobacco by calculating the average, weighted by relative population of such age groups in 1995 as determined by the Bureau of the Census, of the per-*

centages of individuals in grade 12 (ages 16 and 17), in grade 10 (ages 14 and 15), and in grade 8 (age 13) who used cigarettes or smokeless tobacco, as appropriate, on a daily basis during the preceding calendar year. The percentages used in this calculation are to be those measured by (1) the University of Michigan Survey, or (2) such comparable index using identical methodology as is chosen by the Secretary after notice and the opportunity for comment in accordance with section 553 of title 5, United States Code. If the methodology employed by the University of Michigan Survey is changed in a material manner from that employed from 1986 through 1996 (including changes in the States or regions on which the University of Michigan Survey is based), or is (in the opinion of the Secretary) no longer the best available data, the Secretary shall use the percentages measured by an index chosen by the Secretary, after notice and the opportunity for comment in accordance with section 553 of title 5, United States Code, that has a methodology identical to that employed by the University of Michigan Survey from 1986 through 1996. The Secretary shall make the data on which the results of the University of Michigan Survey or such other comparable index are based available to the public upon request.

[(b) CALCULATION OF NON-ATTAINMENT PENALTIES.—

[(1) SECRETARY TO DETERMINE NON-ATTAINMENT PERCENTAGE.—The Secretary shall determine the non-attainment percentage for cigarettes and for smokeless tobacco for each calendar year.

[(2) NON-ATTAINMENT PENALTY FOR CIGARETTES.—For each calendar year in which the percentage reduction in underage use required by section 201(b) is not attained, the Secretary shall assess a penalty on cigarette manufacturers as follows:

If the non-attainment percentage is:	*The penalty is:*
Not more than 5 percent	*$80,000,000 multiplied by the non-attainment percentage*
More than 5% but not more than 10%	*$400,000,000, plus $160,000,000 multiplied by the non-attainment percentage in excess of 5% but not in excess of 10%*
More than 10% but not more than 20%	*$1,200,000,000, plus $240,000,000 multiplied by the non-attainment percentage in excess of 10% but not in excess of 20%*
More than 20%	*$3,500,000,000*

[(3) NON-ATTAINMENT PENALTY FOR SMOKELESS TOBACCO.—For each year in which the percentage reduction in underage use required by section 201(c) is not attained, the Secretary shall assess a penalty on smokeless tobacco product manufacturers as follows:

If the non-attainment percentage is:	*The penalty is:*
Not more than 5 percent	*$8,000,000 multiplied by the non-attainment percentage*
More than 5% but not more than 10%	*$40,000,000, plus $16,000,000 multiplied by the non-attainment percentage in excess of 5% but not in excess of 10%*
More than 10% but not more than 20%	*$120,000,000, plus $24,000,000 multiplied by the non-attainment percentage in excess of 10% but not in excess of 20%*
More than 20%	*$350,000,000*

[(4) PENALTIES TO BE ADJUSTED FOR INFLATION.—

[(A) IN GENERAL.—Beginning with the fourth calendar year after the date of enactment of this Act, each dollar amount in the tables in paragraphs (2) and (3) shall be increased by the inflation adjustment.

[(B) INFLATION ADJUSTMENT.—For purposes of subparagraph (A), the inflation adjustment for any calendar year is the percentage (if any) by which—

[(i) the CPI for the preceding calendar year, exceeds

[(ii) the CPI for the calendar year 1998.

[(C) CPI.—For purposes of subparagraph (B), the CPI for any calendar year is the average of the Consumer Price Index for all-urban

consumers published by the Department of Labor.

[(D) ROUNDING.—If any increase determined under subparagraph (A) is not a multiple of $1,000, the increase shall be rounded to the nearest multiple of $1,000.

[(c) JOINT, SEVERAL, AND STRICT OBLIGATION FOR PENALTIES.—

[(1) CIGARETTE MANUFACTURERS.—Any penalty due and payable by cigarette manufacturers shall be the joint, several, and strict obligation of such manufacturers.

[(2) SMOKELESS TOBACCO.—Any penalty payable by smokeless tobacco product manufacturers shall be the joint, several, and strict obligation of such manufacturers.

[(d) EXEMPTIONS FOR SMALL MANUFACTURERS.—

[(1) ALLOCATION BY MARKET SHARE.—The Secretary shall make such allocations according to each manufacturer's share of the domestic cigarette or domestic smokeless tobacco market, as appropriate, in the year for which the penalty is being assessed, based on actual Federal excise tax payments.

[(2) EXEMPTION.—In any year in which a penalty is being assessed, the Secretary shall exempt from

payment any tobacco product manufacturer with less than 1 percent of the domestic market share for a specific category of tobacco product unless the Secretary finds that the manufacturer's brands used by underage individuals at a rate equal to or greater than the manufacturer's total market share for the type of tobacco product.

[(e) METHOD OF PENALTY ASSESSMENT.—The Secretary shall assess a penalty for a specific calendar year on or before May 1 of the subsequent calendar year. Penalty payments shall be paid on or before July 1 of the year in which they are assessed. The Secretary may establish, by regulation, interest at a rate up to 3 times the prevailing prime rate at the time the penalty is assessed, and additional charges in an amount up to 3 times the penalty, for late payment of the penalty.

[(f) BUSINESS EXPENSE DEDUCTION.—Any penalty paid by a tobacco product manufacturer under this section shall not be deductible as an ordinary and necessary business expense or otherwise under the Internal Revenue Code of 1986.

[(g) PENALTY LIABILITY AMONG MANUFACTURERS.—

[(1) IN GENERAL.—The District Courts of the United States shall have jurisdiction to adjudicate any claim brought under this section by a tobacco

product manufacturer against one or more other tobacco product manufacturers—

[(A) to recover a portion of the penalty paid by the plaintiff manufacturer; or

[(B) for a reallocation of the penalty among tobacco product manufacturers.

[(2) CONTRIBUTION OR REIMBURSEMENT LIABILITY.—A tobacco product manufacturer shall be liable under this subsection to one or more other manufacturers if the plaintiff tobacco product manufacturer establishes by a preponderance of the evidence that the defendant tobacco product manufacturer, through its acts or omissions, was responsible for a disproportionate share of the non-attainment penalty as compared to the responsibility of the plaintiff manufacturer, as contemplated in subsection (c)(3).

[(3) RESPONSIBILITY FOR AGENTS, ETC.—In any action brought under this subsection, a tobacco product manufacturer shall be held responsible for any act or omission of its attorneys, advertising agencies, or other agents that contributed to that manufacturer's responsibility for the penalty assessed under this section.]

SEC. 203. SUBSTANTIAL NON-ATTAINMENT OF REQUIRED REDUCTIONS.

(a) ACTION BY SECRETARY.—

(1) IN GENERAL.—If the Secretary determines that the non-attainment percentage for any year is greater than 20 percentage points for cigarettes or smokeless tobacco, then the Secretary shall determine, on a brand-by-brand basis, using data that reflects a 1999 baseline, which tobacco product manufacturers are responsible within the 2 categories of tobacco products for the excess. The Secretary may commence an action under this section against the tobacco product manufacturer or manufacturers of the brand or brands of cigarettes or smokeless tobacco products for which the non-attainment percentage exceeded 20 percentage points.

(2) DETERMINATION.—The Secretary shall use research methodology that is similar to, or the same as, that used in the University of Michigan Survey, except—

(A) the methodology shall be adapted to determining underage usage by brand; and

(B) the base period shall be calendar year 1999.

(b) PROCEDURES.—Any action under this section shall be commenced by the Secretary in the United States Dis-

trict Court for the District of Columbia within 90 days after publication in the Federal Register of the determination that the non-attainment percentage for the tobacco product in question is greater than 20 percentage points. Any such action shall be heard and determined by a 3-judge court under section 2284 of title 28, United States Code.

(c) DETERMINATION BY COURT.—In any action under this section, the court shall determine whether the preponderance of the evidence shows that a tobacco product manufacturer—

(1) has failed to comply substantially with the provisions of this Act regarding underage tobacco use, of any rules or regulations promulgated thereunder, or of any Federal or State laws regarding underage tobacco use;

(2) has taken any material action to undermine the achievement of the required percentage reduction for the tobacco product in question; or

(3) has failed to comply with all recommendations of the Tobacco Agreement Accountability Panel established under section 801.

(d) REMOVAL OF ANNUAL AGGREGATE PAYMENT LIMITATION.—Except as provided in subsections (e) and (g), if the court determines that the preponderance of the evidence shows that a tobacco product manufacturer engaged in con-

duct described in subsection (c) then section 706(c) of this Act does not apply to the enforcement against, or the payment by, such tobacco product manufacturer of any judgment or settlement that becomes final after that determination is made. The liability apportionment agreement described in section 706(e) of this Act shall not require that other tobacco product manufacturers pay an increased amount in any year over the amount they would have had to pay but for this section.

(e) DEFENSE.—An action under this section shall be dismissed, and subsection (d) shall not apply, if the court finds that the Secretary's determination under subsection (a) was unlawful under subparagraph (A), (B), (C), or (D) of section 706(2) of title 5, United States Code. Any judgments paid under section 706(c) of this Act and section (1)(d)(3) of the Protocol prior to a final judgment determining that the Secretary's determination was erroneous shall be fully credited, with interest, under section 707(e) of this Act and section (1)(d)(3) of the Protocol.

(f) REVIEW.—Decisions of the court under this section are reviewable only by the Supreme Court by writ of certiorari granted upon the petition of any party. The applicability of subsection (d) shall be stayed during the pendency of any such petition or review.

(g) CONTINUING EFFECT.—Subsection (d) shall cease to apply to a tobacco product manufacturer found to have engaged in conduct described in subsection (c) upon the later of—

(1) a determination by the Secretary under section 201 after the commencement of action under subsection (a) that the non-attainment percentage for the tobacco product in question is 20 or fewer percentage points; or

(2) a finding by the court in an action filed against the Secretary by the manufacturer, not earlier than 2 years after the determination described in subsection (c) becomes final, that the preponderance of the evidence shows that, in the period since that determination, the manufacturer—

(A) has complied with the provisions of this Act regarding underage tobacco use, of any rules or regulations promulgated thereunder, and of any other applicable Federal, State, or local laws, rules, or regulations;

(B) has not taken any action to undermine the achievement of the required percentage reduction for the tobacco product in question; and

(C) has pursued substantial additional measures reasonably calculated to attain the re-

quired percentage reduction for the tobacco product in question.

A judgment or settlement against the tobacco product manufacturer that becomes final after a determination or finding described in paragraph (1) or (2) of this subsection is not subject to subsection (d). An action under paragraph (2) of this subsection shall be commenced in the United States District Court for the District of Columbia, and shall be heard and determined by a 3-judge court under section 2284 of title 28, United States Code. A decision by the court under paragraph (2) of this subsection is reviewable only by the Supreme Court by writ of certiorari granted upon the petition of any party, and the decision shall be stayed during the pendency of the petition or review. A determination or finding described in paragraph (1) or (2) of this subsection does not limit the Secretary's authority to bring a subsequent action under this section against any tobacco product manufacturer or the applicability of subsection (d) with respect to any such subsequent action.

(h) DEFINITIONS.—The definitions set forth in section 701 of this Act apply to terms used in this section. A judgment or settlement becomes final within the meaning of this section when it would qualify as a final judgment or final settlement under section 701.

SEC. 204. DEFINITIONS.

As used in this subtitle—

(1) The term "base incidence percentage" means—

(A) in the case of cigarettes, the average, weighted by relative population of the following age groups in 1995 as determined by the Bureau of the Census, of (i) the average of the percentages of individuals in grade 12 (ages 16 and 17) from 1986 to 1996 who used cigarettes on a daily basis; (ii) the average of the percentages of individuals in grade 10 (ages 14 and 15) from 1991 to 1996 who used cigarettes on a daily basis; and (iii) the average of the percentages of individuals in grade 8 (age 13) from 1991 to 1996 who used cigarettes on a daily basis; and

(B) in the case of smokeless tobacco products, the average, weighted by relative population of the following age groups in 1995 as determined by the Bureau of the Census, of the percentage of individuals in grade 12 (ages 16 and 17), individuals in grade 10 (ages 14 and 15), and individuals in grade 8 (age 13) who used smokeless tobacco products on a daily basis in 1996.

The percentages specified in this paragraph are those measured by the University of Michigan Survey or by such comparable index using identical methodology as is chosen by the Secretary after notice and the opportunity for comment in accordance with section 553 of title 5, United States Code.

(2) The term "cigarette manufacturers" means manufacturers of cigarettes sold in the United States.

(3) The term "non-attainment percentage for cigarettes" means the number of percentage points yielded—

(A) for a calendar year in which the percent incidence of underage use of cigarettes is less than the base incidence percentage, by subtracting—

(i) the percentage by which the percent incidence of underage use of cigarettes in that year is less than the base incidence percentage, from

(ii) the required percentage reduction applicable in that year; and

(B) for a calendar year in which the percent incidence of underage use of cigarettes is greater than the base incidence percentage, adding—

(i) the percentage by which the percent incidence of underage use of cigarettes in that year is greater than the base incidence percentage; and

(ii) the required percentage reduction applicable in that year.

(4) The term "non-attainment percentage for smokeless tobacco products" means the number of percentage points yielded—

(A) for a calendar year in which the percent incidence of underage use of smokeless tobacco products is less than the base incidence percentage, by subtracting—

(i) the percentage by which the percent incidence of underage use of smokeless tobacco products in that year is less than the base incidence percentage, from

(ii) the required percentage reduction applicable in that year; and

(B) for a calendar year in which the percent incidence of underage use of smokeless tobacco products is greater than the base incidence percentage, by adding—

(i) the percentage by which the percent incidence of underage use of smokeless to-

bacco products in that year is greater than the base incidence percentage; and

(ii) the required percentage reduction applicable in that year.

(5) The term "smokeless tobacco product manufacturers" means manufacturers of smokeless tobacco products sold in the United States.

(6) The term "University of Michigan Survey" means the University of Michigan's National High School Drug Use Survey entitled "Monitoring the Future".

Subtitle B—State Enforcement Incentives

[SEC. 211. COMPLIANCE BONUS FUND.

[(a) ESTABLISHMENT.—There is established within the National Tobacco Settlement Trust Fund established by section 401 a separate account to be known as the Compliance Bonus Account for States and Retailers. There are authorized to be appropriated from such account such amounts as may be necessary to carry out the provisions of this subtitle.

[(b) CREDITS TO ACCOUNT.—For each fiscal year there shall be credited to the Account an amount equal to—

[(1) 5 percent of the amounts credited to the National Tobacco Settlement Trust Fund under section 401(b)(3); and

[(2) any amounts withheld under section 213.]

SEC. 212. BLOCK GRANTS.

(a) IN GENERAL.—The Secretary shall award block grants to States determined to be eligible under subsection (b).

(b) ELIGIBLE STATES.—To be eligible to receive a grant under subsection (a), a State shall—

(1) prepare and submit to the Secretary an application, at such time, in such manner, and containing such information as the Secretary may require; and

(2) with respect to the year involved, demonstrate to the satisfaction of the Secretary that fewer than 5 percent of all individuals under 18 years of age who attempt to purchase tobacco products in the State in such year are successful in such purchase.

(c) PAYOUT; USE OF FUNDS.—

(1) ANNUAL DISTRIBUTION.—For each fiscal year in which one or more States is eligible to receive a grant under this section, the Secretary shall pay out [the balance in the account established under section 211(a) as of the end of the preceding fiscal year]

any amount appropriated for such fiscal year.

(2) PAYMENT TO STATE.—If more than one State is eligible to receive a grant under this section for any fiscal year, the amount payable for that fiscal year shall be apportioned among such eligible States on the basis of population.

(3) USE OF FUNDS.—Each State that receives a grant under this section shall distribute half of the amount received among retail outlets of tobacco products that, for fiscal year for which the State met the requirements of subsection (b), have outstanding records of compliance with the restrictions on underage sales of tobacco products.

SEC. 213. STATE ENFORCEMENT INCENTIVES.

(a) IN GENERAL.—

(1) ACTIVITIES AND REPORTS REGARDING ENFORCEMENT.—A State shall—

(A) conduct monthly random, unannounced inspections of sales or distribution outlets in the State to ensure compliance with a law prohibiting sales of tobacco products to individuals under 18 years of age;

(B) annually submit to the Secretary a report describing—

(i) the activities carried out by the State to enforce underage access laws during the fiscal year; and

(ii) the extent of success the State has achieved in reducing the availability of tobacco products to individuals under the age of 18 years; and

(C)(i) a detailed description of how the inspections described in subparagraph (A) were conducted and the methods used to identify outlets, with appropriate protection for the confidentiality of information regarding the timing of inspections and other investigative techniques whose effectiveness depends on continued confidentiality;

(ii) the identity of the single State agency designated by the Governor of the State to be responsible for the implementation of the requirements of this section.

(2) MINIMUM INSPECTION SCHEDULE.—In order to meet the requirements of paragraph (1)(A), inspections conducted by the State shall include at least 250 random, unannounced inspections of retail sale outlets annually for each 1,000,000 persons resident in the State, as most recently determined by the Bureau

of the Census. Such inspections shall cover a range of outlets (not preselected on the basis of prior violations) to measure overall levels of compliance as well as to identify violations, and shall be conducted to provide a probability sample of outlets. The sample must reflect the distribution of the population under the age of 18 years throughout the State and the distribution of the outlets throughout the State accessible to youth. Indian tribes shall conduct such inspections monthly of at least 1 retail outlet subject to their jurisdiction for each 4,000 reservation residents. Except as provided in this paragraph, any reports required by this paragraph shall be made public. As used in this paragraph, the term "outlet" refers to any location that sells at retail or otherwise distributes tobacco products to consumers, including to locations that sell such products over-the-counter.

(b) NONCOMPLIANCE.—

(1) INSPECTIONS.—The Secretary shall withhold from any State that fails to meet the requirements of subsection (a) in any calendar year an amount equal to an amount equal to 5 percent of the amount otherwise payable under this subtitle to that State for the next fiscal year.

(2) COMPLIANCE RATE.—The Secretary shall withhold from any State that fails to demonstrate a compliance rate of—

(A) at least 75 percent in the fifth and sixth fiscal years after the date of enactment of the National Tobacco Policy and Youth Smoking Act;

(B) at least 85 percent in the seventh, eighth, and ninth fiscal years after such date; and

(C) at least 90 percent in every fiscal year beginning with the tenth fiscal year after such date,

an amount equal to one percentage point for each percentage point by which the State failed to meet the percentage set forth in this subsection for that year from the amount otherwise payable under this subtitle for that fiscal year.

(c) DEFINITION.—For the purposes of this section, the term "first applicable fiscal year" means the first fiscal year beginning after the fiscal year in which funding is made available to the States under this section.

(f) RELEASE AND DISBURSEMENT.—

(1) Upon notice from the Secretary that an amount payable under section 202(e) has been ordered

withheld under subsection (b), a State may petition the Secretary for a release and disbursement of up to 75 percent of the amount withheld, and shall give timely written notice of such petition to the attorney general of that State and to all tobacco product manufacturers.

(2) The agency shall conduct a hearing on such a petition, in which the attorney general of the State and tobacco product manufacturers may participate and be heard.

(3) The burden shall be on the State to prove, by a preponderance of the evidence, that the release and disbursement should be made. The Secretary's decision on whether to grant such a release, and the amount of any such disbursement, shall be based on whether—

(A) the State has acted in good faith and in full compliance with this Act, and any rules or regulations promulgated under this Act;

(B) the State has pursued all reasonably available measures to attain the compliance rates and required percentage reductions applicable in the year for which the release is being sought;

(C) there is evidence of any direct or indirect action by the State to undermine the achievement of the compliance rates, the required percentage reductions, or other terms and objectives of this Act or the National Tobacco Policy and Youth Smoking Reduction Act; and

(D) any other relevant evidence.

(4) A State shall be entitled to interest on any withheld amount released at the average United States 52-Week Treasury Bill rate for the period between the withholding of the amount and its release.

(5) Any State attorney general or tobacco product manufacturer aggrieved by a final decision on a petition filed under this subsection may seek judicial review of such decision within 30 days in the United States Court of Appeals for the District of Columbia Circuit. Unless otherwise specified in this Act, judicial review under this section shall be governed by sections 701 through 706 of title 5, United States Code.

(6) No stay or other injunctive relief enjoining a reduction in a State's allotment pending appeal or otherwise may be granted by the Secretary or any court.

SEC. 214. CONFORMING CHANGE.

Section 1926 of the Public Health Service Act (42 U.S.C. 300x—26) is hereby repealed.

Subtitle C—Other Programs

SEC. 221. NATIONAL SMOKING CESSATION PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall establish a program to be known as the "National Smoking Cessation Program" under which the Secretary may award grants to eligible public and nonprofit entities and individuals for tobacco product use cessation purposes.

(b) ELIGIBILITY.—

(1) OF ENTITIES.—To be eligible to receive a grant under this section an entity shall—

(A) be a public or nonprofit private entity, including community health centers and other community-based organizations with a focus on low-income populations;

(B) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require;

(C) provide assurances that amounts received under the grant will be used in accordance with subsection (c)(1); and

(D) meet any other requirements determined appropriate by the Secretary.

(2) OF INDIVIDUALS.—To be eligible to receive a grant under this section an individual shall—

(A) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require;

(B) provide assurances that amounts received under the grant will be used only in accordance with subsection (c)(2); and

(C) meet any other requirements determined appropriate by the Secretary.

(c) USE OF FUNDS.—

(1) BY ENTITIES.—An entity that receives a grant under this section shall use amounts provided under the grant to establish or administer tobacco product use cessation programs that are approved in accordance with subsection (d).

(2) BY INDIVIDUALS.—An individual who receives a grant under this section shall use amounts provided under the grant to enroll in a tobacco product use cessation program or to purchase a tobacco product use cessation product that has been approved in accordance with subsection (d). Grants to individuals under this section may be in the form of vouchers that may be used to pay the costs of enrollment in an

approved program or to purchase an approved product.

(d) APPROVAL OF CESSATION PROGRAM OR DEVICES.—Using the best available scientific information, the Secretary shall promulgate regulations to provide for the approval of tobacco product use cessation programs and drugs, human biological products, or medical devices approved by the Food and Drug Administration or otherwise legally marketed under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or under the Public Health Service Act (42 U.S.C. 201 et seq.) for use as smoking cessation therapies or aids. The regulations shall ensure that tobacco product users—

(1) have reasonable access upon request to such comprehensive tobacco use cessation programs and drugs, human biological products, or medical devices; and

(2) have access to a broad range of cessation options that are tailored to the needs of the individual tobacco user.

(e) MINORITY FOCUS.—The Secretary shall ensure smoking cessation programs are directed to include minority populations in proportion to their prevalence in the smoking population, and are linguistically and culturally appropriate for such populations.

(f) FUNDING.—There are authorized to be appropriated from the National Tobacco Settlement Trust Fund, other than from amounts in the State Litigation Settlement Account, such sums as may be necessary to carry out this section.

SEC. 222. NATIONAL TOBACCO-FREE PUBLIC EDUCATION PROGRAM.

(a) ESTABLISHMENT OF BOARD.—

(1) IN GENERAL.—The Secretary shall establish an independent board to be known as the "Tobacco-Free Education Board" (referred to in this section as the "Board") to enter into contracts with or award grants to eligible public and nonprofit private entities to carry out public informational and educational activities designed to reduce the use of tobacco products.

(2) APPOINTMENT.—The Board shall be composed of 9 members to be appointed by the Secretary, of whom—

(A) at least 3 such members shall be individuals who are widely recognized by the general public for achievement in the athletic, cultural, entertainment, educational, business, or political field; and

(B) at least 3 such members shall be individuals who are heads of major public health organizations.

(3) TERMS AND VACANCIES.—The members of the Board shall serve staggered terms as determined appropriate at the time of appointment by the Secretary. A vacancy in the Board shall not affect its powers, but shall be filled in the same manner as the original appointment.

(4) POWERS.—

(A) HEARINGS.—The Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Board considers advisable to carry out the purposes of this section.

(B) INFORMATION FROM FEDERAL AGENCIES.—The Board may secure directly from any Federal department or agency such information as the Board considers necessary to carry out the provisions of this section.

(5) PERSONNEL MATTERS.—

(A) COMPENSATION.—Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual

rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Board. All members of the Board who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(B) TRAVEL EXPENSES.—The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

(b) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a program to be known as the "National Tobacco-Free Public Education Program" under which the Board may enter into contracts with or award grants to eligible public and nonprofit private entities to carry out public informational and educational activities designed to reduce the use of tobacco products.

(c) ELIGIBILITY.—To be eligible to receive a grant under this section an entity shall—

(1) be a—

(A) public entity or a State; or

(B) nonprofit private entity that—

(i) is not affiliated with a tobacco product manufacturer or importer;

(ii) has a demonstrated record of working effectively to reduce tobacco product use; and

(iii) has expertise in conducting a multi-media communications campaign, including proven effective campaigns for minority populations;

(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including a description of the activities to be conducted using amounts received under the grant or contract;

(3) provide assurances that amounts received under the grant will be used in accordance with subsection (d); and

(4) provide assurances to the Secretary that—

(A) the entity will annually report to the Secretary on the effectiveness of the approaches implemented including approaches related to high risk and minority populations;

(B) adequate records will be maintained with respect to such assistance;

(C) amounts provided to individuals or entities will be subject to independent audit; and

(D) activities of private entities or individuals will be coordinated with State and local public health officials in the planning and implementation of the program; and

(5) meet any other requirements determined appropriate by the Secretary.

(d) USE OF FUNDS.—An entity that receives a grant or contract under this section shall use amounts provided under the grant or contract to conduct multi-media public educational or information campaigns that are designed to discourage and de-glamorize the use of tobacco products. Such campaigns shall be designed to discourage the initiation of tobacco use by minors and other populations and encourage those using such products to quit. These campaigns shall include—

(1) school-based programs that are focused on those regions of the State with high smoking rates and targeted at populations most at risk to start smoking;

(2) Statewide college and university based education program to discourage individuals between the ages of 18 and 24 from beginning to on colleges or universities with high smoking rates; or

(3) community-based prevention programs that are focused on those populations within the community including minority populations, in proportion to their prevalence in the smoking population that are most at-risk to use tobacco products or that have been targeted by tobacco advertising or marketing.

(e) NEEDS OF CERTAIN POPULATIONS.—In awarding grants and contracts under this section, the Board shall take into consideration the needs of particular populations, including using methods that are proven and effective and are culturally and linguistically appropriate.

(f) FUNDING.—There are authorized to be appropriated from the National Tobacco Settlement Trust Fund, other than from amounts in the State Litigation Settlement Account, such sums as may be necessary to carry out this section.

SEC. 223. NATIONAL COMMUNITY ACTION PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall establish a program to be known as the "National Community Action Program" under which the Secretary may award grants to eligible State and local governmental entities to carry out community-based tobacco control efforts that are designed to encourage community involvement in reducing tobacco product use.

(b) ELIGIBILITY.—To be eligible to receive a grant under this section an entity shall—

(1) be a State or local public entity;

(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require;

(3) provide assurances that amounts received under the grant will be used in accordance with the purposes of this section; and

(4) meet any other requirements determined appropriate by the Secretary.

(c) FUNDING.—There are authorized to be appropriated from the National Tobacco Settlement Trust Fund, other than from amounts in the State Litigation Settlement Account, such sums as may be necessary to carry out this section.

SEC. 224. STATE RETAIL LICENSING PROGRAM.

(a) GENERAL REQUIREMENTS.—

(1) ESTABLISHMENT OF PROGRAM.—The Secretary shall provide a block grant under this Act to each State that has in effect a law that—

(A) provides for the licensing of entities engaged in the sale or distribution of tobacco products directly to consumers; and

(B) meets the standards described in this section.

(2) STATE AGREEMENT REQUIRED.—In order to receive a block grant under this section, a State—

(A) shall enter into an agreement with the Secretary to assume responsibilities for the implementation and enforcement of a tobacco retailer licensing program;

(B) shall ensure compliance with the Youth Access Restrictions regulations promulgated by the Secretary (21 C.F.R. 897.1 et seq.); and

(C) shall establish to the satisfaction of the Secretary that it has a law or regulation that includes the following:

(i) LICENSURE AND NOTICE.—A State license is required for each retail establishment involved in the sale or distribution of tobacco products to consumers. The State has a program under which notice is pro-

vided to such establishments and their employees of all licensing requirements and responsibilities under State and Federal law relating to the retail distribution of tobacco products.

(ii) PENALTIES.—

(I) CRIMINAL.—Criminal penalties are provided for the sale or distribution of tobacco products to a consumer without a license.

(II) CIVIL.—Civil penalties are provided for the sale or distribution of tobacco products in violation of State law, that include graduated fines and suspension or revocation of licenses, for repeated violations.

(III) OTHER.—There are other programs in place, including such measures as fines, suspension of driver's license privileges, or community service requirements, for underage youths who possess, purchase, or attempt to purchase tobacco products.

(iii) JUDICIAL REVIEW.—Judicial review procedures are in place for an action

of the State suspending, revoking, denying, or refusing to renew any license under its program.

(b) ENFORCEMENT.—Each State that receives a grant under this section shall undertake to enforce compliance with its tobacco retailing licensing program in a manner that can reasonably be expected to reduce the sale and distribution of tobacco products to individuals under 18 years of age. If the Secretary determines that a State is not enforcing the law in accordance with such an undertaking, the Secretary may withhold a portion of any unobligated funds under this section otherwise payable to that State.

(c) NON-PARTICIPATING STATES LICENSING REQUIREMENTS.—For retailers in States which have not established a licensing program under subsection (a), the Secretary may promulgate regulations establishing a Federal retail licensing program for retailers engaged in tobacco sales to consumers in those States. The Secretary may enter into agreements with States for the enforcement of those regulations. A State that enters into such an agreement shall receive a grant under this section to reimburse it for costs incurred in carrying out that agreement.

(d) FUNDING.—There are authorized to be appropriated from the National Tobacco Settlement Trust Fund, other than from amounts

in the State Litigation Settlement Account, such sums as may be necessary to carry out this section.

TITLE III—TOBACCO PRODUCT WARNINGS AND SMOKE CONSTITUENT DISCLOSURE

Subtitle A—Product Warnings, Labeling and Packaging

SEC. 301. CIGARETTE LABEL AND ADVERTISING WARNINGS.

Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) is amended to read as follows:

"SEC. 4. LABELING.

"(a) LABEL REQUIREMENTS.—

"(1) IN GENERAL.—It shall be unlawful for any person to manufacture, package, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

'WARNING: Cigarettes are addictive'

'WARNING: Tobacco smoke can harm your children'

'WARNING: Cigarettes cause fatal lung disease'

'WARNING: Cigarettes cause cancer'

'WARNING: Cigarettes cause strokes and heart disease'

'WARNING: Smoking during pregnancy can harm your baby'

'WARNING: Smoking can kill you'

'WARNING: Tobacco smoke causes fatal lung disease in non-smokers'

'WARNING: Quitting smoking now greatly reduces serious risks to your health'

"(2) PLACEMENT; TYPOGRAPHY; ETC.—

"(A) IN GENERAL.—Each label statement required by paragraph (1) shall be located in the upper portion of the front and rear panels of the package, directly on the package underneath the cellophane or other clear wrapping. Except as provided in subparagraph (B), each label statement shall comprise at least the top 25 percent of the front and rear panels of the package. The word 'WARNING' shall appear in capital letters and all text shall be in conspicuous and legible 17-point type, unless the text of the label statement would occupy more than 70 percent of such area, in which case the text may be in a smaller conspicuous and legible type size, provided that at least 60 percent of such area is occupied by required text. The text shall be black on a white background, or white on a black background, in

a manner that contrasts, by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(4).

"(B) FLIP-TOP BOXES.—For any cigarette brand package manufactured or distributed before January 1, 2000, which employs a flip-top style (if such packaging was used for that brand in commerce prior to June 21, 1997), the label statement required by paragraph (1) shall be located on the flip-top area of the package, even if such area is less than 25 percent of the area of the front panel. Except as provided in this paragraph, the provisions of this subsection shall apply to such packages.

"(3) DOES NOT APPLY TO FOREIGN DISTRIBUTION.—The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of cigarettes which does not manufacture, package, or import cigarettes for sale or distribution within the United States.

"(b) ADVERTISING REQUIREMENTS.—

"(1) IN GENERAL.—It shall be unlawful for any tobacco product manufacturer, importer, distributor, or retailer of cigarettes to advertise or cause to be ad-

vertised within the United States any cigarette unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a) of this section.

"(2) TYPOGRAPHY, ETC.—Each label statement required by subsection (a) of this section in cigarette advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent yield shall comprise 20 percent of the area of the advertisement and shall appear in a conspicuous and prominent format and location at the top of each advertisement within the trim area. The Secretary may revise the required type sizes in such area in such manner as the Secretary determines appropriate. The word 'WARNING' shall appear in capital letters, and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black if the background is white and white if the background is black, under the plan submitted under paragraph (4) of this subsection. The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke

of the capital 'W' of the word 'WARNING' in the label statements. The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement. The label statements shall be in English, except that in the case of—

"(A) an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

"(B) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

"(3) ADJUSTMENT BY SECRETARY.—The Secretary may, through a rulemaking under section 553

of title 5, United States Code, adjust the format and type sizes for the label statements required by this section or the text, format, and type sizes of any required tar, nicotine yield, or other constituent disclosures, or to establish the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.). The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of cigarette advertisements provided by paragraph (2) of this subsection. The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

"(4) MARKETING REQUIREMENTS.—

"(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

"(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of cigarettes in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

"(C) The Secretary shall review each plan submitted under subparagraph (B) and approve it if the plan—

"(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

"(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.".

SEC. 302. AUTHORITY TO REVISE CIGARETTE WARNING LABEL STATEMENTS.

Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by section 301 of this title, is further amended by adding at the end the following:

"(c) CHANGE IN REQUIRED STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, revise the text of any of the warning label statements required by subsection (a) of this section if the Secretary determines that such a change would promote greater public understanding of the risks associated with the use of tobacco products.".

SEC. 303. SMOKELESS TOBACCO LABELS AND ADVERTISING WARNINGS.

Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402) is amended to read as follows:

"SEC. 3. SMOKELESS TOBACCO WARNING.

"(a) GENERAL RULE.—

"(1) It shall be unlawful for any person to manufacture, package, or import for sale or distribution within the United States any smokeless tobacco product unless the product package bears, in accordance with the requirements of this Act, one of the following labels:

'WARNING: This product can cause mouth cancer'

'WARNING: This product can cause gum disease and tooth loss'

'WARNING: This product is not a safe alternative to cigarettes'

'WARNING: Smokeless tobacco is addictive'

"(2) Each label statement required by paragraph (1) shall be—

"(A) located on the 2 principal display panels of the package, and each label statement shall comprise at least 25 percent of each such display panel; and

"(B) in 17-point conspicuous and legible type and in black text on a white background, or white text on a black background, in a manner that contrasts by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(3), except that if the text of a label statement would occupy more than 70 percent of the area specified by subparagraph (A), such text may appear in a smaller type size, so long as at least 60 percent of such warning area is occupied by the label statement.

"(3) The label statements required by paragraph (1) shall be introduced by each tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products concurrently into the distribution chain of such products.

"(4) The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of any smokeless tobacco product that does not manufacture, package, or import smokeless tobacco products for sale or distribution within the United States.

"(b) REQUIRED LABELS.—

"(1) It shall be unlawful for any tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products to advertise or cause to be advertised within the United States any smokeless tobacco product unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

"(2) Each label statement required by subsection (a) in smokeless tobacco advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent yield shall—

"(A) comprise at least 20 percent of the area of the advertisement, and the warning area shall be delineated by a dividing line of contrasting color from the advertisement; and

"(B) the word 'WARNING' shall appear in capital letters and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black on a white background, or white on a black background, in an alternating fashion under the plan submitted under paragraph (3).

"(3)(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

"(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of smokeless tobacco product in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

"(C) The Secretary shall review each plan submitted under subparagraph (B) and approve it if the plan—

"(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

"(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.".

SEC. 304. AUTHORITY TO REVISE SMOKELESS TOBACCO PRODUCT WARNING LABEL STATEMENTS.

Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by section 303 of this title, is further amended by adding at the end the following:

"(c) AUTHORITY TO REVISE WARNING LABEL STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the warning label statements required by subsection (a) of this section, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), if the Secretary finds that such a change

would promote greater public understanding of the risks associated with the use of smokeless tobacco products.".

SEC. 305. TAR, NICOTINE, AND OTHER SMOKE CONSTITUENT DISCLOSURE TO THE PUBLIC.

Section 4(a) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333 (a)), as amended by section 301 of this title, is further amended by adding at the end the following:

"(4)(A) The Secretary shall, by a rulemaking conducted under section 553 of title 5, United States Code, determine (in the Secretary's sole discretion) whether cigarette and other tobacco product manufacturers shall be required to include in the area of each cigarette advertisement specified by subsection (b) of this section, or on the package label, or both, the tar and nicotine yields of the advertised or packaged brand. Any such disclosure shall be in accordance with the methodology established under such regulations, shall conform to the type size requirements of subsection (b) of this section, and shall appear within the area specified in subsection (b) of this section.

"(B) Any differences between the requirements established by the Secretary under subparagraph (A) and tar and nicotine yield reporting requirements established by the Federal Trade Commission shall be

resolved by a memorandum of understanding between the Secretary and the Federal Trade Commission.

"(C) In addition to the disclosures required by subparagraph (A) of this paragraph, the Secretary may, under a rulemaking conducted under section 553 of title 5, United States Code, prescribe disclosure requirements regarding the level of any cigarette or other tobacco product smoke constituent. Any such disclosure may be required if the Secretary determines that disclosure would be of benefit to the public health, or otherwise would increase consumer awareness of the health consequences of the use of tobacco products, except that no such prescribed disclosure shall be required on the face of any cigarette package or advertisement. Nothing in this section shall prohibit the Secretary from requiring such prescribed disclosure through a cigarette or other tobacco product package or advertisement insert, or by any other means under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).".

Subtitle B—Testing and Reporting of Tobacco Product Smoke Constituents

SEC. 311. REGULATION REQUIREMENT.

(a) TESTING, REPORTING, AND DISCLOSURE.—Not later than 24 months after the date of enactment of this Act, the Secretary, through the Commissioner of the Food and Drug Administration, shall promulgate regulations under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) that meet the requirements of subsection (b) of this section.

(b) CONTENTS OF RULES.—The rules promulgated under subsection (a) of this section shall require the testing, reporting, and disclosure of tobacco product smoke constituents and ingredients that the Secretary determines should be disclosed to the public in order to protect the public health. Such constituents shall include tar, nicotine, carbon monoxide, and such other smoke constituents or ingredients as the Secretary may determine to be appropriate. The rule may require that tobacco product manufacturers, packagers, or importers make such disclosures relating to tar and nicotine through labels or advertising, and make such disclosures regarding other smoke constituents or ingredients as the Secretary determines are necessary to protect the public health.

(c) AUTHORITY.—The Food and Drug Administration shall have authority to conduct or to require the testing, reporting, or disclosure of tobacco product smoke constituents.

TITLE IV—NATIONAL TOBACCO SETTLEMENT TRUST FUND

[Subtitle A—General Payment Provisions

[SEC. 401. ESTABLISHMENT OF TRUST FUND.

[(a) CREATION.—

[(1) IN GENERAL.—There is established in the Treasury of the United States a trust fund to be known as the "National Tobacco Settlement Trust Fund", consisting of such amounts as may be appropriated or credited to the trust fund.

[(b) TRANSFERS TO NATIONAL TOBACCO SETTLEMENT TRUST FUND.—There shall be credited to the trust fund the following amounts:

[(1) Amounts paid under section 403.

[(2) Amounts equivalent to the fines or penalties paid under section 403, 404, or 406, including interest thereon.

[(3) Amounts equivalent to penalties paid under section 202, including interest thereon.

[(c) REPAYABLE ADVANCES.—

[(1) AUTHORIZATION.—There are authorized to be appropriated to the trust fund, as repayable advances, such sums as may from time to time be necessary to make the expenditures authorized by this Act.

[(2) REPAYMENT WITH INTEREST.—Repayable advances made to the trust fund shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary of the Treasury determines that moneys are available in the trust fund for such purposes.

[(3) RATE OF INTEREST.—Interest on advances made under this subsection shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining period to maturity comparable to the anticipated period during which the advance will be outstanding.

[(d) EXPENDITURES FROM TRUST FUND.—Amounts in the trust fund shall be available in each calendar year, as provided by appropriations Acts, except that distributions to the States from amounts credited to the State Litigation Settlement Account shall not require further author-

ization or appropriation and shall be as provided in the Master Settlement Agreement and this Act, and not less than 15 percent of the amounts shall be expended, without further appropriation, notwithstanding any other provision of this Act, from the trust fund for each fiscal year, in the aggregate, for actitivities under this Act related to—

[(1) the prevention of smoking;

[(2) education;

[(3) State, local, and private control of tobacco product use; and

[(4) smoking cessation.

[(e) BUDGETARY TREATMENT OF TRUST FUND OPERATIONS.—The receipts and disbursements of the National Tobacco Settlement Trust Fund shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

[(f) ADMINISTRATIVE PROVISIONS.—Section 9602 of the Internal Revenue Code of 1986 shall apply to the trust fund to the same extent as if it were established by subchapter A of chapter 95 of such Code.

[SEC. 402. STATE LITIGATION SETTLEMENT ACCOUNT.

[(a) IN GENERAL.—There is established within the trust fund a separate account, to be known as the State Litigation Settlement Account.

[(b) TRANSFERS TO ACCOUNT.—From amounts received by the trust fund under section 403, the State Litigation Settlement Account shall be credited with all settlement payments designated for allocation, without further appropriation, among the several States, which shall consist of—

[(1) the sum of $196,500,000,000, to be paid in installments over a period of 25 years; and

[(2) beginning after the last installment under paragraph (1), 50 percent of the total annual payments made by participating tobacco product manufacturers under section 403(b) each year thereafter.

[(c) REIMBURSEMENT FOR STATE EXPENDITURES.—

[(1) PAYMENT.—Amounts credited to the account are available, without further appropriation, in each fiscal year to provide funds to each State to reimburse such State for amounts expended by the State for the treatment of individuals with tobacco-related illnesses or conditions.

[(2) AMOUNT.—The amount for which a State is eligible for under subparagraph (A) for a fiscal year shall be based on the Master Settlement Agreement and its ancillary documents in accordance with such

agreements thereunder as may be entered into after the date of enactment of this Act by the governors of the several States.

[(3) USE OF FUNDS.—A State may use amounts received under this subsection as the State determines appropriate.

[(4) FUNDS NOT AVAILABLE AS MEDICAID REIMBURSEMENT.—Funds in the account shall not be available to the Secretary as reimbursement of Medicaid expenditures or considered as Medicaid overpayments for purposes of recoupment.

[(d) PAYMENTS TO BE TRANSFERRED PROMPTLY TO STATES.—The Secretary of the Treasury shall transfer amounts available under subsection (c) to each State as amounts are credited to the State Litigation Settlement Account without undue delay.

[SEC. 403. PAYMENTS BY INDUSTRY.

[(a) INITIAL PAYMENT.—

[(1) CERTAIN PARTICIPATING TOBACCO PRODUCT MANUFACTURERS.—The following participating tobacco product manufacturers shall deposit into the National Tobacco Settlement Trust Fund an aggregate payment of $10,000,000,000, apportioned as follows:

[(A) Phillip Morris Incorporated—65.8 percent;

[(B) Brown and Williamson Tobacco Corporation—17.3 percent;

[(C) Lorillard Tobacco Company—7.1 percent;

[(D) R.J. Reynolds Tobacco Company—6.6 percent; and

[(E) United States Tobacco Company—3.2 percent.

[(2) NO CONTRIBUTION FROM OTHER PARTICIPATING TOBACCO PRODUCT MANUFACTURERS.—No other participating tobacco product manufacturer shall be required to contribute to the payment required by this subsection.

[(3) PAYMENT DATE; INTEREST.—Each participating tobacco product manufacturer required to make a payment under paragraph (1) of this subsection shall make such payment within 30 days after the date of enactment of this Act in accordance with the terms of the Master Settlement Agreement and shall owe interest on such payment at the prime rate plus 10 percent, as published in the Wall Street Journal on the latest publication date on or before the date

of enactment of this Act, for payments made after the required payment date.

[(b) ANNUAL PAYMENTS.—Each calendar year beginning after the required payment date under subsection (a)(3) the participating tobacco product manufacturers shall make total payments into the Fund for each calendar year in the following applicable base amounts, subject to adjustment as provided in section 404:

[(1) year 1—$14,400,000,000;

[(2) year 2—$15,400,000,000;

[(3) year 3—$17,700,000,000;

[(4) year 4—$21,000,000,000;

[(5) year 5—$23,600,000,000; and

[(6) year 6 and thereafter—the adjusted applicable base amount under section 404.

[(c) PAYMENT SCHEDULE.—Each annual payment due under subsection (b) shall be made in 3 equal installments due on March 1st, on June 1st, and on September 1st of each year.

[(d) APPORTIONMENT OF ANNUAL PAYMENT.—

[(1) IN GENERAL.—Each participating tobacco product manufacturer is liable for its share of the applicable base amount payment due each year under subsection (b). Any separate collection of these payments among such participating tobacco product

manufacturers shall be set forth in accordance with an appendix to the Protocol. The annual payment is the obligation and responsibility of only those participating tobacco product manufacturers and their affiliates that directly sell tobacco products in the domestic market to wholesalers, retailers, or consumers, their successors and assigns, and any subsequent fraudulent transferee (but only to the extent of the interest or obligation fraudulently transferred).

[(2) DETERMINATION OF AMOUNT OF PAYMENT DUE.—Each participating tobacco product manufacturer is liable for its share of each installment in proportion to its share of tobacco products sold in the domestic market for the most recent available calendar quarter, as determined by the Secretary of the Treasury not more than 2 months, and not less than 1 month, before the payment is due. One month before each payment is due under this subsection, the Secretary shall make a final determination of each tobacco product manufacturer's applicable base amount payment obligation.

[(3) CALCULATION OF PARTICIPATING TOBACCO PRODUCT MANUFACTURER'S SHARE OF ANNUAL PAYMENT.—The share of the annual payment apportioned to a participating tobacco product manufac-

turer shall be equal to that manufacturer's share of adjusted units. A participating tobacco product manufacturer's share of adjusted units shall be determined as follows:

[(A) UNITS.—A participating tobacco product manufacturer's number of units shall be determined by counting each—

[(i) pack of 20 cigarettes as 1 adjusted unit;

[(ii) 1.2 ounces of moist snuff as 0.4 adjusted unit; and

[(iii) 3 ounces of other smokeless tobacco product as 0.24 adjusted units.

[(B) DETERMINATION OF ADJUSTED UNITS.—Except as provided in subparagraph (C), a participating tobacco product manufacturer's number of adjusted units shall be determined under the following table:

For units:	*Each unit shall be treated as:*
Not exceeding 150 million	*25% of a unit*
Exceeding 150 million, but not exceeding 300 milllion	*50% of a unit*
Exceeding 300 million	*1 unit*

[(C) SPECIAL RULE FOR LARGE MANUFACTURERS.—If a participating tobacco product manufacturer has more than 500 million units under subparagraph (A), then that manufactur-

er's number of adjusted units shall be equal to the total number of units, and not determined under subparagraph (B).

[(e) COMPUTATIONS.—The determinations required by subsection (d) shall be made and certified by the Secretary of Treasury. The parties shall promptly provide the Treasury Department with information sufficient for it to make such determinations.

[(f) NONAPPLICATION TO CERTAIN MANUFACTURERS.—

[(1) EXEMPTION.—A participating manufacturer described in paragraph (3) is exempt from the payments required by subsection (b).

[(2) LIMITATION.—Paragraph (1) applies only to assessments on cigarettes to the extent that those cigarettes constitute less than 3 percent of all cigarettes manufactured and distributed to consumers in any calendar year.

[(3) PARTICIPATING TOBACCO PRODUCT MANUFACTURERS TO WHICH SUBSECTION APPLIES.—A participating tobacco product manufacturer is described in this paragraph if it—

[(A) resolved tobacco-related civil actions with more than 25 States before January 1, 1998, through written settlement agreements

signed by the attorneys general (or the equivalent chief legal officer if there is no office of attorney general) of those States; and

[(B) provides to all other States, not later than December 31, 1998, the opportunity to enter into written settlement agreements that—

[(i) are substantially similar to the agreements entered into with those 25 States; and

[(ii) provide the other States with annual payment terms that are equivalent to the most favorable annual payment terms of its written settlement agreements with those 25 States.

[SEC. 404. ADJUSTMENTS.

[The applicable base amount under section 403(b) for a given calendar year shall be adjusted as follows in determining the annual payment for that year:

[(1) INFLATION ADJUSTMENT.—

[(A) IN GENERAL.—Beginning with the fourth calendar year after the date of enactment of this Act, the adjusted applicable base amount under section 403(b)(6) is the amount of the annual payment made for the preceding year increased by the greater of 3 percent or the infla-

tion adjustment, adjusted (for calendar year 2005 and later years) by the volume adjustment under paragraph (2).

[(B) INFLATION ADJUSTMENT.—For purposes of subparagraph (A), the inflation adjustment for any calendar year is the percentage (if any) by which—

[(i) the CPI for the preceding calendar year, exceeds

[(ii) the CPI for the second preceding calendar year.

[(C) CPI.—For purposes of subparagraph (B), the CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor.

[(D) ROUNDING.—If any increase determined under subparagraph (A) is not a multiple of $1,000, the increase shall be rounded to the nearest multiple of $1,000.

[(2) VOLUME ADJUSTMENT.—Beginning with calendar year 2005, the applicable base amount (as adjusted for inflation under paragraph (1)) shall be adjusted for changes in volume of domestic sales by multiplying the applicable base amount by the ratio

of the actual volume for the preceding year to the base volume. For purposes of this paragraph, the term "base volume" means the number of units of tobacco products sold domestically by the participating tobacco product manufacturers in calendar year 1996, as reported by such manufacturers to the Secretary of the Treasury.

[SEC. 405. PAYMENTS TO BE PASSED THROUGH TO CONSUMERS.

[(a) TARGET PRICE.—Each participating tobacco product manufacturer shall use its best efforts to adjust the price at which it sells each unit of tobacco products in the domestic market or to an importer for resale in the domestic market by an amount sufficient to pass through to each purchaser on a per-unit basis an equal share of the annual payments to be made by such participating tobacco product manufacturer under this Act and the Master Settlement agreement for the year in which the sale occurs.

[(b) COLLECTION OF DEFICIENCY.—

[(1) IN GENERAL.—If the Secretary determines that a participating tobacco product manufacturer failed to comply with subsection (a), the Secretary shall assess a penalty against that manufacturer in an amount equal to—

[(A) 110 percent of the shortfall amount; or

[(B) if the failure to comply with subsection (a) was intentional, up to 125 percent of the shortfall amount.

[(2) SHORTFALL AMOUNT.—For purposes of paragraph (1), the term "shortfall amount" means—

[(A) the number of units of tobacco products sold by a tobacco product manufacturer during a calendar year, multiplied by—

[(B) the excess of—

[(i) the average adjusted price for which each such unit would have been sold during that year if the tobacco product manufacturer had met the price contemplated by subsection (a); over

[(ii) the average adjusted price for which each such unit was sold during that year.

[(3) SOLE REMEDY FOR FAILURE TO PASS PAYMENT THROUGH TO CONSUMERS.—This subsection is the sole remedy available to any person, including any State, for the failure by a participating tobacco product manufacturer to pass through the payments under section 403 to consumers as required by subsection (a).

[SEC. 406. TAX TREATMENT OF PAYMENTS.

[All payments made under section 403 are ordinary and necessary business expenses for purposes of chapter 1 of the Internal Revenue Code of 1986, and no part thereof is either in settlement of an actual or potential liability for a fine or penalty (civil or criminal) or the cost of a tangible or intangible asset or other future benefit.

[SEC. 407. ENFORCEMENT FOR NONPAYMENT.

[(a) PENALTY.—Any participating tobacco product manufacturer that fails to make any payment required under section 403 or 405 within 60 days after the date on which such fee is due is liable for a civil penalty of $100,000 for each day during the noncompliance period.

[(b) NONCOMPLIANCE PERIOD.—For purposes of this section, the term "noncompliance period" means, with respect to any failure to make a payment required under section 403 or 405, the period—

[(1) beginning on the due date for such payment; and

[(2) ending on the date on which such payment is paid in full.

[(c) LIMITATIONS.—

[(1) IN GENERAL.—No penalty shall be imposed by subsection (a) on any failure to make a payment under section 403 during any period for which it is established to the satisfaction of the Secretary of the

Treasury that none of the persons responsible for such failure knew or, exercising reasonable diligence, should have known, that such failure existed.

[(2) CORRECTIONS.—No penalty shall be imposed under subsection (a) on any failure to make a payment under section 403 if—and

[(B) such failure is corrected during the 30-day period beginning on the 1st date that any of the persons responsible for such failure knew or, exercising reasonable diligence, should have known, that such failure existed.

[(3) WAIVER.—In the case of any failure to make a payment under section 403 that is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive all or part of the penalty imposed under subsection (a) to the extent that the Secretary determines that the payment of such penalty would be excessive relative to the failure involved.

[(d) STATUS AS PARTICIPATING TOBACCO PRODUCT MANUFACTURER.—If, at the end of the 1-year period beginning on the date on which a participating tobacco product manufacturer fails to make a timely payment as required under section 403, such manufacture has not fully paid the amount owed by such manufacturer under such section, such manufacturer shall be considered a nonparticipating

tobacco product manufacturer and shall not be eligible for any protections or assistance provided for under this Act.]

Subtitle B—General Spending Provisions

SEC. 411. IMPLEMENTING AND ENFORCEMENT FUNDS.

[Notwithstanding section 401(d), not less than $300,000,000 of the amounts available in the trust fund, other than in the State Litigation Settlement Account, shall be made available for each fiscal year without further appropriation to] ***Subject to the availability of appropriations, the Secretary shall make payments from amounts in the National Tobacco Settlement Trust Fund, other than in the State Litigation Settlement Account, to*** *the Commissioner of Food and Drugs as reimbursement for the costs incurred by the Food and Drug Administration in implementing and enforcing requirements relating to tobacco products. In order to ensure that the amounts provided by this section are used for the purposes for which they are made available, the Commissioner shall submit an account of such costs for each fiscal year to the Secretary of the Treasury, in such detail as the Secretary may require, within 60 days after the close of the fiscal year and transmit a copy of the report to the Congress at the same time as it is submitted to the Secretary.*

[SEC. 412. IMPROVING CHILD CARE AND EARLY CHILDHOOD DEVELOPMENT.

[(a) IN GENERAL.—The Secretary of the Treasury may transfer funds from the National Tobacco Settlement Trust Fund for each fiscal year to be used by the Secretary for the following purposes:

[(1) Improving the affordability of child care through increased appropriations for child care under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9859 et seq.).

[(2) Enhancing the quality of child care and early childhood development through the provision of grants to States under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9859 et seq.).

[(3) Expanding the availability and quality of school-age care through the provision of grants to States under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9859 et seq.).

[(4) Assisting young children by providing grants to local collaboratives under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9859 et seq.) for the purpose of improving parent education and supportive services, strengthening the quality of child care, improving health services, and improving services for children with disabilities.

[(b) SUPPLEMENT NOT SUPPLANT.—Amounts made available to a State under this section shall be used to supplement and not supplant other Federal, State, and local funds provided for programs that serve the health and developmental needs of children. Amounts provided to the State under any of the provisions of law referred to in this section shall not be reduced solely as a result of the availability of funds under this section.

[(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the trust fund established by section 401, other than from amounts in the State Litigation Settlement Account, such sums as are necessary to carry out this section.]

TITLE V—STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE

SEC. 501. DEFINITIONS.

In this title:

(1) ASSISTANT SECRETARY.—The term "Assistant Secretary" means the Assistant Secretary of the Occupational Safety and Health Administration of the Department of Labor.

(2) PUBLIC FACILITY.—

(A) IN GENERAL.—The term "public facility" means any building used for purposes that

affect interstate or foreign commerce that is regularly entered by 10 or more individuals at least 1 day per week including any building owned by or leased to an agency, independent establishment, department, or branch of the United States Government.

(B) EXCLUSIONS.—The term "public facility" does not include a building or portion thereof which is used for residential purposes or as a restaurant (other than a fast food restaurant), bar, private club, hotel guest room or common area, casino, bingo parlor, tobacconist's shop, or prison.

(C) FAST FOOD RESTAURANT.—The term "fast food restaurant" means any restaurant or chain of restaurants that primarily distributes food through a customer pick-up (either at a counter or drive-through window). The Assistant Secretary may promulgate regulations to clarify this subparagraph to ensure that the intended inclusion of establishments catering to individuals under 18 years of age is achieved.

(3) RESPONSIBLE ENTITY.—The term "responsible entity" means, with respect to any public facility, the owner of such facility except that, in the case

of any such facility or portion thereof which is leased, such term means the lessee.

SEC. 502. SMOKE-FREE ENVIRONMENT POLICY.

(a) POLICY REQUIRED.—In order to protect children and adults from cancer, respiratory disease, heart disease, and other adverse health effects from breathing environmental tobacco smoke, the responsible entity for each public facility shall adopt and implement at such facility a smoke-free environment policy which meets the requirements of subsection (b).

(b) ELEMENTS OF POLICY.—

(1) IN GENERAL.—The responsible entity for a public facility shall—

(A) prohibit the smoking of cigarettes, cigars, and pipes, and any other combustion of tobacco within the facility and on facility property within the immediate vicinity of the entrance to the facility; and

(B) post a clear and prominent notice of the smoking prohibition in appropriate and visible locations at the public facility.

(2) EXCEPTION.—The responsible entity for a public facility may provide an exception to the prohibition specified in paragraph (1) for 1 or more specially designated smoking areas within a public facil-

ity if such area or areas meet the requirements of subsection (c).

(c) SPECIALLY DESIGNATED SMOKING AREAS.—A specially designated smoking area meets the requirements of this subsection if—

(1) the area is ventilated in accordance with specifications promulgated by the Assistant Secretary that ensure that air from the area is directly exhausted to the outside and does not recirculate or drift to other areas within the public facility;

(2) the area is maintained at negative pressure, as compared to adjoining nonsmoking areas, as determined under regulations promulgated by the Assistant Secretary;

(3) nonsmoking individuals do not have to enter the area for any purpose while smoking is occurring in such area; and

(4) cleaning and maintenance work are conducted in such area only when no smoking is occurring in the area.

SEC. 503. CITIZEN ACTIONS.

(a) IN GENERAL.—An action may be brought to enforce the requirements of this title by any aggrieved person, any State or local government agency, or the Assistant Secretary.

(b) VENUE.—Any action to enforce this title may be brought in any United States district court for the district in which the defendant resides or is doing business to enjoin any violation of this title or to impose a civil penalty for any such violation in the amount of not more than $5,000 per day of violation. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce this title and to impose civil penalties under this title.

(c) NOTICE.—An aggrieved person shall give any alleged violator notice at least 60 days prior to commencing an action under this section. No action may be commenced by an aggrieved person under this section if such alleged violator complies with the requirements of this title within such 60-day period and thereafter.

(d) COSTS.—The court, in issuing any final order in any action brought under this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing plaintiff, whenever the court determines such award is appropriate.

(e) PENALTIES.—The court, in any action under this section to apply civil penalties, shall have discretion to order that such civil penalties be used for projects which further the policies of this title. The court shall obtain the

view of the Assistant Secretary in exercising such discretion and selecting any such projects.

SEC. 504. PREEMPTION.

Nothing in this title shall preempt or otherwise affect any other Federal, State, or local law which provides greater protection from health hazards from environmental tobacco smoke.

SEC. 505. REGULATIONS.

The Assistant Secretary is authorized to promulgate such regulations as the Assistant Secretary deems necessary to carry out this title.

SEC. 506. EFFECTIVE DATE.

Except as provided in section 507, the provisions of this title shall take effect on the first day of January next following the next regularly scheduled meeting of the State legislature occurring after the date of enactment of this Act at which, under the procedural rules of that legislature, a measure under section 507 may be considered.

SEC. 507. STATE CHOICE.

This title shall not apply to any State that, by law, provides that it shall not apply to that State.

TITLE VI—APPLICATION TO INDIAN TRIBES.

SEC. 601. SHORT TITLE.

This title may be cited as the "Reduction in Tobacco Use and Regulation of Tobacco Products in Indian Country Act of 1998".

SEC. 602. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that Native Americans have used tobacco products for recreational, ceremonial, and traditional purposes for centuries.

(b) PURPOSES.—It is the purpose of this title to—

(1) provide for the implementation of the National Tobacco Policy and Youth Smoking Reduction Act with respect to the regulation of tobacco products and other tobacco-related activities on Indian lands;

(2) recognize the historic Native American traditional and ceremonial use of tobacco products, and to preserve and protect the cultural, religious, and ceremonial uses of tobacco by members of Indian tribes;

(3) recognize and respect Indian tribal sovereignty and tribal authority to make and enforce laws regarding the regulation of tobacco distributors and tobacco products on Indian lands; and

(4) ensure that the necessary funding is made available to tribal governments for licensing and en-

forcement of tobacco distributors and tobacco products on Indian lands.

SEC. 603. APPLICATION OF TOBACCO-RELATED PROVISIONS TO NATIVE AMERICANS.

(a) IN GENERAL.—The provisions of this Act apply to the manufacture, distribution, or sale of tobacco or tobacco products in Indian country and on other trust lands subject to the jurisdiction of an Indian tribe. To the extent that an Indian tribe engages in the manufacture, distribution, or sale of tobacco products, the provisions of this Act apply to that tribe.

(b) TRADITIONAL USE EXCEPTION.—

(1) IN GENERAL.—In recognition of the religious, ceremonial, and traditional uses of tobacco and tobacco products by Indian tribes and the members of such tribes, nothing in this Act shall be construed to infringe upon the right of such tribes or members of such tribes to acquire, possess, use, or transfer any tobacco or tobacco products for such purposes, or to permit an infringement upon the ability of minors to participate and use tobacco products for religious, ceremonial, or traditional purposes.

(2) APPLICATION OF PROVISIONS.—Paragraph (1) shall apply only to those quantities of tobacco or tobacco products necessary to fulfill the religious, cere-

monial, or traditional purposes of an Indian tribe or the members of such tribe, and shall not be construed to permit the general marketing of tobacco or tobacco products in a manner that is not in compliance with chapter IX of the Federal Food, Drug, and Cosmetic Act as added by this Act.

(3) LIMITATION.—Nothing in this Act shall be construed to permit an Indian tribe or member of such a tribe to acquire, possess, use, or transfer any tobacco or tobacco product in violation of section 2342 of title 18, United States Code, with respect to the transportation of contraband cigarettes.

[(c) PAYMENTS TO TOBACCO TRUST FUND.—Any Indian tribe that engages in the manufacture of tobacco products shall be subject to liability for any annual fee payments that are levied on other tobacco product manufacturers for purposes of the National Tobacco Settlement Trust Fund. Any Indian tribe that does not pay such fees shall be considered a nonparticipating tobacco product manufacturer under section 708 of this Act.]

(d) APPLICATION OF FEDERAL FOOD, DRUG, AND COSMETIC ACT REQUIREMENTS.—

(1) IN GENERAL.—The provisions of this Act and the provisions of the Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) relating to the manufacture,

distribution, and sale of tobacco products shall apply in Indian country and on other trust lands subject to the jurisdiction of an Indian tribe. To the extent that an Indian tribe engages in the manufacture, distribution, or sale of tobacco products, the provisions of this Act apply to that tribe.

(2) JURISDICTION.—With respect to tobacco-related activities that take place in Indian country or on trust lands within the jurisdiction of an Indian tribe, the responsibility for enforcing the regulations promulgated under paragraph (1) shall be vested in—

(A) the Indian tribe involved;

(B) the State within which the lands of the Indian tribe are located, under a voluntary cooperative agreement entered into by the State and the Indian tribe or tribal organization; or

(C) the Secretary.

(3) ELIGIBILITY FOR ASSISTANCE.—Under the regulations promulgated under paragraph (1), the Secretary, in consultation with the Secretary of the Interior, shall provide assistance to an Indian tribe in meeting and enforcing the requirements under such regulations, including grant funds, if—

(A) the tribe or tribal organization has a governing body that has powers and carries out

duties that are similar to the powers and duties of State or local governments;

(B) the functions to be exercised through the use of such assistance relate to activities conducted in Indian country and on other trust lands subject to the jurisdiction of the tribe; and

(C) the tribe is reasonably expected to be capable of carrying out the functions required by the Secretary.

(4) DETERMINATIONS.—Not later than 60 days after the date on which an Indian tribe submits an application for assistance under paragraph (3), the Secretary shall make a determination concerning the eligibility of such tribe for such assistance.

(5) IMPLEMENTATION BY THE SECRETARY.—If the Secretary determines that the Indian tribe is not willing or not qualified to administer the requirements of the regulations promulgated under this subsection, or the tribe is considered to be a non-participating tobacco product manufacturer, the Secretary, in consultation with the Secretary of the Interior, shall implement and enforce such regulations on behalf of the tribe.

(6) DEFICIENT APPLICATIONS; OPPORTUNITY TO CURE.—If the Secretary determines under paragraph

(4) that a tribe is not eligible for assistance under this subsection, the Secretary shall—

(A) submit to such tribe in writing, a statement of the reasons for such determination; and

(B) shall assist such tribe in overcoming any deficiencies that resulted in the determination of ineligibility.

After an opportunity to review and cure such deficiencies, the tribe may re-apply to the Secretary for assistance under this subsection.

(e) RETAIL LICENSING REQUIREMENTS.—

(1) IN GENERAL.—The requirements of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) and this Act with respect to the licensing of tobacco retailers shall apply to retailers that sell tobacco or tobacco products in Indian country or on trust lands within the jurisdiction of an Indian tribe.

(2) MINIMUM FEDERAL STANDARDS.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall promulgate regulations to authorize an Indian tribe to implement a tribal tobacco product licensing program in Indian country or on trust lands within the jurisdiction of that Indian tribe.

(B) MINIMUM STANDARDS.—In order for an Indian tribe to assume responsibility for the licensing and regulation of tobacco-related activities conducted in Indian country or on other trust lands subject to the jurisdiction of an Indian tribe, the Indian tribe shall establish terms, conditions, and standards similar to those described in section 224 of this Act for a State licensing law.

(C) WAIVER.—An Indian tribe shall have the same right to apply for waiver and modification of the law described in subparagraph (B) as a State under the Act involved.

(3) IMPLEMENTATION BY THE SECRETARY.—If the Secretary, in consultation with the Secretary of the Interior, determines that the Indian tribe is not qualified to meet the minimum standards of paragraph (2)(B), or the Secretary, in consultation with the Secretary of the Interior, shall implement such requirements on behalf of the Indian tribe.

(f) ELIGIBILITY FOR PUBLIC HEALTH PAYMENTS.—

(1) GRANT.—For each fiscal year the Secretary shall award a grant to each Indian tribe that has an approved anti-smoking plan for the fiscal year in-

volved under paragraph (2) in an amount equal to the amount determined under paragraph (3).

(2) TRIBAL PLANS.—To be eligible to receive a grant under paragraph (1), an Indian tribe shall prepare and submit to the Secretary an anti-smoking plan and shall otherwise meet the requirements of subsection (e). The Secretary shall promulgate regulations providing for the form and content of anti-smoking plans to be submitted under this paragraph.

(3) AMOUNT DETERMINED.—Except as provided in this subsection, the amount of any grant for which an Indian tribe is eligible under paragraph (1) shall be determined by the Secretary based on the product of—

(A) the ratio of the total number of individual residing on or in such tribe's reservation, jurisdictional lands, or the active user population, relative to the total population of the State involved; and

(B) the amount allocated under this Act to the State for such public health purposes.

(4) USE.—Amounts provided to a tribe under this subsection shall be used to reimburse the tribe for smoking-related health expenditures, to further the purposes of this Act and in accordance with a tribal

anti-smoking plan approved by the Secretary. Indian tribes shall have the flexibility to utilize such amounts to meet the unique health care needs of persons within their service populations within the context of tribal health programs if such programs meet the fundamental Federal goals and purposes of Federal Indian health care law and policy.

(5) REALLOTMENT.—Amounts set aside and not expended under this subsection shall be reallotted among other eligible Indian tribes.

(g) OBLIGATIONS OF TOBACCO PRODUCT MANUFACTURERS.—Tobacco product manufacturers, including Indian tribes, participating in, or covered under this any Act shall not engage in any activity in Indian country or on other trust lands subject to the jurisdiction of an Indian tribe that is prohibited by this Act.

(h) USE OF TRUST FUND PAYMENTS.—Amounts made available from the ***[****tobacco trust fund****]*** ***National Tobacco Settlement Trust Fund*** *under any Indian health provisions of this Act shall be provided to the Indian Health Service and, through the provisions of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b et seq.), to Indian tribes to be used to reduce tobacco consumption, promote smoking cessation, and to fund related activities including—*

(1) clinic and facility design, construction, repair, renovation, maintenance, and improvement;

(2) health care provider services and equipment;

(3) domestic and community sanitation associated with clinic and facility construction and improvement;

(4) inpatient and outpatient services; and

(5) other programs and services which have as their goal raising the health status of Indians.

(i) PREEMPTION.—

(1) IN GENERAL.—Except as otherwise provided in this section, nothing in this Act shall be construed to prohibit an Indian tribe from imposing requirements, prohibitions, penalties, or other measures to further the purposes of this title that are in addition to the requirements, prohibitions, or penalties required by this title.

(2) PUBLIC EXPOSURE TO SMOKE.—Nothing in this title shall be construed to preempt or otherwise affect any Indian tribe rule or practice that provides greater protections from the health hazards of environmental tobacco smoke.

SEC. 604. STATE TOBACCO EXCISE TAX COMPLIANCE.

An Indian tribe or tribal corporation shall collect any excise or sales tax imposed by a State, within the exterior

borders or which the sale occurs, on non-members of the Indian tribe as a consequence of the purchase of tobacco products by the non-member from the Indian tribe or tribal corporation. The Indian tribe or tribal corporation shall remit such taxes collected to the Treasury of the United States, which shall, in turn, remit the taxes to the State in which they were collected.

TITLE VII—CIVIL LIABILITY OF TOBACCO PRODUCT MANUFACTURERS

SEC. 701. DEFINITIONS

In this title:

(1) ADDICTION CLAIM; DEPENDENCE CLAIM.—The term "addiction claim" or "dependence claim" refers only to any claim for relief which is predicated upon claims of addiction to, or dependence on, tobacco products, but neither term includes claims based upon manifestation of tobacco-related diseases.

(2) AFFILIATE.—The term "affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this definition, ownership means ownership of an equity interest, or the equivalent thereof, of 10 percent or more, and person means an individual, partner-

ship, committee, association, corporation, or any other organization or group of persons.

(3) CIVIL ACTION.—The term "civil action" means any action, lawsuit, or proceeding that is not a criminal action.

(4) COMPENSATORY DAMAGES.—The term "compensatory damages" refers to those damages necessary to reimburse an injured party, and includes actual, general, and special damages.

(5) COURT.—The term "court" means any judicial court, forum, or tribunal within the United States, including without limitation any Federal, State, or tribal court.

(6) FINAL JUDGMENT.—The term "final judgment" means a judgment on which all rights of appeal or discretionary review have been exhausted or waived or for which the time to appeal or seek such discretionary review has expired.

(7) FINAL SETTLEMENT.—The term "final settlement" means a settlement agreement that is executed and approved as necessary to be fully binding on all relevant parties.

(8) INDIVIDUAL.—The term "individual" means a human being and does not include a corporation, partnership, unincorporated association, trust, estate,

or any other public or private entity, State or local government, or Indian tribe.

(9) PUNITIVE DAMAGES.—The term "punitive damages" means damages in addition to compensatory damages having the character of punishment or penalty.

(10) REDUCED RISK TOBACCO PRODUCTS.—The term "reduced risk tobacco product" means a product designated as a reduced risk tobacco product under section 916(a)(2) of the Federal Food, Drug, and Cosmetic Act.

(11) SECRETARY.—The term "Secretary" means the Secretary of the Treasury, except where the context otherwise requires.

(12) TOBACCO CLAIM.—The term "tobacco claim" means a claim directly or indirectly arising out of, based on, or related to the health-related effects of tobacco products, including without limitation a claim arising out of, based on, or related to allegations regarding any conduct, statement, or omission respecting the health-related effects of such products.

(13) TOBACCO PRODUCT.—The term "tobacco product" means cigarettes, cigarette tobacco, smokeless tobacco, little cigars, roll-your-own tobacco, and fine cut tobacco products.

(14) TOBACCO PRODUCT MANUFACTURER.—The term "tobacco product manufacturer" means—

(A) a person who directly, and not through any affiliate—

(i) manufactures tobacco products for sale in the United States after the date of enactment of this Act, including tobacco products for sale in the United States through an importer;

(ii) is, after the date of enactment of this Act, the first purchaser for resale in the United States of tobacco products manufactured for sale outside of the United States;

(iii) engaged in activities described in clause (i) or (ii) prior to the date of enactment of this Act, has not engaged in such activities after the date of enactment of this Act, and was not as of June 20, 1997, an affiliate of a participating tobacco product manufacturer in which the participating tobacco product manufacturer or its other affiliates owned a 50 percent or greater interest;

(iv) is a successor or assign of any of the foregoing; or

(v) is an entity to which any of the foregoing directly or indirectly makes, after the date of enactment of this Act, a fraudulent conveyance or a transfer that would otherwise be voidable under part 5 of title 11 of the United States Code, but only to the extent of the interest or obligation transferred; but

(B) does not include an affiliate of a tobacco product manufacturer unless that affiliate is described in clause (i), (ii), (iii), (iv), or (v) of subparagraph (A).

SEC. 702. APPLICATION.

(a) IN GENERAL.—The provisions of this title shall apply to any civil action involving a tobacco claim, including any such claim that has not reached final judgment or final settlement as of the date of enactment of this Act, that is brought or maintained against—

(1) a participating tobacco product manufacturer or its predecessors;

(2) any person that at any time was or is an affiliate, officer, director, employee, attorney, or agent of a participating tobacco product manufacturer, unless such person is itself a non-participating tobacco product manufacturer;

(3) an importer, distributor, wholesaler, or retailer of tobacco products—

(A) that, after the date of enactment of this Act, does not import, distribute, or sell tobacco products made or sold by a non-participating tobacco product manufacturer;

(B) whose business practices with respect to sales or operations occurring within the United States, conform to the applicable requirements of the marketing and advertising provisions of the Master Settlement Agreement; and

(C) that is not itself a non-participating tobacco product manufacturer;

(4) a supplier of component or constituent parts of tobacco products—

(A) that, after the date of enactment of this Act, does not knowingly sell any component or constituent parts of tobacco products to a non-participating tobacco product manufacturer;

(B) whose business practices with respect to sales or operations occurring within the United States, conform to the applicable requirements of the marketing and advertisement provisions of the Master Settlement Agreement; and

(C) that is not itself a non-participating tobacco product manufacturer;

(5) a grower of tobacco products, unless such person is itself a non-participating tobacco product manufacturer; or

(6) an insurer of any person described in paragraph (1), (2), (3), (4), or (5) based on, arising out of, or related to tobacco products manufactured, imported, distributed, or sold (or tobacco grown) by such person (other than an action brought by the insured person), unless such insurer is itself a non-participating tobacco product manufacturer.

(b) EXCEPTIONS.—The provisions of this title shall not apply to any tobacco claim—

(1) brought against any person other than a person described in subsection (a) or to any tobacco claim that reached final judgment or final settlement prior to the date of enactment of this Act;

(2) against an employer under valid workers' compensation laws;

(3) arising under the securities laws of a State or the United States;

(4) brought by the United States;

(5) brought under this title by a State or a participating tobacco product manufacturer to enforce this Act;

(6) asserting damage to the environment from exposures other than environmental smoke or second hand smoke; or

(7) against a participating tobacco product manufacturer if that manufacturer, or any of its principal officers, acting in that officer's corporate capacity, is convicted of—

(A) manufacturing or distributing misbranded tobacco products in violation of the Federal Food, Drug, and Cosmetic Act;

(B) violating the reporting requirements of section 5762(a)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 5762(a)(4));

(C) violating, or aiding and abetting the violation of, any provision of chapter 114 of title 18, United States Code; or

(D) violating any provision of chapter 47 or chapter 63 of title 18, United States Code, in making reports or disclosures under this Act.

(c) STATE OPTION FOR ONE-TIME OPT OUT.—The Secretary shall establish procedures under which the attorney general of a State may, not later than 1 year after

the date of enactment of this Act, elect not to resolve a civil action described in subsection (a) or not to enter into the Master Settlement Agreement. A State whose attorney general makes such an election shall not be eligible to receive payments from the ***[****trust fund established by section 401****]*** ***National Tobacco Settlement Trust Fund****. Procedures under this paragraph shall permit such a State to make such an election on a one-time basis.*

SEC. 703. PREEMPTION AND RELATIONSHIP TO OTHER LAW.

(a) PREEMPTION.—No civil action involving a tobacco claim to which this title applies shall be maintained in any court except in accordance with this title.

(b) RELATIONSHIP TO STATE LAW.—This title supersedes State law only to the extent that State law is inconsistent with this title.

(c) CRIMINAL LIABILITY.—Nothing in this title shall be construed to limit the criminal liability of tobacco product manufacturers, retailers, or distributors, or their officers, directors, employees, successors, or assigns.

SEC. 704. GOVERNMENTAL CLAIMS AND CASTANO CIVIL ACTIONS.

(a) IN GENERAL.—Except as provided in subsection (b) and in section 702(c), no State, political subdivision of a State, municipal corporation, governmental entity or corporation, Indian tribe, or agency or subdivision thereof,

or other entity acting in parens patriae, may file or maintain any civil action involving a tobacco claim.

(b) EFFECT OF SETTLEMENT AGREEMENT OR CONSENT DECREE.—Within 30 days after the date of enactment of this Act, any State may request that tobacco product manufacturers enter into the Master Settlement Agreement or a consent decree. If a State makes such a request and enters into a consent decree, it may maintain a civil action involving a tobacco claim only to the extent necessary to permit continuing court jurisdiction over the consent decree. Nothing herein shall preclude any State from bringing suit or seeking a court order to enforce the terms of the Master Settlement Agreement or a consent decree.

(c) CASTANO CIVIL ACTIONS.—

(1) The rights and benefits afforded in section 221 of this Act, and the various research activities envisioned by this Act, are provided in settlement of, and shall constitute the exclusive remedy for the purpose of determining civil liability as to those claims asserted in the Castano Civil Actions, and all bases for any such claim under the laws of any State are preempted (including State substantive, procedural, remedial, and evidentiary provisions) and settled. The Castano Civil Actions shall be dismissed with full reservation of the rights of individual class members to

pursue claims not based on addiction or dependency in civil actions in accordance with this Act. For purposes of determining application of statutes of limitation or repose, individual actions filed within one year after the effective date of this Act by those who were included within a Castano Civil Action shall be considered to have been filed as of the date of the Castano Civil Action applicable to said individual.

(2) For purposes of awarding attorneys fees and expenses for those actions subject to this subsection, the matter at issue shall be submitted to arbitration before one panel of arbitrators. In any such arbitration, the arbitration panel shall consist of 3 persons, one of whom shall be chosen by the attorneys of the Castano Plaintiffs' Litigation Committee who were signatories to the Memorandum of Understanding dated June 20, 1997, by and between tobacco product manufacturers, the Attorneys General, and private attorneys, one of whom shall be chosen by the participating tobacco product manufacturers, and one of whom shall be chosen jointly by those 2 arbitrators.

(3) The participating tobacco product manufacturers shall pay the arbitration award.

SEC. 705. CONCURRENT JURISDICTION; FEDERAL CAUSE OF ACTION; ACTIONS; DAMAGES; LIABILITY.

(a) IN GENERAL.—Any tobacco claim in any civil action to which this title applies shall be deemed to arise under this section and shall be governed by the provisions of this title, but the substantive rules of decision for such claim shall be derived from the law of the State or Tribe that would have been applicable but for the operation of this section, to the extent that such law is not inconsistent with the provisions of this title. This Federal cause of action shall be the exclusive means for the purpose of determining civil liability on any such tobacco claim in any civil action to which this title applies, and all other bases for tobacco claims under State, Tribal, and local law are hereby preempted. District courts of the United States and tribal courts shall have concurrent jurisdiction with the courts of the States over any tobacco claim in any civil action under this section.

(b) PERMISSIBLE DEFENDANTS.—In any civil action to which this subtitle applies, tobacco claims may be filed or maintained only against—

(1) a tobacco product manufacturer; or

(2) a surviving entity established by a tobacco product manufacturer.

(c) ADDICTION AND DEPENDENCE CLAIMS BARRED.—In any civil action to which this title applies, no addiction claim or dependence claim may be filed or maintained.

(d) REQUIREMENTS.—The following requirements apply to civil actions to which this title applies:

(1) FUTURE REDUCED-RISK PRODUCTS.—In any civil action to which this subtitle applies, no allegation or evidence relating to reduced-risk tobacco products developed after the date of enactment of this Act shall be admissible or discoverable in any action on a tobacco claim arising out of, based on, or related to any other tobacco product.

(2) PRODUCTION OF DOCUMENTS.—All documents or other records included in the document depository required to be established and maintained under section 903 of this Act shall be deemed produced in any civil action involving a tobacco claim, and no court in such action shall require additional production of any such document or record. Any such document submitted to the court shall be considered authenticated with the same legal status as the original.

(e) LIABILITY.—The following provisions regarding liability shall apply in civil actions to which this title applies:

(1) A tobacco product manufacturer shall be liable for any act or omission of its attorneys, advertising agencies, and agents undertaken in the representation of such tobacco product manufacturer.

(2) A tobacco product manufacturer shall be liable in connection with any tobacco claim for the liability, if any, of any of its affiliates arising from tobacco products sold directly by such affiliate in the United States or to an importer for resale in the United States, unless such affiliate is a participating tobacco product manufacturer or a non-participating tobacco product manufacturer.

(3) Participating tobacco product manufacturers shall not be jointly and severally liable on a tobacco claim with non-participating tobacco product manufacturers. Nothing in this title prevents a participating tobacco product manufacturer from being held jointly and severally liable with any other person other than a non-participating tobacco product manufacturer if such liability exists under the applicable substantive rules of decision as determined under subsection (a), except that any such imposition of joint and several liability against a participating tobacco product manufacturer shall be subject to the provisions of section 706.

(4) In any civil action involving both a tobacco claim against a participating tobacco product manufacturer based in whole or in part upon conduct occurring prior to the date of enactment of this Act and a claim against 1 or more non-participating tobacco product manufacturers, the court, upon application of a participating tobacco product manufacturer shall sever a trial so that all claims against participating tobacco product manufacturers shall be tried separately from any claim involving non-participating tobacco product manufacturers. If such severance results in a tobacco claim being submitted to more than 1 jury or to the same jury for separate deliberation the participating tobacco product manufacturer may not assert any claim that would prejudice the dollar amount to be recovered by the holder of the tobacco claim from the participating tobacco product manufacturer due to the severance of the action including satisfaction by way of jury verdict against the non-participating tobacco product manufacturer. In any action brought against a participating tobacco manufacturer and a person that is not a tobacco product manufacturer, the court may sever the trial so that all claims against such person may be tried separately.

(5) In any civil action brought involving a tobacco claim, there shall be a presumption that nicotine is addictive and that the diseases identified as being caused by use of tobacco products in the Center for Disease Control and Prevention Reducing the Health Consequences of Smoking: 25 Years of Progress: A Report of the Surgeon General (United States Public Health Service 1989), The Health Consequences of Smoking: Involuntary Smoking, (USPHS 1986); and The Health Consequences of Using Smokeless Tobacco, (USPHS 1986), are caused in whole or in part by the use of tobacco products, (referred to elsewhere in this paragraph as the "general causation presumption"), and a jury empaneled to hear a tobacco claim shall be so instructed. In all other respects, the burden of proof as to the issue of whether a plaintiff's specific disease or injury was caused by smoking shall be governed by the law of the State or Tribe in which the tobacco claim was brought. The general causation presumption shall in no way affect the ability of the defendant to introduce evidence or argument which the defendant would otherwise be entitled to present under the law of the State or Tribe in which the tobacco claim was brought to rebut the general causation presumption,

or with respect to general causation, specific causation, or alternative causation, or to introduce any other evidence or argument which the defendant would otherwise be entitled to make.

[(f) PRESERVATION OF INSURANCE CLAIMS.—

[(1) IN GENERAL.—If all participating tobacco product manufacturers fail to make the payments required by this Act for any calendar year, then—

[(A) beginning on the first day of the next calendar year, subsection (a) does not apply to any insurance claim (including a direct action claim) that is a tobacco claim, regardless of when that claim arose;

[(B) any statute of limitations or doctrine of laches under applicable law shall be tolled for the period—

[(i) beginning on the date of enactment of this Act; and

[(ii) ending on the last day of that calendar year; and

[(C) an insurance claim (including a direct action claim) that is a tobacco claim and that is pending on the date of enactment of this Act shall be preserved.

[(2) APPLICATION OF TITLE 11, UNITED STATES CODE.—For purposes of this subsection, nothing in this Act shall be construed to modify, suspend, or otherwise affect the application of title 11, United States Code, to participating tobacco manufacturers that fail to make such payments.

[(3) STATE LAW NOT AFFECTED.—Nothing in this subsection shall be construed to expand or abridge State law.]

SEC. 706. PAYMENT OF TOBACCO CLAIM SETTLEMENTS AND JUDGMENTS.

(a) IN GENERAL.—Except as provided below, any judgment or settlement in any civil action to which this subtitle applies shall be subject to the process for payment of judgments and settlements set forth in this section. No participating tobacco product manufacturer shall be obligated to pay a judgment or settlement on a tobacco claim in any civil action to which this title applies except in accordance with this section. This section shall not apply to the portion, if any, of a judgment that imposes punitive damages based on any conduct that—

(1) occurs after the date of enactment of this Act; and

(2) is other than the manufacture, development, advertising, marketing, or sale of tobacco products in

compliance with this Act and the Master Settlement Agreement.

(b) REGISTRATION WITH THE SECRETARY OF THE TREASURY.—

(1) The Secretary shall maintain a record of settlements, judgments, and payments in civil actions to which this title applies.

(2) Any party claiming entitlement to a monetary payment under a final judgment or final settlement on a tobacco claim shall register such claim with the Secretary by filing a true and correct copy of the final judgment or final settlement agreement with the Secretary and providing a copy of such filing to all other parties to the judgment or settlement.

(3) The Secretary shall assign a priority for payment based upon the date on which a proper registration of a final judgment or final settlement occurs.

(4) Any participating tobacco product manufacturer making a payment on any final judgment or final settlement to which this section applies shall certify such payment to the Secretary by filing a true and correct copy of the proof of payment and a statement of the remaining unpaid portion, if any, of such final judgment or final settlement with the Secretary

and shall provide a copy of such filing to all other parties to the judgment or settlement.

(c) LIABILITY CAP.—The aggregate payments made by all participating tobacco product manufacturers in any calendar year may not exceed $6,500,000,000. The Secretary shall initiate a rulemaking within 30 days after the date of enactment of this Act to establish a mechanism for implementing this subsection in such a way that payments may be made from all awards payable in that year. Amounts not payable because of the application of this subsection, shall be carried forward and paid in the next year, subject to the provisions of this subsection.

(d) INJUNCTIVE RELIEF.—A participating tobacco product manufacturer may commence an action to enjoin any State court proceeding to enforce or execute any judgment or settlement where payment has not been authorized under this section. Such an action shall arise under the laws of the United States and may be commenced in the district court of the United States for the district in which the State court proceeding is pending.

(e) JOINT AND SEVERAL LIABILITY.—All participating tobacco product manufacturers shall be jointly and severally liable for, and shall enter into an agreement to apportion among them, any amounts payable under judgments and settlements governed by this section arising in

whole or in part from conduct occurring prior to the date of enactment of this Act. No participating tobacco product manufacturer shall cease operations without establishing a surviving entity against which a tobacco claim may be brought. Any obligation or interest of a participating, tobacco product manufacturer arising under such liability apportionment agreement shall be given priority and shall not be rejected, avoided, or discharged in a proceeding, under title 11, United States Code, or in any liquidation, reorganization, receivership, or other insolvency proceeding under State law.

SEC. 707. ATTORNEY'S FEES AND EXPENSES.

(a) ARBITRATION PANEL.—

(1) ESTABLISHMENT.—For the purpose of awarding of attorneys' fees and expenses relating to litigation affected by, or legal services that, in whole or in part, resulted in or created a model for programs in, this Act, and with respect to which litigation or services the attorney involved is unable to agree with the plaintiff who employed that attorney with respect to any dispute that may arise between them regarding the fee agreement, the matter at issue shall be submitted to arbitration. In any such arbitration, the arbitration panel shall consist of 3 persons, one of whom shall be chosen by the plaintiff, one

of whom shall be chosen by the attorney, and one of whom shall be chosen jointly by those 2 arbitrators.

(2) OPERATION.—Not later than 30 days after the date on which all members of an arbitration panel are appointed under paragraph (1), the panel shall establish the procedures under which the panel will operate which shall include—

(A) a requirement that any finding by the arbitration panel must be in writing and supported by written reasons;

(B) procedures for the exchanging of exhibits and witness lists by the various claimants for awards;

(C) to the maximum extent practicable, requirements that proceedings before the panel be based on affidavits rather than live testimony; and

(D) a requirement that all claims be submitted to an arbitration panel not later than 3 months after the date of this Act and a determination made by the panel with respect to such claims not later than 7 months after such date of enactment.

(3) RIGHT TO PETITION.—Any individual attorney or group of attorneys involved in litigation af-

fected by this Act shall have the right to petition an arbitration panel for attorneys' fees and expenses.

(4) CRITERIA.—In making any award under this section, an arbitration panel shall consider the following criteria:

(A) The time and labor required by the claimant.

(B) The novelty and difficulty of the questions involved in the action for which the claimant is making a claim.

(C) The skill requisite to perform the legal service involved properly.

(D) The preclusion of other employment by the attorney due to acceptance of the action involved.

(E) Whether the fee is fixed or a percentage.

(F) Time limitations imposed by the client or the circumstances.

(G) The amount involved and the results obtained.

(H) The experience, reputation, and ability of the attorneys involved.

(I) The undesirability of the action.

(J) Such other factors as justice may require.

(5) APPEAL AND ENFORCEMENT.—The findings of an arbitration panel shall be final, binding, non-appealable, and payable within 30 days after the date on which the finding is made public, except that if an award is to be paid in installments, the first installment shall be payable within such 30 day period and succeeding installments shall be paid annually thereafter.

(b) VALIDITY AND ENFORCEABILITY OF PRIVATE AGREEMENTS.—Notwithstanding any other provision of this Act, nothing in this section shall be construed to abrogate or restrict in any way the rights of any parties to mediate, negotiate, or settle any fee or expense disputes or issues to which this section applies, or to enter into private agreements with respect to the allocation or division of fees among the attorneys party to any such agreement.

(c) OFFSET FOR AMOUNTS ALREADY PAID.—In making a determination under this section with regard to a dispute between a State that pursued independent civil action against tobacco product manufacturers and its attorney, the arbitration panel shall take into account any amounts already paid by the State under the agreement in dispute.

SEC. 708. NON-PARTICIPATING TOBACCO PRODUCT MANUFACTURERS.

(a) IN GENERAL.—If a tobacco product manufacturer does not enter into a consent decree or the Protocol before the date of enactment of this Act, then the limitations on liability under this title do not apply to that manufacturer.

[(b) IMPOSITION OF FEE.—

[(1) IN GENERAL.—There is hereby imposed on each tobacco product manufacturer described in subsection (a) an annual fee for any calendar year ending after the date of enactment of this Act for which it does not enter into a consent decree or sign the Protocol.

[(2) AMOUNT.—

[(A) TOTAL.—The amount of the annual fee imposed by paragraph (1) is equal to 150 percent of the amount that would be paid under section 403 of this Act for that year by that tobacco product manufacturer if it were a participating tobacco product manufacturer.

[(B) PER TOBACCO PRODUCT MANUFACTURER.—The Secretary shall promulgate regulations—

[(i) under which the amount of the fee imposed under paragraph (1) for any to-

bacco product manufacturer is to be determined; and

[(ii) establishing procedures for the assessment and collection of any fee imposed under paragraph (1).]

SEC. 709. CONFORMING AMENDMENTS.

(a) Section 362(b) of title 11, United States Code, is amended by—

(1) striking "or" after the semicolon in paragraph (17);

(2) striking "petition." in paragraph (18) and inserting "petition; or"; and

(3) adding at the end thereof the following:

"(19) under subsection (a) of this section, of the commencement or continuation of any action or other proceeding by or against a participating tobacco product manufacturer as defined in section 6(22) of the National Tobacco Policy and Youth Smoking Reduction Act regarding any interest or obligation arising under or directly related to the Master Settlement Agreement as defined in section 6(21) of that Act or the liability apportionment agreement.".

(b) Section 365 of title 11, United States Code, is amended by—

(1) striking "and (d)" in subsection (a) and inserting "(d), and (p)"; and

(2) adding at the end thereof the following:

"(p) The trustee may not reject, shall be deemed to have assumed as of the commencement of the case, and shall cause the debtor to perform on an executory contract of a participating tobacco product manufacturer as defined in section 6(22) of the National Tobacco Policy and Youth Smoking Reduction Act, to the extent such executory contract is, or is directly related to, the Master Settlement Agreement as defined in section 6(21) of that Act, or the liability apportionment agreement described.".

(c) Section 507(a) of title 11, United States Code, is amended by adding at the end thereof the following:

"(10) Tenth, any unsecured claim of or against a participating tobacco product manufacturer as defined in section 6(22) of the National Tobacco Policy and Youth Smoking Reduction Act, regarding any interest or obligation that arises under or is directly related to the Master Settlement Agreement as defined in section 6(21) of that Act, or the liability apportionment agreement.".

(d) Section 541(a) of title 11, United States Code, is amended by adding at the end thereof the following:

"(8) Any interest of the debtor in property to the extent that the debtor has transferred or agreed to transfer such interest under the Master Settlement Agreement as defined in section 6(21) of the National Tobacco Policy and Youth Smoking Reduction Act or any written agreement directly related to such Master Settlement Agreement, or the liability apportionment agreement, or any written agreement directly related to such liability apportionment agreement.".

(e) Section 1141 of title 11, United States Code, is amended by—

(1) striking "(d)(2) and (d)(3)" in subsection (a) and inserting "(d)(2), (d)(3), and (d)(5)";

(2) striking "(d)(2) and (d)(3)" in subsection (c) and inserting "(d)(2), (d)(3), and (d)(5)"; and

(3) adding at the end of subsection (d) the following:

"(5) The confirmation of a plan does not discharge a debtor from any debt or other obligation arising under or directly related to the Master Settlement Agreement as defined in section 6(21) of the National Tobacco Policy and Youth Smoking Reduction Act, or the liability apportionment agreement.".

TITLE VIII—TOBACCO INDUSTRY COMPLIANCE AND EMPLOYEE PROTECTION FROM REPRISALS

SEC. 801. TOBACCO INDUSTRY COMPLIANCE ACCOUNTABILITY REQUIREMENTS.

(a) ESTABLISHMENT OF ACCOUNTABILITY PANEL.—The Commissioner of Food and Drugs, in consultation with the Secretary, shall establish an advisory panel, to be known as the "Tobacco Agreement Accountability Panel". The panel shall consist of the Surgeon General, the Director of the Center for Disease Control or the Director's delegate, and the Director of the Health and Human Services Office of Minority Health.

(b) TOBACCO COMPANY PLAN.—Within a year after the date of enactment of this Act, each participating tobacco product manufacturer shall adopt and submit to the Commissioner a plan to achieve the required percentage reductions in underage use of tobacco products set forth in section 201, and thereafter shall update its plan no less frequently than annually. The Commissioner shall provide a copy of each such plan to the panel, which shall review the plan and submit its views on the plan to the Commissioner. The panel may recommend amendment of any plan to incor-

porate additional measures to reduce underage tobacco use that are consistent with the provisions of this Act.

(c) ANNUAL REPORT.—The panel shall submit a report to the Commissioner and to the Congress by January 31 of each year, which shall be published in the Federal Register. In its report, the panel shall—

(1) describe in detail each tobacco product manufacturer's compliance with the provisions of this Act and its plan submitted under subsection (b);

(2) report on whether each tobacco product manufacturer's efforts to reduce underage smoking are likely to result in attainment of smoking reduction targets under section 201;

(3) recommend, where necessary, additional measures individual tobacco companies should undertake to meet those targets; and

(4) include, where applicable, the extent to which prior panel recommendations have been adopted by each tobacco product manufacturer.

(d) PUBLIC HEALTH EMERGENCY.—If the panel determines unanimously at any time that a tobacco product manufacturer's actions or inactions with respect to its compliance with the Act are of such a nature as to create a clear and present danger to the attainment of the targets for underage smoking reduction, it shall immediately report

such acts or omissions to the Commissioner. If the Commissioner determines that such report is supported by clear and convincing evidence, the Commissioner may bring an action under section 203 seeking the immediate suspension of the tobacco product manufacturer's annual limitation cap on civil judgments. If the court determines that the Commissioner has proved by clear and convincing evidence that the subject manufacturer's actions or inactions are of such a nature that they present a clear and present danger to the attainment of the targets for underage smoking reduction, the court may suspend the subject manufacturer's annual limitation cap on civil judgments.

SEC. 802. TOBACCO PRODUCT MANUFACTURER EMPLOYEE PROTECTION.

(a) PROHIBITED ACTS.—No tobacco product manufacturer may discharge, demote, or otherwise discriminate against any employee with respect to compensation, terms, conditions, benefits, or privileges of employment because the employee (or any person acting under a request of the employee)—

(1) notified the manufacturer, the Commissioner of Food and Drugs, the Attorney General, or any Federal, State, or local public health or law enforcement authority of an alleged violation of this or any other Act;

(2) refused to engage in any practice made unlawful by such Acts, if the employee has identified the alleged illegality to the manufacturer;

(3) testified before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of such Acts;

(4) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under such Acts, or a proceeding for the administration or enforcement of any requirement imposed under such Acts;

(5) testified or is about to testify in any such proceeding; or

(6) assisted or participated, or is about to assist or participate, in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of such Acts.

(b) EMPLOYEE COMPLAINT.—

(1) Any employee of a tobacco product manufacturer who believes that he or she has been discharged, demoted, or otherwise discriminated against by any person in violation of subsection (a) of this section may, within 180 days after such violation occurs, file (or have any person file on his or her behalf) a com-

plaint with the Secretary alleging such discharge, demotion, or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of its filing.

(2)(A) Upon receipt of a complaint under paragraph (1) of this subsection, the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days after the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any such person acting in his or her behalf) and the person alleged to have committed such violation of the results of the investigation conducted under this paragraph. Within 90 days after the receipt of such complaint, the Secretary shall (unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation) issue an order either providing the relief prescribed in subparagraph (B) of this paragraph or denying the complaint. An order of the Secretary shall be made on the record after notice and the opportunity for a hearing in accordance with sections 554 and 556 of title 5, United States Code. Upon the conclusion of such a hearing and the issuance of a rec-

ommended decision that the complaint has merit, the Secretary shall issue a preliminary order providing the relief prescribed in subparagraph (B) of this paragraph, but may not order compensatory damages pending a final order. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(B) If, in response to a complaint under paragraph (1) of this subsection, the Secretary determines that a violation of this paragraph has occurred, the Secretary shall order the person who committed such violation to (i) take affirmative action to abate the violation, and (ii) reinstate the complainant to his or her former position together with compensation (including back pay), terms, conditions, and privileges of his or her employment. The Secretary may order such person to provide compensatory damages to the complainant. If an order is issued under this subparagraph, the Secretary, at the request of the complainant, shall assess the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred (as determined by the Secretary), by the complainant for, or in connec-

tion with, the bringing of the complaint upon which the order is issued.

(3)(A) The Secretary shall dismiss a complaint filed under paragraph (1) of this subsection, and shall not conduct the investigation required under paragraph (2) of this subsection, unless the complainant has made a prima facie showing that any behavior described in subsection (a) of this section was a contributing factor in the unfavorable personnel action alleged in the complaint.

(B) Notwithstanding a finding by the Secretary that the complainant has made the showing required by subparagraph (A) of this paragraph, no investigation required under paragraph (2) of this subsection shall be conducted if the manufacturer demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of such behavior. Relief may not be ordered under paragraph (1) of this subsection if the manufacturer demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of such behavior.

(C) The Secretary may determine that a violation of subsection (a) of this section has occurred only if the complainant has demonstrated that any behav-

ior described in subsection (a) of this section was a contributing factor in unfavorable personnel action alleged in the complaint.

(c) JUDICIAL REVIEW.—

(1) Any person adversely affected or aggrieved by an order issued under subsection (a) of this section may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within 60 days after the issuance of the Secretary's order. Judicial review shall be available as provided in chapter 7 of title 5, United States Code. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(2) An order of the Secretary with respect to which review could have been obtained under paragraph (1) of this subsection shall not be subject to judicial review in any criminal or civil proceeding.

(d) NONCOMPLIANCE.—Whenever a person has failed to comply with an order issued under subsection (b)(2) of this section, the Secretary may file a civil action in the United States district court for the district in which the violation occurred to enforce such order. In actions brought

under this subsection, the district courts shall have jurisdiction to grant all appropriate relief, including injunctive relief and compensatory and exemplary damages.

(e) ACTION TO ENSURE COMPLIANCE.—

(1) Any person on whose behalf an order was issued under subsection (b)(2) of this section may commence a civil action to require compliance with such order against the person to whom such order was issued. The appropriate United States district court shall have jurisdiction to enforce such order, without regard to the amount in controversy or the citizenship of the parties.

(2) The court, in issuing any final order under this subsection, may award costs of litigation (including reasonable attorneys' and expert witness fees) to any party whenever the court determines such award is appropriate.

(f) ENFORCEMENT.—Any non-discretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(g) APPLICABILITY TO CERTAIN EMPLOYEES.—Subsection (a) of this section shall not apply with respect to any employee who, acting without direction from the manufacturer (or the agent of the manufacturer) deliberately

causes a violation of any requirement of this Act, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), or any other law or regulation relating to tobacco products.

(h) EFFECT ON OTHER LAWS.—This section shall not be construed to expand, diminish, or otherwise affect any right otherwise available to an employee under Federal or State law to redress the employee's discharge or other discriminatory action taken by a tobacco product manufacturer against the employee.

(i) POSTING.—The provisions of this section shall be prominently posted in any place of employment to which this section applies.

TITLE IX—PUBLIC DISCLOSURE OF TOBACCO INDUSTRY DOCUMENTS

SEC. 901. FINDINGS.

The Congress finds that—

(1) the American tobacco industry has made claims of attorney-client privilege, attorney work product, and trade secrets to protect from public disclosure thousands of internal documents sought by civil litigants;

(2) a number of courts have found that these claims of privilege were not made in good faith; and

(3) a prompt and full exposition of tobacco documents will—

(A) promote understanding by the public of the tobacco industry's research and practices; and

(B) further the purposes of this Act.

SEC. 902. APPLICABILITY.

This title shall apply to all participating tobacco product manufacturers.

SEC. 903. NATIONAL TOBACCO DOCUMENT DEPOSITORY.

(a) ESTABLISHMENT.—Participating tobacco product manufacturers shall, within 180 days after the enactment of this Act, establish a National Tobacco Document Depository in the Washington, D.C., area. The cost of establishing and operating the Depository shall be allocated among such manufacturers on the basis of market share or as otherwise agreed among them.

(b) DOCUMENT CATEGORIES.—Within 30 days after the establishment of the Depository, each participating tobacco product manufacturer shall submit to the Depository—

(1) all original laboratory research conducted or funded, directly or indirectly, by any participating tobacco product manufacturers, the Center for Tobacco Research and Tobacco Institute relating to the

health effects or safety of tobacco products, including without limitation all original laboratory research relating to any method or means of making tobacco products less hazardous to consumers;

(2) all documents produced by any participating tobacco product manufacturer, the Center of Tobacco Research or Tobacco Institute to the Attorney General of any State during discovery in any action brought on behalf of any State and commenced after January 1, 1994;

(3) all documents produced by any participating tobacco product manufacturer, Center for Tobacco Research or Tobacco Institute to the Federal Trade Commission in connection with its investigation into the "Joe Camel" advertising campaign and any underage marketing of tobacco products to minors;

(4) all documents produced by any participating tobacco product manufacturers, the Center for Tobacco Research or the Tobacco Institute to litigation adversaries during discovery in any private litigation matters;

(5) all documents produced by any participating tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute in any of the following private litigation matters:

(A) Philip Morris v. American Broadcasting Co., Law No. 7609CL94x00181–00 (Cir. Ct. Va. filed Mar. 26, 1994);

(B) Estate of Butler v. R.J. Reynolds Tobacco Co., Civ. A. No. 94–5–53 (Cir. Ct. Miss., filed May 12, 1994);

(C) Haines v. Liggett Group, No. 84–CV–678 (D.N.J., filed Feb. 22, 1984); and

(D) Cipollone v. Liggett Group, No. 83–CV–284 (D.N.J., filed Aug. 1, 1983);

(6) any document produced as evidence or potential evidence or submitted to the court by participating tobacco product manufacturers in any of the actions described in paragraph (5), including briefs and other pleadings, memoranda, interrogatories, transcripts of depositions, and expert witnesses and consultants materials, including correspondence, reports, and testimony;

(7) any additional documents that any participating tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute have agreed or been required by any court to produce to litigation adversaries as part of discovery in any action listed in paragraph (2), (3), (4), or (5) but have

not yet completed producing as of the date of enactment of this Act;

(8) all indices of documents relating to tobacco products and health, with any such indices that are maintained in computerized form placed into the depository in both a computerized and hard-copy form;

(9) a privilege log describing each document or portion of a document otherwise subject to production in the actions enumerated in this subsection that any participating tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute maintains, based upon a good faith de novo re-review conducted after June 20, 1997, is exempt from public disclosure under this title; and

(10) a trade secrecy log describing each document or portion of a document that any participating tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute maintains is exempt from public disclosure under this title.

(c) FUTURE DOCUMENTS.—With respect to documents created after the date of enactment of this Act, the participating tobacco product manufacturers and their trade associations shall place into the depository in accordance with a schedule established by the Board the following documents:

(1) All original laboratory research conducted or funded, directly or indirectly, by any participating tobacco product manufacturer relating to the health effects or safety of tobacco products, including without limitation all original laboratory research relating to any methods or means of making tobacco products less hazardous to consumers.

(2) All studies conducted or funded, directly or indirectly, by any participating tobacco product manufacturer, relating to tobacco product use by minors.

(3) All documents discussing or referring to the relationship, if any, between advertising and promotion and the use of tobacco products by minors.

(4) A privilege log describing each document or each portion of a document otherwise subject to public disclosure under this subsection that any participating tobacco product manufacturer maintains is exempt from public disclosure under this title.

(5) A trade secrecy log describing each document or each portion of a document otherwise subject to public disclosure under this subsection that any participating tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute maintains is exempt from public disclosure under this Act.

(d) DOCUMENT IDENTIFICATION AND INDEX.—Documents submitted to the Depository under this section shall be sequentially numbered and marked to identify the participating tobacco product manufacturer. Within 15 days after submission of documents to the Depository, each tobacco product manufacturer shall supply the Depository with a comprehensive document index which references the applicable document categories contained in subsection (b).

SEC. 904. PRIVILEGE AND TRADE SECRET CLAIMS.

(a) SEPARATE SUBMISSION OF DOCUMENTS.—Any document that is subject to a claim by a participating tobacco product manufacturer of attorney-client privilege, attorney work product, or trade secret protection shall be so marked and shall be submitted separately to the Depository. Compliance with this subsection shall not be deemed to be a waiver of any applicable claim of privilege or trade secret protection.

(b) CONFIDENTIALITY.—Notwithstanding the provisions of section 552 of title 5 of the United States Code or the provisions of any State law, documents, and information provided to the United States Department of Justice or to State antitrust authorities under the Protocol shall be kept confidential by and among the United States Department of Justice and such authorities and shall be used only for the governmental purposes of enforcing this Act,

the Protocol, and the consent decrees. The inspection and discovery rights provided to the States under the Protocol and this section shall be exercised by each State but coordinated through a multi-state States' Attorneys General oversight committee.

(c) PRIVILEGE AND TRADE SECRET LOGS.—

(1) IN GENERAL.—Within 15 days after submitting documents to the Depository under subsection (a), each participating tobacco product manufacturer shall submit to the Depository a comprehensive log which identifies on a document-by-document basis all documents produced to the Depository for which the manufacturer asserts attorney-client privilege, attorney work-product, or trade secrecy. With respect to documents for which the manufacturer previously has asserted one or more of the aforementioned privileges or trade secret protection, the manufacturer shall conduct a good faith de novo review of such documents to determine whether such privilege or trade secret protection is appropriate.

(2) ORGANIZATION OF LOG.—The log shall be organized in numerical order based upon the document identifier assigned to each document. For each document, the log shall contain—

(A) a description of the document, including type of document, title of document, name and position or title of each author, addressee, and other recipient who was intended to receive a copy, document date, document purpose, and general subject matter;

(B) an explanation why the document or a portion of the document is privileged or subject to trade secret protection; and

(C) a statement whether any previous claim of privilege or trade secret was denied and, if so, in what proceeding.

(3) PUBLIC INSPECTION.—Within 5 days of receipt of such a log, the Depository shall make it available for public inspection and review.

(d) DECLARATION OF COMPLIANCE.—Each participating tobacco product manufacturer shall submit to the Board a declaration, in accordance with the requirements of section 1746 of title 28, United States Code, by an individual with responsibility for the de novo review of documents, preparation of the privilege log, and knowledge of its contents. The declarant shall attest to the manufacturer's compliance with the requirements of this title pertaining to the review of documents and preparation of a privilege log.

SEC. 905. DISCLOSURE BY THE DEPOSITORY.

(a) IN GENERAL.—Within 30 days after receipt of a document that is not subject to a claim of attorney-client privilege, attorney work product, or trade secret protection, the Depository shall make the document available to the public using the Internet and other means.

(b) EVIDENTIARY STATUS.—The provisions of section 2116(a) and (b) of title 44, United States Code, apply to records and documents submitted to the Depository in the same manner and to the same extent as if they were records submitted to the National Archives of the United States required by statute to be retained indefinitely.

(c) APPLICATION OF CONFIDENTIALITY LAW.—The release by the National Tobacco Documents Review Board established under section 906 or any employee of the Depository of any document recognized by the Depository as protected as a trade secret is a violation of section 1905 of title 18, United States Code.

SEC. 906. NATIONAL TOBACCO DOCUMENTS REVIEW BOARD.

(a) ESTABLISHMENT.—There shall be a National Tobacco Documents Review Board consisting of 5 members, qualified by training and experience to carry out the functions of the Board, each of whom shall be appointed by the President and with the advice and consent of the Senate. Any person who is a citizen of the United States shall be

eligible to serve as a member of the Board. Each Board member shall be appointed for a term of 7 years and shall be eligible for reappointment. The Board shall have the power to hire such staff and establish such operating procedures as it deems necessary to carry out its functions as specified hereunder.

(b) RESPONSIBILITY FOR DEPOSITORY.—The Board shall have the responsibility of maintaining the Depository and shall, in consultation with the General Services Administration, establish guidelines and procedures for the establishment and operation of the Depository, including guidelines for the immediate disclosure of documents that are not subject to unresolved claims of privilege or trade secrecy. The Depository shall be open to the public and maintained in a manner that permits it to be used as a resource for litigants, public health groups, and persons with an interest in tobacco industry records and research concerning smoking and health, addiction or nicotine dependency, safer or less hazardous cigarettes, and underage tobacco use and marketing. The Board may grant reasonable extensions of time for compliance upon a showing of good cause.

(c) PRIVILEGE.—The Board shall apply the attorney-client privilege and the attorney work-product doctrine in a manner consistent with Federal law.

SEC. 907. RESOLUTION OF DISPUTED PRIVILEGE AND TRADE SECRET CLAIMS.

(a) IN GENERAL.—The Board shall determine whether to uphold or reject disputed claims of attorney client privilege, attorney work product, or trade secret protection with respect to documents submitted to the Depository. Any person may petition the Board to resolve a claim that a document submitted to the Depository may not be disclosed to the public. Such a determination shall be made by a majority of the Board, in writing, and shall be subject to judicial review as specified in this title. All such determinations shall be made solely on consideration of the subject document and written submissions from the person claiming that the document is privileged or protected by trade secrecy and from any person seeking disclosure of the document. The Board shall cause notice of the petition and the Board's decision to be published in the Federal Register.

(b) FINAL DECISION.—The Board may uphold a claim of privilege or protection in its entirety or, in its sole discretion, it may redact that portion of a document that it determines is protected from public disclosure under subsection (a). Any decision of the Board shall be final unless judicial review is sought under section 908. In the event that judicial review is so sought, the Board's decision shall be stayed pending a final judicial decision.

SEC. 908. APPEAL OF BOARD DECISION.

(a) PETITION; RIGHT OF APPEAL.—Any person may obtain judicial review of a final decision of the Board by filing a petition for review with the United States Court of Appeals for the Federal Circuit within 60 days after the publication of such decision in the Federal Register. A copy of the petition shall be transmitted by the Clerk of the Court to the Board. The Board shall file in the court the record of the proceedings on which the Board based its decision (including any documents reviewed by the Board in camera) as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the Board's decision, except that until the filing of the record the Board may modify or set aside its decision.

(b) ADDITIONAL EVIDENCE AND ARGUMENTS.—If the any party applies to the court for leave to adduce additional evidence respecting the decision being reviewed and shows to the satisfaction of the court that such additional evidence or arguments are material and that there were reasonable grounds for the failure to adduce such evidence or arguments in the proceedings before the Board, the court may order the Board to provide additional opportunity for the presentation of evidence or arguments in such manner and upon such terms as the court deems proper. The Board may modify its findings or make new findings by reason

of the additional evidence or arguments and shall file with the court such modified or new findings, and its recommendation, if any, for the modification or setting aside of the decision being reviewed.

(c) STANDARD OF REVIEW; FINALITY OF JUDGMENTS.—The Board's findings of fact, if supported by substantial evidence on the record taken as a whole, shall be conclusive. The court shall review the Board's legal conclusions de novo. The judgment of the court affirming or setting aside the Board's decision shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

(d) PUBLIC DISCLOSURE AFTER FINAL DECISION.—Within 30 days after a final decision that a document, as redacted by the Board or in its entirety, is not protected from disclosure by a claim of attorney-client privilege, attorney work product, or trade secret protection, the Board shall direct the Depository to make the document available to the public. No Federal, Tribal, or State court shall have jurisdiction to review a claim of attorney-client privilege, attorney work product, or trade secret protection for a document that has lawfully been made available to the public under this subsection.

(e) EFFECT OF NON-DISCLOSURE DECISION ON JUDICIAL PROCEEDINGS.—The Board's decision that a document is protected by attorney-client privilege, attorney work product, or trade secret protection is binding only for the purpose of protecting the document from disclosure by the Depository. The decision by the Board shall not be construed to prevent a document from being disclosed in a judicial proceeding.

(f) DISCLOSURE TO THE FOOD AND DRUG ADMINISTRATION.—Within 240 days after the date of enactment of this Act, each participating tobacco product manufacturer shall submit to the Food and Drug Administration the documents identified in section 903(b) or 903(c), including documents for which trade secret protection is claimed, with the exception of any document for which privilege is claimed, and identified in accordance with section 904(a). Each such manufacturer shall provide the Administration with the privilege and trade secret logs identified under section 904(b). With respect to documents that are claimed to contain trade secret material, unless and until it is finally determined under this title, either through judicial review or because time for judicial review has expired, that such a document does not constitute or contain trade secret material, the Administration shall treat the document as a trade secret in accordance with section 708 of the Federal Food,

Drug, and Cosmetic Act (21 U.S.C. 379) and the regulations promulgated thereunder. Nothing herein shall limit the authority of the Administration to obtain and use, in accordance with any provision of the Federal Food, Drug, and Cosmetic Act and the regulations promulgated thereunder, any document constituting or containing trade secret material. Documents and materials received by the Administration under this provision shall not be obtainable by or releasable to the public through section 552 of title 5, United States Code, or any other provision of law, and the only recourse to obtain these documents shall be through the Board and Depository.

SEC. 909. MISCELLANEOUS.

The disclosure process in this title is not intended to affect the Federal Rules of Civil or Criminal Procedure or any Federal law which requires the disclosure of documents or which deals with attorney-client privilege, attorney work product, or trade secret protection.

SEC. 910. PENALTIES.

(a) GOOD FAITH REQUIREMENT.—Each participating tobacco product manufacturer must act in good faith in asseting claims of privilege or trade secret protection based on fact and law. If the Board determines that a participating tobacco product manufacturer has not acted in good faith with full knowledge of the truth of the facts asserted

and with a reasonable basis under existing law, the manufacturer shall be assessed costs, which shall include the full administrative costs of handling the claim of privilege, and all attorneys' fees incurred by the Board and any party contesting the privilege. The Board may also impose civil penalties of up to $10,000 per violation if it determines that the manufacturer acted in bad faith in asserting a privilege, or knowingly acted with the intent to delay, frustrate, defraud, or obstruct the Board's determination of privilege or trade secret protection claims.

(b) FAILURE TO PRODUCE DOCUMENT.—A failure by a participating tobacco product manufacturer to produce indexes and documents in compliance with the schedule set forth in this title, or with such extension as may be granted by the Board, shall be punished by a civil penalty of up to $500 per violation. A separate violation occurs for each document the manufacturer has failed to produce in a timely manner. The maximum penalty under this subsection for a related series of violations is $10,000. In determining the amount of any civil penalty, the Board shall consider the number of documents, length of delay, any history of prior violations, the ability to pay, and such other matters as justice requires. Nothing in this title shall replace or supersede any criminal sanction under title 18, United States Code, or any other provision of law.

SEC. 911. DEFINITIONS.

For the purposes of this title—

(1) DOCUMENT.—The term "document" includes originals and drafts of any kind of written or graphic matter, regardless of the manner of production or reproduction, of any kind or description, whether sent or received or neither, and all copies thereof that are different in any way from the original (whether by interlineation, receipt stamp, notation, indication of copies sent or received or otherwise) regardless of whether confidential, privileged, or otherwise, including any paper, book, account, photograph, blueprint, drawing, agreement, contract, memorandum, advertising material, letter, telegram, object, report, record, transcript, study, note, notation, working paper, intra-office communication, intra-department communication, chart, minute, index sheet, routing sheet, computer software, computer data, delivery ticket, flow sheet, price list, quotation, bulletin, circular, manual, summary, recording of telephone or other conversation or of interviews, or of conferences, or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter, regardless of the manner produced or reproduced. Such term also includes any tape, recording, videotape, computerization, or other

electronic recording, whether digital or analog or a combination thereof.

(2) TRADE SECRET.—The term "trade secret" means any commercially valuable plan, formula, process, or device that is used for making, compounding, processing, or preparing trade commodities and that can be said to be the end-product of either innovation or substantial effort, for which there is a direct relationship between the plan, formula, process, or device and the productive process.

(3) CERTAIN ACTIONS DEEMED TO BE PROCEEDINGS.—Any action undertaken under this title, including the search, indexing, and production of documents, is deemed to be a "proceeding" before the executive branch of the United States.

(4) OTHER TERMS.—Any term used in this title that is defined in section 701 has the meaning given to it by that section.

TITLE X—LONG-TERM ECONOMIC ASSISTANCE FOR FARMERS

SEC. 1001. SHORT TITLE.

This title may be cited as the "Long-Term Economic Assistance for Farmers Act" or the "LEAF Act".

SEC. 1002. DEFINITIONS.

In this title:

(1) PARTICIPATING TOBACCO PRODUCER.—The term "participating tobacco producer" means a quota holder, quota lessee, or quota tenant.

(2) QUOTA HOLDER.—The term "quota holder" means a producer that owns a farm for which a tobacco farm marketing quota or farm acreage allotment was established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years.

(3) QUOTA LESSEE.—The term "quota lessee" means—

(A) a producer that owns a farm that produced tobacco pursuant to a lease and transfer to that farm of all or part of a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years; or

(B) a producer that rented land from a farm operator to produce tobacco under a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years.

(4) QUOTA TENANT.—The term "quota tenant" means a producer that—

(A) is the principal producer, as determined by the Secretary, of tobacco on a farm where tobacco is produced pursuant to a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years; and

(B) is not a quota holder or quota lessee.

(5) SECRETARY.—The term "Secretary" means—

(A) in subtitles A and B, the Secretary of Agriculture; and

(B) in section 1031, the Secretary of Labor.

(6) TOBACCO PRODUCT IMPORTER.—The term "tobacco product importer" has the meaning given the term "importer" in section 5702 of the Internal Revenue Code of 1986.

(7) TOBACCO PRODUCT MANUFACTURER.—

(A) IN GENERAL.—The term "tobacco product manufacturer" has the meaning given the term "manufacturer of tobacco products" in section 5702 of the Internal Revenue Code of 1986.

(B) EXCLUSION.—The term "tobacco product manufacturer" does not include a person that manufactures cigars or pipe tobacco.

(8) TOBACCO WAREHOUSE OWNER.—The term "tobacco warehouse owner" means a warehouseman that participated in an auction market (as defined in the first section of the Tobacco Inspection Act (7 U.S.C. 511)) during the 1998 marketing year.

[*(9) TRUST FUND.—The term "Trust Fund" means the Tobacco Community Revitalization Trust Fund established under section 1011.*

[Subtitle A—Tobacco Community Revitalization Trust Fund

[SEC. 1011. ESTABLISHMENT OF TRUST FUND.

[*(a) IN GENERAL.—There is established in the Treasury of the United States a trust fund to be known as the "Tobacco Community Revitalization Trust Fund", consisting of such amounts as may be appropriated or credited to the Trust Fund. The Trust Fund shall be administered by the Secretary.*

[*(b) TRANSFERS TO TRUST FUND.—There are appropriated and transferred to the Trust Fund for each fiscal year—*

[(1) amounts contributed by tobacco product manufacturers and tobacco product importers under section 1012; and

[(2) an amount from the National Tobacco Settlement Trust Fund established by section 401 equal to the aggregate amount of assessments under section 1012 against participating tobacco manufacturers for that fiscal year.

[(c) REPAYABLE ADVANCES.—

[(1) AUTHORIZATION.—There are authorized to be appropriated to the Trust Fund, as repayable advances, such sums as may from time to time be necessary to make expenditures under subsection (d).

[(2) REPAYMENT WITH INTEREST.—Repayable advances made to the Trust Fund shall be repaid, and interest on the advances shall be paid, to the general fund of the Treasury when the Secretary of the Treasury determines that moneys are available in the Trust Fund to make the payments.

[(3) RATE OF INTEREST.—Interest on an advance made under this subsection shall be at a rate determined by the Secretary of Treasury (as of the close of the calendar month preceding the month in which the advance is made) that is equal to the current average market yield on outstanding marketable

obligations of the United States with remaining period to maturity comparable to the anticipated period during which the advance will be outstanding.

[(d) EXPENDITURES FROM TRUST FUND.—Amounts in the Trust Fund shall be available for making expenditures after October 1, 1998, to meet those necessary obligations of the Federal Government that are authorized to be paid under—

[(1) section 1021 for payments for lost tobacco quota for each of fiscal years 1999 through 2023, but not to exceed $1,650,000,000 for any fiscal year except to the extent the payments are made in accordance with subsection (d)(12) or (e)(9) of section 1021;

[(2) section 1022 for industry payments for all costs of the Department of Agriculture associated with the production of tobacco;

[(3) section 1023 for tobacco community economic development grants, but not to exceed—

[(A) $375,000,000 for each of fiscal years 1999 through 2008, less any amount required to be paid under section 1022 for the fiscal year; and

[(B) $450,000,000 for each of fiscal year 2009 through 2023, less any amount required to

be paid under section 1022 during the fiscal year;

[(4) section 1031 for assistance provided under the tobacco worker transition program, but not to exceed $25,000,000 for any fiscal year; and

[(5) subpart 9 of part A of title IV of the Higher Education Act of 1965 for farmer opportunity grants, but not to exceed—

[(A) $42,500,000 for each of the academic years 1999–2000 through 2003–2004;

[(B) $50,000,000 for each of the academic years 2004–2005 through 2008–2009;

[(C) $57,500,000 for each of the academic years 2009–2010 through 2013–2014;

[(D) $65,000,000 for each of the academic years 2014–2015 through 2018–2019; and

[(E) $72,500,000 for each of the academic years 2019–2020 through 2023–2024.

[(e) BUDGETARY TREATMENT.—This section constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide payments to States and eligible persons in accordance with this title.

[SEC. 1012. CONTRIBUTIONS BY TOBACCO PRODUCT MANUFACTURERS AND IMPORTERS.

[(a) DEFINITION OF MARKET SHARE.—In this section, the term "market share" means the ratio of—

[(1) the tax liability of a tobacco product manufacturer or tobacco product importer for a calendar year under section 5703 of the Internal Revenue Code of 1986; to

[(2) the tax liability of all tobacco product manufacturers or tobacco product importers for the calendar year under section 5703 of the Internal Revenue Code of 1986.

[(b) DETERMINATIONS.—Not later than September 30 of each fiscal year, the Secretary of the Treasury shall—

[(1) determine—

[(A) the market share of each tobacco product manufacturer or tobacco product importer during the most recent calendar year;

[(B) the total amount of assessments payable for the subsequent fiscal year under subsection (c); and

[(C) the amount of an assessment payable by the tobacco product manufacturer or tobacco product importer for the fiscal year under subsection (d); and

[(2) notify each tobacco product manufacturer and tobacco product importer of the determinations made under paragraph (1) with respect to the manufacturer or importer.

[(c) TOTAL AMOUNT OF ASSESSMENTS.—

[(1) IN GENERAL.—The total amount of assessments payable by all tobacco product manufacturers and tobacco product importers into the Trust Fund for a fiscal year shall be equal to—

[(A) the amount of the contribution to the Trust Fund for the fiscal year required under paragraph (2); less

[(B) any amount made available during the preceding fiscal year to the Trust Fund out of funds transferred from National Tobacco Settlement Trust Fund under section 1011(b)(2).

[(2) TRUST FUND CONTRIBUTIONS.—The amount of the contribution to the Trust Fund shall be—

[(A) $2,100,000,000 for each of fiscal years 1999 through 2008;

[(B) $500,000,000 for each of fiscal years 2009 through 2023; and

[(C) for fiscal year 2024 and each subsequent fiscal year, the amount payable under section 1022.

[(d) INDIVIDUAL AMOUNT OF ASSESSMENTS.—The amount of an assessment payable by each tobacco product manufacturer and tobacco product importer into the Trust Fund for a fiscal year shall be equal to the product obtained by multiplying—

[(1) the total amount of assessments payable by all tobacco product manufacturers and tobacco product importers for the fiscal year under subsection (c); and

[(2) the market share of the tobacco product manufacturer or tobacco product importer during the most recent calendar year determined under subsection (b)(1)(A).

[(e) CREDIT FOR PAYMENTS BY PARTICIPATING TOBACCO PRODUCT MANUFACTURERS.—There shall be allowed as a credit against the amount of any assessment under this section for a participating tobacco product manufacturer an amount equal to the amount paid by that manufacturer under section 403 of this Act (other than as penalty or interest) for the calendar year ending in that fiscal year.]

Subtitle B—Tobacco Market Transition Assistance

SEC. 1021. PAYMENTS FOR LOST TOBACCO QUOTA.

(a) IN GENERAL.—Beginning with the 1999 marketing year, the Secretary shall make payments for lost tobacco quota to eligible quota holders, quota lessees, and quota tenants as reimbursement for lost tobacco quota as a result of a decrease in demand for domestically produced tobacco.

(b) ELIGIBILITY.—To be eligible to receive payments under this section, a quota holder, quota lessee, or quota tenant shall—

(1) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including information sufficient to make the demonstration required under paragraph (2); and

(2) demonstrate to the satisfaction of the Secretary that, with respect to the 1997 marketing year—

(A) the producer was a quota holder and realized income from the production of tobacco through—

(i) the active production of tobacco;

(ii) the lease and transfer of tobacco quota to another farm;

(iii) the rental of all or part of the farm of the quota holder, including the right to produce tobacco, to another tobacco producer; or

(iv) the hiring of a quota tenant to produce tobacco;

(B) the producer was a quota lessee; or

(C) the producer was a quota tenant.

(c) BASE QUOTA LEVEL.—

(1) IN GENERAL.—The Secretary shall determine, for each quota holder, quota lessee, and quota tenant, the base quota level for the 1995 through 1997 marketing years.

(2) QUOTA HOLDERS.—The base quota level for a quota holder shall be equal to the average tobacco farm marketing quota established for the farm owned by the quota holder for the 1995 through 1997 marketing years.

(3) QUOTA LESSEES.—The base quota level for a quota lessee shall be equal to—

(A) 50 percent of the average number of pounds of tobacco quota established for a farm for the 1995 through 1997 marketing years—

(i) that was leased and transferred to a farm owned by the quota lessee; or

(ii) for which the rights to produce the tobacco were rented to the quota lessee; less

(B) 25 percent of the average number of pounds of tobacco quota described in subparagraph (A) for which a quota tenant was the principal producer of the tobacco quota.

(4) QUOTA TENANTS.—The base quota level for a quota tenant shall be equal to the sum of—

(A) 50 percent of the average number of pounds of tobacco quota established for a farm for the 1995 through 1997 marketing years—

(i) that was owned by a quota holder; and

(ii) for which the quota tenant was the principal producer of the tobacco on the farm; and

(B) 25 percent of the average number of pounds of tobacco quota for the 1995 through 1997 marketing years—

(i)(I) that was leased and transferred to a farm owned by the quota lessee; or

(II) for which the rights to produce the tobacco were rented to the quota lessee; and

(ii) for which the quota tenant was the principal producer of the tobacco on the farm.

(5) MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—

(A) IN GENERAL.—For each type of tobacco for which there is a marketing quota or allotment (on an acreage basis), the base quota level for each quota holder, quota lessee, or quota tenant shall be determined in accordance with this subsection (based on a poundage conversion) by multiplying—

(i) the average tobacco farm marketing quota or allotment for the 1995 through 1997 marketing years; and

(ii) the average yield per acre for the farm for the type of tobacco for the marketing years.

(B) YIELDS NOT AVAILABLE.—If the average yield per acre is not available for a farm, the Secretary shall calculate the base quota for the quota holder, quota lessee, or quota tenant (based on a poundage conversion) by determining the amount equal to the product obtained by multiplying—

(i) the average tobacco farm marketing quota or allotment for the 1995 through 1997 marketing years; and

(ii) the average county yield per acre for the county in which the farm is located for the type of tobacco for the marketing years.

(d) PAYMENTS FOR LOST TOBACCO QUOTA FOR TYPES OF TOBACCO OTHER THAN FLUE-CURED TOBACCO.—

(1) ALLOCATION OF FUNDS.—Of the amounts made available ***[****under section 1011(d)(1)****]*** ***out of the National Tobacco Settlement Trust Fund*** *for payments for lost tobacco quota, the Secretary shall make available for payments under this subsection an amount that bears the same ratio to the amounts made available as—*

(A) the sum of all national marketing quotas for all types of tobacco other than flue-cured tobacco during the 1995 through 1997 marketing years; bears to

(B) the sum of all national marketing quotas for all types of tobacco during the 1995 through 1997 marketing years.

(2) OPTION TO RELINQUISH QUOTA.—

(A) IN GENERAL.—Each quota holder shall be given the option to relinquish the farm marketing quota or farm acreage allotment of the quota holder in exchange for a payment made under paragraph (3).

(B) NOTIFICATION.—A quota holder shall give notification of the intention of the quota holder to exercise the option at such time and in such manner as the Secretary may require, but not later than January 15, 1999.

(3) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA HOLDERS EXERCISING OPTIONS TO RELINQUISH QUOTA.—

(A) IN GENERAL.—Subject to subparagraph (E), for each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost tobacco quota to each quota holder that has relinquished the farm marketing quota or farm acreage allotment of the quota holder under paragraph (2).

(B) AMOUNT.—The amount of a payment made to a quota holder described in subparagraph (A) for a marketing year shall equal 1/10 of the lifetime limitation established under subparagraph (E).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the farm marketing quota or farm acreage allotment is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(E) LIFETIME LIMITATION ON PAYMENTS.—The total amount of payments made under this paragraph to a quota holder shall not exceed the product obtained by multiplying the base quota level for the quota holder by $8 per pound.

(4) REISSUANCE OF QUOTA.—

(A) REALLOCATION TO LESSEE OR TENANT.—If a quota holder exercises an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), a quota lessee or quota tenant that was the primary producer during the 1997 marketing year of tobacco pursuant to the farm marketing quota or farm acreage allotment, as determined by the Secretary, shall be given the option of having an allotment of the farm marketing quota or farm

acreage allotment reallocated to a farm owned by the quota lessee or quota tenant.

(B) CONDITIONS FOR REALLOCATION.—

(i) TIMING.—A quota lessee or quota tenant that is given the option of having an allotment of a farm marketing quota or farm acreage allotment reallocated to a farm owned by the quota lessee or quota tenant under subparagraph (A) shall have 1 year from the date on which a farm marketing quota or farm acreage allotment is relinquished under paragraph (2) to exercise the option.

(ii) LIMITATION ON ACREAGE ALLOTMENT.—In the case of a farm acreage allotment, the acreage allotment determined for any farm subsequent to any reallocation under subparagraph (A) shall not exceed 50 percent of the acreage of cropland of the farm owned by the quota lessee or quota tenant.

(iii) LIMITATION ON MARKETING QUOTA.—In the case of a farm marketing quota, the marketing quota determined for any farm subsequent to any reallocation

under subparagraph (A) shall not exceed an amount determined by multiplying—

(I) the average county farm yield, as determined by the Secretary; and

(II) 50 percent of the acreage of cropland of the farm owned by the quota lessee or quota tenant.

(C) ELIGIBILITY OF LESSEE OR TENANT FOR PAYMENTS.—If a farm marketing quota or farm acreage allotment is reallocated to a quota lessee or quota tenant under subparagraph (A)—

(i) the quota lessee or quota tenant shall not be eligible for any additional payments under paragraph (5) or (6) as a result of the reallocation; and

(ii) the base quota level for the quota lessee or quota tenant shall not be increased as a result of the reallocation.

(D) REALLOCATION TO QUOTA HOLDERS WITHIN SAME COUNTY OR STATE.—

(i) IN GENERAL.—Except as provided in clause (ii), if there was no quota lessee or quota tenant for the farm marketing quota or farm acreage allotment for a type of tobacco, or if no quota lessee or quota

tenant exercises an option of having an allotment of the farm marketing quota or farm acreage allotment for a type of tobacco reallocated, the Secretary shall reapportion the farm marketing quota or farm acreage allotment among the remaining quota holders for the type of tobacco within the same county.

(ii) CROSS-COUNTY LEASING.—In a State in which cross-county leasing is authorized pursuant to section 319(l) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e(l)), the Secretary shall reapportion the farm marketing quota among the remaining quota holders for the type of tobacco within the same State.

(iii) ELIGIBILITY OF QUOTA HOLDER FOR PAYMENTS.—If a farm marketing quota is reapportioned to a quota holder under this subparagraph—

(I) the quota holder shall not be eligible for any additional payments under paragraph (5) or (6) as a result of the reapportionment; and

(II) the base quota level for the quota holder shall not be increased as a result of the reapportionment.

(E) SPECIAL RULE FOR TENANT OF LEASED TOBACCO.—If a quota holder exercises an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), the farm marketing quota or farm acreage allotment shall be divided evenly between, and the option of reallocating the farm marketing quota or farm acreage allotment shall be offered in equal portions to, the quota lessee and to the quota tenant, if—

(i) during the 1997 marketing year, the farm marketing quota or farm acreage allotment was leased and transferred to a farm owned by the quota lessee; and

(ii) the quota tenant was the primary producer, as determined by the Secretary, of tobacco pursuant to the farm marketing quota or farm acreage allotment.

(5) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA HOLDERS.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, during any marketing

year in which the national marketing quota for a type of tobacco is less than the average national marketing quota for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota holder that is eligible under subsection (b), and has not exercised an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), in an amount that is equal to the product obtained by multiplying—

(i) the number of pounds by which the basic farm marketing quota (or poundage conversion) is less than the base quota level for the quota holder; and

(ii) $4 per pound.

(B) POUNDAGE CONVERSION FOR MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—

(i) IN GENERAL.—For each type of tobacco for which there is a marketing quota or allotment (on an acreage basis), the poundage conversion for each quota holder during a marketing year shall be determined by multiplying—

(I) the basic farm acreage allotment for the farm for the marketing year; and

(II) the average yield per acre for the farm for the type of tobacco.

(ii) YIELD NOT AVAILABLE.—If the average yield per acre is not available for a farm, the Secretary shall calculate the poundage conversion for each quota holder during a marketing year by multiplying—

(I) the basic farm acreage allotment for the farm for the marketing year; and

(II) the average county yield per acre for the county in which the farm is located for the type of tobacco.

(6) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for a type of tobacco is less than the average national marketing quota for the type of tobacco for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota lessee and quota tenant that is eligible under

subsection (b) in an amount that is equal to the product obtained by multiplying—

(A) the percentage by which the national marketing quota for the type of tobacco is less than the average national marketing quota for the type of tobacco for the 1995 through 1997 marketing years;

(B) the base quota level for the quota lessee or quota tenant; and

(C) $4 per pound.

(7) LIFETIME LIMITATION ON PAYMENTS.—Except as otherwise provided in this subsection, the total amount of payments made under this subsection to a quota holder, quota lessee, or quota tenant during the lifetime of the quota holder, quota lessee, or quota tenant shall not exceed the product obtained by multiplying—

(A) the base quota level for the quota holder, quota lessee, or quota tenant; and

(B) $8 per pound.

(8) LIMITATIONS ON AGGREGATE ANNUAL PAYMENTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the total amount payable under this subsection for any marketing

year shall not exceed the amount made available under paragraph (1).

(B) ACCELERATED PAYMENTS.—Paragraph (1) shall not apply if accelerated payments for lost tobacco quota are made in accordance with paragraph (12).

(C) REDUCTIONS.—If the sum of the amounts determined under paragraphs (3), (5), and (6) for a marketing year exceeds the amount made available under paragraph (1), the Secretary shall make a pro rata reduction in the amounts payable under paragraphs (5) and (6) to quota holders, quota lessees, and quota tenants under this subsection to ensure that the total amount of payments for lost tobacco quota does not exceed the amount made available under paragraph (1).

(D) ROLLOVER OF PAYMENTS FOR LOST TOBACCO QUOTA.—Subject to subparagraph (A), if the Secretary makes a reduction in accordance with subparagraph (C), the amount of the reduction shall be applied to the next marketing year and added to the payments for lost tobacco quota for the marketing year.

(E) ADDITIONAL PAYMENTS TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTA.—If the amount made available under paragraph (1) exceeds the sum of the amounts determined under paragraphs (3), (5), and (6) for a marketing year, the Secretary shall distribute the amount of the excess pro rata to quota holders that have exercised an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2) by increasing the amount payable to each such holder under paragraph (3).

(9) SUBSEQUENT SALE AND TRANSFER OF QUOTA.—Effective beginning with the 1999 marketing year, on the sale and transfer of a farm marketing quota or farm acreage allotment under section 316(g) or 319(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b(g), 1314e(g))—

(A) the person that sold and transferred the quota or allotment shall have—

(i) the base quota level attributable to the person reduced by the base quota level attributable to the quota that is sold and transferred; and

(ii) the lifetime limitation on payments established under paragraph (7) attributable to the person reduced by the product obtained by multiplying—

(I) the base quota level attributable to the quota; and

(II) $8 per pound; and

(B) if the quota or allotment has never been relinquished by a previous quota holder under paragraph (2), the person that acquired the quota shall have—

(i) the base quota level attributable to the person increased by the base quota level attributable to the quota that is sold and transferred; and

(ii) the lifetime limitation on payments established under paragraph (7) attributable to the person—

(I) increased by the product obtained by multiplying—

(aa) the base quota level attributable to the quota; and

(bb) $8 per pound; but

(II) decreased by any payments under paragraph (5) for lost tobacco

quota previously made that are attributable to the quota that is sold and transferred.

(10) SALE OR TRANSFER OF FARM.—On the sale or transfer of ownership of a farm that is owned by a quota holder, the base quota level established under subsection (c), the right to payments under paragraph (5), and the lifetime limitation on payments established under paragraph (7) shall transfer to the new owner of the farm to the same extent and in the same manner as those provisions applied to the previous quota holder.

(11) DEATH OF QUOTA LESSEE OR QUOTA TENANT.—If a quota lessee or quota tenant that is entitled to payments under this subsection dies and is survived by a spouse or 1 or more dependents, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the surviving dependents in equal shares.

(12) ACCELERATION OF PAYMENTS.—

(A) IN GENERAL.—On the occurrence of any of the events described in subparagraph (B), the Secretary shall make an accelerated lump sum payment for lost tobacco quota as established under paragraphs (5) and (6) to each quota

holder, quota lessee, and quota tenant for any affected type of tobacco in accordance with subparagraph (C).

(B) TRIGGERING EVENTS.—The Secretary shall make accelerated payments under subparagraph (A) if after the date of enactment of this Act—

(i) subject to subparagraph (D), for 3 consecutive marketing years, the national marketing quota or national acreage allotment for a type of tobacco is less than 50 percent of the national marketing quota or national acreage allotment for the type of tobacco for the 1998 marketing year; or

(ii) Congress repeals or makes ineffective, directly or indirectly, any provision of—

(I) section 316 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b);

(II) section 319 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e);

(III) section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445);

(IV) section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1); or

(V) section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2).

(C) AMOUNT.—The amount of the accelerated payments made to each quota holder, quota lessee, and quota tenant under this subsection shall be equal to—

(i) the amount of the lifetime limitation established for the quota holder, quota lessee, or quota tenant under paragraph (7); less

(ii) any payments for lost tobacco quota received by the quota holder, quota lessee, or quota tenant before the occurrence of any of the events described in subparagraph (B).

(D) REFERENDUM VOTE NOT A TRIGGERING EVENT.—A referendum vote of producers for any type of tobacco that results in the national marketing quota or national acreage allotment not being in effect for the type of tobacco shall not be considered a triggering event under this paragraph.

(13) BAN ON SUBSEQUENT SALE OR LEASING OF FARM MARKETING QUOTA OR FARM ACREAGE ALLOTMENT TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTA.—No quota holder that exercises the option to relinquish a farm marketing quota or farm acreage allotment for any type of tobacco under paragraph (2) shall be eligible to acquire a farm marketing quota or farm acreage allotment for the type of tobacco, or to obtain the lease or transfer of a farm marketing quota or farm acreage allotment for the type of tobacco, for a period of 25 crop years after the date on which the quota or allotment was relinquished.

(e) PAYMENTS FOR LOST TOBACCO QUOTA FOR FLUE-CURED TOBACCO.—

(1) ALLOCATION OF FUNDS.—Of the amounts made available ***[****under section 1011(d)(1)****]*** ***out of the National Tobacco Settlement Trust Fund*** *for payments for lost tobacco quota, the Secretary shall make available for payments under this subsection an amount that bears the same ratio to the amounts made available as—*

(A) the sum of all national marketing quotas for flue-cured tobacco during the 1995 through 1997 marketing years; bears to

(B) the sum of all national marketing quotas for all types of tobacco during the 1995 through 1997 marketing years.

(2) RELINQUISHMENT OF QUOTA.—

(A) IN GENERAL.—Each quota holder of flue-cured tobacco during the 1998 marketing year shall relinquish the farm marketing quota or farm acreage allotment in exchange for a payment made under paragraph (3) or (4).

(B) NOTIFICATION.—The Secretary shall notify the quota holders of the relinquishment of their quota or allotment at such time and in such manner as the Secretary may require, but not later than November 15, 1998.

(3) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA HOLDERS THAT RELINQUISH QUOTA.—

(A) IN GENERAL.—For each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost flue-cured tobacco to each quota holder that has relinquished the farm marketing quota or farm acreage allotment of the quota holder under paragraph (2).

(B) AMOUNT.—The amount of a payment made to a quota holder described in subpara-

graph (A) for a marketing year shall equal 1/10 of the lifetime limitation established under paragraph (6).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the farm marketing quota or farm acreage allotment is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(4) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS THAT HAVE NOT RELINQUISHED PERMITS.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for flue-cured tobacco is less than the average national marketing quota for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota lessee or quota tenant that—

(i) is eligible under subsection (b);

(ii) has been issued an individual tobacco production permit under section 317A(b) of the Agricultural Adjustment Act of 1938; and

(iii) has not exercised an option to relinquish the permit.

(B) AMOUNT.—The amount of a payment made to a quota holder described in subparagraph (A) for a marketing year shall be equal to the product obtained by multiplying—

(i) the number of pounds by which the individual marketing limitation established for the permit is less than twice the base quota level for the quota holder; and

(ii) $2 per pound.

(5) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS THAT HAVE RELINQUISHED PERMITS.—

(A) IN GENERAL.—For each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost flue-cured tobacco quota to each quota lessee and quota tenant that has relinquished an individual tobacco production permit under section 317A(b)(5) of the Agricultural Adjustment Act of 1938.

(B) AMOUNT.—The amount of a payment made to a quota holder described in subparagraph (A) for a marketing year shall be equal to 1/10 of the lifetime limitation established under paragraph (6).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the individual tobacco production permit is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(E) PROHIBITION AGAINST PERMIT EXPANSION.—A quota lessee or quota tenant that receives a payment under this paragraph shall be ineligible to receive any new or increased tobacco production permit from the county production pool established under section 317A(b)(8) of the Agricultural Adjustment Act of 1938.

(6) LIFETIME LIMITATION ON PAYMENTS.—Except as otherwise provided in this subsection, the total amount of payments made under this subsection to a quota holder, quota lessee, or quota tenant during the lifetime of the quota holder, quota lessee, or quota ten-

ant shall not exceed the product obtained by multiplying—

(A) the base quota level for the quota holder, quota lessee, or quota tenant; and

(B) $8 per pound.

(7) LIMITATIONS ON AGGREGATE ANNUAL PAYMENTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the total amount payable under this subsection for any marketing year shall not exceed the amount made available under paragraph (1).

(B) ACCELERATED PAYMENTS.—Paragraph (1) shall not apply if accelerated payments for lost flue-cured tobacco quota are made in accordance with paragraph (9).

(C) REDUCTIONS.—If the sum of the amounts determined under paragraphs (3), (4), and (5) for a marketing year exceeds the amount made available under paragraph (1), the Secretary shall make a pro rata reduction in the amounts payable under paragraph (4) to quota lessees and quota tenants under this subsection to ensure that the total amount of payments for lost

flue-cured tobacco quota does not exceed the amount made available under paragraph (1).

(D) ROLLOVER OF PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA.—Subject to subparagraph (A), if the Secretary makes a reduction in accordance with subparagraph (C), the amount of the reduction shall be applied to the next marketing year and added to the payments for lost flue-cured tobacco quota for the marketing year.

(E) ADDITIONAL PAYMENTS TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTAS OR PERMITS, OR TO QUOTA LESSEES OR QUOTA TENANTS RELINQUISHING PERMITS.—If the amount made available under paragraph (1) exceeds the sum of the amounts determined under paragraphs (3), (4), and (5) for a marketing year, the Secretary shall distribute the amount of the excess pro rata to quota holders by increasing the amount payable to each such holder under paragraphs (3) and (5).

(8) DEATH OF QUOTA HOLDER, QUOTA LESSEE, OR QUOTA TENANT.—If a quota holder, quota lessee or quota tenant that is entitled to payments under paragraph (4) or (5) dies and is survived by a spouse or

1 or more descendants, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the surviving descendants in equal shares.

(9) ACCELERATION OF PAYMENTS.—

(A) IN GENERAL.—On the occurrence of any of the events described in subparagraph (B), the Secretary shall make an accelerated lump sum payment for lost flue-cured tobacco quota as established under paragraphs (3), (4), and (5) to each quota holder, quota lessee, and quota tenant for flue-cured tobacco in accordance with subparagraph (C).

(B) TRIGGERING EVENTS.—The Secretary shall make accelerated payments under subparagraph (A) if after the date of enactment of this Act—

(i) subject to subparagraph (D), for 3 consecutive marketing years, the national marketing quota or national acreage allotment for flue-cured tobacco is less than 50 percent of the national marketing quota or national acreage allotment for flue-cured tobacco for the 1998 marketing year; or

(ii) Congress repeals or makes ineffective, directly or indirectly, any provision of—

(I) section 316 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b);

(II) section 319 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e);

(III) section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445);

(IV) section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1);

(V) section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2); or

(VI) section 317A of the Agricultural Adjustment Act of 1938.

(C) AMOUNT.—The amount of the accelerated payments made to each quota holder, quota lessee, and quota tenant under this subsection shall be equal to—

(i) the amount of the lifetime limitation established for the quota holder, quota

lessee, or quota tenant under paragraph (6); less

(ii) any payments for lost flue-cured tobacco quota received by the quota holder, quota lessee, or quota tenant before the occurrence of any of the events described in subparagraph (B).

(D) REFERENDUM VOTE NOT A TRIGGERING EVENT.—A referendum vote of producers for flue-cured tobacco that results in the national marketing quota or national acreage allotment not being in effect for flue-cured tobacco shall not be considered a triggering event under this paragraph.

SEC. 1022. INDUSTRY PAYMENTS FOR ALL DEPARTMENT COSTS ASSOCIATED WITH TOBACCO PRODUCTION.

(a) IN GENERAL.—The Secretary shall use such amounts as are necessary from the ***National Tobacco Settlement*** *Trust Fund at the end of each fiscal year to reimburse the Secretary for—*

(1) costs associated with the administration of programs established under this title and amendments made by this title;

(2) costs associated with the administration of the tobacco quota and price support programs administered by the Secretary;

(3) costs to the Federal Government of carrying out crop insurance programs for tobacco;

(4) costs associated with all agricultural research, extension, or education activities associated with tobacco;

(5) costs associated with the administration of loan association and cooperative programs for tobacco producers, as approved by the Secretary; and

(6) any other costs incurred by the Department of Agriculture associated with the production of tobacco.

(b) LIMITATIONS.—Amounts made available under subsection (a) may not be used—

(1) to provide direct benefits to quota holders, quota lessees, or quota tenants; or

(2) in a manner that results in a decrease, or an increase relative to other crops, in the amount of the crop insurance premiums assessed to participating tobacco producers under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

(c) DETERMINATIONS.—Not later than September 30, 1998, and each fiscal year thereafter, the Secretary shall determine—

(1) the amount of costs described in subsection (a); and

(2) the amount that will be provided under this section as reimbursement for the costs.

SEC. 1023. TOBACCO COMMUNITY ECONOMIC DEVELOPMENT GRANTS.

(a) AUTHORITY.—The Secretary shall make grants to tobacco-growing States in accordance with this section to enable the States to carry out economic development initiatives in tobacco-growing communities.

(b) APPLICATION.—To be eligible to receive payments under this section, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including—

(1) a description of the activities that the State will carry out using amounts received under the grant;

(2) a designation of an appropriate State agency to administer amounts received under the grant; and

(3) a description of the steps to be taken to ensure that the funds are distributed in accordance with subsection (e).

(c) AMOUNT OF GRANT.—

(1) IN GENERAL.—From the amounts available to carry out this section for a fiscal year, the Secretary shall allot to each State an amount that bears the same ratio to the amounts available as the total farm income of the State derived from the production of tobacco during the 1995 through 1997 marketing years (as determined under paragraph (2)) bears to the total farm income of all States derived from the production of tobacco during the 1995 through 1997 marketing years.

(2) TOBACCO INCOME.—For the 1995 through 1997 marketing years, the Secretary shall determine the amount of farm income derived from the production of tobacco in each State and in all States.

(d) PAYMENTS.—

(1) IN GENERAL.—A State that has an application approved by the Secretary under subsection (b) shall be entitled to a payment under this section in an amount that is equal to its allotment under subsection (c).

(2) FORM OF PAYMENTS.—The Secretary may make payments under this section to a State in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(3) REALLOTMENTS.—Any portion of the allotment of a State under subsection (c) that the Secretary determines will not be used to carry out this section in accordance with an approved State application required under subsection (b), shall be reallotted by the Secretary to other States in proportion to the original allotments to the other States.

(e) USE AND DISTRIBUTION OF FUNDS.—

(1) IN GENERAL.—Amounts received by a State under this section shall be used to carry out economic development activities, including—

(A) rural business enterprise activities described in subsections (c) and (e) of section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932);

(B) down payment loan assistance programs that are similar to the program described in section 310E of the Consolidated Farm and Rural Development Act (7 U.S.C. 1935);

(C) activities designed to help create productive farm or off-farm employment in rural areas to provide a more viable economic base and enhance opportunities for improved incomes, living standards, and contributions by rural individuals to the economic and social development of tobacco communities;

(D) activities that expand existing infrastructure, facilities, and services to capitalize on opportunities to diversify economies in tobacco communities and that support the development of new industries or commercial ventures;

(E) activities by agricultural organizations that provide assistance directly to participating tobacco producers to assist in developing other agricultural activities that supplement tobacco-producing activities;

(F) initiatives designed to create or expand locally owned value-added processing and marketing operations in tobacco communities;

(G) technical assistance activities by persons to support farmer-owned enterprises, or agriculture-based rural development enterprises, of the type described in section 252 or 253 of the Trade Act of 1974 (19 U.S.C. 2342, 2343); and

(H) initiatives designed to partially compensate tobacco warehouse owners for lost revenues and assist the tobacco warehouse owners in establishing successful business enterprises.

(2) TOBACCO-GROWING COUNTIES.—Assistance may be provided by a State under this section only to assist a county in the State that has been determined by the Secretary to have in excess of $100,000 in income derived from the production of tobacco during 1 or more of the 1995 through 1997 marketing years.

(3) DISTRIBUTION.—

(A) ECONOMIC DEVELOPMENT ACTIVITIES.—Not less than 20 percent of the amounts received by a State under this section shall be used to carry out—

(i) economic development activities described in subparagraph (E) or (F) of paragraph (1); or

(ii) agriculture-based rural development activities described in paragraph (1)(G).

(B) TECHNICAL ASSISTANCE ACTIVITIES.—Not less than 4 percent of the amounts received by a State under this section shall be used to

carry out technical assistance activities described in paragraph (1)(G).

(C) TOBACCO WAREHOUSE OWNER INITIATIVES.—

(i) IN GENERAL.—Not less than 6 percent of the amounts received by a State under this section during each of fiscal years 1999 through 2008 shall be used to carry out initiatives described in paragraph (1)(H).

(ii) DIRECT PAYMENTS.—Of the amount made available under clause (i), not less than 80 percent of the amount shall be used to provide direct payments to tobacco warehouse owners based on any decline in the annual volume of tobacco sales as compared to the volume of tobacco sales during the 1998 marketing year.

(D) TOBACCO-GROWING COUNTIES.—To be eligible to receive payments under this section, a State shall demonstrate to the Secretary that funding will be provided, during each 5-year period for which funding is provided under this section, for activities in each county in the State that has been determined under paragraph (2) to

have in excess of $100,000 in income derived from the production of tobacco, in amounts that are at least equal to the product obtained by multiplying—

(i) the ratio that the tobacco production income in the county determined under paragraph (2) bears to the total tobacco production income for the State determined under subsection (c); and

(ii) 50 percent of the total amounts received by a State under this section during the 5-year period.

(f) PREFERENCES IN HIRING.—A State may require recipients of funds under this section to provide a preference in employment to—

(1) an individual who—

(A) during the 1998 calendar year, was employed in the manufacture, processing, or warehousing of tobacco or tobacco products, or resided, in a county described in subsection (e)(2); and

(B) is eligible for assistance under the tobacco worker transition program established under section 1031; or

(2) an individual who—

(A) during the 1998 marketing year, carried out tobacco quota or relevant tobacco production activities in a county described in subsection (e)(2);

(B) is eligible for a farmer opportunity grant under subpart 9 of part A of title IV of the Higher Education Act of 1965; and

(C) has successfully completed a course of study at an institution of higher education.

(g) MAINTENANCE OF EFFORT.—

(1) IN GENERAL.—Subject to paragraph (2), a State shall provide an assurance to the Secretary that the amount of funds expended by the State and all counties in the State described in subsection (e)(2) for any activities funded under this section for a fiscal year is not less than 90 percent of the amount of funds expended by the State and counties for the activities for the preceding fiscal year.

(2) REDUCTION OF GRANT AMOUNT.—If a State does not provide an assurance described in paragraph (1), the Secretary shall reduce the amount of the grant determined under subsection (c) by an amount equal to the amount by which the amount of funds expended by the State and counties for the activities is less than 90 percent of the amount of funds expended

by the State and counties for the activities for the preceding fiscal year, as determined by the Secretary.

(3) FEDERAL FUNDS.—For purposes of this subsection, the amount of funds expended by a State or county shall not include any amounts made available by the Federal Government.

SEC. 1024. FLUE-CURED TOBACCO PRODUCTION PERMITS.

The Agricultural Adjustment Act of 1938 is amended by inserting after section 317 (7 U.S.C. 1314c) the following:

"SEC. 317A. FLUE-CURED TOBACCO PRODUCTION PERMITS.

"(a) DEFINITIONS.—In this section:

"(1) INDIVIDUAL ACREAGE LIMITATION.—The term 'individual acreage limitation' means the number of acres of flue-cured tobacco that may be planted by the holder of a permit during a marketing year, calculated—

"(A) prior to—

"(i) any increase or decrease in the number due to undermarketings or overmarketings; and

"(ii) any reduction under subsection (i); and

"(B) in a manner that ensures that—

"(i) the total of all individual acreage limitations is equal to the national acreage allotment, less the reserve provided under subsection (h); and

"(ii) the individual acreage limitation for a marketing year bears the same ratio to the individual acreage limitation for the previous marketing year as the ratio that the national acreage allotment for the marketing year bears to the national acreage allotment for the previous marketing year, subject to adjustments by the Secretary to account for any reserve provided under subsection (h).

"(2) INDIVIDUAL MARKETING LIMITATION.—The term 'individual marketing limitation' means the number of pounds of flue-cured tobacco that may be marketed by the holder of a permit during a marketing year, calculated—

"(A) prior to—

"(i) any increase or decrease in the number due to undermarketings or overmarketings; and

"(ii) any reduction under subsection (i); and

"(B) in a manner that ensures that—

"(i) the total of all individual marketing limitations is equal to the national marketing quota, less the reserve provided under subsection (h); and

"(ii) the individual marketing limitation for a marketing year is obtained by multiplying the individual acreage limitation by the permit yield, prior to any adjustment for undermarketings or overmarketings.

"(3) INDIVIDUAL TOBACCO PRODUCTION PERMIT.—The term 'individual tobacco production permit' means a permit issued by the Secretary to a person authorizing the production of flue-cured tobacco for any marketing year during which this section is effective.

"(4) NATIONAL ACREAGE ALLOTMENT.—The term 'national acreage allotment' means the quantity determined by dividing—

"(A) the national marketing quota; by

"(B) the national average yield goal.

"(5) NATIONAL AVERAGE YIELD GOAL.—The term 'national average yield goal' means the national average yield for flue-cured tobacco during the 5 mar-

keting years immediately preceding the marketing year for which the determination is being made.

"(6) NATIONAL MARKETING QUOTA.—For the 1999 and each subsequent crop of flue-cured tobacco, the term 'national marketing quota' for a marketing year means the quantity of flue-cured tobacco, as determined by the Secretary, that is not more than 103 percent nor less than 97 percent of the total of—

"(A) the aggregate of the quantities of flue-cured tobacco that domestic manufacturers of cigarettes estimate that the manufacturers intend to purchase on the United States auction markets or from producers during the marketing year, as compiled and determined under section 320A;

"(B) the average annual quantity of flue-cured tobacco exported from the United States during the 3 marketing years immediately preceding the marketing year for which the determination is being made; and

"(C) the quantity, if any, of flue-cured tobacco that the Secretary, in the discretion of the Secretary, determines is necessary to increase or decrease the inventory of the producer-owned cooperative marketing association that has entered

into a loan agreement with the Commodity Credit Corporation to make price support available to producers of flue-cured tobacco to establish or maintain the inventory at the reserve stock level for flue-cured tobacco.

"(7) PERMIT YIELD.—The term 'permit yield' means the yield of tobacco per acre for an individual tobacco production permit holder that is—

"(A) based on a preliminary permit yield that is equal to the average yield during the 5 marketing years immediately preceding the marketing year for which the determination is made in the county where the holder of the permit is authorized to plant flue-cured tobacco, as determined by the Secretary, on the basis of actual yields of farms in the county; and

"(B) adjusted by a weighted national yield factor calculated by—

"(i) multiplying each preliminary permit yield by the individual acreage limitation, prior to adjustments for overmarketings, undermarketings, or reductions required under subsection (i); and

"(ii) dividing the sum of the products under clause (i) for all flue-cured individual

tobacco production permit holders by the national acreage allotment.

"(b) INITIAL ISSUANCE OF PERMITS.—

"(1) TERMINATION OF FLUE-CURED MARKETING QUOTAS.—On approval through referendum under subsection (c), farm marketing quotas as provided under section 317 shall no longer be in effect for flue-cured tobacco.

"(2) ISSUANCE OF PERMITS TO QUOTA HOLDERS THAT WERE PRINCIPAL PRODUCERS.—

"(A) IN GENERAL.—On approval through a referendum under subsection (c), each individual quota holder under section 317 that was a principal producer of flue-cured tobacco during the 1998 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

"(B) NOTIFICATION.—The Secretary shall notify the holder of each permit of the individual acreage limitation and the individual marketing limitation applicable to the holder for each marketing year.

"(C) INDIVIDUAL ACREAGE LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual acreage limitation for the 1999 marketing

year under this section, the farm acreage allotment that was allotted to a farm owned by the quota holder during the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

"(D) INDIVIDUAL MARKETING LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the farm marketing quota that was allotted to a farm owned by the quota holder during the 1997 marketing year shall be considered the individual marketing limitation for the previous marketing year.

"(3) QUOTA HOLDERS THAT WERE NOT PRINCIPAL PRODUCERS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), on approval through a referendum under subsection (c)—

"(i) each person that was a quota holder under section 317 but that was not a principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall not be eligible to own a permit; and

"(ii) the Secretary shall not issue any permit during the 25-year period beginning on the date of enactment of this Act to any person that was a quota holder and was not the principal producer of flue-cured tobacco during the 1997 marketing year.

"(B) MEDICAL HARDSHIPS AND CROP DISASTERS.—Subparagraph (A) shall not apply to a person that would have been the principal producer of flue-cured tobacco during the 1997 marketing year but for a medical hardship or crop disaster that occurred during the 1997 marketing year.

"(C) ADMINISTRATION.—The Secretary shall issue regulations—

"(i) defining the term 'person' for the purpose of this paragraph; and

"(ii) prescribing such rules as the Secretary determines are necessary to ensure a fair and reasonable application of the prohibition established under this paragraph.

"(4) ISSUANCE OF PERMITS TO PRINCIPAL PRODUCERS OF FLUE-CURED TOBACCO.—

"(A) IN GENERAL.—On approval through a referendum under subsection (c), each individual

quota lessee or quota tenant (as defined in section 1002 of the LEAF Act) that was the principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

"(B) INDIVIDUAL ACREAGE LIMITATIONS.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by a quota holder for whom the quota lessee or quota tenant was the principal producer of flue-cured tobacco during the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

"(C) INDIVIDUAL MARKETING LIMITATIONS.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the individual marketing limitation for the previous year for an individual described in this paragraph shall be calculated by multiplying—

"(i) the farm marketing quota that was allotted to a farm owned by a quota

holder for whom the quota lessee or quota holder was the principal producer of flue-cured tobacco during the 1997 marketing year, by

"(ii) the ratio that—

"(I) the sum of all flue-cured tobacco farm marketing quotas for the 1997 marketing year prior to adjusting for undermarketing and overmarketing; bears to

"(II) the sum of all flue-cured tobacco farm marketing quotas for the 1998 marketing year, after adjusting for undermarketing and overmarketing.

"(D) SPECIAL RULE FOR TENANT OF LEASED FLUE-CURED TOBACCO.—If the farm marketing quota or farm acreage allotment of a quota holder was produced pursuant to an agreement under which a quota lessee rented land from a quota holder and a quota tenant was the primary producer, as determined by the Secretary, of flue-cured tobacco pursuant to the farm marketing quota or farm acreage allotment, the farm marketing quota or farm acreage allotment shall be divided proportionately between

the quota lessee and quota tenant for purposes of issuing individual tobacco production permits under this paragraph.

"(5) OPTION OF QUOTA LESSEE OR QUOTA TENANT TO RELINQUISH PERMIT.—

"(A) IN GENERAL.—Each quota lessee or quota tenant that is issued an individual tobacco production permit under paragraph (4) shall be given the option of relinquishing the permit in exchange for payments made under section 1021(e)(5) of the LEAF Act.

"(B) NOTIFICATION.—A quota lessee or quota tenant that is issued an individual tobacco production permit shall give notification of the intention to exercise the option at such time and in such manner as the Secretary may require, but not later than 30 days after the permit is issued.

"(C) REALLOCATION OF PERMIT.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit relinquished under this paragraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

"(6) ACTIVE PRODUCER REQUIREMENT.—

"(A) REQUIREMENT FOR SHARING RISK.—No individual tobacco production permit shall be issued to, or maintained by, a person that does not fully share in the risk of producing a crop of flue-cured tobacco.

"(B) CRITERIA FOR SHARING RISK.—For purposes of this paragraph, a person shall be considered to have fully shared in the risk of production of a crop if—

"(i) the investment of the person in the production of the crop is not less than 100 percent of the costs of production associated with the crop;

"(ii) the amount of the person's return on the investment is dependent solely on the sale price of the crop; and

"(iii) the person may not receive any of the return before the sale of the crop.

"(C) PERSONS NOT SHARING RISK.—

"(i) FORFEITURE.—Any person that fails to fully share in the risks of production under this paragraph shall forfeit an individual tobacco production permit if, after notice and opportunity for a hearing, the

appropriate county committee determines that the conditions for forfeiture exist.

"(ii) REALLOCATION.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit forfeited under this subparagraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

"(D) NOTICE.—Notice of any determination made by a county committee under subparagraph (C) shall be mailed, as soon as practicable, to the person involved.

"(E) REVIEW.—If the person is dissatisfied with the determination, the person may request, not later than 15 days after notice of the determination is received, a review of the determination by a local review committee under the procedures established under section 363 for farm marketing quotas.

"(7) COUNTY OF ORIGIN REQUIREMENT.—For the 1999 and each subsequent crop of flue-cured tobacco, all tobacco produced pursuant to an individual tobacco production permit shall be produced in the same county in which was produced the tobacco pro-

duced during the 1997 marketing year pursuant to the farm marketing quota or farm acreage allotment on which the individual tobacco production permit is based.

"(8) COUNTY PRODUCTION POOL.—

"(A) IN GENERAL.—The authority to produce flue-cured tobacco under an individual tobacco production permit that is forfeited, relinquished, or surrendered within a county may be reallocated by the appropriate county committee to tobacco producers located in the same county that apply to the committee to produce flue-cured tobacco under the authority.

"(B) PRIORITY.—In reallocating individual tobacco production permits under this paragraph, a county committee shall provide a priority to—

"(i) an active tobacco producer that controls the authority to produce a quantity of flue-cured tobacco under an individual tobacco production permit that is equal to or less than the average number of pounds of flue-cured tobacco that was produced by the producer during each of the 1995

through 1997 marketing years, as determined by the Secretary; and

"(ii) a new tobacco producer.

"(C) CRITERIA.—Individual tobacco production permits shall be reallocated by the appropriate county committee under this paragraph in a fair and equitable manner after taking into consideration—

"(i) the experience of the producer;

"(ii) the availability of land, labor, and equipment for the production of tobacco;

"(iii) crop rotation practices; and

"(iv) the soil and other physical factors affecting the production of tobacco.

"(D) MEDICAL HARDSHIPS AND CROP DISASTERS.—Notwithstanding any other provision of this Act, the Secretary may issue an individual tobacco production permit under this paragraph to a producer that is otherwise ineligible for the permit due to a medical hardship or crop disaster that occurred during the 1997 marketing year.

"(c) REFERENDUM.—

"(1) ANNOUNCEMENT OF QUOTA AND ALLOTMENT.—Not later than December 15, 1998, the Secretary pursuant to subsection (b) shall determine and announce—

"(A) the quantity of the national marketing quota for flue-cured tobacco for the 1999 marketing year; and

"(B) the national acreage allotment and national average yield goal for the 1999 crop of flue-cured tobacco.

"(2) SPECIAL REFERENDUM.—Not later than 30 days after the announcement of the quantity of the national marketing quota, the Secretary shall conduct a special referendum of the producers that were the principal producers of flue-cured tobacco of the 1997 crop to determine whether the producers approve or oppose the establishment of individual tobacco production permits on an acreage-poundage basis as provided in this section for the 1999 through 2001 marketing years.

"(3) APPROVAL OF PERMITS.—If the Secretary determines that more than 66⅔ percent of the producers voting in the special referendum approve the establishment of individual tobacco production permits on an acreage-poundage basis—

"(A) individual tobacco production permits on an acreage-poundage basis as provided in this section shall be in effect for the 1999 through 2001 marketing years; and

"(B) marketing quotas on an acreage-poundage basis shall cease to be in effect for the 1999 through 2001 marketing years.

"(4) DISAPPROVAL OF PERMITS.—If individual tobacco production permits on an acreage-poundage basis are not approved by more than 66⅔ percent of the producers voting in the referendum, no marketing quotas on an acreage-poundage basis shall continue in effect that were proclaimed under section 317 prior to the referendum.

"(5) APPLICABLE MARKETING YEARS.—If individual tobacco production permits have been made effective for flue-cured tobacco on an acreage-poundage basis pursuant to this subsection, the Secretary shall, not later than December 15 of any future marketing year, announce a national marketing quota for that type of tobacco for the next 3 succeeding marketing years if the marketing year is the last year of 3 consecutive years for which individual tobacco production permits previously proclaimed will be in effect.

"(d) ANNUAL ANNOUNCEMENT OF NATIONAL MARKETING QUOTA.—The Secretary shall determine and announce the national marketing quota, national acreage allotment, and national average yield goal for the second and third marketing years of any 3-year period for which individual tobacco production permits are in effect on or before the December 15 immediately preceding the beginning of the marketing year to which the quota, allotment, and goal apply.

"(e) ANNUAL ANNOUNCEMENT OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—If a national marketing quota, national acreage allotment, and national average yield goal are determined and announced, the Secretary shall provide for the determination of individual tobacco production permits, individual acreage limitations, and individual marketing limitations under this section for the crop and marketing year covered by the determinations.

"(f) ASSIGNMENT OF TOBACCO PRODUCTION PERMITS.—

"(1) LIMITATION TO SAME COUNTY.—Each individual tobacco production permit holder shall assign the individual acreage limitation and individual marketing limitation to 1 or more farms located within the county of origin of the individual tobacco production permit.

"(2) FILING WITH COUNTY COMMITTEE.—The assignment of an individual acreage limitation and individual marketing limitation shall not be effective until evidence of the assignment, in such form as required by the Secretary, is filed with and determined by the county committee for the county in which the farm involved is located.

"(3) LIMITATION ON TILLABLE CROPLAND.—The total acreage assigned to any farm under this subsection shall not exceed the acreage of cropland on the farm.

"(g) PROHIBITION ON SALE OR LEASING OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the Secretary shall not permit the sale and transfer, or lease and transfer, of an individual tobacco production permit issued under this section.

"(2) TRANSFER TO DESCENDANTS.—

"(A) DEATH.—In the case of the death of a person to whom an individual tobacco production permit has been issued under this section, the permit shall transfer to the surviving spouse of the person or, if there is no surviving spouse, to surviving direct descendants of the person.

"(B) TEMPORARY INABILITY TO FARM.—In the case of the death of a person to whom an individual tobacco production permit has been issued under this section and whose descendants are temporarily unable to produce a crop of tobacco, the Secretary may hold the license in the name of the descendants for a period of not more than 18 months.

"(3) VOLUNTARY TRANSFERS.—A person that is eligible to obtain an individual tobacco production permit under this section may at any time transfer all or part of the permit to the person's spouse or direct descendants that are actively engaged in the production of tobacco.

"(h) RESERVE.—

"(1) IN GENERAL.—For each marketing year for which individual tobacco production permits are in effect under this section, the Secretary may establish a reserve from the national marketing quota in a quantity equal to not more than 1 percent of the national marketing quota to be available for—

"(A) making corrections of errors in individual acreage limitations and individual marketing limitations;

"(B) adjusting inequities; and

"(C) establishing individual tobacco production permits for new tobacco producers (except that not less than two-thirds of the reserve shall be for establishing such permits for new tobacco producers).

"(2) ELIGIBLE PERSONS.—To be eligible for a new individual tobacco production permit, a producer must have owned a farm on which tobacco was not produced or considered produced during the immediately preceding 5 years.

"(3) APPORTIONMENT FOR NEW PRODUCERS.—The part of the reserve held for apportionment to new individual tobacco producers shall be allotted on the basis of—

"(A) land, labor, and equipment available for the production of tobacco;

"(B) crop rotation practices;

"(C) soil and other physical factors affecting the production of tobacco; and

"(D) the past tobacco-producing experience of the producer.

"(4) PERMIT YIELD.—The permit yield for any producer for which a new individual tobacco production permit is established shall be determined on the basis of available productivity data for the land in-

volved and yields for similar farms in the same county.

"(i) PENALTIES.—

"(1) PRODUCTION ON OTHER FARMS.—If any quantity of tobacco is marketed as having been produced under an individual acreage limitation or individual marketing limitation assigned to a farm but was produced on a different farm, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

"(2) FALSE REPORT.—If a person to which an individual tobacco production permit is issued files, or aids or acquiesces in the filing of, a false report with respect to the assignment of an individual acreage limitation or individual marketing limitation for a quantity of tobacco, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

"(j) MARKETING PENALTIES.—

"(1) IN GENERAL.—When individual tobacco production permits under this section are in effect, provisions with respect to penalties for the marketing of excess tobacco and the other provisions contained in section 314 shall apply in the same manner and to

the same extent as they would apply under section 317(g) if farm marketing quotas were in effect.

"(2) PRODUCTION ON OTHER FARMS.—If a producer falsely identifies tobacco as having been produced on or marketed from a farm to which an individual acreage limitation or individual marketing limitation has been assigned, future individual acreage limitations and individual marketing limitations shall be forfeited.".

SEC. 1025. MODIFICATIONS IN FEDERAL TOBACCO PROGRAMS.

(a) PROGRAM REFERENDA.—Section 312(c) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1312(c)) is amended—

(1) by striking "(c) Within thirty" and inserting the following:

"(c) REFERENDA ON QUOTAS.—

"(1) IN GENERAL.—Not later than 30"; and

(2) by adding at the end the following:

"(2) REFERENDA ON PROGRAM CHANGES.—

"(A) IN GENERAL.—In the case of any type of tobacco for which marketing quotas are in effect, on the receipt of a petition from more than 5 percent of the producers of that type of tobacco in a State, the Secretary shall conduct a state-

wide referendum on any proposal related to the lease and transfer of tobacco quota within a State requested by the petition that is authorized under this part.

"(B) APPROVAL OF PROPOSALS.—If a majority of producers of the type of tobacco in the State approve a proposal in a referendum conducted under subparagraph (A), the Secretary shall implement the proposal in a manner that applies to all producers and quota holders of that type of tobacco in the State.".

(b) PURCHASE REQUIREMENTS.—Section 320B of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314h) is amended—

(1) in subsection (c)—

(A) by striking "(c) The amount" and inserting "(c) AMOUNT OF PENALTY.—For the 1998 and subsequent marketing years, the amount"; and

(B) by striking paragraph (1) and inserting the following:

"(1) 105 percent of the average market price for the type of tobacco involved during the preceding marketing year; and"; and

(2) by striking subsection (d) and inserting the following:

"(d) USE OF PENALTY PAYMENTS.—An amount equivalent to each penalty collected by the Secretary under this section shall be transmitted by the Secretary to the Secretary of the Treasury for deposit in the ***[****Tobacco Community Revitalization Trust Fund established under section 1011 of the LEAF Act****]*** ***National Tobacco Settlement Trust Fund****.".*

(c) ELIMINATION OF TOBACCO MARKETING ASSESSMENT.—

(1) IN GENERAL.—Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended by striking subsection (g).

(2) CONFORMING AMENDMENT.—Section 422(c) of the Uruguay Round Agreements Act (Public Law 103–465; 7 U.S.C. 1445 note) is amended by striking "section 106(g), 106A, or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445(g), 1445–1, or 1445–2)" and inserting "section 106A or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–1, 1445–2)".

(d) ADJUSTMENT FOR LAND RENTAL COSTS.—Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended by adding at the end the following:

"(h) ADJUSTMENT FOR LAND RENTAL COSTS.—For each of the 1999 and 2000 marketing years for flue-cured tobacco, after consultation with producers, State farm organizations and cooperative associations, the Secretary shall make an adjustment in the price support level for flue-cured tobacco equal to the annual change in the average cost per pound to flue-cured producers, as determined by the Secretary, under agreements through which producers rent land to produce flue-cured tobacco.".

(e) FIRE-CURED AND DARK AIR-CURED TOBACCO PROGRAMS.—

(1) LIMITATION ON TRANSFERS.—Section 318(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 13l4d(g)) is amended—

(A) by striking "ten" and inserting "30"; and

(B) by inserting "during any crop year" after "transferred to any farm".

(2) LOSS OF ALLOTMENT OR QUOTA THROUGH UNDERPLANTING.—Section 318 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314d) is amended by adding at the end the following:

"(k) LOSS OF ALLOTMENT OR QUOTA THROUGH UNDERPLANTING.—Effective for the 1999 and subsequent marketing years, no acreage allotment or acreage-poundage

quota, other than a new marketing quota, shall be established for a farm on which no fire-cured or dark air-cured tobacco was planted or considered planted during at least 2 of the 3 crop years immediately preceding the crop year for which the acreage allotment or acreage-poundage quota would otherwise be established.".

(f) EXPANSION OF TYPES OF TOBACCO SUBJECT TO NO NET COST ASSESSMENT.—

(1) NO NET COST TOBACCO FUND.—Section 106A(d)(1)(A) of the Agricultural Act of 1949 (7 U.S.C. 1445–1(d)(1)(A)) is amended—

(A) in clause (ii), by inserting after "Burley quota tobacco" the following: "and fire-cured and dark air-cured quota tobacco"; and

(B) in clause (iii)—

(i) in the matter preceding subclause (I), by striking "Flue-cured or Burley tobacco" and inserting "each kind of tobacco for which price support is made available under this Act, and each kind of like tobacco,"; and

(ii) by striking subclause (II) and inserting the following:

"(II) the sum of the amount of the per pound producer contribution and

purchaser assessment (if any) for the kind of tobacco payable under clauses (i) and (ii); and".

(2) NO NET COST TOBACCO ACCOUNT.—Section 106B(d)(1) of the Agricultural Act of 1949 (7 U.S.C. 1445–2(d)(1)) is amended—

(A) in subparagraph (B), by inserting after "Burley quota tobacco" the following: "and fire-cured and dark air-cured tobacco"; and

(B) in subparagraph (C), by striking "Flue-cured and Burley tobacco" and inserting "each kind of tobacco for which price support is made available under this Act, and each kind of like tobacco,".

Subtitle C—Farmer and Worker Transition Assistance

SEC. 1031. TOBACCO WORKER TRANSITION PROGRAM.

(a) GROUP ELIGIBILITY REQUIREMENTS.—

(1) CRITERIA.—A group of workers (including workers in any firm or subdivision of a firm involved in the manufacture, processing, or warehousing of tobacco or tobacco products) shall be certified as eligible to apply for adjustment assistance under this section pursuant to a petition filed under subsection (b) if the Secretary of Labor determines that a significant

number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated, and—

(A) the sales or production, or both, of the firm or subdivision have decreased absolutely; and

(B) the implementation of the national tobacco settlement contributed importantly to the workers' separation or threat of separation and to the decline in the sales or production of the firm or subdivision.

(2) DEFINITION OF CONTRIBUTED IMPORTANTLY.—In paragraph (1)(B), the term "contributed importantly" means a cause that is important but not necessarily more important than any other cause.

(3) REGULATIONS.—The Secretary shall issue regulations relating to the application of the criteria described in paragraph (1) in making preliminary findings under subsection (b) and determinations under subsection (c).

(b) PRELIMINARY FINDINGS AND BASIC ASSISTANCE.—

(1) FILING OF PETITIONS.—A petition for certification of eligibility to apply for adjustment assist-

ance under this section may be filed by a group of workers (including workers in any firm or subdivision of a firm involved in the manufacture, processing, or warehousing of tobacco or tobacco products) or by their certified or recognized union or other duly authorized representative with the Governor of the State in which the workers' firm or subdivision thereof is located.

(2) FINDINGS AND ASSISTANCE.—On receipt of a petition under paragraph (1), the Governor shall—

(A) notify the Secretary that the Governor has received the petition;

(B) within 10 days after receiving the petition—

(i) make a preliminary finding as to whether the petition meets the criteria described in subsection (a)(1); and

(ii) transmit the petition, together with a statement of the finding under clause (i) and reasons for the finding, to the Secretary for action under subsection (c); and

(C) if the preliminary finding under subparagraph (B)(i) is affirmative, ensure that rapid response and basic readjustment services

authorized under other Federal laws are made available to the workers.

(c) REVIEW OF PETITIONS BY SECRETARY; CERTIFICATIONS.—

(1) IN GENERAL.—The Secretary, within 30 days after receiving a petition under subsection (b)(2)(B)(ii), shall determine whether the petition meets the criteria described in subsection (a)(1). On a determination that the petition meets the criteria, the Secretary shall issue to workers covered by the petition a certification of eligibility to apply for the assistance described in subsection (d).

(2) DENIAL OF CERTIFICATION.—On the denial of a certification with respect to a petition under paragraph (1), the Secretary shall review the petition in accordance with the requirements of other applicable assistance programs to determine if the workers may be certified under the other programs.

(d) COMPREHENSIVE ASSISTANCE.—

(1) IN GENERAL.—Workers covered by a certification issued by the Secretary under subsection (c)(1) shall be provided with benefits and services described in paragraph (2) in the same manner and to the same extent as workers covered under a certification under subchapter A of title II of the Trade Act of

1974 (19 U.S.C. 2271 et seq.), except that the total amount of payments under this section for any fiscal year shall not exceed $25,000,000.

(2) BENEFITS AND SERVICES.—The benefits and services described in this paragraph are the following:

(A) Employment services of the type described in section 235 of the Trade Act of 1974 (19 U.S.C. 2295).

(B) Training described in section 236 of the Trade Act of 1974 (19 U.S.C. 2296), except that notwithstanding the provisions of section 236(a)(2)(A) of that Act, the total amount of payments for training under this section for any fiscal year shall not exceed $12,500,000.

(C) Tobacco worker readjustment allowances, which shall be provided in the same manner as trade readjustment allowances are provided under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2291 et seq.), except that—

(i) the provisions of sections 231(a)(5)(C) and 231(c) of that Act (19 U.S.C. 2291(a)(5)(C), 2291(c)), authorizing the payment of trade readjustment allowances on a finding that it is not feasible or

appropriate to approve a training program for a worker, shall not be applicable to payment of allowances under this section; and

(ii) notwithstanding the provisions of section 233(b) of that Act (19 U.S.C. 2293(b)), in order for a worker to qualify for tobacco readjustment allowances under this section, the worker shall be enrolled in a training program approved by the Secretary of the type described in section 236(a) of that Act (19 U.S.C. 2296(a)) by the later of—

(I) the last day of the 16th week of the worker's initial unemployment compensation benefit period; or

(II) the last day of the 6th week after the week in which the Secretary issues a certification covering the worker.

In cases of extenuating circumstances relating to enrollment of a worker in a training program under this section, the Secretary may extend the time for enrollment for a period of not to exceed 30 days.

(D) Job search allowances of the type described in section 237 of the Trade Act of 1974 (19 U.S.C. 2297).

(E) Relocation allowances of the type described in section 238 of the Trade Act of 1974 (19 U.S.C. 2298).

(e) INELIGIBILITY OF INDIVIDUALS RECEIVING PAYMENTS FOR LOST TOBACCO QUOTA.—No benefits or services may be provided under this section to any individual who has received payments for lost tobacco quota under section 1021.

(f) FUNDING.—Of the amounts ***[****in the****]*** ***made available out of the National Tobacco Settlement*** *Trust Fund, the Secretary may use not to exceed $25,000,000 for each of fiscal years 1999 through 2008 to provide assistance under this section.*

(g) EFFECTIVE DATE.—This section shall take effect on the date that is the later of—

(1) October l, 1998; or

(2) the date of enactment of this Act.

(h) TERMINATION DATE.—No assistance, vouchers, allowances, or other payments may be provided under this section after the date that is the earlier of—

(1) the date that is 10 years after the effective date of this section under subsection (g); or

(2) the date on which legislation establishing a program providing dislocated workers with comprehensive assistance substantially similar to the assistance provided by this section becomes effective.

SEC. 1032. FARMER OPPORTUNITY GRANTS.

Part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) is amended by adding at the end the following:

"Subpart 9—Farmer Opportunity Grants

"SEC. 420D. STATEMENT OF PURPOSE.

"It is the purpose of this subpart to assist in making available the benefits of postsecondary education to eligible students (determined in accordance with section 420F) in institutions of higher education by providing farmer opportunity grants to all eligible students.

"SEC. 420E. PROGRAM AUTHORITY; AMOUNT AND DETERMINATIONS; APPLICATIONS.

"(a) PROGRAM AUTHORITY AND METHOD OF DISTRIBUTION.—

"(1) PROGRAM AUTHORITY.—From amounts made available ***[****under section 1011(d)(5) of the LEAF Act****]*** ***out of the National Tobacco Settlement Trust Fund****, the Secretary, during the period beginning July 1, 1999, and ending September 30, 2024, shall pay to each eligible institution such*

sums as may be necessary to pay to each eligible student (determined in accordance with section 420F) for each academic year during which that student is in attendance at an institution of higher education, as an undergraduate, a farmer opportunity grant in the amount for which that student is eligible, as determined pursuant to subsection (b). Not less than 85 percent of the sums shall be advanced to eligible institutions prior to the start of each payment period and shall be based on an amount requested by the institution as needed to pay eligible students, except that this sentence shall not be construed to limit the authority of the Secretary to place an institution on a reimbursement system of payment.

"(2) CONSTRUCTION.—Nothing in this section shall be construed to prohibit the Secretary from paying directly to students, in advance of the beginning of the academic term, an amount for which the students are eligible, in cases where the eligible institution elects not to participate in the disbursement system required by paragraph (1).

"(3) DESIGNATION.—Grants made under this subpart shall be known as 'farmer opportunity grants'.

"(b) AMOUNT OF GRANTS.—

"(1) AMOUNTS.—

"(A) IN GENERAL.—The amount of the grant for a student eligible under this subpart shall be—

"(i) $1,700 for each of the academic years 1999–2000 through 2003–2004;

"(ii) $2,000 for each of the academic years 2004–2005 through 2008–2009;

"(iii) $2,300 for each of the academic years 2009–2010 through 2013–2014;

"(iv) $2,600 for each of the academic years 2014–2015 through 2018–2019; and

"(v) $2,900 for each of the academic years 2019–2020 through 2023–2024.

"(B) PART-TIME RULE.—In any case where a student attends an institution of higher education on less than a full-time basis (including a student who attends an institution of higher education on less than a half-time basis) during any academic year, the amount of the grant for which that student is eligible shall be reduced in proportion to the degree to which that student is not so attending on a full-time basis, in accordance with a schedule of reductions established by the Secretary for the purposes of this subpara-

graph, computed in accordance with this subpart. The schedule of reductions shall be established by regulation and published in the Federal Register.

"(2) MAXIMUM.—No grant under this subpart shall exceed the cost of attendance (as described in section 472) at the institution at which that student is in attendance. If, with respect to any student, it is determined that the amount of a grant exceeds the cost of attendance for that year, the amount of the grant shall be reduced to an amount equal to the cost of attendance at the institution.

"(3) PROHIBITION.—No grant shall be awarded under this subpart to any individual who is incarcerated in any Federal, State, or local penal institution.

"(c) PERIOD OF ELIGIBILITY FOR GRANTS.—

"(1) IN GENERAL.—The period during which a student may receive grants shall be the period required for the completion of the first undergraduate baccalaureate course of study being pursued by that student at the institution at which the student is in attendance, except that any period during which the student is enrolled in a noncredit or remedial course of study as described in paragraph (2) shall not be counted for the purpose of this paragraph.

"(2) CONSTRUCTION.—Nothing in this section shall be construed to—

"(A) exclude from eligibility courses of study that are noncredit or remedial in nature and that are determined by the institution to be necessary to help the student be prepared for the pursuit of a first undergraduate baccalaureate degree or certificate or, in the case of courses in English language instruction, to be necessary to enable the student to utilize already existing knowledge, training, or skills; and

"(B) exclude from eligibility programs of study abroad that are approved for credit by the home institution at which the student is enrolled.

"(3) PROHIBITION.—No student is entitled to receive farmer opportunity grant payments concurrently from more than 1 institution or from the Secretary and an institution.

"(d) APPLICATIONS FOR GRANTS.—

"(1) IN GENERAL.—The Secretary shall from time to time set dates by which students shall file applications for grants under this subpart. The filing of applications under this subpart shall be coordinated with the filing of applications under section 401(c).

"(2) INFORMATION AND ASSURANCES.—Each student desiring a grant for any year shall file with the Secretary an application for the grant containing such information and assurances as the Secretary may deem necessary to enable the Secretary to carry out the Secretary's functions and responsibilities under this subpart.

"(e) DISTRIBUTION OF GRANTS TO STUDENTS.—Payments under this section shall be made in accordance with regulations promulgated by the Secretary for such purpose, in such manner as will best accomplish the purpose of this section. Any disbursement allowed to be made by crediting the student's account shall be limited to tuition and fees and, in the case of institutionally owned housing, room and board. The student may elect to have the institution provide other such goods and services by crediting the student's account.

"(f) INSUFFICIENT FUNDING.—If, for any fiscal year, the funds made available to carry out this subpart from the ***[****Tobacco Community Revitalization****]*** ***National Tobacco Settlement*** *Trust Fund are insufficient to satisfy fully all grants for students determined to be eligible under section 420F, the amount of the grant provided under subsection (b) shall be reduced on a pro rata basis among all eligible students.*

"(g) TREATMENT OF INSTITUTIONS AND STUDENTS UNDER OTHER LAWS.—Any institution of higher education that enters into an agreement with the Secretary to disburse to students attending that institution the amounts those students are eligible to receive under this subpart shall not be deemed, by virtue of the agreement, to be a contractor maintaining a system of records to accomplish a function of the Secretary. Recipients of farmer opportunity grants shall not be considered to be individual grantees for purposes of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.).

"SEC. 420F. STUDENT ELIGIBILITY.

"(a) IN GENERAL.—In order to receive any grant under this subpart, a student shall—

"(1) be a member of a tobacco farm family in accordance with subsection (b);

"(2) be enrolled or accepted for enrollment in a degree, certificate, or other program (including a program of study abroad approved for credit by the eligible institution at which the student is enrolled) leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with section 487, and not be enrolled in an elementary or secondary school;

"(3) if the student is presently enrolled at an institution of higher education, be maintaining satisfactory progress in the course of study the student is pursuing in accordance with subsection (c);

"(4) not owe a refund on grants previously received at any institution of higher education under this title, or be in default on any loan from a student loan fund at any institution provided for in part D, or a loan made, insured, or guaranteed by the Secretary under this title for attendance at any institution;

"(5) file with the institution of higher education that the student intends to attend, or is attending, a document, that need not be notarized, but that shall include—

"(A) a statement of educational purpose stating that the money attributable to the grant will be used solely for expenses related to attendance or continued attendance at the institution; and

"(B) the student's social security number; and

"(6) be a citizen of the United States.

"(b) TOBACCO FARM FAMILIES.—

"(1) IN GENERAL.—For the purpose of subsection (a)(1), a student is a member of a tobacco farm family if during calendar year 1998 the student was—

"(A) an individual who—

"(i) is a participating tobacco producer (as defined in section 1002 of the LEAF Act); or

"(ii) is otherwise actively engaged in the production of tobacco;

"(B) a spouse, son, daughter, stepson, or stepdaughter of an individual described in subparagraph (A);

"(C) an individual—

"(i) who was a brother, sister, stepbrother, stepsister, son-in-law, or daughter-in-law of an individual described in subparagraph (A); and

"(ii) whose principal place of residence was the home of the individual described in subparagraph (A); or

"(D) an individual who was a dependent (within the meaning of section 152 of the Internal Revenue Code of 1986) of an individual described in subparagraph (A).

"(2) ADMINISTRATION.—On request, the Secretary of Agriculture shall provide to the Secretary such information as is necessary to carry out this subsection.

"(c) SATISFACTORY PROGRESS.—

"(1) IN GENERAL.—For the purpose of subsection (a)(3), a student is maintaining satisfactory progress if—

"(A) the institution at which the student is in attendance reviews the progress of the student at the end of each academic year, or its equivalent, as determined by the institution; and

"(B) the student has at least a cumulative C average or its equivalent, or academic standing consistent with the requirements for graduation, as determined by the institution, at the end of the second such academic year.

"(2) SPECIAL RULE.—Whenever a student fails to meet the eligibility requirements of subsection (a)(3) as a result of the application of this subsection and subsequent to that failure the student has academic standing consistent with the requirements for graduation, as determined by the institution, for any grading period, the student may, subject to this sub-

section, again be eligible under subsection (a)(3) for a grant under this subpart.

"(3) WAIVER.—Any institution of higher education at which the student is in attendance may waive paragraph (1) or (2) for undue hardship based on—

"(A) the death of a relative of the student;

"(B) the personal injury or illness of the student; or

"(C) special circumstances as determined by the institution.

"(d) STUDENTS WHO ARE NOT SECONDARY SCHOOL GRADUATES.—In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of the certificate, to be eligible for any assistance under this subpart, the student shall meet either 1 of the following standards:

"(1) EXAMINATION.—The student shall take an independently administered examination and shall achieve a score, specified by the Secretary, demonstrating that the student can benefit from the education or training being offered. The examination shall be approved by the Secretary on the basis of compliance with such standards for development, ad-

ministration, and scoring as the Secretary may prescribe in regulations.

"(2) DETERMINATION.—The student shall be determined as having the ability to benefit from the education or training in accordance with such process as the State shall prescribe. Any such process described or approved by a State for the purposes of this section shall be effective 6 months after the date of submission to the Secretary unless the Secretary disapproves the process. In determining whether to approve or disapprove the process, the Secretary shall take into account the effectiveness of the process in enabling students without secondary school diplomas or the recognized equivalent to benefit from the instruction offered by institutions utilizing the process, and shall also take into account the cultural diversity, economic circumstances, and educational preparation of the populations served by the institutions.

"(e) SPECIAL RULE FOR CORRESPONDENCE COURSES.—A student shall not be eligible to receive a grant under this subpart for a correspondence course unless the course is part of a program leading to an associate, bachelor, or graduate degree.

"(f) COURSES OFFERED THROUGH TELECOMMUNICATIONS.—

"(1) RELATION TO CORRESPONDENCE COURSES.—A student enrolled in a course of instruction at an eligible institution of higher education (other than an institute or school that meets the definition in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)(C))) that is offered in whole or in part through telecommunications and leads to a recognized associate, bachelor, or graduate degree conferred by the institution shall not be considered to be enrolled in correspondence courses unless the total amount of telecommunications and correspondence courses at the institution equals or exceeds 50 percent of the courses.

"(2) RESTRICTION OR REDUCTIONS OF FINANCIAL AID.—A student's eligibility to receive a grant under this subpart may be reduced if a financial aid officer determines under the discretionary authority provided in section 479A that telecommunications instruction results in a substantially reduced cost of attendance to the student.

"(3) DEFINITION.—For the purposes of this subsection, the term 'telecommunications' means the use of television, audio, or computer transmission, including open broadcast, closed circuit, cable, microwave,

or satellite, audio conferencing, computer conferencing, or video cassettes or discs, except that the term does not include a course that is delivered using video cassette or disc recordings at the institution and that is not delivered in person to other students of that institution.

"(g) STUDY ABROAD.—Nothing in this subpart shall be construed to limit or otherwise prohibit access to study abroad programs approved by the home institution at which a student is enrolled. An otherwise eligible student who is engaged in a program of study abroad approved for academic credit by the home institution at which the student is enrolled shall be eligible to receive a grant under this subpart, without regard to whether the study abroad program is required as part of the student's degree program.

"(h) VERIFICATION OF SOCIAL SECURITY NUMBER.—The Secretary, in cooperation with the Commissioner of Social Security, shall verify any social security number provided by a student to an eligible institution under subsection (a)(5)(B) and shall enforce the following conditions:

"(1) PENDING VERIFICATION.—Except as provided in paragraphs (2) and (3), an institution shall not deny, reduce, delay, or terminate a student's eligibility for assistance under this subpart because social security number verification is pending.

"(2) DENIAL OR TERMINATION.—If there is a determination by the Secretary that the social security number provided to an eligible institution by a student is incorrect, the institution shall deny or terminate the student's eligibility for any grant under this subpart until such time as the student provides documented evidence of a social security number that is determined by the institution to be correct.

"(3) CONSTRUCTION.—Nothing in this subsection shall be construed to permit the Secretary to take any compliance, disallowance, penalty, or other regulatory action against—

"(A) any institution of higher education with respect to any error in a social security number, unless the error was a result of fraud on the part of the institution; or

"(B) any student with respect to any error in a social security number, unless the error was a result of fraud on the part of the student.".

Subtitle D—Immunity

SEC. 1041. GENERAL IMMUNITY FOR TOBACCO PRODUCERS AND TOBACCO WAREHOUSE OWNERS.

Notwithstanding any other provision of this title, a participating tobacco producer, tobacco-related growers association, or tobacco warehouse owner or employee may not

be subject to liability in any Federal or State court for any cause of action resulting from the failure of any tobacco product manufacturer, distributor, or retailer to comply with the National Tobacco Policy and Youth Smoking Reduction Act.

TITLE XI—MISCELLANEOUS

Subtitle A—Prohibitions Relating to Tobacco Products and Children

SEC. 1101. SHORT TITLE.

This subtitle may be cited as the "Tobacco Use by Minors Prevention Act".

SEC. 1102. PROHIBITIONS RELATING TO TOBACCO PRODUCTS AND CHILDREN.

Chapter VIII of the Federal Food, Drug, and Cosmetic Act is amended by adding at the end the following:

"SEC. 804. PROHIBITION ON SALE OR DISTRIBUTION OF TOBACCO PRODUCTS TO CHILDREN.

"(a) GENERAL RULE.—It shall be unlawful for any domestic concern or any officer, director, employee, or agent of such concern to make use of the mails or any means or instrumentality of interstate commerce to cause or contribute, either directly or through a foreign subsidiary, joint venture, affiliate, or licensee, to—

"(1) the sale or distribution of tobacco products in a foreign country to children; or

"(2) the advertising or promotion of tobacco products in a foreign country in a manner that does not comply with Federal requirements for the advertisement or promotion of tobacco products in the United States

"(b) DEFENSE.—In an action brought to enforce subsection (a), it shall be an affirmative defense that the tobacco products involved were sold, distributed, advertised, or promoted in the foreign country involved in a manner that would be lawful if such conduct occurred in the United States.

"SEC. 805. LABELING.

"It shall be unlawful for any domestic concern or any officer, director, employee, or agent of such concern, either directly or through a foreign subsidiary, joint venture, affiliate, or licensee, to make use of the mails or any means or instrumentality of interstate commerce to cause or contribute to the export from the United States or the sale or distribution in, or export from, any other country any tobacco product the package of which does not contain a warning label that—

"(1) is in the primary language or languages of the country in which the tobacco product is sold or distributed to consumers; and

"(2) except for the requirement of paragraph (1)—

"(A) complies with Federal requirements for labeling of similar tobacco products manufactured, imported, or packaged for sale or distribution in the United States; or

"(B) complies with the labeling requirements of the foreign country in which the product is sold or distributed to consumers and which labeling requirements the Secretary determines are substantially similar to Federal requirements and are adequately enforced by such country.".

SEC. 1103. ENFORCEMENT.

Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended by adding at the end the following:

"(aa) To carry out an act made unlawful by section 804 or 805.".

SEC. 1104. REWARD.

Section 303(b)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333(b)(5)) is amended by adding at the end the following: "If a person provides information leading to the institution of a criminal proceeding against, and conviction of, a person for a violation of section 301(aa), such person shall be entitled to one-half of the

criminal fine imposed and collected for such violation but not more than $125,000.".

SEC. 1105. DEFINITIONS.

Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321), as amended by section 101(a) of this Act is amended by adding at the end the following:

"(ll) The term 'domestic concern' means—

"(1) any individual who is a citizen, national, or resident of the United States; and

"(2) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States.

"(mm) The term 'children' means individuals under the age of 18.".

SEC. 1106. AMENDMENTS TO PUBLIC HEALTH SERVICE ACT.

(a) IN GENERAL.—The Public Health Service Act (42 U.S.C. 201 et seq.) is amended by adding at the end the following:

"TITLE XXVIII—NATIONAL EFFORTS TO REDUCE YOUTH SMOKING

"Subtitle E—Reducing Youth Smoking and Tobacco-Related Diseases Through Research

"SEC. 2801. STUDY BY THE INSTITUTE OF MEDICINE.

"(a) CONTRACT.—Not later than 60 days after the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act, the Secretary shall enter into a contract with the Institute of Medicine for the conduct of a study on the framework for a research agenda and research priorities to be used by the National Tobacco Task Force established under section 2802.

"(b) CONSIDERATIONS.—

"(1) IN GENERAL.—In developing the framework for the research agenda and research priorities under subsection (a) the Institute of Medicine shall focus on increasing knowledge concerning the biological, social, behavioral, public health, and community factors involved in the prevention of tobacco use, reduction of tobacco use, and health consequences of tobacco use.

"(2) SPECIFIC CONSIDERATIONS.—In the study conducted under subsection (a), the Institute of Medicine shall specifically consider—

"(A) public health and community research relating to tobacco use prevention methods, including public education, media, community strategies;

"(B) behavioral research relating to addiction and tobacco use;

"(C) health services research relating to tobacco product prevention and cessation treatment methodologies;

"(D) surveillance and epidemiology research relating to tobacco;

"(E) biomedical, including clinical, research relating to prevention and treatment of tobacco-related diseases; and

"(F) economic research relating to the responsiveness of youth smoking to price and other economic factors.

"(c) REPORT.—Not later than 10 months after the date on which the Secretary enters into the contract under subsection (a), the Institute of Medicine shall prepare and submit to the Secretary, the National Task Force, the Committee on Labor and Human Resources of the Senate, and the Committee on Commerce of the House of Representatives, a report that shall contain the findings and recommenda-

tions of the Institute for the purposes described in subsection (b).

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $750,000 to carry out this section.

"SEC. 2802. NATIONAL TOBACCO TASK FORCE.

"(a) ESTABLISHMENT.—The Secretary shall establish a National Tobacco Task Force (referred to in this subtitle as the 'National Task Force') to foster coordination among public health agencies, academic bodies, and community groups that conduct or support tobacco-related biomedical, clinical, behavioral, health services, public health and community, and surveillance and epidemiology research activities.

"(b) COMPOSITION.—The National Task Force shall be composed of—

"(1) the Surgeon General;

"(2) the Director of the Office of Smoking and Health of the Centers for Disease Control and Prevention;

"(3) the Administrator of the Agency for Health Care Policy and Research;

"(4) the Director of the National Institutes of Health;

"(5) two representatives from non-governmental public health or tobacco control organizations; and

"(6) two representatives from State or local government public health agencies and offices.

"(c) CHAIR.—The National Task Force shall be chaired by the Secretary, and shall be staffed by the Centers for Disease Control and Prevention.

"(d) DUTIES.—The Task Force shall—

"(1) in accordance with research agenda recommended under section 2801, coordinate and advise tobacco-related research activities among Federal public health service agencies;

"(2) collect and make available to States and communities, through publication and other appropriate means, evidence-based tobacco-related research results and recommendations and the practical application of such results; and

"(3) report on a biennial basis to the Secretary and the Committee on Labor and Human Resources of the Senate, and the Committee on Commerce of the House of Representatives on the current and planned activities of participating Federal agencies;

"(e) RESEARCH ACTIVITIES.—The research activities referred to in subsection (a) shall be designed to address tobacco-related research priorities, and shall include—

"(1) the development of effective strategies to prevent the use of tobacco products among youth;

"(2) an outline of cost-effective, accessible, and successful methods for tobacco use cessation among adults and youths who want to quit;

"(3) the development of breakthroughs in the understanding of the effects on the human body of nicotine and other non-tobacco constituents of tobacco products; and

"(4) the development of an enhanced ability to prevent and treat tobacco-related diseases.

"SEC. 2803. RESEARCH ACTIVITIES OF THE CENTERS FOR DISEASE CONTROL AND PREVENTION.

"(a) FUNDING.—There are authorized to be appropriated from the National Tobacco Settlement Trust Fund established by section ***[****401 of the National Tobacco Policy and Youth Smoking Reduction Act****]*** ***9512 of the Internal Revenue Code of 1986****, other than from amounts in the State Litigation Settlement Account, the following amounts to carry out this section—*

"(1) $450,000,000 for each of the first 3 fiscal years after the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act;

"(2) $505,000,000 for each of the 4th and 5th fiscal years after that date;

"(3) $405,000,000 for each of the 6th and 7th fiscal years after that date;

"(4) $360,000,000 for each of the 8th and 9th fiscal years after that date; and

"(5) $305,000,000 for the 10th fiscal year after that date.

"(b) DUTIES.—The Director of the Centers for Disease Control and Prevention, working in consultation with National Task Force, shall carry out tobacco-related surveillance and epidemiologic studies and develop tobacco control and prevention strategies under this section.

"(c) TRIGGER.—No expenditures shall be made under this section during any fiscal year in which the annual amount appropriated for the Centers for Disease Control and Prevention is less than the amount so appropriated for the prior fiscal year.

"SEC. 2804. RESEARCH ACTIVITIES OF THE NATIONAL INSTITUTES OF HEALTH.

"(a) FUNDING.—There are authorized to be appropriated, from amounts in the National Tobacco Settlement Trust Fund established by section ***[****401 of the National Tobacco Policy and Youth Smoking Reduction Act****]*** ***9512 of the Internal Revenue Code of 1986****, other than from amounts in the State Litigation Settlement Account,*

to carry out this section $2,500,000,000 for each of the fiscal years 1999 through 2008.

"(b) ESTABLISHMENT.—The Secretary shall establish, within the Office of the Director of the National Institutes of Health, a Tobacco-Related Research Initiative (referred to in this section as the 'tobacco initiative') to be headed by the Director.

"(c) EXPENDITURE OF FUNDS.—The Director of the National Institutes of Health acting through the tobacco initiative, and in consultation with the National Tobacco Task Force, shall provide funds to conduct or support epidemiological, behavioral, biomedical, and social science research (including the training of researchers) related to the prevention and treatment of tobacco addiction, and the prevention and treatment of diseases associated with tobacco use.

"(d) GUARANTEED MINIMUM.—Of the funds made available to the National Institutes of Health under this section, not less than 33 percent of such funds shall be used to support epidemiological, behavioral, and social science research related to the prevention and treatment of tobacco addiction.

"(e) LIMITATION.—Except as may be necessary to study one of the specific purposes described in subsection (f), funds made available under subsection (d) shall not be

used to support neurobiological research, or research in which the behavior of an organism is observed for the purpose of determining activity at the cellular or molecular level.

"(f) NATURE OF RESEARCH.—Funds made available under subsection (d) shall be used to conduct or support research with respect to one or more of the following—

"(1) the epidemiology of tobacco use;

"(2) the etiology of tobacco use;

"(3) risk factors for tobacco use by children;

"(4) prevention of tobacco use by children, including school and community-based programs, and alternative activities;

"(5) the relationship between tobacco use, alcohol abuse and illicit drug abuse;

"(6) behavioral and pharmacological smoking cessation methods and technologies, including relapse prevention;

"(7) the toxicity of tobacco products and their ingredients;

"(8) the relative harmfulness of different tobacco products;

"(9) environmental exposure to tobacco smoke;

"(10) the impact of tobacco use by pregnant women on their fetuses; and

"(11) the redesign of tobacco products to reduce risks to public health and safety.

"(g) COORDINATION.—In carrying out tobacco-related research under this section, the Director of the National Institutes of Health, in coordination with the National Tobacco Task Force, shall ensure appropriate coordination with the research of other agencies, and shall avoid duplicative efforts through all appropriate means, including through the establishment of an Office of Tobacco-Related Research.

"(h) OFFICE OF TOBACCO-RELATED RESEARCH.—

"(1) ESTABLISHMENT.—There is established within the National Institutes of Health and Office of Tobacco-Related Research (referred to in this subsection as the 'Office'). The Office shall be headed by a director to be appointed by the Secretary.

"(2) DUTIES.—The director of the Office shall—

"(A) in coordination with the National Tobacco Task Force, identify tobacco-related research projects that should be conducted or supported by the research institutes, and develop such projects in cooperation with such institutes;

"(B) coordinate tobacco-related research that is conducted or supported by the National Institutes of Health;

"(C) through the activities of the National Tobacco Task Force, take steps to further cooperation and collaboration between the institutes of the National Institutes of Health and other Federal agencies with respect to tobacco-related research conducted or supported by such agencies;

"(D) ensure compliance with the funding levels described in subsection (d) and the limitation described in subsection (e);

"(E) annually recommend to Congress the allocation of anti-tobacco research funds among the national research institutes; and

"(F) establish a clearinghouse for information about tobacco-related research conducted by governmental and non-governmental bodies.

"(3) ADMINISTRATION.—The Director of the National Institutes of Health shall set-aside not less than 1 percent and not more than 3 percent of the funds made available under subsection (d) to administer the Office.

"(i) TRIGGER.—No expenditure shall be made under subsection (a) during any fiscal year in which the annual amount appropriated for the National Institutes of Health

is less than the amount so appropriated for the prior fiscal year.".

(b) RESEARCH ON MINORITY SMOKING AND TOBACCO-RELATED DISEASES.—

Section 1707(b) of the Public Health Service Act (42 U.S.C. 300u–6(b)) is amended by striking "(b) DUTIES.—The Secretary" and inserting the following:

"(b) DUTIES.—

"(1) IN GENERAL.—

"(A) INTERAGENCY COORDINATION.—With respect to minority health activities of the Public Health Service, and the National Institutes of Health, a representative of the Office of Minority Health within the Department of Health and Human Services, a representative of the Office of Minority Health within the National Institutes of Health, and a representative of the Surgeon General shall—

"(i) seek to assure coordination of research, service delivery and inclusion of community-based organizations related to tobacco-related diseases, prevention, and cessation programs for ethnic, socio-economic and culturally-diverse populations;

"(ii) monitor and report to Congress biannually the amount of Federal funds targeted for research related to minority tobacco-related diseases, research into effective smoking cessation programs that are culturally and linguistically appropriate, health service delivery, and for community-based organizations providing smoking prevention and cessation services, and report biannually to the Congress the demonstrated effectiveness of these programs.".

[(c) MEDICAID COVERAGE OF OUTPATIENT SMOKING CESSATION AGENTS.—Paragraph (2) of section 1927(d) of the Public Health Service Act (42 U.S.C. 1396r–8(d)) is amended—

[(1) by striking subparagraph (E) and redesignating subparagraphs (F) through (J) as subparagraphs (E) through (I); and

[(2) by striking "drugs." in subparagraph (F), as redesignated, and inserting "drugs, except agents, approved by the Food and Drug Administration, when used to promote smoking cessation.".]

(c) ELIMINATION OF LIMITATION ON MEDICAID COVERAGE OF SMOKING CESSATION AGENTS.—Section 1927(d)(2) of the Social Secu-

rity Act (42 U.S.C. 1396r–8(d)(2)) is amended by striking subparagraph (E) and redesignating subparagraphs (F) through (J) as subparagraphs (E) through (I), respectively.

SEC. 1107. BAN ON DISTRIBUTION OF TOBACCO PRODUCTS PRODUCED BY CHILD LABOR.

Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) is amended by inserting after "United States." the following: "The provisions of this section apply with equal force to tobacco products produced or manufactured wholly or in part in any foreign country by ***forced or/and indentured*** *child labor.".*

Subtitle B—Federal Licensing of Tobacco Product Distribution

SEC. 1121. LICENSING OF TOBACCO PRODUCT DISTRIBUTION.

(a) IN GENERAL.—Except for any retailer licensed under section 224 of this Act, no domestic concern may engage in the manufacture, or distribution of tobacco products for sale, in the United States more than 1 year after the date of enactment of this Act, either directly or through its foreign subsidiaries, affiliates, joint ventures, or licensees, unless it is licensed to do so by the Secretary.

[*(b) FEE.—*

[(1) IN GENERAL.—The annual license fee shall be $1 per every 1000 cigarettes manufactured, or distributed for sale, by a domestic concern either directly or through its foreign subsidiaries, affiliates, joint ventures, or licensees and an equivalent amount, as established by the Secretary, for other tobacco products.

[(2) CREDIT.—In any year, a domestic concern shall receive as a credit towards that portion of its license fee under clause (i) which is attributable to the manufacture of tobacco products subject to the Federal excise tax under section 5701 of the Internal Revenue Code of 1986 the amount of tax it paid under that section.]

(c) REGULATIONS.—Within 6 months after the date of the enactment of this Act, the Secretary shall promulgate regulations to implement the requirements of this section.

(d) PENALTY.—Any domestic concern which engages in the manufacture of cigarettes or other tobacco products either directly or through its foreign subsidiaries, affiliates, joint ventures, or licensees without the license required by subsection (a) shall be considered to have committed a prohibited act under section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331).

(e) DOMESTIC CONCERN DEFINED.—For purposes of this section, the term "domestic concern" means—

(1) any individual who is a citizen, national, or resident of the United States;

(2) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States; and

(3) includes any person engaged in the manufacture, or distribution for sale, of cigarettes or other tobacco products on Indian lands.

Subtitle C—International Provisions

[SEC. 1131. INTERNATIONAL TOBACCO CONTROL TRUST FUND.

[*(a) ESTABLISHMENT.—There is established in the Treasury an International Tobacco Control Trust Fund (referred to as the "International Trust Fund") which shall be funded by the license fees collected under section 1121.*

[*(b) USE OF INTERNATIONAL TRUST FUND.—Funds from the International Trust Fund shall be available for use as follows:*

[(1) AMERICAN CENTER ON GLOBAL HEALTH AND TOBACCO.—Annual funds of $150,000,000 may be used from the International Trust Fund for the American Center on Global Health and Tobacco as provided in appropriation Acts.

[(2) HEALTH AND HUMAN SERVICES.—The Secretary of Health and Human Services may use the funds deposited in the International Trust Fund for grants and other forms of assistance to foreign governments, nongovernmental organizations, and international organizations to support tobacco control activities in foreign countries as provided in appropriation Acts.

[(3) ENFORCEMENT.—The Secretary may use funds deposited in the International Trust Fund for enforcement of any requirements related to the sale, distribution, marketing, or promotion of tobacco products internationally as provided in appropriation Acts.

SEC. 1131. INTERNATIONAL ENFORCEMENT.

Funds appropriated from the National Tobacco Settlement Trust Fund shall be available for use as follows:

(1) AMERICAN CENTER ON GLOBAL HEALTH AND TOBACCO.—For the American

Center on Global Health and Tobacco as provided in appropriation Acts.

(2) HEALTH AND HUMAN SERVICES.—The Secretary of Health and Human Services may use such funds for grants and other forms of assistance to foreign governments, nongovernmental organizations, and international organizations to support tobacco control activities in foreign countries as provided in appropriation Acts.

(3) ENFORCEMENT.—The Secretary may use such funds for enforcement of any requirements related to the sale, distribution, marketing, or promotion of tobacco products internationally as provided in appropriation Acts.

SEC. 1132. AMERICAN CENTER ON GLOBAL HEALTH AND TOBACCO.

(a) FINDINGS AND PURPOSE.—

(1) FINDINGS.—Congress makes the following findings:

(A) Tobacco use is estimated to have caused nearly 3,000,000 deaths a year worldwide in the early 1990's, and is projected to cause in excess

of 10,000,000 additional deaths a year globally by 2030, more than any single disease. More than 70 percent of those deaths are expected in developing countries.

(B) Many countries are unprepared to address increases in tobacco deaths, including the impact on health systems and health costs. While tobacco consumption in the United States and other established market economies has fallen over the last decade, consumption is rising in China, India, East Asia, and former socialist economies. Tobacco companies in the United States and elsewhere have increasingly targeted those markets.

(C) Tobacco use markedly reduces good health and threatens to erode the major health gains in life expectancy of the last century. Only HIV/AIDS infection and tobacco are large and growing causes of death and disease worldwide. The total projected deaths from tobacco over the next 10 years likely will exceed deaths from HIV/AIDS, maternal and childhood conditions, and tuberculosis combined.

(D) The United States consistently has provided leadership and funding to address the

world's most pressing public health needs, including HIV/AIDS, hunger, maternal and child health, and immunization.

(E) Through exports and overseas operations, United States tobacco companies sell more cigarettes overseas than they do in the United States. Foreign sales now account for more than half of all sales for the 2 leading United States tobacco product manufacturers.

(F) United States companies spend billions of dollars on aggressive tobacco marketing campaigns overseas that associate smoking with the United States, affluence, freedom, and liberation. In many markets, American companies reach youthful audiences through television and radio advertising, free samples, and other methods that are outlawed in the United States.

(G) In light of the role the United States tobacco companies have played in spreading tobacco use globally, and in light of the large financial benefits they continue to enjoy from tobacco exports, it is appropriate that this section be enacted in order to provide assistance and funding for international public education and

mass media programs to inform the public about the hazards of tobacco use.

(H) Smoking in United States films is pervasive and influences persons in other countries who seek to emulate "American activities" depicted in motion pictures. According to one study, more than half of the top-grossing United States films released between 1991 and 1996 exhibited smoking. In these films, 80 percent of the male lead characters and 27 percent of the female characters smoked. The motion picture industry is painting a distorted picture that smoking is a truly American activity.

(2) PURPOSE.—The purpose of this section is to establish the American Center on Global Health and Tobacco (herein after referred to as "ACT"). ACT shall assist organizations in other countries to reduce and prevent the use of tobacco. Activities ACT shall support include—

(A) public education programs that inform the public about the hazards of tobacco use and of environmental tobacco smoke;

(B) mass media campaigns, including paid counter-tobacco advertisements, to reverse the image appeal of pro-tobacco messages, especially

those that glamorize and "Westernize" tobacco use to young people; and

(C) education about the economic and societal costs of tobacco use, and effective tobacco use prevention and cessation strategies that are appropriate for the country involved.

(b) ESTABLISHMENT.—

(1) IN GENERAL.—There is hereby established in the District of Columbia a private, nonprofit corporation to be known as the American Center on Global Health and Tobacco. ACT shall—

(A) not be an agency or establishment of the United States; and

(B) except as otherwise provided in this section, be subject to, and have all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code section 29–501 et seq.).

(2) RELATION TO UNITED STATES.—Nothing in this section shall be construed as making ACT an agency or establishment of the United States, or as making the members of the Board of ACT, or its employees, officers or employees of the United States.

(3) RELATION TO NONGOVERNMENTAL ORGANIZATIONS.—ACT shall have a limited staff, and, to the

maximum extent practicable, utilize the available experience and talents of nongovernmental organizations with specialized experience in health, education, media, and tobacco.

(4) GOVERNING BOARD.—ACT shall be governed by a board of up to 25 members including—

(A) on a bipartisan basis, Members of the Senate and of the House of Representatives;

(B) the heads of American public health organizations;

(C) the heads of American media, marketing, and other nongovernment institutions and corporations; and

(D) individuals active in education, public health, and other relevant activities.

(5) INTERNATIONAL ADVISORY COUNCIL.—An International Advisory Council consisting of representatives from key global, regional, and national public health organizations, and leading individual educators and health professionals shall provide advisory assistance to ACT.

*(c) FUNDING.—**Subject to apppriations, there are authorized to be appropriated from the National Tobacco Settlement Trust Fund, other than amounts in the State Litigation***

Settlement Account, such sums as may be necessary to carry out this section.

[(1) DEFINITION OF TRUST FUND.—In this section, the term "Trust Fund" means the National Tobacco Settlement Trust Fund established by section 401 of this Act, other than amounts in the State Litigation Settlement Account.

[(2) ESTABLISHMENT OF GLOBAL PUBLIC HEALTH AND EDUCATION RESOURCE ACCOUNT.—There is established within the Trust Fund the Global Public Health and Education Resource Account that shall be credited with $150,000,000 for each fiscal year.

[(3) TRANSFER AUTHORITY.—The Secretary of the Treasury shall on October 1 of each fiscal year beginning after the date of enactment of this section, transfer $150,000,000 from the Global Public Health and Education Resource Account of the Trust Fund to the account of ACT to carry out the activities authorized under this section.

[(4) TERMINATION OF TRANSFER AUTHORITY.—The authority of the Secretary of the Treasury to transfer funds from the Trust Fund shall expire with the expiration of the Trust Fund.]

(d) REQUIREMENTS FOR ELIGIBILITY FOR ANNUAL TRANSFERS FROM THE TRUST FUND.—

(1) OVERSIGHT.—ACT and its grantees shall be subject to the oversight and supervision of Congress, and shall annually submit a report of its activities to Congress in accordance with paragraph (5)(A)(iii).

(2) COMPLIANCE.—

(A) FUNDING CONTINGENT ON COMPLIANCE.—Annual payments from the Trust Fund may be made to ACT under this section only if ACT complies with the requirements specified in this section.

(B) USE OF FUNDS.—ACT may only fund programs for private sector groups, and may not carry out programs directly. ACT may provide funding only for programs which are consistent with the purposes of this section.

(3) SALARIES AND COMPENSATION.—

(A) NO OTHER SOURCE OF COMPENSATION.—Officers and employees of ACT may not receive any salary or other compensation from any source other than ACT for services performed for ACT.

(B) UNITED STATES OFFICERS AND EMPLOYEES.—An individual who is an officer or

employee of the United States who also serves on the Board of Directors or as an officer or employee of ACT, may not receive any compensation or travel expenses in connection with services performed for ACT.

(4) STOCKS AND DIVIDENDS.—ACT shall not issue any shares of stock or declare or pay any dividends.

(5) AUDITS.—

(A) INDEPENDENT PUBLIC ACCOUNTANTS.—

(i) IN GENERAL.—The accounts of ACT shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States. The audits shall be conducted at the place or places where the accounts of ACT are normally kept. All books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by ACT and necessary to facilitate the audits shall be made available to the person or persons conduct-

ing the audits, and full facilities for verifying transactions with any assets held by depositories, fiscal agents, and custodians shall be afforded to such person or persons.

(ii) CONTENT OF AUDIT.—The report of each audit conducted under clause (i) shall be included in the annual report required under this subsection. The audit report shall set forth the scope of the audit and include such statements as are necessary to present fairly ACT's assets and liabilities, surplus or deficit, with an analysis of the changes therein during the year, supplemented in reasonable detail by a statement of the income and expenses of ACT during the year, and a statement of the application of funds, together with the independent auditor's opinion of those statements.

(iii) REPORT.—Not later than December 31 of each year, ACT shall submit an annual report for the preceding fiscal year to the President for transmittal to Congress. The report shall include a comprehensive and detailed report of ACT's operations, ac-

tivities, financial condition, and accomplishments under this section and may include such recommendations as ACT deems appropriate.

(B) COMPTROLLER GENERAL.—

(i) IN GENERAL.—The financial transactions of ACT for each fiscal year may be audited by the Comptroller General in accordance with such principles and procedures and under such rules and regulations as the Comptroller General may prescribe. Any such audit shall be conducted at the place or places where accounts of ACT are normally kept. The Comptroller General shall have access to all books, accounts, records, reports, files, and all other papers, things, or property belonging to or in use by ACT pertaining to its financial transactions and necessary to facilitate the audit. All books, accounts, records, reports, files, papers, and property of ACT shall remain in the possession and custody of ACT.

(ii) REPORT.—A report of each audit shall be made by the Comptroller General to Congress. A copy of each report shall be fur-

nished to the President and to ACT at the time the report is submitted to Congress.

(6) RECORDKEEPING.—

(A) IN GENERAL.—ACT shall ensure that each recipient of assistance from ACT under this section keeps such records as may be reasonably necessary to fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(B) ACCESS.—ACT shall ensure that it, or any of its duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of each recipient of assistance from ACT that are pertinent to assistance provided through ACT under this section.

SEC. 1133. PROHIBITION ON USE OF FUNDS TO FACILITATE THE EXPORTATION OR PROMOTION OF TOBACCO.

[(a) IN GENERAL.—Notwithstanding any other provision of law, no funds made available by appropriations or otherwise made available may be used by any officer, employee, department, or agency of the United States—

[(1) to promote or encourage the export, re-export, sale, manufacture, advertising, promotion, distribution, or use of tobacco or tobacco products to or in a foreign country; or

[(2) to seek, through negotiation or otherwise, the removal or reduction by any foreign country of any restriction or proposed restriction in that country on the importation, export, re-export, sale, manufacture, advertising, promotion, distribution, packaging, labeling, use, content, imposition of tariffs, or taxation, of tobacco or tobacco products.

[(b) EXCEPTION.—Subsection (a)(2) shall not apply to any restriction or proposed restriction by a foreign country if—

[(1) the restriction is applied in a manner which constitutes a means of arbitrary or unjustifiable discrimination between countries;

[(2) the Secretary of Commerce certifies in writing to Congress that the restriction is being applied

in a manner that constitutes a means of arbitrary or unjustifiable discrimination between countries; and

[*(3) the Secretary of Health and Human Services certifies to Congress in writing that the restriction is not a reasonable means of protecting the public health.*

[*(c) DEFINITION.—In this section, the term "arbitrary or unjustifiable discrimination" means a restriction or proposed restriction by a foreign country that—*

[*(1) is arbitrary or unjustifiable; and*

[*(2) does not adhere to the principle of national treatment and applies less favorable treatment to goods that are imported into that country than the country applies to like goods that are the product, growth, or manufacture of that country.****]***

No officer, employee, department, or agency of the United States may promote the sale or export of tobacco or tobacco products, or seek the reduction or removal of any foreign country restrictions on the marketing of tobacco or tobacco products, if the restrictions are applied in a nondiscriminatory manner. Nothing in this section shall apply to any ministerial or clerical functions performed by any

officer, employee, department, or agency of the United States.

[SEC. 1134. HARMONIZATION WITH UNITED STATES INTERNATIONAL COMMITMENTS AND OBLIGATIONS.

[The United States Trade Representative shall report to the Congress within 90 days after the date of enactment of this Act on any provisions of this Act that are inconsistent with obligations of the United States under treaties or other international agreements to which it is a signatory, including any treaty pending ratification, together with recommendations as to how to implement or modify the provision without violating international law.]

Subtitle D—Prevention of Tobacco Smuggling

SEC. 1141. DEFINITIONS.

(a) INCORPORATION OF CERTAIN DEFINITIONS.—In this subtitle, the terms "cigar", "cigarette", "person", "pipe tobacco", "smokeless tobacco", "State", "tobacco product", and "United States" shall have the meanings given such terms in sections 5702(a), 5702(b), 7701(a)(1), 5702(o), 5702(n)(1), 3306(j)(1), 5702(c), and 3306(j)(2) respectively of the Internal Revenue Code of 1986.

(b) OTHER DEFINITIONS.—In this subtitle:

(1) AFFILIATE.—The term "affiliate" means any one of 2 or more persons if 1 of such persons has actual or legal control, directly or indirectly, whether by stock ownership or otherwise, of the other or others of such persons, and any one of 2 or more persons subject to common control, actual or legal, directly or indirectly, whether by stock ownership or otherwise.

(2) INTERSTATE OR FOREIGN COMMERCE.—The term "interstate or foreign commerce" means commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(4) PACKAGE.—The term "package" means the innermost sealed container irrespective of the material from which such container is made, in which a tobacco product is placed by the manufacturer and in which such tobacco product is offered for sale to a member of the general public.

(5) RETAILER.—The term "retailer" means any dealer who sells, or offers for sale, any tobacco product to any person other than a wholesaler.

SEC. 1142. TOBACCO PRODUCT LABELING REQUIREMENTS.

(a) IN GENERAL.—It shall be unlawful for any person to sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from customs custody for use, any tobacco product unless such product is packaged and labeled in conformity with this section.

(b) LABELING.—

(1) IDENTIFICATION.—Not later than 1 year after the date of enactment of this subtitle, the Secretary shall promulgate regulations that require each manufacturer of tobacco products to legibly print a unique serial number on all packages of tobacco products manufactured for sale or distribution. Such serial number shall be designed to enable the Secretary to identify the manufacturer of the product, and the location and date of manufacture. The Secretary shall determine the size and location of the serial number.

(2) COUNTRY OF FINAL DESTINATION.—Each package of a tobacco product that is exported shall be labeled with the name of the country of final destination. The Secretary shall promulgate regulations to determine the size and location of the label and under what circumstances a waiver of this paragraph shall be granted.

(c) PROHIBITION ON ALTERATION.—It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark or label required under this subtitle upon a tobacco product in or affecting commerce, except as authorized by Federal law or except under regulations of the Secretary authorizing relabeling for purposes of compliance with the requirements of this section or of State law.

SEC. 1143. REQUIREMENTS FOR THE TRACKING OF TOBACCO PRODUCTS.

(a) POSTING OF BOND.—

(1) IN GENERAL.—It shall be unlawful for any person to export any tobacco product unless such person—

(A) has posted with the Secretary a tobacco product bond in accordance with this section for such product that contains a disclosure of the country to which such product will be exported; and

(B) receives a written statement from the recipient of the tobacco products involved that such person—

(i) will not knowingly and willfully violate any law or regulation of such country with respect to such products; and

(ii) has never been convicted of any offense with respect to tobacco products.

(2) REGULATIONS.—The Secretary shall promulgate regulations that determine the frequency and the amount of each bond that must be posted under paragraph (1), but in no case shall such amount be less than an amount equal to the Federal tax imposed under chapter 52 of the Internal Revenue Code of 1986 on the value of the shipment of the products involved if such products were consumed within the United States.

(b) RETURN OF BOND.—The Secretary shall return a bond posted under subsection (a) upon a determination by the Secretary (based on documentation provided by the person who posted the bond in accordance with regulations promulgated by the Secretary) that the tobacco products to which the bond applies have been received in the country of final destination as designated in the bond.

SEC. 1144. TOBACCO PRODUCT PERMITS.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall establish a program under which tobacco product permits are issued to persons (desiring to sell or ship, or deliver for sale or shipment, or otherwise introduce in interstate or foreign com-

merce, or to receive therein, or to remove from customs custody for use, any tobacco product).

(b) CONDITIONS.—The issuance of a permit to a tobacco product manufacturer under this section shall be conditioned upon the compliance of the manufacturer with the requirements of this subtitle.

(c) REVOCATION, SUSPENSION, AND ANNULMENT.—The program established under subsection (a) shall permit the Secretary to revoke, suspend, or annul a permit issued under this section if the Secretary determines that the terms or conditions of the permit have not been complied with. Prior to any action under this subsection, the Secretary shall provide the permittee with due notice and the opportunity for a hearing.

(d) RECORDS AND AUDITS.—The Secretary shall, under the program established under subsection (a), require permit holders to keep records concerning the chain of custody of the tobacco products that are the subject of the permit and make such records available to the Secretary for inspection and audit.

(e) RETAILERS.—This section shall not apply to retailers of tobacco products, except that retailers shall maintain commercial records of receipt, and such records shall be available to the Secretary for inspection and audit.

SEC. 1145. PROHIBITIONS.

[(a) IMPORTATION AND SALE.—It shall be unlawful, except under a permit issued by the Secretary under section 1144—

[(1) to engage in the business of importing into the United States tobacco products; or

[(2) for any person so engaged to sell, offer, or deliver for sale, contract to sell, or ship, in or affecting commerce, directly or indirectly or through affiliate, tobacco products so imported.

[(b) MANUFACTURE AND SALE.—It shall be unlawful, except under a permit issued by the Secretary under section 1144—

[(1) to engage in the business of manufacturing, packaging or warehousing tobacco products; or

[(2) for any person so engaged to sell, offer, or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, tobacco products so manufactured, packaged or warehoused.

[(c) WHOLESALE.—It shall be unlawful, except under a permit issued by the Secretary under section 1144—

[(1) to engage in the business of purchasing for resale at wholesale tobacco products, or, as a principal or agent, to sell, offer for sale, negotiate for, or hold out by solicitation, advertisement, or otherwise

as selling, providing, or arranging for, the purchase for resale at wholesale of tobacco products; or

[(2) for any person so engaged to receive or sell, offer or deliver for sale, contract to sell, or ship, in or affecting commerce, directly or indirectly or through an affiliate, tobacco products so purchased.

[(d) EFFECTIVE DATE.—The provisions of this section shall become effective on the date that is 180 days after the date of enactment of this Act.]

(a) IN GENERAL.—It shall be unlawful, except pursuant to a permit issued by the Secretary under section 1144—

(1) to engage in the business of importing into the United States, manufacturing, packaging, warehousing, or purchasing for resale at wholesale tobacco products, or, as a principal or agent, to sell, offer for sale, negotiate for, or hold out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, the purchase for resale at wholesale of tobacco products; or

(2) for any person engaged in a business described in paragraph (1) to receive or sell, offer or deliver for sale, contract to

sell, or ship, in or affecting commerce, directly or indirectly or through an affiliate, tobacco products.

(b) EFFECTIVE DATE.—The provisions of this section shall become effective on the date that is 180 days after the date of enactment of this Act.

SEC. 1146. PRICING AND LABELING OF PRODUCTS SOLD ON MILITARY INSTALLATIONS OR BY NATIVE AMERICANS.

(a) MILITARY INSTALLATIONS.—

(1) IN GENERAL.—The Secretary, in consultation with the Secretary of Defense, shall promulgate regulations that ensure that the price charged for a tobacco product sold on a military installation (as defined in section 2801(c)(2) of title 10, United States Code) is equal to—

(A) the average price for which such product is sold in the metropolitan area immediately bordering the military installation; or

(B) the highest price (inclusive of Federal or State taxes) for which such product is sold on military installations located in the United States;

whichever is greater.

(2) LABEL.—The regulations under paragraph (1) shall require that each package of a tobacco product that is sold on a military installation be labeled as such. Such regulations shall include requirements for the size and location of the label.

(b) INDIAN TRIBES.—The Secretary, in consultation with the Secretary of Interior, shall promulgate regulations that require that each package of a tobacco product that is sold on an Indian reservation (as defined in section 403(9) of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3202(9))) be labeled as such. Such regulations shall include requirements for the size and location of the label.

SEC. 1147. PROHIBITION AGAINST SALE OF TOBACCO PRODUCTS IN OR TO DUTY-FREE SHOPS OR FORWARDING THROUGH OR MANUFACTURE IN TRADE ZONES.

(a) DUTY-FREE SHOPS.—It shall be unlawful for any person to sell a tobacco product—

(1) in any duty-free shop located within the United States; or

(2) to any duty-free shop.

(b) TRADE ZONES.—No person may forward through or manufacture a tobacco product in any foreign trade zone,

as defined for purposes of the Act of June 18, 1934 (19 U.S.C. 81a et seq.).

SEC. 1148. JURISDICTION; PENALTIES; COMPROMISE OF LIABILITY.

(a) JURISDICTION.—The District Courts of the United States, and the United States court for any Territory, of the District where the offense is committed or of which the offender is an inhabitant or has its principal place of business, are vested with jurisdiction of any suit brought by the Attorney General in the name of the United States, to prevent and restrain violations of any of the provisions of this subtitle.

(b) PENALTIES.—The provisions of section 3571 of title 18, United States Code, shall apply to any person convicted of violating any of the provisions of this subtitle as if such person were convicted of a felony under such title.

(c) COMPROMISE OF LIABILITY.—The Secretary is authorized, with respect to any violation of this subtitle, to compromise the liability arising with respect to a violation of this subtitle—

(1) upon payment of a sum not in excess of $10,000 for each offense, to be collected by the Secretary and to be paid into the Treasury as miscellaneous receipts; and

(2) in the case of repetitious violations and in order to avoid multiplicity of criminal proceedings, upon agreement to a stipulation, that the United States may, on its own motion upon 5 days' notice to the violator, cause a consent decree to be entered by any court of competent jurisdiction enjoining the repetition of such violation.

SEC. 1149. AMENDMENTS TO THE CONTRABAND CIGARETTE TRAFFICKING ACT.

(a) DEFINITIONS.—Section 2341 of title 18, United States Code, is amended—

(1) in paragraph (2)—

(A) by striking "60,000" and inserting "30,000"; and

(B) by inserting after "payment of cigarette taxes," the following: "or in the case of a State that does not require any such indication of tax payment, if the person in possession of the cigarettes is unable to provide any evidence that the cigarettes are moving legally in interstate commerce,"; and

(2) in paragraph (4), by striking "and" at the end;

(3) in paragraph (5), by striking the period and inserting a semicolon; and

(4) by adding at the end the following:

"(6) the term 'tobacco product' means cigars, cigarettes, smokeless tobacco, and pipe tobacco (as such terms are defined in section 5701 of the Internal Revenue Code of 1986); and

"(7) the term 'contraband tobacco product' means a quantity in excess of 30,000 of any tobacco product that is manufactured, sold, shipped, delivered, transferred, or possessed in violation of Federal laws relating to the distribution of tobacco products.".

(b) UNLAWFUL ACTS.—Section 2342 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting "or contraband tobacco products" before the period;

(2) in subsection (b)—

(A) by striking "cigarettes" and inserting "tobacco products";

(B) by striking "60,000" and inserting "30,000"; and

(C) by inserting before the period the following: "or knowingly to fail to maintain distribution records, alter or obliterate required markings, or interfere with any inspection as required with respect to such quantity of tobacco products"; and

(3) by adding at the end the following:

"(c) It shall be unlawful for any person knowingly to transport tobacco products under a false bill of lading or without any bill of lading.".

(c) RECORDKEEPING.—Section 2343 of title 18, United States Code, is amended—

(1) by striking "cigarettes" each place that such appears and inserting "tobacco products";

(2) in subsection (a), by striking "60,000" and inserting "30,000";

(3) in subsection (b), by striking "60,000" and inserting "30,000".

(d) PENALTIES.—Section 2344 of title 18, United States Code, is amended—

(1) in subsection (c), by inserting "or contraband tobacco products" after "cigarettes"; and

(2) by adding at the end the following:

"(d) Any proceeds from the unlawful distribution of tobacco products shall be subject to seizure and forfeiture under section 981(a)(1)(C).".

SEC. 1150. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this subtitle.

Subtitle E—Antitrust Exemption

SEC. 1161. LIMITED ANTITRUST EXEMPTION.

(a) IN GENERAL.—The antitrust laws of the United States (as defined in section 1 of the Clayton Act (15 U.S.C. 12) and any other statute in pari materia, and any similar law of a State, do not apply to the joint discussion, consideration, review, action, agreement, or understanding by or among any participating tobacco product manufacturers, for the purposes of, and limited to—

(1) entering into and complying with the Protocol, Trust Agreement, or Consent Decree;

(2) refusing to deal with a distributor, retailer, or other seller of tobacco products who distributes such products for sale to, or offers for sale or sells such products to, underage persons, or who otherwise fails to comply with the applicable requirements of the Act, the Protocol, or Consent Decree; or

(3) submitting an application relating to a plan or program of the type referred to in subsection (b) of this section or, entering into, complying with or otherwise carrying out the terms of, any plan or program that has been approved under subsection (b) of this section.

(b) APPROVAL BY ATTORNEY GENERAL.—The Attorney General of the United States is authorized to approve, upon

application by one or more participating tobacco product manufacturers, plans, or programs to reduce the use of tobacco products by underage individuals. Before approving any such plan or program, the Attorney General shall determine that approval is appropriate as part of the effort to reduce the use of tobacco products by underage individuals and will not have the effect of unduly restraining competition. The Attorney General shall approve or disapprove any such application in writing within 90 days from the date it is received by the Department of Justice. Upon written withdrawal by the Attorney General of any approval under this subsection, the provisions of subsection (a)(3) shall not apply to any subsequent act or omission with respect to the plan or program to which the approval related.

Subtitle F—Special Provisions Concerning Programs for Women, Minorities, and Others

SEC. 1171. RESEARCH RELATED TO PATTERNS OF SMOKING BY WOMEN AND MINORITIES.

(a) RESEARCH DESIGN CRITERIA.—Any research funded under this Act, or under any amendment made by this Act, that is conducted for the purpose of investigating factors affecting tobacco use and patterns of smoking, shall if appropriate to the scope and purpose of the investigation

include data and analysis with respect to different factors that may be present in the case of women or minorities.

(b) PATTERNS OF SMOKING.—Research funded under this Act, or under any amendment made by this Act, examining patterns of smoking among minorities should be conducted in proportion to their prevalence in the smoking population and shall be conducted at minority education institutions, where available, or institutions that provide the greatest amount of health care to minority populations in a State.

SEC. 1172. COUNTER-ADVERTISING PROGRAMS.

(a) IN GENERAL.—The Secretary shall carry out programs to reduce tobacco usage through media-based (such as counter-advertising campaigns) and nonmedia-based education, prevention, and cessation campaigns designed to discourage the use of tobacco products by individuals and to encourage those who use such products to quit. Such programs shall target, in a culturally and linguistically appropriate manner, adults, children, women, and minorities who have been targeted by tobacco industry advertising.

(b) ELIGIBILITY.—To be eligible to receive assistance under this section an entity or individual shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(c) USE OF FUNDS.—Amounts received by an individual or entity under this section shall be used to carry out activities under the programs established under subsection (a). Such amounts may be used to design and implement such activities and to conduct research concerning the effectiveness of such programs.

(d) FUNDING.—There are authorized to be appropriated from the National Tobacco Settlement Trust Fund [established by section 401], other than from amounts not in the State Litigation Settlement Account, or otherwise obligated under this Act such sums as are necessary to carry out the provisions of this section.

SEC. 1173. PREVENTION ACTIVITIES OF COMMUNITY AND MIGRANT HEALTH CENTERS.

(a) FUNDING.—There are authorized to be appropriated from the National Tobacco Settlement Trust Fund [established by section 401], other than from amounts in the State Litigation Settlement Account, [of this Act $300,000,000] for each of the first 10 fiscal years beginning after the date of enactment of this Act to carry out the provisions of subsection (b).

(b) PROGRAM.—The Secretary shall make amounts made available under subsection (a) available to Community, Migrant, and Homeless Health Centers receiving grants under section 330 of the Public Health Service Act

(42 U.S.C. 254c) to provide health services for diseases related to tobacco and to prevent tobacco-related diseases.

(c) LIMITATION.—No amount may be expended or obligated under subsection (b) for any fiscal year in which the annual amount appropriated for Community, Migrant, and Homeless Health Centers is less than the amount appropriated for the previous fiscal year.

Subtitle G—Sense of the Senate

SEC. 1181. SENSE OF THE SENATE.

It is the sense of the Senate that the proceeds of this Act may be used for purposes including, but not limited to—

(1) reimbursing public health care financing programs for tobacco-related costs, including Medicare;

(2) supporting tobacco use prevention and cessation, particularly with respect to youth, including counter-advertising at the Federal, State, Tribal, and local level;

(3) supporting tobacco-related health services research activities;

(4) assisting tobacco farmers and tobacco dependent communities;

(5) creating, and fully and adequately funding, a Tobacco Asbestos Trust to assist victims of the unique harm that smoking causes to asbestos workers;

(6) settling with and reimbursing States for tobacco-related health care costs and damages, including Medicaid;

(7) providing funding for the Federal Black Lung Program;

(8) providing funding for child care and early childhood development;

(9) providing funding for veterans' benefit programs; and

(10) providing funding for clinical trials at the National Institutes of Health.

Subtitle H—Ban On Sale Of Tobacco Products Through The Use Of Vending Machines

SEC. 1191. BAN OF SALE OF TOBACCO PRODUCTS THROUGH THE USE OF VENDING MACHINES.

(a) BAN OF SALE OF TOBACCO PRODUCTS THROUGH THE USE OF VENDING MACHINES.—Effective 12 months after the date of enactment of this Act, it shall be unlawful to sell tobacco products through the use of a vending machine.

(b) COMPENSATION FOR BANNED VENDING MACHINES.—

(1) IN GENERAL.—The owners and operators of tobacco vending machines shall be reimbursed for the fair market value of their businesses, including the cost of banned vending machines, compensation for lost profits, unexpired contracts, and for the owner's or operator's plant and equipment related only to the production of tobacco vending machines.

(2) TOBACCO VENDING REIMBURMENT CORPORATION.—

(A) CORPORATION.—Reimbursment shall be directed through a private, nonprofit corporation established in the District of Columbia, known as the Tobacco Vending Reimburment Corporation (in this section referred to as the "Corporation"). The Corporation is—

(i) not an agency or establishment of the United States; and

(ii) except as otherwise provided in this section, is subject to, and has all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code section 29-501 et seq.).

(B) DUTIES.—The Corporation shall—

(i) disburse compensation funds to vending companies under this section;

(ii) verify operational machines; and

(iii) maintain complete records of machine verification and accountings of disbursements and administration of the compensation fund established under paragraph (4).

(3) MANAGEMENT OF CORPORATION.—

(A) BOARD OF DIRECTORS.—The Corporation shall be managed by a Board of Directors that—

(i) consists of distinguished Americans with experience in finance, public policy, or fund management;

(ii) includes at least 1 member of the United States tobacco vending machine industry;

(iii) shall be paid an annual salary on an individualized basis of $40,000 out of amounts transferred to the Corporation under paragraph (4)(A);

(iv) shall appoint a President to manage the day-to-day activities of the Corporation;

(v) shall develop guidelines by which the President shall direct the Corporation;

(vi) shall retain a national accounting firm to verify the distribution of funds and audit the compensation fund established under paragraph (4);

(vii) shall retain such legal, management, or consulting assistance as is necessary and proper; and

(viii) shall periodically report to Congress regarding the activities of the Corporation.

(B) DUTIES OF THE PRESIDENT OF THE CORPORATION.—The President of the Corporation shall—

(i) hire appropriate staff;

(ii) prepare the report of the Board of Directors of the Corporation required under subparagraph (A)(viii); and

(iii) oversee Corporation functions, including verification of machines, administration and disbursement of funds, mainte-

nance of complete records, operation of appeals procedures, and other directed functions.

(4) COMPENSATION FUND.—

(A) TRANSFER OF FUNDS FROM TOBACCO INDUSTRY PAYMENTS.—The Secretary of the Treasury shall transfer to the Corporation, out of funds in the National Tobacco Settlement Trust Fund, other than from amounts in the State Litigation Settlement Account, such sums as are ***[****necessary****] provided in appropriations Acts*** *to make due compensation to owners and operators of tobacco vending machines and to carry out the duties of the Corporation.* ***[****Not later than 1 year after such date on which the first transfer is made under this subparagraph, the Secretary of the Treasury shall transfer to the Corporation out of funds paid to the United States by the tobacco industry, such additional sums as may be necessary for such purposes.****]***

(B) RULES FOR DISBURSEMENT OF FUNDS.—

(i) PAYMENTS TO OWNERS AND OPERATORS.—The Corporation shall disburse funds to compensate the owners and opera-

tors of tobacco vending machines in accordance with the following:

(I) The fair market value of each tobacco vending machine verified by the Corporation President in accordance with subparagraph (C), and proven to have been in operation before August 10, 1995, shall be disbursed to the owner of the machine seeking compensation.

(II) No compensation shall be made for a spiral glass front vending machine.

(ii) OTHER PAYMENTS.—Funds transferred to the Corporation under subparagraph (A) may be used to pay the administrative costs of the Corporation that are necessary and proper or required by law. The total amount paid by the Corporation for administrative and overhead costs, including accounting fees, legal fees, consultant fees, and associated administrative costs shall not exceed 5 percent of the total amount transferred to the Corporation under subparagraph (A).

(C) VERIFICATION OF VENDING MACHINES.—Verification of vending machines shall be based on copies of official State vending licenses, company computerized or handwritten sales records, or physical inspection by the Corporation President or by an inspection agent designated by the President. The Corporation President and the Board of Directors of the Corporation shall work vigorously to prevent and prosecute any fraudulent claims submitted for compensation.

(D) RETURN OF ACCOUNT FUNDS NOT DISTRIBUTED TO VENDORS.—The Corporation shall be dissolved on the date that is 4 years after the date of enactment of this Act. Any funds not dispersed or allocated to claims pending as of that date shall be transferred to ***[****a public anti-smoking trust, or used for such other purposes as Congress may designate****]*** ***the National Tobacco Settlement Trust Fund****.*

(c) SETTLEMENT OF LEGAL CLAIMS PENDING AGAINST THE UNITED STATES.—Acceptance of a compensation payment from the Corporation by a vending machine owner or operator shall settle all pending and future claims of the owner or operator against the United States

that are based on, or related to, the ban of the use of tobacco vending machines imposed under this section and any other laws or regulations that limit the use of tobacco vending machines.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the National Tobacco Settlement Trust Fund, other than from amounts in the Senate Litigation Settlement Account, such sums as may be necessary to carry out this section.

[TITLE XII—TOBACCO ASBESTOS TRUST FUND

[SEC. 1201. DEFINITIONS.

[In this title:

[(1) ASBESTOS CLAIM.—The term "asbestos claim" means a claim brought or capable of being brought in a court of competent jurisdiction by a person for personal injury, wrongful death, loss of consortium, or other damages arising from occupational exposure to asbestos or asbestos containing products, including claims by spouses or household members who were exposed to asbestos through the occupational exposure of another person.

[(2) ASBESTOS CLAIMANT.—The term "asbestos claimant" means a person who brings an asbestos claim.

[(3) ASBESTOS DEFENDANT.—The term "asbestos defendant" means a person or existing entity (including a partnership or corporation) who as part of its operations is defending asbestos claims on the date of enactment of this Act.

[(4) ASBESTOS/TOBACCO CLAIM.—The term "asbestos/tobacco claim" means a legally justiciable asbestos claim of a person who also claims injury, disease, or death arising from exposure to tobacco.

[(5) ASBESTOS/TOBACCO CLAIMANT.—The term "asbestos/tobacco claimant" means a person who has an asbestos/tobacco claim.

[(6) ASBESTOS TRUST.—The term "asbestos trust" means a court-supervised trust that was established to resolve asbestos claims arising directly or indirectly from exposure to asbestos or asbestos containing products of an asbestos defendant, including a trust created under the bankruptcy laws of the United States, or Rule 23 of the Federal Rules of Civil Procedure.

[(7) EXPOSURE TO TOBACCO.—The term "exposure to tobacco" means any instance in which a person consumes, inhales, ingests, or uses a tobacco product.

[(8) TOBACCO.—The term "tobacco" means tobacco in its manufactured form, including cigars, cigarettes, cigarillos, cigarette tobacco, little cigars, pipe tobacco, and smokeless tobacco.

[(9) TOBACCO COMPANY.—The term "tobacco company" means any person, including any repacker, or relabeler, who manufactures, fabricates, assembles, processes, or labels a finished tobacco product.

[(10) TRUST FUND.—The term "trust fund" means the Tobacco Asbestos Trust Fund established under section 1202.

[SEC. 1202. TOBACCO ASBESTOS TRUST FUND.

[(a) ESTABLISHMENT.—

[(1) IN GENERAL.—There is established in the Treasury of the United States a trust fund to be known as the "Tobacco Asbestos Trust Fund", consisting of such amounts as may be appropriated or credited to the trust fund.

[(2) DIVISION.—

[(A) IN GENERAL.—The trust fund shall be composed of 2 funds to be known as "Fund I" and "Fund II". Each such fund shall meet the requirements of this title.

[(B) FUND I.—

[(i) ADMINISTRATION.—Fund I shall be administered by the trustees appointed under paragraphs (1) and (3) of subsection (b). Fund I shall be considered to be a designated settlement fund within the meaning of section 468B of the Internal Revenue Code of 1986.

[(ii) PURPOSE AND USE.—The purpose of Fund I shall be for the reimbursement of asbestos trusts and asbestos defendants for payments made by such trust and defendants for the tobacco-caused portion of asbestos/tobacco claims. Fund I shall be used to allocate credits to asbestos trusts and asbestos defendants who settled and paid the civil claims of individuals who had exposure to tobacco and asbestos. Such credits may be used to direct the payment of funds by the trustees to pay asbestos claims and asbestos/tobacco claims, as described in section 1203.

[(C) FUND II.—

[(i) ADMINISTRATION.—Fund II shall be administered by the trustees appointed under paragraphs (2) and (3) of subsection

(b). Fund II shall be considered to be a designated settlement fund within the meaning of section 468B of the Internal Revenue Code of 1986.

[(ii) PURPOSE.—The purpose of Fund II shall be to pay asbestos/tobacco claims brought after the date of enactment of this Act for the tobacco-caused portion of the claimant's harm, as described in section 1204.

[(3) SEPARATE OPERATIONS.—The operations of each Fund shall be conducted separately. Upon majority vote of the trustees of Fund I and upon majority vote of the trustees of Fund II, the Funds may, in the interest of efficiency and economy, conduct certain tasks as a single operation.

[(b) TRUSTEES.—Not later than 60 days after the date of enactment of this Act—

[(1) the Secretary shall appoint 2 individuals to serve as trustees of the trust fund, of which—

[(A) 1 individual shall represent asbestos trusts; and

[(B) 1 individual shall represent asbestos defendants;

[(2) the Secretary of Labor shall appoint 2 individuals to serve as trustees of the trust fund, of which—

[(A) 1 individual shall represent asbestos claimants; and

[(B) 1 individual shall represent labor organizations with asbestos claimants as members; and

[(3) the trustees appointed under paragraphs (1) and (2) shall appoint an individual who shall be a member of the health care profession with experience in asbestos disease or disability to serve as a trustee.

[(c) AUTHORIZATION AND ALLOCATIONS.—

[(1) AUTHORIZATION.—There are appropriated, out of amounts in the National Tobacco Settlement Trust Fund established by section 401 (other than amounts in the State Litigation Settlement Account or otherwise obligated), to the trust fund the amounts set forth in section 1205. The Secretary of the Treasury shall transfer amounts appropriated under this paragraph to the trust fund.

[(2) ALLOCATION BETWEEN FUNDS.—Of the amounts transferred under paragraph (1), 50 percent

shall be deposited into Fund I and 50 percent shall be deposited into Fund II.

[(B) TIMING ADJUSTMENT.—The trustees of Fund II may provide an advance to Fund I as a loan (to be repaid from proceeds of Fund I) from funds available in Fund II as may be necessary to further the purposes of Fund I.

[(d) REPAYABLE ADVANCES.—

[(1) AUTHORIZATION.—In addition to the amounts appropriated under subsection (c), there are authorized to be appropriated to the trust fund, as repayable advances, such sums as may be necessary for fiscal year 1999 and each subsequent fiscal year to make the expenditures described in sections 1203 and 1204.

[(2) REPAYMENT WITH INTEREST.—Repayable advances made to the trust fund shall be repaid, and interest on the advances shall be paid to the general fund of the Treasury when the Secretary of the Treasury determines that monies are available in the Tobacco Asbestos Trust Fund to make the payments.

[(3) RATE OF INTEREST.—Interest on an advance made under this subsection shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in

which the advance is made) that is equal to the current average market yield on outstanding marketable obligations of the United States with remaining period to maturity comparable to the anticipated period during which the advance will be outstanding.

[(e) USE OF TRUST FUND.—

[(1) IN GENERAL.—The trust fund shall be used as provided for in this title. No amount shall be expended or obligated from the trust fund unless the expenditure or obligation is authorized by an appropriation Act.

[(2) LIMITATION.—Amounts may only be made available from the trust fund to, or for the direct benefit of, asbestos claimants and asbestos/tobacco claimants.

[(f) AUTHORITY OF TRUSTEES.—

[(1) DECISIONS BASED ON VOTES.—Except as provided in this Act, the trustees of each Fund shall make decisions with regard to the respective Funds based on a majority vote.

[(2) GENERAL AUTHORITY.—The trustees shall have the authority to take such actions as may be necessary to effectuate the purposes of the trust fund, including—

[(A) the investment of the trust fund assets in a reasonable and prudent manner consistent with the needs and purposes of the trust fund; and

[(B) commencing actions to enforce any provisions or obligations imposed under this title.

[(3) ADMINISTRATIVE AUTHORITY.—The trustees shall have the authority to employ officers, administrators, claims analysts, attorneys, actuaries, investment specialists, and such other employees and agents as may be required to administer the trust fund.

[(g) ACCOUNTING FOR EXPENSES.—Except for the compensation and expenses of the trustees, which shall be charged equally to Fund I and Fund II, the trustees shall, to the extent feasible, separately account for all salaries, overhead, and other costs and expenses as between Fund I and Fund II on the basis of activities conducted separately with respect to each such Fund.

[(h) EXPENDITURES FROM TRUST FUND.—Amounts in the trust fund, and each of its Funds, shall be made available in each fiscal year, as provided by appropriations Acts, as necessary to make the expenditures and allocations provided for in sections 1203 and 1204.

[SEC. 1203. PAYMENTS FROM FUND I.

[(a) IN GENERAL.—Credits applying to the amounts deposited into Fund I shall be allocated and disbursed as provided for in this section.

[(b) DETERMINATION OF BASE.—

[(1) NOTICE.—Not later than 90 days after the date on which the trustees for Fund I are appointed, the trustees shall provide notice to all asbestos trusts and asbestos defendants of the establishment of the Fund.

[(2) REQUEST FOR INFORMATION.—The notice under paragraph (1) shall request that each asbestos trust and asbestos defendant, within a reasonable period of time, provide the trustees with information as to the amount of payments or settlements made by or on behalf of such trusts or defendants (and, in the case of non-bankruptcy trusts, also made by or on behalf of their predecessor organizations), and the amount of any outstanding bonded judgments, on asbestos claims as of the date of enactment of this Act.

[(3) DETERMINATION.—Based on the information provided under paragraph (2), the trustees for Fund I shall determine the total amount of payments and settlements and outstanding bonded judgments (reasonably adjusted for the probable resolution as of the date the information is submitted under para-

graph (2)) on the asbestos claims of all asbestos trusts and asbestos defendants that responded to the notice.

[(c) ALLOCATION OF CREDITS.—

[(1) IN GENERAL.—Upon review of the information submitted under subsection (b)(2), the trustees for Fund I shall provide a credit with respect to each asbestos trust and asbestos defendant submitting such information.

[(2) AMOUNT.—A credit under paragraph (1) with respect to an asbestos trust or asbestos defendant shall be based on the ratio of—

[(A) the amount of settlement payments and outstanding bonded judgments on asbestos claims made by or on behalf of the trust or defendant; and

[(B) the total amount of settlement payments and outstanding bonded judgments on asbestos claims made by or on behalf of all asbestos trusts and asbestos defendants described in paragraph (1).

[(d) ADDITIONAL FACTORS.—

[(1) INTEREST.—In making the allocation of credits under this section, the trustees for Fund I shall consider the timing of past cash payments and

include an appropriate interest factor in making their allocation determinations.

[(2) UNPAID SETTLEMENTS.—In making the allocation of credits under this section, the trustees for Fund I shall include the settlements of asbestos trusts and asbestos defendants that have not been paid as of the date of enactment of this Act in an amount not to exceed 20 percent of the amount of such unpaid settlements.

[(3) LIMITATION.—The aggregate amount of Fund I credits allocated to asbestos trusts or asbestos defendants to account for unpaid settlements under paragraph (2) shall not exceed an amount equal to 6 percent of the amounts contained in Fund I for the year involved. Any necessary reductions from the application of the limitation under this paragraph shall be determined using the ratios described in subsection (c).

[(4) UNUSED CREDITS.—To the extent that any asbestos trust or asbestos defendant has credits from its allocation under this section that have not been the subject of a request and direction to be paid for a period of 2 years from the date on which such credits are made available, such unused credits shall be reallocated proportionally to each asbestos trust and as-

bestos defendant submitting information under subsection (b)(2) according to the amount of the unpaid settlements of such trust and defendants which remain unpaid after making the allocations required by this section.

[(e) REVIEW OF DETERMINATIONS.—

[(1) IN GENERAL.—Any dispute regarding a determination made by the trustees for Fund I under this section shall be resolved not later than 6 months after the date on which notice of such dispute is provided to the trustees. Such resolution shall be under final and binding arbitration under the rules of the American Arbitration Association.

[(2) SCOPE.—The scope of any review under paragraph (1) shall be limited to determining whether the determinations of the trustees were unsupported by substantial evidence or were contrary to law.

[(3) APPLICATION OF SECTION.—During the pendency of any dispute resolution proceeding under this subsection, the trustees may continue to implement the provisions of this section, reserving sufficient monies as may be necessary in their judgment to satisfy the resolution of such disputes.

[(f) USE OF FUND I CREDITS.—

[(1) FOR BENEFIT OF VICTIMS.—All monies credited to asbestos trusts and asbestos defendants under this section shall be used solely for the payment of asbestos claims and asbestos/tobacco claims. None of the credits allocated under this section to an asbestos trust or asbestos defendant shall be used for the costs of defending against an asbestos claims, for payment of corporate dividends, for reimbursement of insurers, or for any other corporate purpose.

[(2) MECHANISM FOR PAYMENT OF VICTIMS.—

[(A) ASBESTOS DEFENDANTS.—An asbestos defendant that receives an allocation of credit under this section may only use such credit to direct that a payment be made from Fund I to any asbestos claimant as compensation for an asbestos claim or asbestos/tobacco claim. The payment of such claimant shall be under a written request submitted by the defendant to the Fund. Such requests are not subject to approval by the Fund so long as they do not exceed the defendant's allocation of credit under this section.

[(B) ASBESTOS TRUST.—All monies resulting from credits allocated to an asbestos trust under this section shall be paid to such trust for use according to the rules of such trust with re-

gard to the payment of asbestos claims and asbestos/tobacco claims.

[SEC. 1204. PAYMENTS FROM FUND II.

[(a) IN GENERAL.—Amounts deposited into II shall be disbursed as provided for in this section.

[(b) ESTABLISHMENT OF FUND.—The trustee for Fund II shall establish procedures and standards under subsection (c) for the payment, upon approval of an appropriate application, of a reasonable reimbursement for the costs, expenses, and fees incurred in connection with an asbestos claim or an asbestos/tobacco claim.

[(c) PROCEDURES AND STANDARDS.—The procedures and standards established under this subsection for the payment of compensation to asbestos claimants and asbestos/tobacco claimants, shall include—

[(1) rules to ensure that compensation from Fund II is paid only for that portion of an asbestos claimant's or an asbestos/tobacco claimant's harm caused by exposure to tobacco;

[(2) rules ensuring that—

[(A) all present and future such claimants are treated equitably in relationship to each other; and

[(B) if future demands against Fund II require limitations on current payment, that pri-

ority be given to payment of asbestos claimants or asbestos/tobacco claimants with the most serious harm due to exposure to asbestos and tobacco;

[(3) rules establishing application forms and procedures for the submission of claims and supporting documentation;

[(4) criteria establishing a minimum degree of asbestos disability or impairment that must be demonstrated in order for a claimant to receive compensation under this section;

[(5) criteria for the coordination of the administration of Fund II with the signatories to the Louisiana Agreement Providing Administrative Alternatives for Claimants with Asbestos Related Conditions to expand the agreement to include national coverage for claimants who may not be compensated under the criteria provided for under paragraph (4);

[(6) rules requiring recipients of funds from Fund II to execute a release of personal injury claims for tobacco-caused harm; and

[(7) rules to ensure that the administration of the claims process, including attorney's fees, is fair and equitable to asbestos claimants and asbestos/tobacco claimants.

[(d) PERIOD FOR FINAL DETERMINATIONS.—The trustees for Fund II shall make a final determination with respect to a claim submitted under this section not later than 120 days after the date on which the claim is submitted. In the event that exigent circumstances exist with respect to a such a claim, as verified by a competent medical professional, such final determination shall be made as soon as practicable, but in no case later than 60 days after the date of the submission of such claim.

[(e) NO LIMITATION ON RIGHT TO SUE.—Except as provided in section 1206(b), nothing in this title shall be construed to limit the rights of any individual to bring a civil suit against a tobacco company.

[(f) CLAIMS ADMINISTRATION.—The trustees for Fund II may establish, or enter into a contract for the establishment or operation of, a claims facility for the processing, evaluation, and settlement of claims submitted to Fund II.

[(g) REVIEW JURISDICTION.—The District Courts of the United States shall have exclusive jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to review a determination (or failure to make a determination as required by section 1206(a)) by or on behalf of the trustees with respect to compensation under Fund II by an individual bringing a claim. No such determination may be overturned or remanded if it is supported

by substantial evidence. A claimant may not file a proceeding under this subsection unless the plaintiff has provided the trustees with a notice of intent of the plaintiff to file such an action, at least 90 days prior to the filing of such action.

[SEC. 1205. TRANSFERS FROM NATIONAL TOBACCO SETTLEMENT TRUST FUND.

[(a) SPECIAL ASBESTOS-TOBACCO VICTIM TRANSFERS.—Beginning with calendar year 1999, the Secretary of the Treasury shall, for each calendar year, transfer from the National Tobacco Settlement Trust Fund established under section 401 (other than from amounts in the State Litigation Settlement Account) the amounts sufficient to provide the trust fund established by section 1202 the following amounts:

[(l) For calendar year 1999, $1,000,000,000.

[(2) For calendar year 2000, $1,500,000,000.

[(3) For calendar year 2001, $3,000,000,000.

[(4) For calendar year 2002, $3,000,000,000.

[(5) For calendar year 2003, $3,000,000,000.

[(6) For calendar year 2004, $4,000,000,000.

[(7) For each of the calendar years 2005 through 2014, $550,000,000.

[(b) PAYMENTS.—The Secretary of the Treasury shall ensure that transfers are made under this section on a timely basis.

[SEC. 1206. RULES FOR CLAIMS AGAINST ASBESTOS TRUSTS, ASBESTOS DEFENDANTS, AND TOBACCO COMPANIES.

[(a) PURPOSE.—

[(1) IN GENERAL.—It is the purpose of this title to ensure that asbestos claimants and asbestos/tobacco claimants who are eligible, by reason of harm resulting from exposure to asbestos and tobacco, to receive compensation on a fair and timely basis.

[(2) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to expand the rights of asbestos claimants and asbestos/tobacco claimants in civil actions pending (or resolved) against asbestos defendants or asbestos trusts on the date of enactment of this Act.

[(b) NON-BINDING SUBMISSION OF TOBACCO/ASBESTOS CLAIMS TO FUND II.—

[(1) IN GENERAL.—A civil action by an individual for harm caused by the combined effects of tobacco and asbestos shall not proceed to trial or result in a judgment against an asbestos defendant or asbestos trust until a claim is submitted to Fund II by

such individual and finally resolved in accordance with section 1204(c)(3) as determined by the trustees for Fund II. For purposes of this paragraph, the term "proceed to trial" means—

[(A) in a jury trial, to commence voir dire; and

[(B) in a nonjury trial, to begin the trial.

[(2) DENIAL OF CLAIM.—A claimant whose claim under paragraph (1) is denied, or who rejects an offer made by the trustees for Fund II, may proceed to judgment or trial. All claimants shall receive a final determination from Fund II within 120 days after submission of a claim. In the event of exigent circumstances, verified by a competent medical professional, a claimant shall receive a final determination from Fund II as soon as practicable, but in all events within 60 days after submission.

[(c) LIABILITY OF TOBACCO COMPANIES.—

[(1) IN GENERAL.—The provisions of this subsection limiting the civil liability of tobacco companies shall remain in effect so long as the transfers and deposits are made in accordance with the provisions of this title.

[(2) CLAIMS OF ASBESTOS-TOBACCO VICTIMS.—Any claimant who receives a payment from Fund II,

shall execute a release of liability for all tobacco-caused harm.

[(3) CONTRIBUTION CLAIMS FOR PAST AMOUNTS PAID.—Notwithstanding any other provision of law, no tobacco company shall be liable for contribution, indemnity, or otherwise to any asbestos trust or asbestos defendant on any claim arising from payments or obligations for payments to asbestos claimants and asbestos/tobacco claimants made or incurred prior to the date of enactment of this Act. All such claims by asbestos defendants or asbestos trusts filed as of the date of enactment of this Act are terminated.

[(4) CONTRIBUTION CLAIMS FOR FUTURE AMOUNTS.—Notwithstanding any other provision of law, in any contribution or similar action against a tobacco company arising from the payments or obligations for payments to asbestos claimants and asbestos/tobacco claimants made or incurred after the date of enactment of this Act, an asbestos trust or asbestos defendant may aggregate and establish a claim based on valid statistical proof on a consolidated basis. In such an action, the assessment of damages to a tobacco company defendant shall be based upon the degree of relative causation as between asbestos and to-

bacco based on statistical data applicable to relevant disease categories.

[(5) RIGHTS RESERVED.—Nothing in this subsection shall be construed to limit the rights of any person that chooses not to receive compensation from Fund II to commence a civil action against any tobacco company.

[(d) LIABILITY OF ASBESTOS TRUSTS AND ASBESTOS DEFENDANTS.—

[(1) ACCEPTANCE OF FUND II AWARD.—A claimant who accepts a payment from Fund II shall execute a release of liability for all tobacco-caused harm, and shall not recover from an asbestos defendant in any civil action any damages for any portion of the harm caused by exposure to tobacco.

[(2) FUND II CLAIMANT'S RIGHT TO SUE.—A claimant, whose claim has been denied by the trustees for Fund II, or who has rejected the offer of a payment from Fund II, may pursue a civil action against a tobacco defendant or asbestos defendant for personal injury attributable to both tobacco and asbestos, to the extent that such action is otherwise permissible under applicable law.

[(3) SUCCESSION TO CLAIMANT'S RIGHTS.—Any asbestos defendant that pays a part or all of a judg-

ment that includes damages for tobacco-caused harm may elect—

[(A) to—

[(i) succeed to the rights of the claimant involved, in the same proportion that the payment by the defendant in the action involved bears to the total amount of the judgment; and

[(ii) to request compensation on behalf of the claimant from Fund II as in the same manner as if the claimant had made a timely and proper election to receive such compensation, and on the same basis as other claimants similarly situated; or

[(B) to pursue an action for indemnity or contribution against any tobacco company.

[(4) CONTRIBUTION CLAIMS AGAINST ASBESTOS COMPANIES.—An asbestos trust or asbestos defendant shall not be liable to a tobacco company for contribution, indemnity, or otherwise with respect to any claim arising from payments or obligations for payments to asbestos claimants or for exposure to tobacco and asbestos made or incurred either prior to or by virtue of, the enactment of this Act. All such claims

filed as of the date of enactment of this Act are terminated.

[(e) PRESERVATION OF JOINT LIABILITY FOR ASBESTOS-CAUSED INJURY OR CONDITION.—Nothing in this title shall be construed to—

[(1) limit any joint liability under otherwise applicable law among asbestos defendants or asbestos trusts for the portion of a claimant's harm caused by asbestos;

[(2) limit the ability of any individual to claim that his or her harm was caused by asbestos; or

[(3) delay the resolution of a claim brought by any individual against an asbestos trust or asbestos defendant for compensation for harm caused by asbestos.]

TITLE XIII—VETERANS' BENEFITS

SEC. 1301. RECOVERY BY SECRETARY OF VETERANS AFFAIRS.

Title 38, United States Code, is amended by adding after part VI the following:

"PART VII—RECOVERY OF COMPENSATION COSTS FOR TOBACCO-RELATED DISABILITY OR DEATH

"CHAPTER 91—TORT LIABILITY FOR DISABILITY OR DEATH DUE TO TOBACCO USE

"Sec.
"9101. Recovery by Secretary of Veterans Affairs
"9102. Regulations
"9103. Limitation or repeal of other provisions for recovery of compensation
"9104. Exemption from annual limitation on damages

"§ 9101. Recovery by Secretary of Veterans Affairs

"(a) CONDITIONS; EXCEPTIONS; PERSONS LIABLE; AMOUNT OF RECOVERY; SUBROGATION.—In any case in which the Secretary is authorized or required by law to provide compensation under this title for disability or death from injury or disease attributable in whole or in part to the use of tobacco products by a veteran during the veterans active military, naval, or air service under circumstances creating a tort liability upon a participating tobacco product manufacturer, distributor, or retailer of a tobacco product (other than or in addition to the United States) to pay damages therefor, the Secretary shall have a right to recover (independent of the rights of the injured or diseased veteran) from said participating tobacco product manufacturer, distributor, or retailer the cost of the compensation paid or to be paid and shall, as to this right, be subrogated to any right or claim that the injured or diseased veteran, his or her guardian, personal representative, estate, dependents, or

survivors has against such third person to the extent of the cost of the compensation paid or to be paid.

"(b) ENFORCEMENT PROCEDURE; INTERVENTION; JOINDER OF PARTIES; STATE OR FEDERAL COURT PROCEEDINGS.—The Secretary may, to enforce such right under subsection (a) of this section:

"(1) intervene or join in any action or proceeding brought by the injured or diseased veteran, his or her guardian, personal representative, estate, dependents, or survivors, against the participating tobacco product manufacturer, distributor, or retailer of a tobacco product who is liable for the injury or disease; or

"(2) if such action or proceeding is not commenced within six months after the first day on which compensation is paid by the Secretary in connection with the injury or disease involved, institute and prosecute legal proceedings against the participating tobacco product manufacturer, distributor, or retailer of a tobacco product who is liable for the injury or disease, in a State or Federal court, either alone (in its own name or in the name of the injured veteran, his or her guardian, personal representative, estate, dependents, or survivors) or in conjunction with the injured or diseased veteran, his or her guard-

ian, personal representative, estate, dependents, or survivors.

"(c) CREDITS TO APPROPRIATIONS.—Any amount recovered or collected under this section for compensation paid by the Secretary shall be credited to a revolving fund established in the Treasury of the United States known as the Department of Veterans Affairs Tobacco Recovery Fund (hereafter called the Fund). The Fund shall be available to the Secretary without fiscal year limitation for purposes of veterans benefit programs, including administrative costs. The Secretary may transfer such funds as deemed necessary to the various Department of Veterans Affairs appropriations, which shall remain available until expended.

"(d) DEFINITION.—For purposes of this section, the term participating tobacco product manufacturer, distributor, or retailer of a tobacco product means a manufacturer, distributor, or retailer of tobacco products that has entered into a consent decree as such term is defined in section 701 of the National Tobacco Policy and Youth Smoking Reduction Act and that is a signatory to the Protocol as such term is defined in section 6 of that Act.

"§ 9102. Regulations

"(a) DETERMINATION AND ESTABLISHMENT OF PRESENT VALUE OF COMPENSATION TO BE PAID.—The Secretary may prescribe regulations to carry out this chapter,

including regulations with respect to the determination and establishment of the present value of compensation to be paid to an injured or diseased veteran or his or her surviving spouse, child, or parent.

"(b) SETTLEMENT, RELEASE AND WAIVER OF CLAIMS.—To the extent prescribed by regulations under subsection (a) of this section, the Secretary may—

"(1) compromise, or settle and execute a release of, any claim which the Secretary has by virtue of the right established by section 9101 of this title; or

"(2) waive any such claim, in whole or in part, for the convenience of the Government, or if he or she determines that collection would result in undue hardship upon the veteran who suffered the injury or disease or his or her surviving spouse, child or parent resulting in payment of compensation.

"(c) DAMAGES RECOVERABLE FOR PERSONAL INJURY UNAFFECTED.—No action taken by the Secretary in connection with the rights afforded under this chapter shall operate to deny to the injured veteran or his or her surviving spouse, child or parent the recovery for that portion of his or her damage not covered hereunder.

"§ 9103. Limitation or repeal of other provisions for recovery of compensation

"This chapter does not limit or repeal any other provision of law providing for recovery by the Secretary of the cost of compensation described in section 9101 of this title.

"§ 9104. Exemption from annual limitation on damages

"Any amount recovered under section 9101 of this title for compensation paid or to be paid by the Secretary for disability or death from injury or disease attributable in whole or in part to the use of tobacco products by a veteran during the veterans active military, naval, or air service shall not be subject to the limitation on the annual amount of damages for which the participating tobacco product manufacturers, distributors, and retailers may be found liable as provided in the National Tobacco Policy and Youth Smoking Reduction Act and shall not be counted in computing the annual amount of damages for purposes of that section.".

TITLE XIV—REVENUE AND OTHER PROVISIONS

Subtitle A—Taxes on Tobacco Products

SEC. 1400. AMENDMENT OF 1986 CODE.

Except as otherwise expressly provided, whenever in this title an amendment or repeal

is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 1401. TAXES ON TOBACCO PRODUCTS.

(a) CIGARETTES.—Subsection (b) of section 5701 is amended—

(1) by striking "$12 per thousand ($10 per thousand on cigarettes removed during 1991 or 1992);" in paragraph (1) and inserting "the applicable rate per thousand determined in accordance with the following table:

"In the case of cigarettes removed during:	*The applicable rate is:*
1999	*$37.00*
2000	*$67.00*
2001	*$92.00*
2002 and thereafter	*$94.50.";*

and

(2) by striking paragraph (2) and inserting the following:

"(2) LARGE CIGARETTES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), on cigarettes, weighing more than 3 pounds per thousand, the applicable rate per

thousand determined in accordance with the following table:

"In the case of cigarettes removed during:	*The applicable rate is:*
1999	*$77.70*
2000	*$140.70*
2001	*$193.20*
2002 and thereafter	*$198.45.*

"(B) EXCEPTION.—On cigarettes more than 6½ inches in length, at the rate prescribed for cigarettes weighing not more than 3 pounds per thousand, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette."

(b) CIGARS.—Subsection (a) of section 5701 is amended—

(1) by striking "$1.125 cents per thousand (93.75 cents per thousand on cigars removed during 1991 or 1992)," in paragraph (1) and inserting "the applicable rate per thousand determined in accordance with the following table:

"In the case of cigars removed during:	*The applicable rate is:*
1999	*$3.4687 cents*
2000	*$6.2822 cents*
2001	*$8.6264 cents*
2002 and thereafter	*$8.8588 cents.";*

and

(2) by striking paragraph (2) and inserting the following:

"(2) LARGE CIGARS.—On cigars, weighing more than 3 pounds per thousand, the applicable percentage of the price for which sold but not more that the applicable rate per thousand determined in accordance with the following table:

"In the case of cigars removed during:	*The applicable percentage is:*	*The applicable rate is:*
1999	*39.312%*	*$92.50*
2000	*71.189%*	*$167.50*
2001	*97.753%*	*$230.00*
2002 and thereafter	*100.407%*	*$236.25."*

(c) CIGARETTE PAPERS.—Subsection (c) of section 5701 is amended to read as follows:

"(c) CIGARETTE PAPERS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), on each book or set of cigarette papers containing more than 25 papers, manufactured in or imported into the United States, there shall be imposed a tax of the applicable rate for each 50 papers or fractional part thereof as determined in accordance with the following table:

"In the case of cigarette papers removed during:	*The applicable rate is:*
1999	*2.31 cents*
2000	*4.18 cents*
2001	*5.74 cents*
2002 and thereafter	*5.91 cents.*

1 ***"(2) EXCEPTION.—If cigarette papers***
2 ***measure more than 6½ inches in length,***
3 ***such cigarette papers shall be taxable at***
4 ***the rate prescribed, counting each 2¾***
5 ***inches, or fraction thereof, of the length of***
6 ***each as one cigarette paper."***
7 ***(d) CIGARETTE TUBES.—Subsection (d) of***
8 ***section 5701 is amended to read as follows:***
9 ***"(d) CIGARETTE TUBES.—***
10 ***"(1) IN GENERAL.—Except as provided***
11 ***in paragraph (2), on cigarette tubes, man-***
12 ***ufactured in or imported into the United***
13 ***States, there shall be imposed a tax of the***
14 ***applicable rate for each 50 tubes or frac-***
15 ***tional part thereof as determined in ac-***
16 ***cordance with the following table:***

"In the case of cigarette tubes removed during:	*The applicable rate is:*
1999	*4.62 cents*
2000	*8.39 cents*
2001	*11.53 cents*
2002 and thereafter	*11.82 cents.*

17 ***"(2) EXCEPTION.—If cigarette tubes***
18 ***measure more than 6½ inches in length,***

such cigarette tubes shall be taxable at the rate prescribed, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette tube."

(e) SMOKELESS TOBACCO.—Paragraphs (1) and (2) of subsection (e) of section 5701 are amended to read as follows:

"(1) SNUFF.—On snuff, the applicable rate per pound determined in accordance with the following table (and a proportionate tax at the like rate on all fractional parts of a pound):

"In the case of snuff removed during:	*The applicable rate is:*
1999	*$1.11*
2000	*$2.01*
2001	*$2.76*
2002 and thereafter	*$2.835 cents.*

"(2) CHEWING TOBACCO.—On chewing tobacco, the applicable rate per pound determined in accordance with the following table (and a proportionate tax at the like rate on all fractional parts of a pound):

"In the case of chewing tobacco removed during:	*The applicable rate is:*
1999	*37 cents*
2000	*67 cents*
2001	*92 cents*
2002 and thereafter	*94.5 cents."*

(f) PIPE TOBACCO.—Subsection (f) of section 5701 is amended to read as follows:

"(f) PIPE TOBACCO.—On pipe tobacco, manufactured in or imported into the United States, there shall be imposed a tax of the applicable rate per pound determined in accordance with the following table (and a proportionate tax at the like rate on all fractional parts of a pound):

"In the case of pipe tobacco removed during:	*The applicable rate is:*
1999	*$2.0812 cents*
2000	*$3.7705 cents*
2001	*$5.1774 cents*
2002 and therafter	*$5.3157 cents."*

(g) IMPOSITION OF EXCISE TAX ON MANUFACTURE OR IMPORTATION OF ROLL-YOUR-OWN TOBACCO.—

(1) IN GENERAL.—Section 5701 (relating to rate of tax) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) ROLL-YOUR-OWN TOBACCO.—On roll-your-own tobacco, manufactured in or imported into the United States, there shall be imposed a tax of the applicable rate per pound determined in accordance with the following

table (and a proportionate tax at the like rate on all fractional parts of a pound):

"In the case of roll-your-own tobacco removed during:	*The applicable rate is:*
1999	*$2.0812 cents*
2000	*$3.7705 cents*
2001	*$5.1774 cents*
2002 and thereafter	*$5.3157 cents."*

(2) ROLL-YOUR-OWN TOBACCO.—Section 5702 (relating to definitions) is amended by adding at the end the following new subsection:

"(p) ROLL-YOUR-OWN TOBACCO.—The term 'roll-your-own tobacco' means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes."

(3) TECHNICAL AMENDMENTS.—

(A) Subsection (c) of section 5702 is amended by striking "and pipe tobacco" and inserting "pipe tobacco, and roll-your-own tobacco".

(B) Subsection (d) of section 5702 is amended—

(i) in the material preceding paragraph (1), by striking "or pipe tobacco" and inserting "pipe

tobacco, or roll-your-own tobacco", and

(ii) by striking paragraph (1) and inserting the following new paragraph:

"(1) a person who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the person's own personal consumption or use, and".

(C) The chapter heading for chapter 52 is amended to read as follows:

"CHAPTER 52—TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES".

(D) The table of chapters for subtitle E is amended by striking the item relating to chapter 52 and inserting the following new item:

"CHAPTER 52. Tobacco products and cigarette papers and tubes."

(h) INFLATION ADJUSTMENT OF RATES, FLOOR STOCKS TAXES, AND APPLICATION OF TAXES TO POSSESSIONS.—Section 5701, as amended by subsection (g), is amended by redesignating subsection (h) as subsection (j)

and by inserting after subsection (g) the following:

"(h) INFLATION ADJUSTMENT.—

"(1) IN GENERAL.—In the case of any calendar year after 2001, the dollar amount contained in the table in each of the preceding subsections (and the percentage contained in the table contained in subsection (b)(2)) otherwise applicable to such calendar year shall be increased by an amount equal to—

"(A) such dollar amount (or percentage), multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 2000' for 'calendar year 1992' in subparagraph (B) thereof.

"(2) ROUNDING.—If any increase determined under paragraph (1) is not a multiple of—

"(A) in the case of a dollar amount in the table contained in subsection (a)(2) or (b), 50 cents, and

"(B) in the case of a dollar amount in the table contained in subsection (a)(1), (e), (f), or (g), 1 cent,

"(C) in the case of a dollar amount in the table contained in subsection (c) or (d), .01 cent,

such increase shall be rounded to the nearest multiple of the applicable cent unit.

"(i) FLOOR STOCKS TAXES.—

"(1) IMPOSITION OF TAX.—On tobacco products manufactured in or imported into the United States or any possession of the United States which are removed before any tax increase date, and held on such date for sale by any person, there is hereby imposed a tax in an amount equal to the excess of—

"(A) the tax which would be imposed under any preceding subsection of this section on the article if the article had been removed on such date, over

"(B) the prior tax (if any) imposed under such subsection on such article.

"(2) CREDIT AGAINST TAX.—Each person shall be allowed as a credit against the taxes imposed by paragraph (1) an amount equal to $500. Such credit shall not exceed the amount of taxes imposed by paragraph (1) on any tax increase date, for which such person is liable.

"(3) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

"(A) LIABILITY FOR TAX.—A person holding cigarettes on any tax increase date, to which any tax imposed by paragraph (1) applies shall be liable for such tax.

"(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe by regulations.

"(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before the date which is 180 days after any tax increase date.

"(4) ARTICLES IN FOREIGN TRADE ZONES.—Notwithstanding the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a) and

any other provision of law, any article which is located in a foreign trade zone on any tax increase date, shall be subject to the tax imposed by paragraph (1) if—

"(A) internal revenue taxes have been determined, or customs duties liquidated, with respect to such article before such date pursuant to a request made under the 1st proviso of section 3(a) of such Act, or

"(B) such article is held on such date under the supervision of a customs officer pursuant to the 2d proviso of such section 3(a).

"(5) TAX INCREASE DATE.—The term "tax increase date" means January 1 in any calendar year after 1998.

"(6) CONTROLLED GROUPS.—Rules similar to the rules of section 5061(e)(3) shall apply for purposes of this subsection.

"(7) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by the preceding subsections of this section shall, insofar as applicable and not in-

consistent with the provisions of this subsection, apply to the floor stocks taxes imposed by paragraph (1), to the same extent as if such taxes were imposed by such subsections. The Secretary may treat any person who bore the ultimate burden of the tax imposed by paragraph (1) as the person to whom a credit or refund under such provisions may be allowed or made.

"(j) APPLICATION OF TAXES TO U.S. POSSESSIONS.—Notwithstanding subsections (b) and (c) of section 7653 and any other provision of law—

"(1) IN GENERAL.—On tobacco products manufactured in or imported into any possession of the United States, there is hereby imposed a tax at the rate equal to the excess of—

"(A) the rate of tax applicable under this section to like articles manufactured in the United States, over

"(B) the rate referred to in subparagraph (A) which would have been in effect if the amendments made by

the National Tobacco Policy and Youth Smoking Reduction Act had not been enacted.

"(2) SHIPMENTS TO U.S. POSSESSIONS FROM THE UNITED STATES.—Only the rates of tax which would have been in effect if the amendments made by the National Tobacco Policy and Youth Smoking Reduction Act had not been enacted shall be taken into account in determining the amount of any exemption from, or credit or drawback of, any tax imposed by this section on any article shipped to any possession of the United States from the United States.

"(3) SHIPMENTS FROM U.S. POSSESSIONS TO THE UNITED STATES.—The rates of tax taken into account under section 7652(a) with respect to tobacco products coming into the United States from any possession of the United States shall be the rates of tax which would have been in effect if the amendments made by the National Tobacco Policy and Youth Smoking Reduction Act had not been enacted.

"(4) DISPOSITION OF REVENUES.—The provisions of section 7652(a)(3) shall not apply to any tax imposed by reason of this subsection."

(j) MODIFICATIONS OF CERTAIN TOBACCO TAX PROVISIONS.—

(1) EXEMPTION FOR EXPORTED TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES TO APPLY ONLY TO ARTICLES MARKED FOR EXPORT.—

(A) Subsection (b) of section 5704 is amended by adding at the end the following new sentence: "Tobacco products and cigarette papers and tubes may not be transferred or removed under this subsection unless such products or papers and tubes bear such marks, labels, or notices as the Secretary shall by regulations prescribe."

(B) Section 5761 is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) SALE OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES FOR EXPORT.—Except as provided in subsections (b) and (d) of section 5704—

"(1) every person who sells, relands, or receives within the jurisdiction of the United States any tobacco products or cigarette papers or tubes which have been labeled or shipped for exportation under this chapter,

"(2) every person who sells or receives such relanded tobacco products or cigarette papers or tubes, and

"(3) every person who aids or abets in such selling, relanding, or receiving,

shall, in addition to the tax and any other penalty provided in this title, be liable for a penalty equal to the greater of $1,000 or 5 times the amount of the tax imposed by this chapter. All tobacco products and cigarette papers and tubes relanded within the jurisdiction of the United States, and all vessels, vehicles, and aircraft used in such relanding or in removing such products, papers, and tubes from the

place where relanded, shall be forfeited to the United States."

(C) Subsection (a) of section 5761 is amended by striking "subsection (b)" and inserting "subsection (b) or (c)".

(D) Subsection (d) of section 5761, as redesignated by subparagraph (B), is amended by striking "The penalty imposed by subsection (b)" and inserting "The penalties imposed by subsections (b) and (c)".

(E)(i) Subpart F of chapter 52 is amended by adding at the end the following new section:

"SEC. 5754. RESTRICTION ON IMPORTATION OF PREVIOUSLY EXPORTED TOBACCO PRODUCTS.

"(a) IN GENERAL.—Tobacco products and cigarette papers and tubes previously exported from the United States may be imported or brought into the United States only as provided in section 5704(d). For purposes of this section, section 5704(d), section 5761, and such other provisions as the Secretary may specify by regulations, references to exportation shall

be treated as including a reference to shipment to the Commonwealth of Puerto Rico.

"(b) CROSS REFERENCE.—

"For penalty for the sale of tobacco products and cigarette papers and tubes in the United States which are labeled for export, see section 5761(c)."

(ii) The table of sections for subpart F of chapter 52 is amended by adding at the end the following new item:

"Sec. 5754. Restriction on importation of previously exported tobacco products."

(2) IMPORTERS REQUIRED TO BE QUALIFIED.—

(A) Sections 5712, 5713(a), 5721, 5722, 5762(a)(1), and 5763 (b) and (c) are each amended by inserting "or importer" after "manufacturer".

(B) The heading of subsection (b) of section 5763 is amended by inserting "QUALIFIED IMPORTERS," after "MANUFACTURERS,".

(C) The heading for subchapter B of chapter 52 is amended by inserting "and Importers" after "Manufacturers".

(D) The item relating to subchapter B in the table of subchapters for chapter 52 is amended by inserting "and importers" after "manufacturers".

(3) BOOKS OF 25 OR FEWER CIGARETTE PAPERS SUBJECT TO TAX.—Subsection (c) of section 5701 is amended by striking "On each book or set of cigarette papers containing more than 25 papers," and inserting "On cigarette papers,".

(4) STORAGE OF TOBACCO PRODUCTS.—Subsection (k) of section 5702 is amended by inserting "under section 5704" after "internal revenue bond".

(5) AUTHORITY TO PRESCRIBE MINIMUM MANUFACTURING ACTIVITY REQUIREMENTS.—Section 5712 is amended by striking "or" at the end of paragraph (1), by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following new paragraph:

"(2) the activity proposed to be carried out at such premises does not meet such

minimum capacity or activity requirements as the Secretary may prescribe, or".

(k) REPEAL OF DUPLICATIVE PROVISIONS.—Section 9302 of the Balanced Budget Act of 1997 (other than subsection (i)(2)) and the amendments made by such section are repealed, and the Internal Revenue Code of 1986 shall be administered as if such section and such amendments had not been enacted.

(l) EFFECTIVE DATE.—The amendments and repeal made by this section shall apply to articles removed (as defined in section 5702(k) of the Internal Revenue Code of 1986, as amended by this section) after December 30, 1998.

SEC. 1402. EXCISE TAX ON FAILURE TO MEET UNDERAGE SMOKING REDUCTION GOALS.

(a) IN GENERAL.—Subchapter G of chapter 52 (relating to penalties and forfeitures) is amended by adding at the end the following new part:

"PART II—FAILURE TO MEET UNDERAGE SMOKING REDUCTION GOALS

"Sec. 5771. Excise tax on failure to meet underage smoking reduction goals.

"SEC. 5771. EXCISE TAX ON FAILURE TO MEET UNDERAGE SMOKING REDUCTION GOALS.

"(a) IMPOSITION OF TAX.—If the Secretary determines under subsection (f) for any calendar year that there is a failure to attain the required percentage reduction in underage use of cigarettes or smokeless tobacco, then there is hereby imposed on each applicable person with respect to such product a tax in the amount determined under subsection (b).

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) on any applicable person with respect to cigarettes or smokeless tobacco for any calendar year shall be an amount equal to such person's applicable percentage of the non-attainment penalty for such product for such calendar year.

"(c) LIABILITY FOR AND PAYMENT OF TAX.—

"(1) LIABILITY.—

"(A) IN GENERAL.—Each applicable person shall be liable for the tax imposed under subsection (a) on such person.

"(B) JOINT, SEVERAL, AND STRICT LIABILITY.—

"(i) CIGARETTES.—Any tax imposed by subsection (a) on any applicable person with respect to cigarettes shall be the joint, several, and strict liability of all applicable persons with respect to cigarettes.

"(ii) SMOKELESS TOBACCO.—Any tax imposed by subsection (a) on any applicable person with respect to smokeless tobacco shall be the joint, several, and strict liability of all applicable persons with respect to smokeless tobacco.

The Secretary shall make a reasonable effort to collect any tax under this section on the person on which the tax was imposed (without regard to this subparagraph).

"(2) TIME FOR PAYMENT.—Any tax imposed by subsection (a) for any calendar year shall be due and payable on April 1 of the following calendar year.

"(d) APPLICABLE PERSON; APPLICABLE PERCENTAGE.—For purposes of this section—

"(1) APPLICABLE PERSON.—The term 'applicable person' means, with respect to any calendar year, any person liable for tax imposed by section 5201 with respect to cigarettes or smokeless tobacco.

"(2) APPLICABLE PERCENTAGE.—The term 'applicable percentage' means, with respect to any product of an applicable person for a calendar year, the percentage (determined by the Secretary) equal to the ratio of—

"(A) the liability of the person for the taxes imposed by section 5701 on such product for the calendar year, to

"(B) such liability for all applicable persons with respect to such product for the calendar year.

"(3) LIABILITY FOR TAX.—For purposes of this subsection, liability for tax imposed by section 5701 shall be determined without regard to section 5703 and net of any credit or refund before the determination date.

"(e) CALCULATION OF NON-ATTAINMENT PENALTIES.—

"(1) SECRETARY TO DETERMINE NON-ATTAINMENT PENALTY.—Not later than February 15 of each calendar year, the Secretary shall determine and publish—

"(A) the non-attainment penalty (if any) for cigarettes and for smokeless tobacco for the preceding calendar year, and

"(B) the applicable percentage for such preceding calendar year for each applicable person.

"(2) NON-ATTAINMENT PENALTY FOR CIGARETTES.—The non-attainment penalty for cigarettes for any calendar year for which a failure is determined under subsection (f) shall be determined as follows:

If the non-attainment percentage is:	*The penalty is:*
Not more than 5 percent	*$80,000,000 multiplied by the non-attainment percentage*
More than 5% but not more than 10%	*$400,000,000, plus $160,000,000 multiplied by the non-attainment percentage in excess of 5% but not in excess of 10%*
More than 10% but not more than 20%	*$1,200,000,000, plus $240,000,000 multiplied by the non-attainment percentage in excess of 10% but not in excess of 20%*
More than 20%	*$3,600,000,000*

"(3) NON-ATTAINMENT PENALTY FOR SMOKELESS TOBACCO.—The non-attainment penalty for smokeless tobacco for any calendar year for which a failure is determined under subsection (f) shall be determined as follows:

If the non-attainment percentage is:	*The penalty is:*
Not more than 5 percent	*$8,000,000 multiplied by the non-attainment percentage*
More than 5% but not more than 10%	*$40,000,000, plus $16,000,000 multiplied by the non-attainment percentage in excess of 5% but not in excess of 10%*
More than 10% but not more than 20%	*$120,000,000, plus $24,000,000 multiplied by the non-attainment percentage in excess of 10% but not in excess of 20%*
More than 20%	*$360,000,000*

"(4) PENALTIES TO BE ADJUSTED FOR INFLATION.—

"(A) IN GENERAL.—Beginning with the fourth calendar year beginning after the date of enactment of this section, each dollar amount in the tables in paragraphs (2) and (3) shall be increased by the inflation adjustment.

"(B) INFLATION ADJUSTMENT.—For purposes of subparagraph (A), the in-

flation adjustment for any calendar year is the percentage (if any) by which—

"(i) the CPI for the preceding calendar year, exceeds

"(ii) the CPI for the calendar year 1998.

"(C) CPI.—For purposes of subparagraph (B), the CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor as of the close of the 12-month period ending August 31 of such calendar year.

"(D) ROUNDING.—If any increase determined under subparagraph (A) is not a multiple of $1,000, the increase shall be rounded to the nearest multiple of $1,000.

"(f) FAILURES TO WHICH SECTION APPLIES.—For purposes of this section—

"(1) REQUIRED REDUCTION.—

"(A) REQUIRED REDUCTIONS FOR CIGARETTES.—With respect to ciga-

1 *rettes, the required percentage reduc-*
2 *tion in underage use means—*

Calendar Year	*Required Percentage Reduction as a Percentage of Base Incidence Percentage in Underage Cigarette Use*
2001 and 2002	*15 percent*
2003 and 2004	*30 percent*
2005, 2006, and 2007	*50 percent*
2008 and thereafter	*60 percent*

3 *"(B) REQUIRED REDUCTIONS FOR*
4 *SMOKELESS TOBACCO.—With respect to*
5 *smokeless tobacco products, the re-*
6 *quired percentage reduction in under-*
7 *age use means—*

Calendar Year	*Required Percentage Reduction as a Percentage of Base Incidence Percentage in Underage Smokeless Tobacco Use*
2001 and 2002	*12.5 percent*
2003 and 2004	*25 percent*
2005, 2006, and 2007	*35 percent*
2008 and thereafter	*45 percent*

1 ***"(2) DETERMINATION OF UNDERAGE***
2 ***USE.—As soon as practicable after cal-***
3 ***endar year 2001, and annually thereafter,***
4 ***the Secretary shall determine the percent***
5 ***incidence of underage use of cigarettes***
6 ***and of smokeless tobacco by calculating***
7 ***the average, weighted by relative popu-***
8 ***lation of such age groups in 1995 as deter-***
9 ***mined by the Bureau of the Census, of the***
10 ***percentages of individuals in grade 12***
11 ***(ages 16 and 17), in grade 10 (ages 14 and***
12 ***15), and in grade 8 (age 13) who used***
13 ***cigarettes or smokeless tobacco, as appro-***
14 ***priate, on a daily basis during the preced-***
15 ***ing calendar year. The percentages used***
16 ***in this calculation are to be those meas-***
17 ***ured by (A) the University of Michigan***
18 ***Survey, or (B) such other index as is cho-***
19 ***sen by the Secretary after consultation***
20 ***with the Secretary of Health and Human***

Services and after notice and the opportunity for comment in accordance with section 553 of title 5, United States Code.

"(3) BASE INCIDENCE PERCENTAGE.—The term 'base incidence percentage' means—

"(A) in the case of cigarettes, the average, weighted by relative population of the following age groups in 1995 as determined by the Bureau of the Census, of (i) the average of the percentages of individuals in grade 12 (ages 16 and 17) from 1986 to 1996 who used cigarettes on a daily basis; (ii) the average of the percentages of individuals in grade 10 (ages 14 and 15) from 1991 to 1996 who used cigarettes on a daily basis; and (iii) the average of the percentages of individuals in grade 8 (age 13) from 1991 to 1996 who used cigarettes on a daily basis; and

"(B) in the case of smokeless tobacco products, the average, weighted by relative population of the following age groups in 1995 as determined by

the Bureau of the Census, of the percentage of individuals in grade 12 (ages 16 and 17), individuals in grade 10 (ages 14 and 15), and individuals in grade 8 (age 13) who used smokeless tobacco products on a daily basis in 1996.

The percentages specified in this paragraph are those measured by using an index similar to the index used for purposes of paragraph (2).

"(4) NON-ATTAINMENT PERCENTAGE FOR CIGARETTES.—The term 'non-attainment percentage for cigarettes' means the number of percentage points yielded—

"(A) for a calendar year in which the percent incidence of underage use of cigarettes is less than the base incidence percentage for such use, by subtracting—

"(i) the percentage by which the percent incidence of underage use of cigarettes in that year is less than the base incidence percentage, from

"(ii) the required percentage reduction applicable in that year; and

"(B) for a calendar year in which the percent incidence of underage use of cigarettes is greater than the base incidence percentage for such use, by adding—

"(i) the percentage by which the percent incidence of underage use of cigarettes in that year is greater than the base incidence percentage; and

"(ii) the required percentage reduction applicable in that year.

"(5) NON-ATTAINMENT PERCENTAGE FOR SMOKELESS TOBACCO PRODUCTS.—The term 'non-attainment percentage for smokeless tobacco products' means the number of percentage points yielded—

"(A) for a calendar year in which the percent incidence of underage use of smokeless tobacco products is less than the base incidence percentage for such use, by subtracting—

"(i) the percentage by which the percent incidence of underage use of smokeless tobacco products in that year is less than the base incidence percentage, from

"(ii) the required percentage reduction applicable in that year; and

"(B) for a calendar year in which the percent incidence of underage use of smokeless tobacco products is greater than the base incidence percentage for such use, by adding—

"(i) the percentage by which the percent incidence of underage use of smokeless tobacco products in that year is greater than the base incidence percentage; and

"(ii) the required percentage reduction applicable in that year.

"(g) PENALTY LIABILITY AMONG MANUFACTURERS.—

"(1) IN GENERAL.—The District Courts of the United States shall have jurisdiction to adjudicate any claim brought

under this section by an applicable person against one or more other applicable persons—

"(A) to recover a portion of the penalty paid by the plaintiff applicable person; or

"(B) for a reallocation of the penalty among applicable persons.

"(2) CONTRIBUTION OR REIMBURSEMENT LIABILITY.—An applicable person shall be liable under this subsection to one or more other applicable persons if the plaintiff establishes by a preponderance of the evidence that the defendant, through its acts or omissions, was responsible for a disproportionate share of the non-attainment penalty as compared to the responsibility of the plaintiff.

"(3) RESPONSIBILITY FOR AGENTS, ETC.—In any action brought under this subsection, an applicable person shall be held responsible for any act or omission of its attorneys, advertising agencies, or other agents that contributed to that per-

son's responsibility for the penalty assessed under this section."

(b) TAX NOT DEDUCTIBLE.—Section 275(a) is amended by adding after paragraph (6) the following new paragraph:

"(7) The tax imposed by section 5771."

(c) CONFORMING AMENDMENTS.—So much of subchapter G of chapter 52 as precedes section 5761 as amended reads as follows:

"Subchapter G—Penalties and Forfeitures

"Part I—General provisions.
"Part II—Failure to meet underage smoking reduction goals.

"PART I—GENERAL PROVISIONS".

SEC. 1403. ESTABLISHMENT OF TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 (relating to establishment of trust funds) is amended by adding at the end the following new section:

"SEC. 9512. NATIONAL TOBACCO SETTLEMENT TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'National Tobacco Settlement Trust Fund', consisting of such amounts as may be appropriated or credited to the National Tobacco

Settlement Trust Fund as provided in this section.

"(b) TRANSFERS TO NATIONAL TOBACCO SETTLEMENT TRUST FUND.—

"(1) IN GENERAL.—There are appropriated to the National Tobacco Settlement Trust Fund—

"(A) amounts equivalent to the net revenues received in the Treasury after December 31, 1998, from the taxes imposed by section 5701 to the extent attributable to increases in the rates of tax imposed by such section over the rates which would have been imposed if the National Tobacco Policy and Youth Smoking Reduction Act had not been enacted,

"(B) amounts equivalent to the net revenues received in the Treasury after December 31, 1998, from the tax imposed by section 5771, and

"(C) amounts determined by the Secretary to be equivalent to the amounts of civil penalties collected under the provisions of, and amend-

ments made by, the National Tobacco Policy and Youth Smoking Reduction Act.

"(2) NET REVENUES.—The term 'net revenues' means the amount estimated by the Secretary based on the excess of—

"(A) the taxes received in the Treasury as described in subparagraphs (A) and (B) of paragraph (1), over

"(B) the decrease in the tax imposed by chapter 1 resulting from the imposition of the taxes described in subparagraph (A).

"(c) EXPENDITURES FROM TRUST FUND.—

"(1) IN GENERAL.—Except as provided in this subsection and subsection (d), amounts in the National Tobacco Settlement Trust Fund shall be available, as provided by appropriations Acts, for making expenditures after December 31, 1998, under the provisions of, and the amendments made by, the National Tobacco Policy and Youth Smoking Reduction Act, as

in effect on the date of the enactment of this section.

"(2) ECONOMIC ASSISTANCE TO FARMERS.—

"(A) IN GENERAL.—Amounts in the National Tobacco Settlement Trust Fund shall be available, without further appropriations, for the purposes set forth in sections 1021, 1022, 1023, and 1031 of the National Tobacco Policy and Youth Smoking Reduction Act, and subpart 9 of part A of title IV of the Higher Education Act of 1965 (relating to long-term economic assistance to farmers), as in effect on the date of the enactment of this Act.

"(B) BUDGETARY TREATMENT.—This paragraph constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide payments to States and eligible persons in accordance with the provisions described in subparagraph (A).

"(3) TAX REFUNDS.—The Secretary shall pay from time to time from the National Tobacco Settlement Trust Fund into the general fund of the Treasury amounts equivalent to refunds provided under subchapter A of chapter 52 to the extent such refunds are attributable to the revenues transferred to such Trust Fund under this section.

"(d) STATE LITIGATION SETTLEMENT ACCOUNT.—

"(1) IN GENERAL.—There is established in the National Tobacco Settlement Trust Fund a separate account to be known as the 'State Litigation Settlement Account', consisting of such amounts as may be transferred to such Account under paragraph (2).

"(2) TRANSFERS TO ACCOUNT.—The Secretary of the Treasury shall transfer to the State Litigation Settlement Account an amount equal to 45 percent (30 percent in the case of calendar years 1999, 2000, 2001, 2002, and 2003) of the amounts ap-

propriated to the National Tobacco Settlement Trust Fund under subsection (b).

"(3) EXPENDITURES FROM ACCOUNT.—

"(A) IN GENERAL.—Except as provided in paragraph (5), amounts in the State Litigation Settlement Account shall be available, without further appropriations, to make payments to each State in the amount determined under subparagraph (B). The Secretary shall transfer amounts available under this subsection to each State as amounts are credited to the State Litigation Settlement Account without undue delay.

"(B) AMOUNT.—Except as provided in paragraph (4), the amount of any payment to a State under subparagraph (A) for any calendar year shall be equal to the percentage of the amounts transferred to the State Litigation Settlement Account for such calendar year determined in accordance with the following table:

"States:	*Percentage:*
Alabama	*1.237*
Alaska	*0.400*

Arizona	*1.709*
Arkansas	*0.954*
California	*8.695*
Colorado	*0.990*
Connecticut	*1.548*
Delaware	*0.400*
District of Columbia	*0.474*
Florida	*4.768*
Georgia	*2.735*
Hawaii	*0.800*
Idaho	*0.400*
Illinois	*3.930*
Indiana	*1.490*
Iowa	*0.932*
Kansas	*0.800*
Kentucky	*1.664*
Louisiana	*1.723*
Maine	*0.800*
Maryland	*1.425*
Massachusetts	*3.802*
Michigan	*3.586*
Minnesota	*1.246*
Mississippi	*1.701*
Missouri	*1.701*
Montana	*0.400*
Nebraska	*0.400*
Nevada	*0.400*
New Hampshire	*0.400*
New Jersey	*3.755*
New Mexico	*0.800*
New York	*12.812*
North Carolina	*1.977*
North Dakota	*0.400*
Ohio	*4.205*
Oklahoma	*0.800*
Oregon	*1.353*
Pennsylvania	*4.421*
Rhode Island	*0.800*
South Carolina	*1.090*
South Dakota	*0.400*
Tennessee	*2.851*
Texas	*5.930*
Utah	*0.400*
Vermont	*0.400*
Virginia	*1.348*
Washington	*1.726*
West Virginia	*0.782*
Wisconsin	*1.841*
Wyoming	*0.400.*

1 ***"(C) APPLICATION OF MEDICAID COST***

2 ***RECOVERY RULES.—Subject to section***

1903(d)(7) of the Social Security Act, a State may use amounts received under this paragraph as the State determines appropriate.

"(4) MINIMUM PAYMENTS TO SETTLEMENT STATES.—

"(A) IN GENERAL.—In the case of the State of Florida, Minnesota, Mississippi, or Texas, the payment under paragraph (3)(A) for any calendar year shall be equal to the greater of—

"(i) the amount of the payment determined under paragraph (3)(B), or

"(ii) the aggregate payments which, but for paragraph (5), would have been received by such State for such calendar year under the settlement, judgment, or other agreement with respect to which payments were waived under paragraph (5).

"(B) REALLOCATION OF AMOUNTS FOR OTHER STATES.—If the amount determined under subparagraph (A)(ii)

exceeds the amount determined under subparagraph (A)(i) for 1 or more States for any calendar year, the amount of the payments under paragraph (3)(A) to all States to which subparagraph (A) does not apply shall be ratably reduced by the aggregate amount of such excess for all 4 States.

"(5) WAIVER OF PAYMENTS FROM STATE LITIGATION.—

"(A) IN GENERAL.—No payment shall be made from the State Litigation Settlement Account to any State unless such State agrees to waive its rights to receive funds after the date of the enactment of this Act under any settlement, entry of a court judgment, or other agreement, that resolves litigation by the State against a tobacco manufacturer or a group of tobacco manufacturers for expenditures of the State for tobacco-related diseases or conditions.

"(B) REDISTRIBUTION OF WAIVED PAYMENTS.—If a waiver is not in effect

under this paragraph with respect to a State for a calendar year, any payments out of the State Litigation Settlement Account which would otherwise have been made to such State shall be reallocated to all other States receiving such payments for such calendar year in the same proportion as the payments received by any State bear to all such payments.

"(C) WAIVER.—Any waiver under subparagraph (A) shall be made before the date which is 1 year after the date of the enactment of this section and, once made, is irrevocable.

"(6) BUDGETARY TREATMENT.—This subsection constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide payments to States in accordance with the provisions described in paragraph (3).

"(e) LIMITATION ON TRANSFERS TO TRUST FUND.—No amount may be appropriated to the National Tobacco Settlement Trust Fund or

the State Litigation Settlement Account on or after the date of any expenditure from such Trust Fund or Account which is not permitted by this section. The determination of whether an expenditure is so permitted shall be made without regard to—

"(1) any provision of law which is not contained or referenced in this title or in a revenue Act, and

"(2) whether such provision of law is a subsequently enacted provision or directly or indirectly seeks to waive the application of this subsection."

(b) INTEREST NOT CREDITED TO TRUST FUND.—Section 9602(b)(3) (relating to interest on certain proceeds) is amended by striking "The interest" and inserting "Except with respect to the National Tobacco Settlement Trust Fund, the interest".

(c) APPLICATION OF MEDICAID COST RECOVERY RULES.—Section 1903(d) of the Social Security Act (42 U.S.C. 1396b(d)) is amended by adding at the end the following:

"(7)(A) Except as provided under subparagraph (B), the provisions of this subsection re-

lating to the treatment of overpayments, and any other cost recovery rules applicable to payments made under this title, shall apply to the portion of any of the following amounts that is used for expenditures under or related to the State plan (or a waiver of such plan) under this title:

"(i) Payments from the State Litigation Settlement Account established under section 9512(d) of the Internal Revenue Code of 1986.

"(ii) Payments received as a result of litigation by the State against a tobacco manufacturer or a group of tobacco manufacturers based on expenditures of the State for tobacco-related diseases or conditions that is resolved through a settlement, entry of a court judgment, or otherwise.

"(B) Upon receipt of certification by the chief executive officer of a State that the State shall not use payments described in clauses (i) or (ii) of subparagraph (A) for expenditures under or related to the State plan (or a waiver of such plan) under this title, the Secretary

shall waive the application of the provisions of this subsection relating to the treatment of overpayments, and any other cost recovery rules applicable to payments made under this title, to such payments."

(d) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 is amended by adding at the end the following:

"Sec. 9512. National Tobacco Settlement Trust Fund."

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle B—Women's Health and Cancer Rights

SEC. 1411. SHORT TITLE.

This subtitle may be cited as the "Women's Health and Cancer Rights Act of 1998".

SEC. 1412. FINDINGS.

Congress finds that—

(1) the offering and operation of health plans affect commerce among the States;

(2) health care providers located in a State serve patients who reside in the State and patients who reside in other States; and

(3) in order to provide for uniform treatment of health care providers and patients among the States, it is necessary to cover health plans operating in 1 State as well as health plans operating among the several States.

SEC. 1413. AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185 et seq.) is amended by adding at the end the following new section:

"SEC. 713. REQUIRED COVERAGE FOR MINIMUM HOSPITAL STAY FOR MASTECTOMIES AND LYMPH NODE DISSECTIONS FOR THE TREATMENT OF BREAST CANCER AND COVERAGE FOR RECONSTRUCTIVE SURGERY FOLLOWING MASTECTOMIES.

"(a) INPATIENT CARE.—

"(1) IN GENERAL.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, that provides medical and surgical benefits

shall ensure that inpatient coverage with respect to the surgical treatment of breast cancer (including a mastectomy, lumpectomy, or lymph node dissection for the treatment of breast cancer) is provided for a period of time as is determined by the attending physician, in his or her professional judgment consistent with scientific evidence-based practice, in consultation with the patient, and subject to subsection (d), to be medically appropriate.

"(2) EXCEPTION.—Nothing in this section shall be construed as requiring the provision of inpatient coverage if the attending physician in consultation with the patient determine that a shorter period of hospital stay is medically appropriate.

"(b) RECONSTRUCTIVE SURGERY.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, that provides medical and surgical benefits with respect to a mastectomy shall ensure that, in a

case in which a mastectomy patient elects breast reconstruction, coverage is provided for—

"(1) all stages of reconstruction of the breast on which the mastectomy has been performed;

"(2) surgery and reconstruction of the other breast to produce a symmetrical appearance; and

"(3) the costs of prostheses and complications of mastectomy including lymphedemas;

in the manner determined by the attending physician and the patient to be appropriate. Such coverage may be subject to annual deductibles and coinsurance provisions as may be deemed appropriate and as are consistent with those established for other benefits under the plan or coverage. Written notice of the availability of such coverage shall be delivered to the participant upon enrollment and annually thereafter.

"(c) NOTICE.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group

health plan shall provide notice to each participant and beneficiary under such plan regarding the coverage required by this section in accordance with regulations promulgated by the Secretary. Such notice shall be in writing and prominently positioned in any literature or correspondence made available or distributed by the plan or issuer and shall be transmitted—

"(1) in the next mailing made by the plan or issuer to the participant or beneficiary;

"(2) as part of any yearly informational packet sent to the participant or beneficiary; or

"(3) not later than January 1, 1998;

whichever is earlier.

"(d) NO AUTHORIZATION REQUIRED.—

"(1) IN GENERAL.—An attending physician shall not be required to obtain authorization from the plan or issuer for prescribing any length of stay in connection with a mastectomy, a lumpectomy, or a lymph node dissection for the treatment of breast cancer.

"(2) PRENOTIFICATION.—Nothing in this section shall be construed as preventing a group health plan from requiring prenotification of an inpatient stay referred to in this section if such requirement is consistent with terms and conditions applicable to other inpatient benefits under the plan, except that the provision of such inpatient stay benefits shall not be contingent upon such notification.

"(e) PROHIBITIONS.—A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, may not—

"(1) deny to a patient eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section;

"(2) provide monetary payments or rebates to individuals to encourage such individuals to accept less than the minimum protections available under this section;

"(3) penalize or otherwise reduce or limit the reimbursement of an attending provider because such provider provided care to an individual participant or beneficiary in accordance with this section;

"(4) provide incentives (monetary or otherwise) to an attending provider to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section; and

"(5) subject to subsection (f)(3), restrict benefits for any portion of a period within a hospital length of stay required under subsection (a) in a manner which is less favorable than the benefits provided for any preceding portion of such stay.

"(f) RULES OF CONSTRUCTION.—

"(1) IN GENERAL.—Nothing in this section shall be construed to require a patient who is a participant or beneficiary—

"(A) to undergo a mastectomy or lymph node dissection in a hospital; or

"(B) to stay in the hospital for a fixed period of time following a mastectomy or lymph node dissection.

"(2) LIMITATION.—This section shall not apply with respect to any group health plan, or any group health insurance coverage offered by a health insurance issuer, which does not provide benefits for hospital lengths of stay in connection with a mastectomy or lymph node dissection for the treatment of breast cancer.

"(3) COST SHARING.—Nothing in this section shall be construed as preventing a group health plan or issuer from imposing deductibles, coinsurance, or other cost-sharing in relation to benefits for hospital lengths of stay in connection with a mastectomy or lymph node dissection for the treatment of breast cancer under the plan (or under health insurance coverage offered in connection with a group health plan), except that such coinsurance or other cost-sharing for any portion of a period within a hospital length of stay required under subsection

(a) may not be greater than such coinsurance or cost-sharing for any preceding portion of such stay.

"(4) LEVEL AND TYPE OF REIMBURSEMENTS.—Nothing in this section shall be construed to prevent a group health plan or a health insurance issuer offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

"(g) PREEMPTION, RELATION TO STATE LAWS.—

"(1) IN GENERAL.—Nothing in this section shall be construed to preempt any State law in effect on the date of enactment of this section with respect to health insurance coverage that—

"(A) requires coverage for a minimum hospital length of stay following a surgical treatment for breast cancer;

"(B) requires coverage of at least the coverage of reconstructive breast

surgery otherwise required under this section; or

"(C) requires coverage for breast cancer treatments (including breast reconstruction) in accordance with scientific evidence-based practices or guidelines recommended by established medical associations.

"(2) APPLICATION OF SECTION.—With respect to a State law—

"(A) described in paragraph (1)(A), the provisions of this section relating to breast reconstruction shall apply in such State; and

"(B) described in paragraph (1)(B), the provisions of this section relating to length of stays for surgical breast treatment shall apply in such State.

"(3) ERISA.—Nothing in this section shall be construed to affect or modify the provisions of section 514 with respect to group health plans.".

(b) CLERICAL AMENDMENT.—The table of contents in section 1 of the Employee Retire-

ment Income Security Act of 1974 (29 U.S.C. 1001 note) is amended by inserting after the item relating to section 712 the following new item:

"Sec. 713. Required coverage for minimum hospital stay for mastectomies and lymph node dissections for the treatment of breast cancer and coverage for reconstructive surgery following mastectomies.".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to plan years beginning on or after the date of enactment of this Act.

(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

SEC. 1414. AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT RELATING TO THE GROUP MARKET.

(a) IN GENERAL.—Subpart 2 of part A of title XXVII of the Public Health Service Act (42 U.S.C. 300gg-4 et seq.) is amended by adding at the end the following new section:

"SEC. 2706. REQUIRED COVERAGE FOR MINIMUM HOSPITAL STAY FOR MASTECTOMIES AND LYMPH NODE DISSECTIONS FOR THE TREATMENT OF BREAST CANCER AND COVERAGE FOR RECONSTRUCTIVE SURGERY FOLLOWING MASTECTOMIES.

"(a) INPATIENT CARE.—

"(1) IN GENERAL.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, that provides medical and surgical benefits shall ensure that inpatient coverage with respect to the surgical treatment of breast cancer (including a mastectomy, lumpectomy, or lymph node dissection for the treatment of breast cancer) is provided for a period of time as is determined by the attending physician, in his or her professional judgment consistent with sci-

entific evidence-based practice, in consultation with the patient, and subject to subsection (d), to be medically appropriate.

"(2) EXCEPTION.—Nothing in this section shall be construed as requiring the provision of inpatient coverage if the attending physician in consultation with the patient determine that a shorter period of hospital stay is medically appropriate.

"(b) RECONSTRUCTIVE SURGERY.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, that provides medical and surgical benefits with respect to a mastectomy shall ensure that, in a case in which a mastectomy patient elects breast reconstruction, coverage is provided for—

"(1) all stages of reconstruction of the breast on which the mastectomy has been performed;

"(2) surgery and reconstruction of the other breast to produce a symmetrical appearance; and

"(3) the costs of prostheses and complications of mastectomy including lymphedemas;

in the manner determined by the attending physician and the patient to be appropriate. Such coverage may be subject to annual deductibles and coinsurance provisions as may be deemed appropriate and as are consistent with those established for other benefits under the plan or coverage. Written notice of the availability of such coverage shall be delivered to the enrollee upon enrollment and annually thereafter.

"(c) NOTICE.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan shall provide notice to each participant and beneficiary under such plan regarding the coverage required by this section in accordance with regulations promulgated by the Secretary. Such notice shall be in writing and prominently positioned in any lit-

erature or correspondence made available or distributed by the plan or issuer and shall be transmitted—

"(1) in the next mailing made by the plan or issuer to the participant or beneficiary;

"(2) as part of any yearly informational packet sent to the participant or beneficiary; or

"(3) not later than January 1, 1998;

whichever is earlier.

"(d) NO AUTHORIZATION REQUIRED.—

"(1) IN GENERAL.—An attending physician shall not be required to obtain authorization from the plan or issuer for prescribing any length of stay in connection with a mastectomy, a lumpectomy, or a lymph node dissection for the treatment of breast cancer.

"(2) PRENOTIFICATION.—Nothing in this section shall be construed as preventing a plan or issuer from requiring prenotification of an inpatient stay referred to in this section if such requirement is consistent with terms and condi-

tions applicable to other inpatient benefits under the plan, except that the provision of such inpatient stay benefits shall not be contingent upon such notification.

"(e) PROHIBITIONS.—A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, may not—

"(1) deny to a patient eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section;

"(2) provide monetary payments or rebates to individuals to encourage such individuals to accept less than the minimum protections available under this section;

"(3) penalize or otherwise reduce or limit the reimbursement of an attending provider because such provider provided care to an individual participant or beneficiary in accordance with this section;

"(4) provide incentives (monetary or otherwise) to an attending provider to in-

duce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section; and

"(5) subject to subsection (f)(3), restrict benefits for any portion of a period within a hospital length of stay required under subsection (a) in a manner which is less favorable than the benefits provided for any preceding portion of such stay.

"(f) RULES OF CONSTRUCTION.—

"(1) IN GENERAL.—Nothing in this section shall be construed to require a patient who is a participant or beneficiary—

"(A) to undergo a mastectomy or lymph node dissection in a hospital; or

"(B) to stay in the hospital for a fixed period of time following a mastectomy or lymph node dissection.

"(2) LIMITATION.—This section shall not apply with respect to any group health plan, or any group health insurance coverage offered by a health insurance issuer, which does not provide bene-

fits for hospital lengths of stay in connection with a mastectomy or lymph node dissection for the treatment of breast cancer.

"(3) COST SHARING.—Nothing in this section shall be construed as preventing a group health plan or issuer from imposing deductibles, coinsurance, or other cost-sharing in relation to benefits for hospital lengths of stay in connection with a mastectomy or lymph node dissection for the treatment of breast cancer under the plan (or under health insurance coverage offered in connection with a group health plan), except that such coinsurance or other cost-sharing for any portion of a period within a hospital length of stay required under subsection (a) may not be greater than such coinsurance or cost-sharing for any preceding portion of such stay.

"(4) LEVEL AND TYPE OF REIMBURSEMENTS.—Nothing in this section shall be construed to prevent a group health plan or a health insurance issuer offering group health insurance coverage from ne-

gotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

"(g) PREEMPTION, RELATION TO STATE LAWS.—

"(1) IN GENERAL.—Nothing in this section shall be construed to preempt any State law in effect on the date of enactment of this section with respect to health insurance coverage that—

"(A) requires coverage for a minimum hospital length of stay following a surgical treatment for breast cancer;

"(B) requires coverage of at least the coverage of reconstructive breast surgery otherwise required under this section; or

"(C) requires coverage for breast cancer treatments (including breast reconstruction) in accordance with scientific evidence-based practices or guidelines recommended by established medical associations.

"(2) APPLICATION OF SECTION.—With respect to a State law—

"(A) described in paragraph (1)(A), the provisions of this section relating to breast reconstruction shall apply in such State; and

"(B) described in paragraph (1)(B), the provisions of this section relating to length of stays for surgical breast treatment shall apply in such State.

"(3) ERISA.—Nothing in this section shall be construed to affect or modify the provisions of section 514 of the Employee Retirement Income Security Act of 1974 with respect to group health plans.".

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to group health plans for plan years beginning on or after the date of enactment of this Act.

(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to 1 or more collective bargaining agree-

ments between employee representatives and 1 or more employers, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

SEC. 1415. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT RELATING TO THE INDIVIDUAL MARKET.

(a) IN GENERAL.—Subpart 3 of part B of title XXVII of the Public Health Service Act (42 U.S.C. 300gg-11 et seq.) is amended by adding at the end the following new section:

"SEC. 2752. REQUIRED COVERAGE FOR MINIMUM HOSPITAL STAY FOR MASTECTOMIES AND LYMPH NODE DISSECTIONS FOR THE TREATMENT OF BREAST CANCER.

"The provisions of section 2706 shall apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as they apply to health insurance coverage offered by a health insur-

ance issuer in connection with a group health plan in the small or large group market.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after the date of enactment of this Act.

SEC. 1416. AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.

(a) IN GENERAL.—Subchapter A of chapter 100 (relating to group health plan portability, access, and renewability requirements) is amended by inserting after section 9803 the following new section:

"SEC. 9804. REQUIRED COVERAGE FOR MINIMUM HOSPITAL STAY FOR MASTECTOMIES AND LYMPH NODE DISSECTIONS FOR THE TREATMENT OF BREAST CANCER AND COVERAGE FOR RECONSTRUCTIVE SURGERY FOLLOWING MASTECTOMIES.

"(a) INPATIENT CARE.—

"(1) IN GENERAL.—A group health plan, and a health insurance issuer providing health insurance coverage in con-

nection with a group health plan, that provides medical and surgical benefits shall ensure that inpatient coverage with respect to the surgical treatment of breast cancer (including a mastectomy, lumpectomy, or lymph node dissection for the treatment of breast cancer) is provided for a period of time as is determined by the attending physician, in his or her professional judgment consistent with scientific evidence-based practice, in consultation with the patient, and subject to subsection (d), to be medically appropriate.

"(2) EXCEPTION.—Nothing in this section shall be construed as requiring the provision of inpatient coverage if the attending physician in consultation with the patient determine that a shorter period of hospital stay is medically appropriate.

"(b) RECONSTRUCTIVE SURGERY.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, that pro-

vides medical and surgical benefits with respect to a mastectomy shall ensure that, in a case in which a mastectomy patient elects breast reconstruction, coverage is provided for—

"(1) all stages of reconstruction of the breast on which the mastectomy has been performed;

"(2) surgery and reconstruction of the other breast to produce a symmetrical appearance; and

"(3) the costs of prostheses and complications of mastectomy including lymphedemas;

in the manner determined by the attending physician and the patient to be appropriate. Such coverage may be subject to annual deductibles and coinsurance provisions as may be deemed appropriate and as are consistent with those established for other benefits under the plan or coverage. Written notice of the availability of such coverage shall be delivered to the participant upon enrollment and annually thereafter.

"(c) NOTICE.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan shall provide notice to each participant and beneficiary under such plan regarding the coverage required by this section in accordance with regulations promulgated by the Secretary. Such notice shall be in writing and prominently positioned in any literature or correspondence made available or distributed by the plan or issuer and shall be transmitted—

"(1) in the next mailing made by the plan or issuer to the participant or beneficiary;

"(2) as part of any yearly informational packet sent to the participant or beneficiary; or

"(3) not later than January 1, 1998;

whichever is earlier.

"(d) NO AUTHORIZATION REQUIRED.—

"(1) IN GENERAL.—A, attending physician shall not be required to obtain authorization from the plan or issuer for prescribing any length of stay in connec-

tion with a mastectomy, a lumpectomy, or a lymph node dissection for the treatment of breast cancer.

"(2) PRENOTIFICATION.—Nothing in this section shall be construed as preventing a plan or issuer from requiring prenotification of an inpatient stay referred to in this section if such requirement is consistent with terms and conditions applicable to other inpatient benefits under the plan, except that the provision of such inpatient stay benefits shall not be contingent upon such notification.

"(e) PROHIBITIONS.—A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, may not—

"(1) deny to a patient eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section;

"(2) provide monetary payments or rebates to individuals to encourage such individuals to accept less than the mini-

mum protections available under this section;

"(3) penalize or otherwise reduce or limit the reimbursement of an attending provider because such provider provided care to an individual participant or beneficiary in accordance with this section;

"(4) provide incentives (monetary or otherwise) to an attending provider to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section; and

"(5) subject to subsection (f)(3), restrict benefits for any portion of a period within a hospital length of stay required under subsection (a) in a manner which is less favorable than the benefits provided for any preceding portion of such stay.

"(f) RULES OF CONSTRUCTION.—

"(1) IN GENERAL.—Nothing in this section shall be construed to require a patient who is a participant or beneficiary—

"(A) to undergo a mastectomy or lymph node dissection in a hospital; or

"(B) to stay in the hospital for a fixed period of time following a mastectomy or lymph node dissection.

"(2) LIMITATION.—This section shall not apply with respect to any group health plan, or any group health insurance coverage offered by a health insurance issuer, which does not provide benefits for hospital lengths of stay in connection with a mastectomy or lymph node dissection for the treatment of breast cancer.

"(3) COST SHARING.—Nothing in this section shall be construed as preventing a group health plan or issuer from imposing deductibles, coinsurance, or other cost-sharing in relation to benefits for hospital lengths of stay in connection with a mastectomy or lymph node dissection for the treatment of breast cancer under the plan (or under health insurance coverage offered in connection with a group health plan), except that such co-

insurance or other cost-sharing for any portion of a period within a hospital length of stay required under subsection (a) may not be greater than such coinsurance or cost-sharing for any preceding portion of such stay.

"(4) LEVEL AND TYPE OF REIMBURSEMENTS.—Nothing in this section shall be construed to prevent a group health plan or a health insurance issuer offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

"(g) PREEMPTION, RELATION TO STATE LAWS.—

"(1) IN GENERAL.—Nothing in this section shall be construed to preempt any State law in effect on the date of enactment of this section with respect to health insurance coverage that—

"(A) requires coverage for a minimum hospital length of stay following a surgical treatment for breast cancer;

"(B) requires coverage of at least the coverage of reconstructive breast surgery otherwise required under this section; or

"(C) requires coverage for breast cancer treatments (including breast reconstruction) in accordance with scientific evidence-based practices or guidelines recommended by established medical associations.

"(2) APPLICATION OF SECTION.—With respect to a State law—

"(A) described in paragraph (1)(A), the provisions of this section relating to breast reconstruction shall apply in such State; and

"(B) described in paragraph (1)(B), the provisions of this section relating to length of stays for surgical breast treatment shall apply in such State.

"(3) ERISA.—Nothing in this section shall be construed to affect or modify the provisions of section 514 of the Employee

Retirement Income Security Act of 1974 with respect to group health plans.".

(b) CONFORMING AMENDMENTS.—

(1) The heading for subtitle K is amended to read as follows:

"Subtitle K—Group Health Plan Portability, Access, Renewability, and Other Requirements".

(2) The heading for chapter 100 is amended to read as follows:

"CHAPTER 100—GROUP HEALTH PLAN PORTABILITY, ACCESS, RENEWABILITY, AND OTHER REQUIREMENTS".

(3) Section 4980D(a) is amended by striking "and renewability" and inserting "renewability, and other".

(c) CLERICAL AMENDMENTS.—

(1) The table of contents for chapter 100 is amended inserting after the item relating to section 9803 the following new item:

"Sec. 9804. Required coverage for minimum hospital stay for mastectomies and lymph node dissections for the treatment of breast cancer and coverage for reconstructive surgery following mastectomies.".

(2) The item relating to subtitle K in the table of subtitles is amended by strik-

ing "and renewability" and inserting "renewability, and other".

(3) The item relating to chapter 100 in the table of chapters for subtitle K is amended by striking "and renewability" and inserting "renewability, and other".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to plan years beginning on or after the date of enactment of this Act.

(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

SEC. 1417. RESEARCH STUDY ON THE MANAGEMENT OF BREAST CANCER.

(a) STUDY.—To improve survival, quality of life and patient satisfaction in the care of patients with breast cancer, the Agency for Health Care Policy and Research shall conduct a study of the scientific issues relating to—

(1) disease management strategies for breast cancer that can achieve better patient outcomes;

(2) controlled clinical evidence that links specific clinical procedures to improved health outcomes;

(3) the definition of quality measures to evaluate plan and provider performance in the management of breast cancer;

(4) the identification of quality improvement interventions that can change the process of care to achieve better outcomes for individuals with breast cancer;

(5) preventive strategies utilized by health plans for the treatment of breast cancer; and

(6) the extent of clinical practice variation including its impact on cost, quality and outcomes.

(b) REPORT.—Not later than January 1, 2000, the Agency for Health Care Policy and Research shall prepare and submit to the appropriate committees of Congress a report concerning the results of the study conducted under subsection (a).

Subtitle C—Limitations Applicable to Other Provisions

SEC. 1421. LIMITATIONS ON EXPENDITURES AND OBLIGATIONS.

Notwithstanding any other provision of this Act—

(1) any expenditure required by this Act shall be made from the National Tobacco Settlement Trust Fund or the Department of Veterans Affairs Tobacco Recovery Fund, whichever is applicable; and

(2) with the exception of title X of this Act and section 9512(d) of the Internal Revenue Code of 1986, the Federal Government shall only be obligated to make expenditures as required by this Act, includ-

ing any payment to any person or government, as provided in advance in appropriations Acts.

SEC. 1422. LIMITATION ON USER FEES.

(a) IN GENERAL.—Notwithstanding any other provision of, or amendment made by, this Act, no fee or charge imposed by such provision or amendment shall take effect unless such fee or charge is—

(1) for a voluntary service,

(2) imposed on the direct beneficiaries of such service, and

(3) in an amount which does not exceed the direct cost of providing such service to such beneficiaries.

(b) FEE OR CHARGE.—For purposes of subsection (a), the term "fee or charge" does not include any civil or criminal penalty or fine.