FOIA Number: 2008-1524-F

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: Office of Science and Technology Policy

Series/Staff Member: Jerold Mande

Subseries:

OA/ID Number: 13037

FolderID:

Folder Title:
Tobacco Bills [3]

Stack:	Row:	Section:	Shelf:	Position:
S	66	4	3	3

"(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. [Should provisions of section 517 of FDCA apply?]

"(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 manufacturer 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. [Is this the correct policy?]

"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 [by whom] of tobacco product material prior to the packaging of such product;

"(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. [Is this correct policy?]

"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 ______________________ 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 ______________________________ 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 compound 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 ______________________________ 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 ____ 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 ____-months after the date of enactment of the ______________________________ 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 product 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).

"(e) 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. [Is this correct policy?]

"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 ____________________, 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 ____________________, 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 de-

signed 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 described 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 Administration, 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. [Is this constitutional?]

(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 participate 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 materials 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. **[Is this correct policy?]**

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.—[Need policy here]

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
Nineth	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
Nineth	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 involved 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 chapter ____ of 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

Secrettary 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 preponderence 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 furtherence 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 intended 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 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 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. [Modeled on Black Lung Disability Trust Fund, may want provision in revenue code]

(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, the Secretary, and [to be supplied].

(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 proceeding 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 antici-

pated period during which the advance will be outstanding.

(d) EXPENDITURES FROM TRUST FUND.—Amounts in the Trust Fund shall be available in each [fiscal/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. [Is this correct, who is making the payments? How do we deal with other tobacco entities?]

(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. [Is this correct with respect to the lump sum payment?]

(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 equal to [what is this be equal to?].

(B) DETERMINATION BY COMMISSIONER.—The Commissioner, based on data submitted by industry sources and other appropriate data, shall determine the relevant domestic tobacco product unit sales volume of an industry source for a year.

(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 ________________ Act.".

[Policy: What priority should these payments by given for bankruptcy purposes?]

(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 ____________ 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, the Secretary, and [to be supplied].

(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 [fiscal/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—

(1) such assurances as the Secretary may require regarding the compliance of the State with the requirements of this Act; and

(2) [Are there other requirements or information that should be mentioned in the application?]

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.—[How will funds be allotted among States and territories?]

(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 equal to the amount which bears the same ratio to the State's allotment for the fiscal year involved as the [What is basis for allotment to tribes?].

(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 ____ 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. [Additional uses, more specificity?]

(b) LIMITATIONS ON USES.—A State may not use amounts provided under a grant under this subtitle for [Any limitations?]

(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 investigation 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). [Such entity shall not use amounts received under this section in a manner that creates a profit for the entity.]

(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 edu-

cational activities designed to reduce the use of tobacco products.

(2) APPOINTMENT.—The Board shall be composed of ____ members to be appointed by the Secretary, of which—

(A) at least ____ such member 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 ____ of which shall be an individual who is the head of a major public health organization.

(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. **[Is this the policy or should the Board members serve without compensation and not be Federal employees?]**

(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 containing 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.

(e) 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. [Modeled on ASSIST program, need details.]

(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 subsection (c); and

(4) meet any other requirements determined appropriate by the Secretary.

(c) ADDITIONAL REQUIREMENTS.—[Additional requirements with respect to distribution and use of amounts should be supplied.]

(d) 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.—[Who is eligible?]

(c) USE OF FUNDS.—[What are the permissible uses?]

(d) ADDITIONAL REQUIREMENTS.—[Additional requirements with respect to distribution and use of amounts should be supplied.]

(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. [Is there additional policy? Is this constitutional?]

(a) REQUIREMENT.—Not later than ___________ 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. [Is this correct policy?]

(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.—[Is policy correct?]

(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.—[Based on section 1926 of the Public Health Service Act]

(1) IN GENERAL.—Subject to paragraph (2), for each [calendar/fiscal] 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 ____ 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 outlets[?] 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 ____ 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