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: 13038

FolderID:

Folder Title:
Tobacco: S. 1415 [Binder] [2]

Stack:	Row:	Section:	Shelf:	Position:
S	66	4	4	1

The percentages specified in this paragraph are those measured by the University of Michigan Survey or by such comparable index using identical methodology as is chosen by the Secretary after notice and the opportunity for comment in accordance with section 553 of title 5, United States Code.

(2) The term "cigarette manufacturers" means manufacturers of cigarettes sold in the United States.

(3) The term "non-attainment percentage for cigarettes" means the number of percentage points yielded—

(A) for a calendar year in which the percent incidence of underage use of cigarettes is less than the base incidence percentage, by subtracting—

(i) the percentage by which the percent incidence of underage use of cigarettes in that year is less than the base incidence percentage, from

(ii) the required percentage reduction applicable in that year; and

(B) for a calendar year in which the percent incidence of underage use of cigarettes is greater than the base incidence percentage, adding—

(i) the percentage by which the percent incidence of underage use of cigarettes in that year is greater than the base incidence percentage; and

(ii) the required percentage reduction applicable in that year.

(4) The term "non-attainment percentage for smokeless tobacco products" means the number of percentage points yielded—

(A) for a calendar year in which the percent incidence of underage use of smokeless tobacco products is less than the base incidence percentage, by subtracting—

(i) the percentage by which the percent incidence of underage use of smokeless tobacco products in that year is less than the base incidence percentage, from

(ii) the required percentage reduction applicable in that year; and

(B) for a calendar year in which the percent incidence of underage use of smokeless tobacco products is greater than the base incidence percentage, by adding—

(i) the percentage by which the percent incidence of underage use of smokeless to-

bacco products in that year is greater than the base incidence percentage; and

(ii) the required percentage reduction applicable in that year.

(5) The term "smokeless tobacco product manufacturers" means manufacturers of smokeless tobacco products sold in the United States.

(6) The term "University of Michigan Survey" means the University of Michigan's National High School Drug Use Survey entitled "Monitoring the Future".

Subtitle B—State Enforcement Incentives

SEC. 211. COMPLIANCE BONUS FUND.

(a) ESTABLISHMENT.—There is established within the National Tobacco Settlement Trust Fund established by section 401 a separate account to be known as the Compliance Bonus Account for States and Retailers. There are authorized to be appropriated from such account such amounts as may be necessary to carry out the provisions of this subtitle.

(b) CREDITS TO ACCOUNT.—For each fiscal year there shall be credited to the Account an amount equal to—

(1) 5 percent of the amounts credited to the National Tobacco Settlement Trust Fund under section 401(b)(3); and

(2) any amounts withheld under section 213.

SEC. 212. BLOCK GRANTS.

(a) IN GENERAL.—The Secretary shall award block grants to States determined to be eligible under subsection (b).

(b) ELIGIBLE STATES.—To be eligible to receive a grant under subsection (a), a State shall—

(1) prepare and submit to the Secretary an application, at such time, in such manner, and containing such information as the Secretary may require; and

(2) with respect to the year involved, demonstrate to the satisfaction of the Secretary that fewer than 5 percent of all individuals under 18 years of age who attempt to purchase tobacco products in the State in such year are successful in such purchase.

(c) PAYOUT; USE OF FUNDS.—

(1) ANNUAL DISTRIBUTION.—For each fiscal year in which one or more States is eligible to receive a grant under this section, the Secretary shall pay out the balance in the account established under section 211(a) as of the end of the preceding fiscal year.

(2) PAYMENT TO STATE.—If more than one State is eligible to receive a grant under this section for any fiscal year, the amount payable for that fiscal year shall be apportioned among such eligible States on the basis of population.

(3) USE OF FUNDS.—Each State that receives a grant under this section shall distribute half of the amount received among retail outlets of tobacco products that, for fiscal year for which the State met the requirements of subsection (b), have outstanding records of compliance with the restrictions on underage sales of tobacco products.

SEC. 213. STATE ENFORCEMENT INCENTIVES.

(a) IN GENERAL.—

(1) ACTIVITIES AND REPORTS REGARDING ENFORCEMENT.—A State shall—

(A) conduct monthly random, unannounced inspections of sales or distribution outlets in the State to ensure compliance with a law prohibiting sales of tobacco products to individuals under 18 years of age;

(B) annually submit to the Secretary a report describing—

(i) the activities carried out by the State to enforce underage access laws during the fiscal year; and

(ii) the extent of success the State has achieved in reducing the availability of tobacco products to individuals under the age of 18 years; and

(C)(i) a detailed description of how the inspections described in subparagraph (A) were conducted and the methods used to identify outlets, with appropriate protection for the confidentiality of information regarding the timing of inspections and other investigative techniques whose effectiveness depends on continued confidentiality;

(ii) the identity of the single State agency designated by the Governor of the State to be responsible for the implementation of the requirements of this section.

(2) MINIMUM INSPECTION SCHEDULE.—In order to meet the requirements of paragraph (1)(A), inspections conducted by the State shall include at least 250 random, unannounced inspections of retail sale outlets annually for each 1,000,000 persons resident in the State, as most recently determined by the Bureau

of the Census. Such inspections shall cover a range of outlets (not preselected on the basis of prior violations) to measure overall levels of compliance as well as to identify violations, and shall be conducted to provide a probability sample of outlets. The sample must reflect the distribution of the population under the age of 18 years throughout the State and the distribution of the outlets throughout the State accessible to youth. Indian tribes shall conduct such inspections monthly of at least 1 retail outlet subject to their jurisdiction for each 4,000 reservation residents. Except as provided in this paragraph, any reports required by this paragraph shall be made public. As used in this paragraph, the term "outlet" refers to any location that sells at retail or otherwise distributes tobacco products to consumers, including to locations that sell such products over-the-counter.

(b) NONCOMPLIANCE.—

(1) INSPECTIONS.—The Secretary shall withhold from any State that fails to meet the requirements of subsection (a) in any calendar year an amount equal to an amount equal to 5 percent of the amount otherwise payable under this subtitle to that State for the next fiscal year.

(2) COMPLIANCE RATE.—The Secretary shall withhold from any State that fails to demonstrate a compliance rate of—

(A) at least 75 percent in the fifth and sixth fiscal years after the date of enactment of the National Tobacco Policy and Youth Smoking Act;

(B) at least 85 percent in the seventh, eighth, and ninth fiscal years after such date; and

(C) at least 90 percent in every fiscal year beginning with the tenth fiscal year after such date,

an amount equal to one percentage point for each percentage point by which the State failed to meet the percentage set forth in this subsection for that year from the amount otherwise payable under this subtitle for that fiscal year.

(c) DEFINITION.—For the purposes of this section, the term "first applicable fiscal year" means the first fiscal year beginning after the fiscal year in which funding is made available to the States under this section.

(f) RELEASE AND DISBURSEMENT.—

(1) Upon notice from the Secretary that an amount payable under section 202(e) has been ordered

withheld under subsection (b), a State may petition the Secretary for a release and disbursement of up to 75 percent of the amount withheld, and shall give timely written notice of such petition to the attorney general of that State and to all tobacco product manufacturers.

(2) The agency shall conduct a hearing on such a petition, in which the attorney general of the State and tobacco product manufacturers may participate and be heard.

(3) The burden shall be on the State to prove, by a preponderance of the evidence, that the release and disbursement should be made. The Secretary's decision on whether to grant such a release, and the amount of any such disbursement, shall be based on whether—

(A) the State has acted in good faith and in full compliance with this Act, and any rules or regulations promulgated under this Act;

(B) the State has pursued all reasonably available measures to attain the compliance rates and required percentage reductions applicable in the year for which the release is being sought;

(C) there is evidence of any direct or indirect action by the State to undermine the achievement of the compliance rates, the required percentage reductions, or other terms and objectives of this Act or the National Tobacco Policy and Youth Smoking Reduction Act; and

(D) any other relevant evidence.

(4) A State shall be entitled to interest on any withheld amount released at the average United States 52-Week Treasury Bill rate for the period between the withholding of the amount and its release.

(5) Any State attorney general or tobacco product manufacturer aggrieved by a final decision on a petition filed under this subsection may seek judicial review of such decision within 30 days in the United States Court of Appeals for the District of Columbia Circuit. Unless otherwise specified in this Act, judicial review under this section shall be governed by sections 701 through 706 of title 5, United States Code.

(6) No stay or other injunctive relief enjoining a reduction in a State's allotment pending appeal or otherwise may be granted by the Secretary or any court.

SEC. 214. CONFORMING CHANGE.

Section 1926 of the Public Health Service Act (42 U.S.C. 300x—26) is hereby repealed.

Subtitle C—Other Programs

SEC. 221. NATIONAL SMOKING CESSATION PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall establish a program to be known as the "National Smoking Cessation Program" under which the Secretary may award grants to eligible public and nonprofit entities and individuals for tobacco product use cessation purposes.

(b) ELIGIBILITY.—

(1) OF ENTITIES.—To be eligible to receive a grant under this section an entity shall—

(A) be a public or nonprofit private entity, including community health centers and other community-based organizations with a focus on low-income populations;

(B) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require;

(C) provide assurances that amounts received under the grant will be used in accordance with subsection (c)(1); and

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

(2) OF INDIVIDUALS.—To be eligible to receive a grant under this section an individual shall—

(A) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require;

(B) provide assurances that amounts received under the grant will be used only in accordance with subsection (c)(2); and

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

(c) USE OF FUNDS.—

(1) BY ENTITIES.—An entity that receives a grant under this section shall use amounts provided under the grant to establish or administer tobacco product use cessation programs that are approved in accordance with subsection (d).

(2) BY INDIVIDUALS.—An individual who receives a grant under this section shall use amounts provided under the grant to enroll in a tobacco product use cessation program or to purchase a tobacco product use cessation product that has been approved in accordance with subsection (d). Grants to individuals under this section may be in the form of vouchers that may be used to pay the costs of enrollment in an

approved program or to purchase an approved product.

(d) APPROVAL OF CESSATION PROGRAM OR DEVICES.—Using the best available scientific information, the Secretary shall promulgate regulations to provide for the approval of tobacco product use cessation programs and drugs, human biological products, or medical devices approved by the Food and Drug Administration or otherwise legally marketed under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or under the Public Health Service Act (42 U.S.C. 201 et seq.) for use as smoking cessation therapies or aids. The regulations shall ensure that tobacco product users—

(1) have reasonable access upon request to such comprehensive tobacco use cessation programs and drugs, human biological products, or medical devices; and

(2) have access to a broad range of cessation options that are tailored to the needs of the individual tobacco user.

(e) MINORITY FOCUS.—The Secretary shall ensure smoking cessation programs are directed to include minority populations in proportion to their prevalence in the smoking population, and are linguistically and culturally appropriate for such populations.

(f) FUNDING.—There are authorized to be appropriated from the National Tobacco Settlement Trust Fund, other than from amounts in the State Litigation Settlement Account, such sums as may be necessary to carry out this section.

SEC. 222. NATIONAL TOBACCO-FREE PUBLIC EDUCATION PROGRAM.

(a) ESTABLISHMENT OF BOARD.—

(1) IN GENERAL.—The Secretary shall establish an independent board to be known as the "Tobacco-Free Education Board" (referred to in this section as the "Board") to enter into contracts with or award grants to eligible public and nonprofit private entities to carry out public informational and educational activities designed to reduce the use of tobacco products.

(2) APPOINTMENT.—The Board shall be composed of 9 members to be appointed by the Secretary, of whom—

(A) at least 3 such members shall be individuals who are widely recognized by the general public for achievement in the athletic, cultural, entertainment, educational, business, or political field; and

(B) at least 3 such members shall be individuals who are heads of major public health organizations.

(3) TERMS AND VACANCIES.—The members of the Board shall serve staggered terms as determined appropriate at the time of appointment by the Secretary. A vacancy in the Board shall not affect its powers, but shall be filled in the same manner as the original appointment.

(4) POWERS.—

(A) HEARINGS.—The Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Board considers advisable to carry out the purposes of this section.

(B) INFORMATION FROM FEDERAL AGENCIES.—The Board may secure directly from any Federal department or agency such information as the Board considers necessary to carry out the provisions of this section.

(5) PERSONNEL MATTERS.—

(A) COMPENSATION.—Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual

rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Board. All members of the Board who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(B) TRAVEL EXPENSES.—The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

(b) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a program to be known as the "National Tobacco-Free Public Education Program" under which the Board may enter into contracts with or award grants to eligible public and nonprofit private entities to carry out public informational and educational activities designed to reduce the use of tobacco products.

(c) ELIGIBILITY.—To be eligible to receive a grant under this section an entity shall—

(1) be a—

(A) public entity or a State; or

(B) nonprofit private entity that—

(i) is not affiliated with a tobacco product manufacturer or importer;

(ii) has a demonstrated record of working effectively to reduce tobacco product use; and

(iii) has expertise in conducting a multi-media communications campaign, including proven effective campaigns for minority populations;

(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including a description of the activities to be conducted using amounts received under the grant or contract;

(3) provide assurances that amounts received under the grant will be used in accordance with subsection (d); and

(4) provide assurances to the Secretary that—

(A) the entity will annually report to the Secretary on the effectiveness of the approaches implemented including approaches related to high risk and minority populations;

(B) adequate records will be maintained with respect to such assistance;

(C) amounts provided to individuals or entities will be subject to independent audit; and

(D) activities of private entities or individuals will be coordinated with State and local public health officials in the planning and implementation of the program; and

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

(d) USE OF FUNDS.—An entity that receives a grant or contract under this section shall use amounts provided under the grant or contract to conduct multi-media public educational or information campaigns that are designed to discourage and de-glamorize the use of tobacco products. Such campaigns shall be designed to discourage the initiation of tobacco use by minors and other populations and encourage those using such products to quit. These campaigns shall include—

(1) school-based programs that are focused on those regions of the State with high smoking rates and targeted at populations most at risk to start smoking;

(2) Statewide college and university based education program to discourage individuals between the ages of 18 and 24 from beginning to on colleges or universities with high smoking rates; or

(3) community-based prevention programs that are focused on those populations within the community including minority populations, in proportion to their prevalence in the smoking population that are most at-risk to use tobacco products or that have been targeted by tobacco advertising or marketing.

(e) NEEDS OF CERTAIN POPULATIONS.—In awarding grants and contracts under this section, the Board shall take into consideration the needs of particular populations, including using methods that are proven and effective and are culturally and linguistically appropriate.

(f) FUNDING.—There are authorized to be appropriated from the National Tobacco Settlement Trust Fund, other than from amounts in the State Litigation Settlement Account, such sums as may be necessary to carry out this section.

SEC. 223. NATIONAL COMMUNITY ACTION PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall establish a program to be known as the "National Community Action Program" under which the Secretary may award grants to eligible State and local governmental entities to carry out community-based tobacco control efforts that are designed to encourage community involvement in reducing tobacco product use.

(b) ELIGIBILITY.—To be eligible to receive a grant under this section an entity shall—

(1) be a State or local public entity;

(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require;

(3) provide assurances that amounts received under the grant will be used in accordance with the purposes of this section; and

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

(c) FUNDING.—There are authorized to be appropriated from the National Tobacco Settlement Trust Fund, other than from amounts in the State Litigation Settlement Account, such sums as may be necessary to carry out this section.

SEC. 224. STATE RETAIL LICENSING PROGRAM.

(a) GENERAL REQUIREMENTS.—

(1) ESTABLISHMENT OF PROGRAM.—The Secretary shall provide a block grant under this Act to each State that has in effect a law that—

(A) provides for the licensing of entities engaged in the sale or distribution of tobacco products directly to consumers; and

(B) meets the standards described in this section.

(2) STATE AGREEMENT REQUIRED.—In order to receive a block grant under this section, a State—

(A) shall enter into an agreement with the Secretary to assume responsibilities for the implementation and enforcement of a tobacco retailer licensing program;

(B) shall ensure compliance with the Youth Access Restrictions regulations promulgated by the Secretary (21 C.F.R. 897.1 et seq.); and

(C) shall establish to the satisfaction of the Secretary that it has a law or regulation that includes the following:

(i) LICENSURE AND NOTICE.—A State license is required for each retail establishment involved in the sale or distribution of tobacco products to consumers. The State has a program under which notice is pro-

vided to such establishments and their employees of all licensing requirements and responsibilities under State and Federal law relating to the retail distribution of tobacco products.

(ii) PENALTIES.—

(I) CRIMINAL.—Criminal penalties are provided for the sale or distribution of tobacco products to a consumer without a license.

(II) CIVIL.—Civil penalties are provided for the sale or distribution of tobacco products in violation of State law, that include graduated fines and suspension or revocation of licenses, for repeated violations.

(III) OTHER.—There are other programs in place, including such measures as fines, suspension of driver's license privileges, or community service requirements, for underage youths who possess, purchase, or attempt to purchase tobacco products.

(iii) JUDICIAL REVIEW.—Judicial review procedures are in place for an action

of the State suspending, revoking, denying, or refusing to renew any license under its program.

(b) ENFORCEMENT.—Each State that receives a grant under this section shall undertake to enforce compliance with its tobacco retailing licensing program in a manner that can reasonably be expected to reduce the sale and distribution of tobacco products to individuals under 18 years of age. If the Secretary determines that a State is not enforcing the law in accordance with such an undertaking, the Secretary may withhold a portion of any unobligated funds under this section otherwise payable to that State.

(c) NON-PARTICIPATING STATES LICENSING REQUIREMENTS.—For retailers in States which have not established a licensing program under subsection (a), the Secretary may promulgate regulations establishing a Federal retail licensing program for retailers engaged in tobacco sales to consumers in those States. The Secretary may enter into agreements with States for the enforcement of those regulations. A State that enters into such an agreement shall receive a grant under this section to reimburse it for costs incurred in carrying out that agreement.

TITLE III—TOBACCO PRODUCT WARNINGS AND SMOKE CONSTITUENT DISCLOSURE

Subtitle A—Product Warnings, Labeling and Packaging

SEC. 301. CIGARETTE LABEL AND ADVERTISING WARNINGS.

Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) is amended to read as follows:

"SEC. 4. LABELING.

"(a) LABEL REQUIREMENTS.—

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

"WARNING: Cigarettes are addictive"

"WARNING: Tobacco smoke can harm your children"

"WARNING: Cigarettes cause fatal lung disease"

"WARNING: Cigarettes cause cancer"

"WARNING: Cigarettes cause strokes and heart disease"

"WARNING: Smoking during pregnancy can harm your baby"

"WARNING: Smoking can kill you"

"WARNING: Tobacco smoke causes fatal lung disease in non-smokers"

"WARNING: Quitting smoking now greatly reduces serious risks to your health"

"(2) PLACEMENT; TYPOGRAPHY; ETC.—

"(A) IN GENERAL.—Each label statement required by paragraph (1) shall be located in the upper portion of the front and rear panels of the package, directly on the package underneath the cellophane or other clear wrapping. Except as provided in subparagraph (B), each label statement shall comprise at least the top 25 percent of the front and rear panels of the package. The word "WARNING" shall appear in capital letters and all text shall be in conspicuous and legible 17-point type, unless the text of the label statement would occupy more than 70 percent of such area, in which case the text may be in a smaller conspicuous and legible type size, provided that at least 60 percent of such area is occupied by required text. The text shall be black on a white background, or white on a black background, in a manner that contrasts, by typography, layout, or color, with all other printed material on the package, in an alternating fash-

ion under the plan submitted under subsection (b)(4).

"(B) FLIP-TOP BOXES.—For any cigarette brand package manufactured or distributed before January 1, 2000, which employs a flip-top style (if such packaging was used for that brand in commerce prior to June 21, 1997), the label statement required by paragraph (1) shall be located on the flip-top area of the package, even if such area is less than 25 percent of the area of the front panel. Except as provided in this paragraph, the provisions of this subsection shall apply to such packages.

"(3) DOES NOT APPLY TO FOREIGN DISTRIBUTION.—The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of cigarettes which does not manufacture, package, or import cigarettes for sale or distribution within the United States.

"(b) ADVERTISING REQUIREMENTS.—

"(1) IN GENERAL.—It shall be unlawful for any tobacco product manufacturer, importer, distributor, or retailer of cigarettes to advertise or cause to be advertised within the United States any cigarette unless its advertising bears, in accordance with the require-

ments of this section, one of the labels specified in subsection (a) of this section.

"(2) TYPOGRAPHY, ETC.—Each label statement required by subsection (a) of this section in cigarette advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent yield shall comprise 20 percent of the area of the advertisement and shall appear in a conspicuous and prominent format and location at the top of each advertisement within the trim area. The Secretary may revise the required type sizes in such area in such manner as the Secretary determines appropriate. The word "WARNING" shall appear in capital letters, and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black if the background is white and white if the background is black, under the plan submitted under paragraph (4) of this subsection. The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital "W" of the word "WARNING" in the label statements. The text of such label statements

shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement. The label statements shall be in English, except that in the case of—

"(A) an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

"(B) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

"(3) ADJUSTMENT BY SECRETARY.—The Secretary may, through a rulemaking under section 553 of title 5, United States Code, adjust the format and type sizes for the label statements required by this sec-

tion or the text, format, and type sizes of any required tar, nicotine yield, or other constituent disclosures, or to establish the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et. seq.). The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of cigarette advertisements provided by paragraph (2) of this subsection. The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

"(4) MARKETING REQUIREMENTS.—

"(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

"(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alter-

nating sequence in advertisements for each brand of cigarettes in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

"(C) The Secretary shall review each plan submitted under subparagraph (B) and approve it if the plan—

"(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

"(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.".

SEC. 302. AUTHORITY TO REVISE CIGARETTE WARNING LABEL STATEMENTS.

Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by section 301 of this title, is further amended by adding at the end the following:

"(c) CHANGE IN REQUIRED STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553

of title 5, United States Code, revise the text of any of the warning label statements required by subsection (a) of this section if the Secretary determines that such a change would promote greater public understanding of the risks associated with the use of tobacco products.".

SEC. 303. SMOKELESS TOBACCO LABELS AND ADVERTISING WARNINGS.

Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402) is amended to read as follows:

"SEC. 3. SMOKELESS TOBACCO WARNING.

"(a) GENERAL RULE.—

"(1) It shall be unlawful for any person to manufacture, package, or import for sale or distribution within the United States any smokeless tobacco product unless the product package bears, in accordance with the requirements of this Act, one of the following labels:

"WARNING: This product can cause mouth cancer"

"WARNING: This product can cause gum disease and tooth loss"

"WARNING: This product is not a safe alternative to cigarettes"

"WARNING: Smokeless tobacco is addictive"

"(2) Each label statement required by paragraph (1) shall be—

"(A) located on the 2 principal display panels of the package, and each label statement shall comprise at least 25 percent of each such display panel; and

"(B) in 17-point conspicuous and legible type and in black text on a white background, or white text on a black background, in a manner that contrasts by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(3), except that if the text of a label statement would occupy more than 70 percent of the area specified by subparagraph (A), such text may appear in a smaller type size, so long as at least 60 percent of such warning area is occupied by the label statement.

"(3) The label statements required by paragraph (1) shall be introduced by each tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products concurrently into the distribution chain of such products.

"(4) The provisions of this subsection do not apply to a tobacco product manufacturer or distribu-

tor of any smokeless tobacco product that does not manufacture, package, or import smokeless tobacco products for sale or distribution within the United States.

"(b) REQUIRED LABELS.—

"(1) It shall be unlawful for any tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products to advertise or cause to be advertised within the United States any smokeless tobacco product unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

"(2) Each label statement required by subsection (a) in smokeless tobacco advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent yield shall—

"(A) comprise at least 20 percent of the area of the advertisement, and the warning area shall be delineated by a dividing line of contrasting color from the advertisement; and

"(B) the word "WARNING" shall appear in capital letters and each label statement shall appear in conspicuous and legible type. The text

of the label statement shall be black on a white background, or white on a black background, in an alternating fashion under the plan submitted under paragraph (3).

"(3)(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

"(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of smokeless tobacco product in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

"(C) The Secretary shall review each plan submitted under subparagraph (B) and approve it if the plan—

"(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

"(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.".

SEC. 304. AUTHORITY TO REVISE SMOKELESS TOBACCO PRODUCT WARNING LABEL STATEMENTS.

Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by section 303 of this title, is further amended by adding at the end the following:

"(c) AUTHORITY TO REVISE WARNING LABEL STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the warning label statements required by subsection (a) of this section, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of smokeless tobacco products.".

SEC. 305. TAR, NICOTINE, AND OTHER SMOKE CONSTITUENT DISCLOSURE TO THE PUBLIC.

Section 4(a) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333 (a)), as amended by section 301 of this title, is further amended by adding at the end the following:

"(4)(A) The Secretary shall, by a rulemaking conducted under section 553 of title 5, United States Code, determine (in the Secretary's sole discretion) whether cigarette and other tobacco product manufacturers shall be required to include in the area of each cigarette advertisement specified by subsection (b) of this section, or on the package label, or both, the tar and nicotine yields of the advertised or packaged brand. Any such disclosure shall be in accordance with the methodology established under such regulations, shall conform to the type size requirements of subsection (b) of this section, and shall appear within the area specified in subsection (b) of this section.

"(B) Any differences between the requirements established by the Secretary under subparagraph (A) and tar and nicotine yield reporting requirements established by the Federal Trade Commission shall be resolved by a memorandum of understanding between the Secretary and the Federal Trade Commission.

"(C) In addition to the disclosures required by subparagraph (A) of this paragraph, the Secretary may, under a rulemaking conducted under section 553 of title 5, United States Code, prescribe disclosure requirements regarding the level of any cigarette or other tobacco product smoke constituent. Any such disclosure may be required if the Secretary determines that disclosure would be of benefit to the public health, or otherwise would increase consumer awareness of the health consequences of the use of tobacco products, except that no such prescribed disclosure shall be required on the face of any cigarette package or advertisement. Nothing in this section shall prohibit the Secretary from requiring such prescribed disclosure through a cigarette or other tobacco product package or advertisement insert, or by any other means under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).".

Subtitle B—Testing and Reporting of Tobacco Product Smoke Constituents

SEC. 311. REGULATION REQUIREMENT.

(a) TESTING, REPORTING, AND DISCLOSURE.—Not later than 24 months after the date of enactment of this Act, the Secretary, through the Commissioner of the Food

and Drug Administration, shall promulgate regulations under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) that meet the requirements of subsection (b) of this section.

(b) CONTENTS OF RULES.—The rules promulgated under subsection (a) of this section shall require the testing, reporting, and disclosure of tobacco product smoke constituents and ingredients that the Secretary determines should be disclosed to the public in order to protect the public health. Such constituents shall include tar, nicotine, carbon monoxide, and such other smoke constituents or ingredients as the Secretary may determine to be appropriate. The rule may require that tobacco product manufacturers, packagers, or importers make such disclosures relating to tar and nicotine through labels or advertising, and make such disclosures regarding other smoke constituents or ingredients as the Secretary determines are necessary to protect the public health.

(c) AUTHORITY.—The Food and Drug Administration shall have authority to conduct or to require the testing, reporting, or disclosure of tobacco product smoke constituents.

TITLE IV—NATIONAL TOBACCO SETTLEMENT TRUST FUND

Subtitle A—General Payment Provisions

SEC. 401. ESTABLISHMENT OF TRUST FUND.

(a) CREATION.—

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

(b) TRANSFERS TO NATIONAL TOBACCO SETTLEMENT TRUST FUND.—There shall be credited to the trust fund the following amounts:

(1) Amounts paid under section 403.

(2) Amounts equivalent to the fines or penalties paid under section 403, 404, or 406, including interest thereon.

(3) Amounts equivalent to penalties paid under section 202, including interest thereon.

(c) REPAYABLE ADVANCES.—

(1) AUTHORIZATION.—There are authorized to be appropriated to the trust fund, as repayable advances, such sums as may from time to time be necessary to make the expenditures authorized by this Act.

(2) REPAYMENT WITH INTEREST.—Repayable advances made to the trust fund shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary of the Treasury determines that moneys are available in the trust fund for such purposes.

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

(d) EXPENDITURES FROM TRUST FUND.—Amounts in the trust fund shall be available in each calendar year, as provided by appropriations Acts, except that distributions to the States from amounts credited to the State Litigation Settlement Account shall not require further authorization or appropriation and shall be as provided in the Master Settlement Agreement and this Act, and not less than 15 percent of the amounts shall be expended, without further appropriation, notwithstanding any other provision of this

Act, from the trust fund for each fiscal year, in the aggregate, for actitivities under this Act related to—

(1) the prevention of smoking;

(2) education;

(3) State, local, and private control of tobacco product use; and

(4) smoking cessation.

(e) BUDGETARY TREATMENT OF TRUST FUND OPERATIONS.—The receipts and disbursements of the National Tobacco Settlement Trust Fund shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

(f) ADMINISTRATIVE PROVISIONS.—Section 9602 of the Internal Revenue Code of 1986 shall apply to the trust fund to the same extent as if it were established by subchapter A of chapter 95 of such Code.

SEC. 402. STATE LITIGATION SETTLEMENT ACCOUNT.

(a) IN GENERAL.—There is established within the trust fund a separate account, to be known as the State Litigation Settlement Account.

(b) TRANSFERS TO ACCOUNT.—From amounts received by the trust fund under section 403, the State Litiga-

tion Settlement Account shall be credited with all settlement payments designated for allocation, without further appropriation, among the several States, which shall consist of—

(1) the sum of $196,500,000,000, to be paid in installments over a period of 25 years; and

(2) beginning after the last installment under paragraph (1), 50 percent of the total annual payments made by participating tobacco product manufacturers under section 403(b) each year thereafter.

(c) REIMBURSEMENT FOR STATE EXPENDITURES.—

(1) PAYMENT.—Amounts credited to the account are available, without further appropriation, in each fiscal year to provide funds to each State to reimburse such State for amounts expended by the State for the treatment of individuals with tobacco-related illnesses or conditions.

(2) AMOUNT.—The amount for which a State is eligible for under subparagraph (A) for a fiscal year shall be based on the Master Settlement Agreement and its ancillary documents in accordance with such agreements thereunder as may be entered into after the date of enactment of this Act by the governors of the several States.

(3) USE OF FUNDS.—A State may use amounts received under this subsection as the State determines appropriate.

(4) FUNDS NOT AVAILABLE AS MEDICAID REIMBURSEMENT.—Funds in the account shall not be available to the Secretary as reimbursement of Medicaid expenditures or considered as Medicaid overpayments for purposes of recoupment.

(d) PAYMENTS TO BE TRANSFERRED PROMPTLY TO STATES.—The Secretary of the Treasury shall transfer amounts available under subsection (c) to each State as amounts are credited to the State Litigation Settlement Account without undue delay.

SEC. 403. PAYMENTS BY INDUSTRY.

(a) INITIAL PAYMENT.—

(1) CERTAIN PARTICIPATING TOBACCO PRODUCT MANUFACTURERS.—The following participating tobacco product manufacturers shall deposit into the National Tobacco Settlement Trust Fund an aggregate payment of $10,000,000,000, apportioned as follows:

(A) Phillip Morris Incorporated—65.8 percent;

(B) Brown and Williamson Tobacco Corporation—17.3 percent;

(C) Lorillard Tobacco Company—7.1 percent;

(D) R.J. Reynolds Tobacco Company—6.6 percent; and

(E) United States Tobacco Company—3.2 percent.

(2) NO CONTRIBUTION FROM OTHER PARTICIPATING TOBACCO PRODUCT MANUFACTURERS.—No other participating tobacco product manufacturer shall be required to contribute to the payment required by this subsection.

(3) PAYMENT DATE; INTEREST.—Each participating tobacco product manufacturer required to make a payment under paragraph (1) of this subsection shall make such payment within 30 days after the date of enactment of this Act in accordance with the terms of the Master Settlement Agreement and shall owe interest on such payment at the prime rate plus 10 percent, as published in the Wall Street Journal on the latest publication date on or before the date of enactment of this Act, for payments made after the required payment date.

(b) ANNUAL PAYMENTS.—Each calendar year beginning after the required payment date under subsection (a)(3) the participating tobacco product manufacturers

shall make total payments into the Fund for each calendar year in the following applicable base amounts, subject to adjustment as provided in section 404:

(1) year 1—$14,400,000,000;

(2) year 2—$15,400,000,000;

(3) year 3—$17,700,000,000;

(4) year 4—$21,000,000,000;

(5) year 5—$23,600,000,000; and

(6) year 6 and thereafter—the adjusted applicable base amount under section 404.

(c) PAYMENT SCHEDULE.—Each annual payment due under subsection (b) shall be made in 3 equal installments due on March 1st, on June 1st, and on September 1st of each year.

(d) APPORTIONMENT OF ANNUAL PAYMENT.—

(1) IN GENERAL.—Each participating tobacco product manufacturer is liable for its share of the applicable base amount payment due each year under subsection (b). Any separate collection of these payments among such participating tobacco product manufacturers shall be set forth in accordance with an appendix to the Protocol. The annual payment is the obligation and responsibility of only those participating tobacco product manufacturers and their affiliates that directly sell tobacco products in the do-

mestic market to wholesalers, retailers, or consumers, their successors and assigns, and any subsequent fraudulent transferee (but only to the extent of the interest or obligation fraudulently transferred).

(2) DETERMINATION OF AMOUNT OF PAYMENT DUE.—Each participating tobacco product manufacturer is liable for its share of each installment in proportion to its share of tobacco products sold in the domestic market for the most recent available calendar quarter, as determined by the Secretary of the Treasury not more than 2 months, and not less than 1 month, before the payment is due. One month before each payment is due under this subsection, the Secretary shall make a final determination of each tobacco product manufacturer's applicable base amount payment obligation.

(3) CALCULATION OF PARTICIPATING TOBACCO PRODUCT MANUFACTURER'S SHARE OF ANNUAL PAYMENT.—The share of the annual payment apportioned to a participating tobacco product manufacturer shall be equal to that manufacturer's share of adjusted units. A participating tobacco product manufacturer's share of adjusted units shall be determined as follows:

(A) UNITS.—A participating tobacco product manufacturer's number of units shall be determined by counting each—

(i) pack of 20 cigarettes as 1 adjusted unit;

(ii) 1.2 ounces of moist snuff as 0.4 adjusted unit; and

(iii) 3 ounces of other smokeless tobacco product as 0.24 adjusted units.

(B) DETERMINATION OF ADJUSTED UNITS.—Except as provided in subparagraph (C), a participating tobacco product manufacturer's number of adjusted units shall be determined under the following table:

For units:	*Each unit shall be treated as:*
Not exceeding 150 million	*25% of a unit*
Exceeding 150 million, but not exceeding 300 milllion	*50% of a unit*
Exceeding 300 million	*1 unit*

(C) SPECIAL RULE FOR LARGE MANUFACTURERS.—If a participating tobacco product manufacturer has more than 500 million units under subparagraph (A), then that manufacturer's number of adjusted units shall be equal to the total number of units, and not determined under subparagraph (B).

(e) COMPUTATIONS.—The determinations required by subsection (d) shall be made and certified by the Secretary of Treasury. The parties shall promptly provide the Treasury Department with information sufficient for it to make such determinations.

(f) NONAPPLICATION TO CERTAIN MANUFACTURERS.—

(1) EXEMPTION.—A participating manufacturer described in paragraph (3) is exempt from the payments required by subsection (b).

(2) LIMITATION.—Paragraph (1) applies only to assessments on cigarettes to the extent that those cigarettes constitute less than 3 percent of all cigarettes manufactured and distributed to consumers in any calendar year.

(3) PARTICIPATING TOBACCO PRODUCT MANUFACTURERS TO WHICH SUBSECTION APPLIES.—A participating tobacco product manufacturer is described in this paragraph if it—

(A) resolved tobacco-related civil actions with more than 25 States before January 1, 1998, through written settlement agreements signed by the attorneys general (or the equivalent chief legal officer if there is no office of attorney general) of those States; and

(B) provides to all other States, not later than December 31, 1998, the opportunity to enter into written settlement agreements that—

(i) are substantially similar to the agreements entered into with those 25 States; and

(ii) provide the other States with annual payment terms that are equivalent to the most favorable annual payment terms of its written settlement agreements with those 25 States.

SEC. 404. ADJUSTMENTS.

The applicable base amount under section 403(b) for a given calendar year shall be adjusted as follows in determining the annual payment for that year:

(1) INFLATION ADJUSTMENT.—

(A) IN GENERAL.—Beginning with the fourth calendar year after the date of enactment of this Act, the adjusted applicable base amount under section 403(b)(6) is the amount of the annual payment made for the preceding year increased by the greater of 3 percent or the inflation adjustment, adjusted (for calendar year 2005 and later years) by the volume adjustment under paragraph (2).

(B) INFLATION ADJUSTMENT.—For purposes of subparagraph (A), the inflation adjustment for any calendar year is the percentage (if any) by which—

(i) the CPI for the preceding calendar year, exceeds

(ii) the CPI for the second preceding calendar year.

(C) CPI.—For purposes of subparagraph (B), the CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(D) ROUNDING.—If any increase determined under subparagraph (A) is not a multiple of $1,000, the increase shall be rounded to the nearest multiple of $1,000.

(2) VOLUME ADJUSTMENT.—Beginning with calendar year 2005, the applicable base amount (as adjusted for inflation under paragraph (1)) shall be adjusted for changes in volume of domestic sales by multiplying the applicable base amount by the ratio of the actual volume for the preceding year to the base volume. For purposes of this paragraph, the term "base volume" means the number of units of tobacco

products sold domestically by the participating tobacco product manufacturers in calendar year 1996, as reported by such manufacturers to the Secretary of the Treasury.

SEC. 405. PAYMENTS TO BE PASSED THROUGH TO CONSUMERS.

(a) TARGET PRICE.—Each participating tobacco product manufacturer shall use its best efforts to adjust the price at which it sells each unit of tobacco products in the domestic market or to an importer for resale in the domestic market by an amount sufficient to pass through to each purchaser on a per-unit basis an equal share of the annual payments to be made by such participating tobacco product manufacturer under this Act and the Master Settlement agreement for the year in which the sale occurs.

(b) COLLECTION OF DEFICIENCY.—

(1) IN GENERAL.—If the Secretary determines that a participating tobacco product manufacturer failed to comply with subsection (a), the Secretary shall assess a penalty against that manufacturer in an amount equal to—

(A) 110 percent of the shortfall amount; or

(B) if the failure to comply with subsection (a) was intentional, up to 125 percent of the shortfall amount.

(2) SHORTFALL AMOUNT.—For purposes of paragraph (1), the term "shortfall amount" means—

(A) the number of units of tobacco products sold by a tobacco product manufacturer during a calendar year, multiplied by—

(B) the excess of—

(i) the average adjusted price for which each such unit would have been sold during that year if the tobacco product manufacturer had met the price contemplated by subsection (a); over

(ii) the average adjusted price for which each such unit was sold during that year.

(3) SOLE REMEDY FOR FAILURE TO PASS PAYMENT THROUGH TO CONSUMERS.—This subsection is the sole remedy available to any person, including any State, for the failure by a participating tobacco product manufacturer to pass through the payments under section 403 to consumers as required by subsection (a).

SEC. 406. TAX TREATMENT OF PAYMENTS.

All payments made under section 403 are ordinary and necessary business expenses for purposes of chapter 1 of the Internal Revenue Code of 1986, and no part thereof *is either in settlement of an actual or potential liability for a fine or penalty (civil or criminal) or the cost of a tangible or intangible asset or other future benefit.*

SEC. 407. ENFORCEMENT FOR NONPAYMENT.

(a) PENALTY.—Any participating tobacco product manufacturer that fails to make any payment required under section 403 or 405 within 60 days after the date on which such fee is due is liable for a civil penalty of $100,000 for each day during the noncompliance period.

(b) NONCOMPLIANCE PERIOD.—For purposes of this section, the term "noncompliance period" means, with respect to any failure to make a payment required under section 403 or 405, the period—

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

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

(c) LIMITATIONS.—

(1) IN GENERAL.—No penalty shall be imposed by subsection (a) on any failure to make a payment under section 403 during any period for which it is established to the satisfaction of the Secretary of the Treasury that none of the persons responsible for such failure knew or, exercising reasonable diligence, should have known, that such failure existed.

(2) CORRECTIONS.—No penalty shall be imposed under subsection (a) on any failure to make a payment under section 403 if—

(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, should have known, that such failure existed.

(3) WAIVER.—In the case of any failure to make a payment under section 403 that is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive all or part of the penalty imposed under subsection (a) to the extent that the Secretary determines that the payment of such penalty would be excessive relative to the failure involved.

(d) STATUS AS PARTICIPATING TOBACCO PRODUCT MANUFACTURER.—If, at the end of the 1-year period beginning on the date on which a participating tobacco product manufacturer fails to make a timely payment as required under section 403, such manufacture has not fully paid the amount owed by such manufacturer under such section, such manufacturer shall be considered a nonparticipating

tobacco product manufacturer and shall not be eligible for any protections or assistance provided for under this Act.

Subtitle B—General Spending Provisions

SEC. 411. IMPLEMENTING AND ENFORCEMENT FUNDS.

Notwithstanding section 401(d), not less than $300,000,000 of the amounts available in the trust fund, other than in the State Litigation Settlement Account, shall be made available for each fiscal year without further appropriation to the Commissioner of Food and Drugs as reimbursement for the costs incurred by the Food and Drug Administration in implementing and enforcing requirements relating to tobacco products. In order to ensure that the amounts provided by this section are used for the purposes for which they are made available, the Commissioner shall submit an account of such costs for each fiscal year to the Secretary of the Treasury, in such detail as the Secretary may require, within 60 days after the close of the fiscal year and transmit a copy of the report to the Congress at the same time as it is submitted to the Secretary.

SEC. 412. IMPROVING CHILD CARE AND EARLY CHILDHOOD DEVELOPMENT.

(a) IN GENERAL.—The Secretary of the Treasury may transfer funds from the National Tobacco Settlement Trust

Fund for each fiscal year to be used by the Secretary for the following purposes:

(1) Improving the affordability of child care through increased appropriations for child care under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9859 et seq.).

(2) Enhancing the quality of child care and early childhood development through the provision of grants to States under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9859 et seq.).

(3) Expanding the availability and quality of school-age care through the provision of grants to States under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9859 et seq.).

(4) Assisting young children by providing grants to local collaboratives under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9859 et seq.) for the purpose of improving parent education and supportive services, strengthening the quality of child care, improving health services, and improving services for children with disabilities.

(b) SUPPLEMENT NOT SUPPLANT.—Amounts made available to a State under this section shall be used to supplement and not supplant other Federal, State, and local

funds provided for programs that serve the health and developmental needs of children. Amounts provided to the State under any of the provisions of law referred to in this section shall not be reduced solely as a result of the availability of funds under this section.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the trust fund established by section 401, other than from amounts in the State Litigation Settlement Account, such sums as are necessary to carry out this section.

TITLE V—STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE

SEC. 501. DEFINITIONS.

In this title:

(1) ASSISTANT SECRETARY.—The term "Assistant Secretary" means the Assistant Secretary of the Occupational Safety and Health Administration of the Department of Labor.

(2) PUBLIC FACILITY.—

(A) IN GENERAL.—The term "public facility" means any building used for purposes that affect interstate or foreign commerce that is regularly entered by 10 or more individuals at least 1 day per week including any building owned by

or leased to an agency, independent establishment, department, or branch of the United States Government.

(B) EXCLUSIONS.—The term "public facility" does not include a building or portion thereof which is used for residential purposes or as a restaurant (other than a fast food restaurant), bar, private club, hotel guest room or common area, casino, bingo parlor, tobacconist's shop, or prison.

(C) FAST FOOD RESTAURANT.—The term "fast food restaurant" means any restaurant or chain of restaurants that primarily distributes food through a customer pick-up (either at a counter or drive-through window). The Assistant Secretary may promulgate regulations to clarify this subparagraph to ensure that the intended inclusion of establishments catering to individuals under 18 years of age is achieved.

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

SEC. 502. SMOKE-FREE ENVIRONMENT POLICY.

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

(b) ELEMENTS OF POLICY.—

(1) IN GENERAL.—The responsible entity for a public facility shall—

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

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

(2) EXCEPTION.—The responsible entity for a public facility may provide an exception to the prohibition specified in paragraph (1) for 1 or more specially designated smoking areas within a public 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 Assistant Secretary that ensure that air from the area is directly exhausted to the outside and does not recirculate or drift to other areas within the public facility;

(2) the area is maintained at negative pressure, as compared to adjoining nonsmoking areas, as determined under regulations promulgated by the Assistant Secretary;

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

(4) cleaning and maintenance work are conducted in such area only when no smoking is occurring in the area.

SEC. 503. CITIZEN ACTIONS.

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

(b) VENUE.—Any action to enforce this title may be brought in any United States district court for the district

in which the defendant resides or is doing business to enjoin any violation of this title or to impose a civil penalty for any such violation in the amount of not more than $5,000 per day of violation. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce this title and to impose civil penalties under this title.

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

(d) COSTS.—The court, in issuing any final order in any action brought under this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing plaintiff, whenever the court determines such award is appropriate.

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

SEC. 504. PREEMPTION.

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

SEC. 505. REGULATIONS.

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

SEC. 506. EFFECTIVE DATE.

Except as provided in section 507, the provisions of this title shall take effect on the first day of January next following the next regularly scheduled meeting of the State legislature occurring after the date of enactment of this Act at which, under the procedural rules of that legislature, a measure under section 507 may be considered.

SEC. 507. STATE CHOICE.

This title shall not apply to any State that, by law, provides that it shall not apply to that State.

TITLE VI—APPLICATION TO INDIAN TRIBES.

SEC. 601. SHORT TITLE.

This title may be cited as the "Reduction in Tobacco Use and Regulation of Tobacco Products in Indian Country Act of 1998".

SEC. 602. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that Native Americans have used tobacco products for recreational, ceremonial, and traditional purposes for centuries.

(b) PURPOSES.—It is the purpose of this title to—

(1) provide for the implementation of the National Tobacco Policy and Youth Smoking Reduction Act with respect to the regulation of tobacco products and other tobacco-related activities on Indian lands;

(2) recognize the historic Native American traditional and ceremonial use of tobacco products, and to preserve and protect the cultural, religious, and ceremonial uses of tobacco by members of Indian tribes;

(3) recognize and respect Indian tribal sovereignty and tribal authority to make and enforce laws regarding the regulation of tobacco distributors and tobacco products on Indian lands; and

(4). ensure that the necessary funding is made available to tribal governments for licensing and enforcement of tobacco distributors and tobacco products on Indian lands.

SEC. 603. APPLICATION OF TOBACCO-RELATED PROVISIONS TO NATIVE AMERICANS.

(a) IN GENERAL.—The provisions of this Act apply to the manufacture, distribution, or sale of tobacco or tobacco products in Indian country and on other trust lands

subject to the jurisdiction of an Indian tribe. To the extent that an Indian tribe engages in the manufacture, distribution, or sale of tobacco products, the provisions of this Act apply to that tribe.

(b) TRADITIONAL USE EXCEPTION.—

(1) IN GENERAL.—In recognition of the religious, ceremonial, and traditional uses of tobacco and tobacco products by Indian tribes and the members of such tribes, nothing in this Act shall be construed to infringe upon the right of such tribes or members of such tribes to acquire, possess, use, or transfer any tobacco or tobacco products for such purposes, or to permit an infringement upon the ability of minors to participate and use tobacco products for religious, ceremonial, or traditional purposes.

(2) APPLICATION OF PROVISIONS.—Paragraph (1) shall apply only to those quantities of tobacco or tobacco products necessary to fulfill the religious, ceremonial, or traditional purposes of an Indian tribe or the members of such tribe, and shall not be construed to permit the general marketing of tobacco or tobacco products in a manner that is not in compliance with chapter IX of the Federal Food, Drug, and Cosmetic Act as added by this Act.

(3) LIMITATION.—Nothing in this Act shall be construed to permit an Indian tribe or member of such a tribe to acquire, possess, use, or transfer any tobacco or tobacco product in violation of section 2342 of title 18, United States Code, with respect to the transportation of contraband cigarettes.

(c) PAYMENTS TO TOBACCO TRUST FUND.—Any Indian tribe that engages in the manufacture of tobacco products shall be subject to liability for any annual fee payments that are levied on other tobacco product manufacturers for purposes of the National Tobacco Settlement Trust Fund. Any Indian tribe that does not pay such fees shall be considered a nonparticipating tobacco product manufacturer under section 708 of this Act.

(d) APPLICATION OF FEDERAL FOOD, DRUG, AND COSMETIC ACT REQUIREMENTS.—

(1) IN GENERAL.—The provisions of this Act and the provisions of the Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) relating to the manufacture, distribution, and sale of tobacco products shall apply in Indian country and on other trust lands subject to the jurisdiction of an Indian tribe. To the extent that an Indian tribe engages in the manufacture, distribution, or sale of tobacco products, the provisions of this Act apply to that tribe.

(2) JURISDICTION.—With respect to tobacco-related activities that take place in Indian country or on trust lands within the jurisdiction of an Indian tribe, the responsibility for enforcing the regulations promulgated under paragraph (1) shall be vested in—

(A) the Indian tribe involved;

(B) the State within which the lands of the Indian tribe are located, under a voluntary cooperative agreement entered into by the State and the Indian tribe or tribal organization; or

(C) the Secretary.

(3) ELIGIBILITY FOR ASSISTANCE.—Under the regulations promulgated under paragraph (1), the Secretary, in consultation with the Secretary of the Interior, shall provide assistance to an Indian tribe in meeting and enforcing the requirements under such regulations, including grant funds, if—

(A) the tribe or tribal organization has a governing body that has powers and carries out duties that are similar to the powers and duties of State or local governments;

(B) the functions to be exercised through the use of such assistance relate to activities conducted in Indian country and on other trust lands subject to the jurisdiction of the tribe; and

(C) the tribe is reasonably expected to be capable of carrying out the functions required by the Secretary.

(4) DETERMINATIONS.—Not later than 60 days after the date on which an Indian tribe submits an application for assistance under paragraph (3), the Secretary shall make a determination concerning the eligibility of such tribe for such assistance.

(5) IMPLEMENTATION BY THE SECRETARY.—If the Secretary determines that the Indian tribe is not willing or not qualified to administer the requirements of the regulations promulgated under this subsection, or the tribe is considered to be a non-participating tobacco product manufacturer, the Secretary, in consultation with the Secretary of the Interior, shall implement and enforce such regulations on behalf of the tribe.

(6) DEFICIENT APPLICATIONS; OPPORTUNITY TO CURE.—If the Secretary determines under paragraph (4) that a tribe is not eligible for assistance under this subsection, the Secretary shall—

(A) submit to such tribe in writing, a statement of the reasons for such determination; and

(B) shall assist such tribe in overcoming any deficiencies that resulted in the determination of ineligibility.

After an opportunity to review and cure such deficiencies, the tribe may re-apply to the Secretary for assistance under this subsection.

(e) RETAIL LICENSING REQUIREMENTS.—

(1) IN GENERAL.—The requirements of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) and this Act with respect to the licensing of tobacco retailers shall apply to retailers that sell tobacco or tobacco products in Indian country or on trust lands within the jurisdiction of an Indian tribe.

(2) MINIMUM FEDERAL STANDARDS.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall promulgate regulations to authorize an Indian tribe to implement a tribal tobacco product licensing program in Indian country or on trust lands within the jurisdiction of that Indian tribe.

(B) MINIMUM STANDARDS.—In order for an Indian tribe to assume responsibility for the licensing and regulation of tobacco-related activities conducted in Indian country or on other

trust lands subject to the jurisdiction of an Indian tribe, the Indian tribe shall establish terms, conditions, and standards similar to those described in section 224 of this Act for a State licensing law.

(C) WAIVER.—An Indian tribe shall have the same right to apply for waiver and modification of the law described in subparagraph (B) as a State under the Act involved.

(3) IMPLEMENTATION BY THE SECRETARY.—If the Secretary, in consultation with the Secretary of the Interior, determines that the Indian tribe is not qualified to meet the minimum standards of paragraph (2)(B), or the Secretary, in consultation with the Secretary of the Interior, shall implement such requirements on behalf of the Indian tribe.

(f) ELIGIBILITY FOR PUBLIC HEALTH PAYMENTS.—

(1) GRANT.—For each fiscal year the Secretary shall award a grant to each Indian tribe that has an approved anti-smoking plan for the fiscal year involved under paragraph (2) in an amount equal to the amount determined under paragraph (3).

(2) TRIBAL PLANS.—To be eligible to receive a grant under paragraph (1), an Indian tribe shall prepare and submit to the Secretary an anti-smoking

plan and shall otherwise meet the requirements of subsection (e). The Secretary shall promulgate regulations providing for the form and content of anti-smoking plans to be submitted under this paragraph.

(3) AMOUNT DETERMINED.—Except as provided in this subsection, the amount of any grant for which an Indian tribe is eligible under paragraph (1) shall be determined by the Secretary based on the product of—

(A) the ratio of the total number of individual residing on or in such tribe's reservation, jurisdictional lands, or the active user population, relative to the total population of the State involved; and

(B) the amount allocated under this Act to the State for such public health purposes.

(4) USE.—Amounts provided to a tribe under this subsection shall be used to reimburse the tribe for smoking-related health expenditures, to further the purposes of this Act and in accordance with a tribal anti-smoking plan approved by the Secretary. Indian tribes shall have the flexibility to utilize such amounts to meet the unique health care needs of persons within their service populations within the context of tribal health programs if such programs meet the fundamen-

tal Federal goals and purposes of Federal Indian health care law and policy.

(5) REALLOTMENT.—Amounts set aside and not expended under this subsection shall be reallotted among other eligible Indian tribes.

(g) OBLIGATIONS OF TOBACCO PRODUCT MANUFACTURERS.—Tobacco product manufacturers, including Indian tribes, participating in, or covered under this any Act shall not engage in any activity in Indian country or on other trust lands subject to the jurisdiction of an Indian tribe that is prohibited by this Act.

(h) USE OF TRUST FUND PAYMENTS.—Amounts made available from the tobacco trust fund under any Indian health provisions of this Act shall be provided to the Indian Health Service and, through the provisions of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b et seq.), to Indian tribes to be used to reduce tobacco consumption, promote smoking cessation, and to fund related activities including—

(1) clinic and facility design, construction, repair, renovation, maintenance, and improvement;

(2) health care provider services and equipment;

(3) domestic and community sanitation associated with clinic and facility construction and improvement;

(4) inpatient and outpatient services; and

(5) other programs and services which have as their goal raising the health status of Indians.

(i) PREEMPTION.—

(1) IN GENERAL.—Except as otherwise provided in this section, nothing in this Act shall be construed to prohibit an Indian tribe from imposing requirements, prohibitions, penalties, or other measures to further the purposes of this title that are in addition to the requirements, prohibitions, or penalties required by this title.

(2) PUBLIC EXPOSURE TO SMOKE.—Nothing in this title shall be construed to preempt or otherwise affect any Indian tribe rule or practice that provides greater protections from the health hazards of environmental tobacco smoke.

SEC. 604. STATE TOBACCO EXCISE TAX COMPLIANCE.

An Indian tribe or tribal corporation shall collect any excise or sales tax imposed by a State, within the exterior borders or which the sale occurs, on non-members of the Indian tribe as a consequence of the purchase of tobacco products by the non-member from the Indian tribe or tribal corporation. The Indian tribe or tribal corporation shall remit such taxes collected to the Treasury of the United States, *which shall, in turn, remit the taxes to the State in which they were collected.*

TITLE VII—CIVIL LIABILITY OF TOBACCO PRODUCT MANUFACTURERS

SEC. 701. DEFINITIONS

In this title:

(1) ADDICTION CLAIM; DEPENDENCE CLAIM.—The term "addiction claim" or "dependence claim" refers only to any claim for relief which is predicated upon claims of addiction to, or dependence on, tobacco products, but neither term includes claims based upon manifestation of tobacco-related diseases.

(2) AFFILIATE.—The term "affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this definition, ownership means ownership of an equity interest, or the equivalent thereof, of 10 percent or more, and person means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

(3) CIVIL ACTION.—The term "civil action" means any action, lawsuit, or proceeding that is not a criminal action.

(4) COMPENSATORY DAMAGES.—The term "compensatory damages" refers to those damages necessary to reimburse an injured party, and includes actual, general, and special damages.

(5) COURT.—The term "court" means any judicial court, forum, or tribunal within the United States, including without limitation any Federal, State, or tribal court.

(6) FINAL JUDGMENT.—The term "final judgment" means a judgment on which all rights of appeal or discretionary review have been exhausted or waived or for which the time to appeal or seek such discretionary review has expired.

(7) FINAL SETTLEMENT.—The term "final settlement" means a settlement agreement that is executed and approved as necessary to be fully binding on all relevant parties.

(8) INDIVIDUAL.—The term "individual" means a human being and does not include a corporation, partnership, unincorporated association, trust, estate, or any other public or private entity, State or local government, or Indian tribe.

(9) PUNITIVE DAMAGES.—The term "punitive damages" means damages in addition to compen-

satory damages having the character of punishment or penalty.

(10) REDUCED RISK TOBACCO PRODUCTS.—The term "reduced risk tobacco product" means a product designated as a reduced risk tobacco product under section 916(a)(2) of the Federal Food, Drug, and Cosmetic Act.

(11) SECRETARY.—The term "Secretary" means the Secretary of the Treasury, except where the context otherwise requires.

(12) TOBACCO CLAIM.—The term "tobacco claim" means a claim directly or indirectly arising out of, based on, or related to the health-related effects of tobacco products, including without limitation a claim arising out of, based on, or related to allegations regarding any conduct, statement, or omission respecting the health-related effects of such products.

(13) TOBACCO PRODUCT.—The term "tobacco product" means cigarettes, cigarette tobacco, smokeless tobacco, little cigars, roll-your-own tobacco, and fine cut tobacco products.

(14) TOBACCO PRODUCT MANUFACTURER.—The term "tobacco product manufacturer" means—

(A) a person who directly, and not through any affiliate—

(i) manufactures tobacco products for sale in the United States after the date of enactment of this Act, including tobacco products for sale in the United States through an importer;

(ii) is, after the date of enactment of this Act, the first purchaser for resale in the United States of tobacco products manufactured for sale outside of the United States;

(iii) engaged in activities described in clause (i) or (ii) prior to the date of enactment of this Act, has not engaged in such activities after the date of enactment of this Act, and was not as of June 20, 1997, an affiliate of a participating tobacco product manufacturer in which the participating tobacco product manufacturer or its other affiliates owned a 50 percent or greater interest;

(iv) is a successor or assign of any of the foregoing; or

(v) is an entity to which any of the foregoing directly or indirectly makes, after the date of enactment of this Act, a fraudulent conveyance or a transfer that would

otherwise be voidable under part 5 of title 11 of the United States Code, but only to the extent of the interest or obligation transferred; but

(B) does not include an affiliate of a tobacco product manufacturer unless that affiliate is described in clause (i), (ii), (iii), (iv), or (v) of subparagraph (A).

SEC. 702. APPLICATION.

(a) IN GENERAL.—The provisions of this title shall apply to any civil action involving a tobacco claim, including any such claim that has not reached final judgment or final settlement as of the date of enactment of this Act, that is brought or maintained against—

(1) a participating tobacco product manufacturer or its predecessors;

(2) any person that at any time was or is an affiliate, officer, director, employee, attorney, or agent of a participating tobacco product manufacturer, unless such person is itself a non-participating tobacco product manufacturer;

(3) an importer, distributor, wholesaler, or retailer of tobacco products—

(A) that, after the date of enactment of this Act, does not import, distribute, or sell tobacco

products made or sold by a non-participating tobacco product manufacturer;

(B) whose business practices with respect to sales or operations occurring within the United States, conform to the applicable requirements of the marketing and advertising provisions of the Master Settlement Agreement; and

(C) that is not itself a non-participating tobacco product manufacturer;

(4) a supplier of component or constituent parts of tobacco products—

(A) that, after the date of enactment of this Act, does not knowingly sell any component or constituent parts of tobacco products to a non-participating tobacco product manufacturer;

(B) whose business practices with respect to sales or operations occurring within the United States, conform to the applicable requirements of the marketing and advertisement provisions of the Master Settlement Agreement; and

(C) that is not itself a non-participating tobacco product manufacturer;

(5) a grower of tobacco products, unless such person is itself a non-participating tobacco product manufacturer; or

(6) an insurer of any person described in paragraph (1), (2), (3), (4), or (5) based on, arising out of, or related to tobacco products manufactured, imported, distributed, or sold (or tobacco grown) by such person (other than an action brought by the insured person), unless such insurer is itself a non-participating tobacco product manufacturer.

(b) EXCEPTIONS.—The provisions of this title shall not apply to any tobacco claim—

(1) brought against any person other than a person described in subsection (a) or to any tobacco claim that reached final judgment or final settlement prior to the date of enactment of this Act;

(2) against an employer under valid workers' compensation laws;

(3) arising under the securities laws of a State or the United States;

(4) brought by the United States;

(5) brought under this title by a State or a participating tobacco product manufacturer to enforce this Act;

(6) asserting damage to the environment from exposures other than environmental smoke or second hand smoke; or

(7) against a participating tobacco product manufacturer if that manufacturer, or any of its principal officers, acting in that officer's corporate capacity, is convicted of—

(A) manufacturing or distributing misbranded tobacco products in violation of the Federal Food, Drug, and Cosmetic Act;

(B) violating the reporting requirements of section 5762(a)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 5762(a)(4));

(C) violating, or aiding and abetting the violation of, any provision of chapter 114 of title 18, United States Code; or

(D) violating any provision of chapter 47 or chapter 63 of title 18, United States Code, in making reports or disclosures under this Act.

(c) STATE OPTION FOR ONE-TIME OPT OUT.—The Secretary shall establish procedures under which the attorney general of a State may, not later than 1 year after the date of enactment of this Act, elect not to resolve a civil action described in subsection (a) or not to enter into the Master Settlement Agreement. A State whose attorney general makes such an election shall not be eligible to receive payments from the trust fund established by section 401.

Procedures under this paragraph shall permit such a State to make such an election on a one-time basis.

SEC. 703. PREEMPTION AND RELATIONSHIP TO OTHER LAW.

(a) PREEMPTION.—No civil action involving a tobacco claim to which this title applies shall be maintained in any court except in accordance with this title.

(b) RELATIONSHIP TO STATE LAW.—This title supersedes State law only to the extent that State law is inconsistent with this title.

(c) CRIMINAL LIABILITY.—Nothing in this title shall be construed to limit the criminal liability of tobacco product manufacturers, retailers, or distributors, or their officers, directors, employees, successors, or assigns.

SEC. 704. GOVERNMENTAL CLAIMS AND CASTANO CIVIL ACTIONS.

(a) IN GENERAL.—Except as provided in subsection (b) and in section 702(c), no State, political subdivision of a State, municipal corporation, governmental entity or corporation, Indian tribe, or agency or subdivision thereof, or other entity acting in parens patriae, may file or maintain any civil action involving a tobacco claim.

(b) EFFECT OF SETTLEMENT AGREEMENT OR CONSENT DECREE.—Within 30 days after the date of enactment of this Act, any State may request that tobacco product manufacturers enter into the Master Settlement Agreement

or a consent decree. If a State makes such a request and enters into a consent decree, it may maintain a civil action involving a tobacco claim only to the extent necessary to permit continuing court jurisdiction over the consent decree. Nothing herein shall preclude any State from bringing suit or seeking a court order to enforce the terms of the Master Settlement Agreement or a consent decree.

(c) CASTANO CIVIL ACTIONS.—

(1) The rights and benefits afforded in section 221 of this Act, and the various research activities envisioned by this Act, are provided in settlement of, and shall constitute the exclusive remedy for the purpose of determining civil liability as to those claims asserted in the Castano Civil Actions, and all bases for any such claim under the laws of any State are preempted (including State substantive, procedural, remedial, and evidentiary provisions) and settled. The Castano Civil Actions shall be dismissed with full reservation of the rights of individual class members to pursue claims not based on addiction or dependency in civil actions in accordance with this Act. For purposes of determining application of statutes of limitation or repose, individual actions filed within one year after the effective date of this Act by those who were included within a Castano Civil Action shall be

considered to have been filed as of the date of the Castano Civil Action applicable to said individual.

(2) For purposes of awarding attorneys fees and expenses for those actions subject to this subsection, the matter at issue shall be submitted to arbitration before one panel of arbitrators. In any such arbitration, the arbitration panel shall consist of 3 persons, one of whom shall be chosen by the attorneys of the Castano Plaintiffs' Litigation Committee who were signatories to the Memorandum of Understanding dated June 20, 1997, by and between tobacco product manufacturers, the Attorneys General, and private attorneys, one of whom shall be chosen by the participating tobacco product manufacturers, and one of whom shall be chosen jointly by those 2 arbitrators.

(3) The participating tobacco product manufacturers shall pay the arbitration award.

SEC. 705. CONCURRENT JURISDICTION; FEDERAL CAUSE OF ACTION; ACTIONS; DAMAGES; LIABILITY.

(a) IN GENERAL.—Any tobacco claim in any civil action to which this title applies shall be deemed to arise under this section and shall be governed by the provisions of this title, but the substantive rules of decision for such claim shall be derived from the law of the State or Tribe that would have been applicable but for the operation of

this section, to the extent that such law is not inconsistent with the provisions of this title. This Federal cause of action shall be the exclusive means for the purpose of determining civil liability on any such tobacco claim in any civil action to which this title applies, and all other bases for tobacco claims under State, Tribal, and local law are hereby preempted. District courts of the United States and tribal courts shall have concurrent jurisdiction with the courts of the States over any tobacco claim in any civil action under this section.

(b) PERMISSIBLE DEFENDANTS.—In any civil action to which this subtitle applies, tobacco claims may be filed or maintained only against—

(1) a tobacco product manufacturer; or

(2) a surviving entity established by a tobacco product manufacturer.

(c) ADDICTION AND DEPENDENCE CLAIMS BARRED.—In any civil action to which this title applies, no addiction claim or dependence claim may be filed or maintained.

(d) REQUIREMENTS.—The following requirements apply to civil actions to which this title applies:

(1) FUTURE REDUCED-RISK PRODUCTS.—In any civil action to which this subtitle applies, no allegation or evidence relating to reduced-risk tobacco products developed after the date of enactment of this Act

shall be admissible or discoverable in any action on a tobacco claim arising out of, based on, or related to any other tobacco product.

(2) PRODUCTION OF DOCUMENTS.—All documents or other records included in the document depository required to be established and maintained under section 903 of this Act shall be deemed produced in any civil action involving a tobacco claim, and no court in such action shall require additional production of any such document or record. Any such document submitted to the court shall be considered authenticated with the same legal status as the original.

(e) LIABILITY.—The following provisions regarding liability shall apply in civil actions to which this title applies:

(1) A tobacco product manufacturer shall be liable for any act or omission of its attorneys, advertising agencies, and agents undertaken in the representation of such tobacco product manufacturer.

(2) A tobacco product manufacturer shall be liable in connection with any tobacco claim for the liability, if any, of any of its affiliates arising from tobacco products sold directly by such affiliate in the United States or to an importer for resale in the

United States, unless such affiliate is a participating tobacco product manufacturer or a non-participating tobacco product manufacturer.

(3) Participating tobacco product manufacturers shall not be jointly and severally liable on a tobacco claim with non-participating tobacco product manufacturers. Nothing in this title prevents a participating tobacco product manufacturer from being held jointly and severally liable with any other person other than a non-participating tobacco product manufacturer if such liability exists under the applicable substantive rules of decision as determined under subsection (a), except that any such imposition of joint and several liability against a participating tobacco product manufacturer shall be subject to the provisions of section 706.

(4) In any civil action involving both a tobacco claim against a participating tobacco product manufacturer based in whole or in part upon conduct occurring prior to the date of enactment of this Act and a claim against 1 or more non-participating tobacco product manufacturers, the court, upon application of a participating tobacco product manufacturer shall sever a trial so that all claims against participating tobacco product manufacturers shall be tried sepa-

rately from any claim involving non-participating tobacco product manufacturers. If such severance results in a tobacco claim being submitted to more than 1 jury or to the same jury for separate deliberation the participating tobacco product manufacturer may not assert any claim that would prejudice the dollar amount to be recovered by the holder of the tobacco claim from the participating tobacco product manufacturer due to the severance of the action including satisfaction by way of jury verdict against the non-participating tobacco product manufacturer. In any action brought against a participating tobacco manufacturer and a person that is not a tobacco product manufacturer, the court may sever the trial so that all claims against such person may be tried separately.

(5) In any civil action brought involving a tobacco claim, there shall be a presumption that nicotine is addictive and that the diseases identified as being caused by use of tobacco products in the Center for Disease Control and Prevention Reducing the Health Consequences of Smoking: 25 Years of Progress: A Report of the Surgeon General (United States Public Health Service 1989), The Health Consequences of Smoking: Involuntary Smoking, (USPHS 1986); and The Health Consequences of

Using Smokeless Tobacco, (USPHS 1986), are caused in whole or in part by the use of tobacco products, (referred to elsewhere in this paragraph as the "general causation presumption"), and a jury empaneled to hear a tobacco claim shall be so instructed. In all other respects, the burden of proof as to the issue of whether a plaintiff's specific disease or injury was caused by smoking shall be governed by the law of the State or Tribe in which the tobacco claim was brought. The general causation presumption shall in no way affect the ability of the defendant to introduce evidence or argument which the defendant would otherwise be entitled to present under the law of the State or Tribe in which the tobacco claim was brought to rebut the general causation presumption, or with respect to general causation, specific causation, or alternative causation, or to introduce any other evidence or argument which the defendant would otherwise be entitled to make.

(f) PRESERVATION OF INSURANCE CLAIMS.—

(1) IN GENERAL.—If all participating tobacco product manufacturers fail to make the payments required by this Act for any calendar year, then—

(A) beginning on the first day of the next calendar year, subsection (a) does not apply to

any insurance claim (including a direct action claim) that is a tobacco claim, regardless of when that claim arose;

(B) any statute of limitations or doctrine of laches under applicable law shall be tolled for the period—

(i) beginning on the date of enactment of this Act; and

(ii) ending on the last day of that calendar year; and

(C) an insurance claim (including a direct action claim) that is a tobacco claim and that is pending on the date of enactment of this Act shall be preserved.

(2) APPLICATION OF TITLE 11, UNITED STATES CODE.—For purposes of this subsection, nothing in this Act shall be construed to modify, suspend, or otherwise affect the application of title 11, United States Code, to participating tobacco manufacturers that fail to make such payments.

(3) STATE LAW NOT AFFECTED.—Nothing in this subsection shall be construed to expand or abridge State law.

SEC. 706. PAYMENT OF TOBACCO CLAIM SETTLEMENTS AND JUDGMENTS.

(a) IN GENERAL.—Except as provided below, any judgment or settlement in any civil action to which this subtitle applies shall be subject to the process for payment of judgments and settlements set forth in this section. No participating tobacco product manufacturer shall be obligated to pay a judgment or settlement on a tobacco claim in any civil action to which this title applies except in accordance with this section. This section shall not apply to the portion, if any, of a judgment that imposes punitive damages based on any conduct that—

(1) occurs after the date of enactment of this Act; and

(2) is other than the manufacture, development, advertising, marketing, or sale of tobacco products in compliance with this Act and the Master Settlement Agreement.

(b) REGISTRATION WITH THE SECRETARY OF THE TREASURY.—

(1) The Secretary shall maintain a record of settlements, judgments, and payments in civil actions to which this title applies.

(2) Any party claiming entitlement to a monetary payment under a final judgment or final settlement on a tobacco claim shall register such claim

with the Secretary by filing a true and correct copy of the final judgment or final settlement agreement with the Secretary and providing a copy of such filing to all other parties to the judgment or settlement.

(3) The Secretary shall assign a priority for payment based upon the date on which a proper registration of a final judgment or final settlement occurs.

(4) Any participating tobacco product manufacturer making a payment on any final judgment or final settlement to which this section applies shall certify such payment to the Secretary by filing a true and correct copy of the proof of payment and a statement of the remaining unpaid portion, if any, of such final judgment or final settlement with the Secretary and shall provide a copy of such filing to all other parties to the judgment or settlement.

(c) LIABILITY CAP.—The aggregate payments made by all participating tobacco product manufacturers in any calendar year may not exceed $6,500,000,000. The Secretary shall initiate a rulemaking within 30 days after the date of enactment of this Act to establish a mechanism for implementing this subsection in such a way that payments may be made from all awards payable in that year. Amounts not payable because of the application of this subsection,

shall be carried forward and paid in the next year, subject to the provisions of this subsection.

(d) INJUNCTIVE RELIEF.—A participating tobacco product manufacturer may commence an action to enjoin any State court proceeding to enforce or execute any judgment or settlement where payment has not been authorized under this section. Such an action shall arise under the laws of the United States and may be commenced in the district court of the United States for the district in which the State court proceeding is pending.

(e) JOINT AND SEVERAL LIABILITY.—All participating tobacco product manufacturers shall be jointly and severally liable for, and shall enter into an agreement to apportion among them, any amounts payable under judgments and settlements governed by this section arising in whole or in part from conduct occurring prior to the date of enactment of this Act. No participating tobacco product manufacturer shall cease operations without establishing a surviving entity against which a tobacco claim may be brought. Any obligation or interest of a participating, tobacco product manufacturer arising under such liability apportionment agreement shall be given priority and shall not be rejected, avoided, or discharged in a proceeding, under title 11, United States Code, or in any liquidation,

reorganization, receivership, or other insolvency proceeding under State law.

SEC. 707. ATTORNEY'S FEES AND EXPENSES.

(a) ARBITRATION PANEL.—

(1) ESTABLISHMENT.—For the purpose of awarding of attorneys' fees and expenses relating to litigation affected by, or legal services that, in whole or in part, resulted in or created a model for programs in, this Act, and with respect to which litigation or services the attorney involved is unable to agree with the plaintiff who employed that attorney with respect to any dispute that may arise between them regarding the fee agreement, the matter at issue shall be submitted to arbitration. In any such arbitration, the arbitration panel shall consist of 3 persons, one of whom shall be chosen by the plaintiff, one of whom shall be chosen by the attorney, and one of whom shall be chosen jointly by those 2 arbitrators.

(2) OPERATION.—Not later than 30 days after the date on which all members of an arbitration panel are appointed under paragraph (1), the panel shall establish the procedures under which the panel will operate which shall include—

(A) a requirement that any finding by the arbitration panel must be in writing and supported by written reasons;

(B) procedures for the exchanging of exhibits and witness lists by the various claimants for awards;

(C) to the maximum extent practicable, requirements that proceedings before the panel be based on affidavits rather than live testimony; and

(D) a requirement that all claims be submitted to an arbitration panel not later than 3 months after the date of this Act and a determination made by the panel with respect to such claims not later than 7 months after such date of enactment.

(3) RIGHT TO PETITION.—Any individual attorney or group of attorneys involved in litigation affected by this Act shall have the right to petition an arbitration panel for attorneys' fees and expenses.

(4) CRITERIA.—In making any award under this section, an arbitration panel shall consider the following criteria:

(A) The time and labor required by the claimant.

(B) The novelty and difficulty of the questions involved in the action for which the claimant is making a claim.

(C) The skill requisite to perform the legal service involved properly.

(D) The preclusion of other employment by the attorney due to acceptance of the action involved.

(E) Whether the fee is fixed or a percentage.

(F) Time limitations imposed by the client or the circumstances.

(G) The amount involved and the results obtained.

(H) The experience, reputation, and ability of the attorneys involved.

(I) The undesirability of the action.

(J) Such other factors as justice may require.

(5) APPEAL AND ENFORCEMENT.—The findings of an arbitration panel shall be final, binding, nonappealable, and payable within 30 days after the date on which the finding is made public, except that if an award is to be paid in installments, the first installment shall be payable within such 30 day period and

succeeding installments shall be paid annually thereafter.

(b) VALIDITY AND ENFORCEABILITY OF PRIVATE AGREEMENTS.—Notwithstanding any other provision of this Act, nothing in this section shall be construed to abrogate or restrict in any way the rights of any parties to mediate, negotiate, or settle any fee or expense disputes or issues to which this section applies, or to enter into private agreements with respect to the allocation or division of fees among the attorneys party to any such agreement.

(c) OFFSET FOR AMOUNTS ALREADY PAID.—In making a determination under this section with regard to a dispute between a State that pursued independent civil action against tobacco product manufacturers and its attorney, the arbitration panel shall take into account any amounts already paid by the State under the agreement in dispute.

SEC. 708. NON-PARTICIPATING TOBACCO PRODUCT MANUFACTURERS.

(a) IN GENERAL.—If a tobacco product manufacturer does not enter into a consent decree or the Protocol before the date of enactment of this Act, then the limitations on liability under this title do not apply to that manufacturer.

(b) IMPOSITION OF FEE.—

(1) IN GENERAL.—There is hereby imposed on each tobacco product manufacturer described in subsection (a) an annual fee for any calendar year ending after the date of enactment of this Act for which it does not enter into a consent decree or sign the Protocol.

(2) AMOUNT.—

(A) TOTAL.—The amount of the annual fee imposed by paragraph (1) is equal to 150 percent of the amount that would be paid under section 403 of this Act for that year by that tobacco product manufacturer if it were a participating tobacco product manufacturer.

(B) PER TOBACCO PRODUCT MANUFACTURER.—The Secretary shall promulgate regulations—

(i) under which the amount of the fee imposed under paragraph (1) for any tobacco product manufacturer is to be determined; and

(ii) establishing procedures for the assessment and collection of any fee imposed under paragraph (1).

SEC. 709. CONFORMING AMENDMENTS.

(a) Section 362(b) of title 11, United States Code, is amended by—

(1) striking "or" after the semicolon in paragraph (17);

(2) striking "petition." in paragraph (18) and inserting "petition; or"; and

(3) adding at the end thereof the following:

"(19) under subsection (a) of this section, of the commencement or continuation of any action or other proceeding by or against a participating tobacco product manufacturer as defined in section 6(22) of the National Tobacco Policy and Youth Smoking Reduction Act regarding any interest or obligation arising under or directly related to the Master Settlement Agreement as defined in section 6(21) of that Act or the liability apportionment agreement.".

(b) Section 365 of title 11, United States Code, is amended by—

(1) striking "and (d)" in subsection (a) and inserting "(d), and (p)"; and

(2) adding at the end thereof the following:

"(p) The trustee may not reject, shall be deemed to have assumed as of the commencement of the case, and shall cause the debtor to perform on an executory contract of a participating tobacco product manufacturer as defined in

section 6(22) of the National Tobacco Policy and Youth Smoking Reduction Act, to the extent such executory contract is, or is directly related to, the Master Settlement Agreement as defined in section 6(21) of that Act, or the liability apportionment agreement described.".

(c) Section 507(a) of title 11, United States Code, is amended by adding at the end thereof the following:

"(10) Tenth, any unsecured claim of or against a participating tobacco product manufacturer as defined in section 6(22) of the National Tobacco Policy and Youth Smoking Reduction Act, regarding any interest or obligation that arises under or is directly related to the Master Settlement Agreement as defined in section 6(21) of that Act, or the liability apportionment agreement.".

(d) Section 541(a) of title 11, United States Code, is amended by adding at the end thereof the following:

"(8) Any interest of the debtor in property to the extent that the debtor has transferred or agreed to transfer such interest under the Master Settlement Agreement as defined in section 6(21) of the National Tobacco Policy and Youth Smoking Reduction Act or any written agreement directly related to such Master Settlement Agreement, or the liability apportionment

agreement, or any written agreement directly related to such liability apportionment agreement.".

(e) Section 1141 of title 11, United States Code, is amended by—

(1) striking "(d)(2) and (d)(3)" in subsection (a) and inserting "(d)(2), (d)(3), and (d)(5)";

(2) striking "(d)(2) and (d)(3)" in subsection (c) and inserting "(d)(2), (d)(3), and (d)(5)"; and

(3) adding at the end of subsection (d) the following:

"(5) The confirmation of a plan does not discharge a debtor from any debt or other obligation arising under or directly related to the Master Settlement Agreement as defined in section 6(21) of the National Tobacco Policy and Youth Smoking Reduction Act, or the liability apportionment agreement.".

TITLE VIII—TOBACCO INDUSTRY COMPLIANCE AND EMPLOYEE PROTECTION FROM REPRISALS

SEC. 801. TOBACCO INDUSTRY COMPLIANCE ACCOUNTABILITY REQUIREMENTS.

(a) ESTABLISHMENT OF ACCOUNTABILITY PANEL.—The Commissioner of Food and Drugs, in consultation with the Secretary, shall establish an advisory panel, to be

known as the "Tobacco Agreement Accountability Panel". The panel shall consist of the Surgeon General, the Director of the Center for Disease Control or the Director's delegate, and the Director of the Health and Human Services Office of Minority Health.

(b) TOBACCO COMPANY PLAN.—Within a year after the date of enactment of this Act, each participating tobacco product manufacturer shall adopt and submit to the Commissioner a plan to achieve the required percentage reductions in underage use of tobacco products set forth in section 201, and thereafter shall update its plan no less frequently than annually. The Commissioner shall provide a copy of each such plan to the panel, which shall review the plan and submit its views on the plan to the Commissioner. The panel may recommend amendment of any plan to incorporate additional measures to reduce underage tobacco use that are consistent with the provisions of this Act.

(c) ANNUAL REPORT.—The panel shall submit a report to the Commissioner and to the Congress by January 31 of each year, which shall be published in the Federal Register. In its report, the panel shall—

(1) describe in detail each tobacco product manufacturer's compliance with the provisions of this Act and its plan submitted under subsection (b);

(2) report on whether each tobacco product manufacturer's efforts to reduce underage smoking are likely to result in attainment of smoking reduction targets under section 201;

(3) recommend, where necessary, additional measures individual tobacco companies should undertake to meet those targets; and

(4) include, where applicable, the extent to which prior panel recommendations have been adopted by each tobacco product manufacturer.

(d) PUBLIC HEALTH EMERGENCY.—If the panel determines unanimously at any time that a tobacco product manufacturer's actions or inactions with respect to its compliance with the Act are of such a nature as to create a clear and present danger to the attainment of the targets for underage smoking reduction, it shall immediately report such acts or omissions to the Commissioner. If the Commissioner determines that such report is supported by clear and convincing evidence, the Commissioner may bring an action under section 203 seeking the immediate suspension of the tobacco product manufacturer's annual limitation cap on civil judgments. If the court determines that the Commissioner has proved by clear and convincing evidence that the subject manufacturer's actions or inactions are of such a nature that they present a clear and present danger to the

attainment of the targets for underage smoking reduction, the court may suspend the subject manufacturer's annual limitation cap on civil judgments.

SEC. 802. TOBACCO PRODUCT MANUFACTURER EMPLOYEE PROTECTION.

(a) PROHIBITED ACTS.—No tobacco product manufacturer may discharge, demote, or otherwise discriminate against any employee with respect to compensation, terms, conditions, benefits, or privileges of employment because the employee (or any person acting under a request of the employee)—

(1) notified the manufacturer, the Commissioner of Food and Drugs, the Attorney General, or any Federal, State, or local public health or law enforcement authority of an alleged violation of this or any other Act;

(2) refused to engage in any practice made unlawful by such Acts, if the employee has identified the alleged illegality to the manufacturer;

(3) testified before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of such Acts;

(4) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under such Acts, or a proceeding for the ad-

ministration or enforcement of any requirement imposed under such Acts;

(5) testified or is about to testify in any such proceeding; or

(6) assisted or participated, or is about to assist or participate, in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of such Acts.

(b) EMPLOYEE COMPLAINT.—

(1) Any employee of a tobacco product manufacturer who believes that he or she has been discharged, demoted, or otherwise discriminated against by any person in violation of subsection (a) of this section may, within 180 days after such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary alleging such discharge, demotion, or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of its filing.

(2)(A) Upon receipt of a complaint under paragraph (1) of this subsection, the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days after the receipt of such complaint, the Secretary shall complete such inves-

tigation and shall notify in writing the complainant (and any such person acting in his or her behalf) and the person alleged to have committed such violation of the results of the investigation conducted under this paragraph. Within 90 days after the receipt of such complaint, the Secretary shall (unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation) issue an order either providing the relief prescribed in subparagraph (B) of this paragraph or denying the complaint. An order of the Secretary shall be made on the record after notice and the opportunity for a hearing in accordance with sections 554 and 556 of title 5, United States Code. Upon the conclusion of such a hearing and the issuance of a recommended decision that the complaint has merit, the Secretary shall issue a preliminary order providing the relief prescribed in subparagraph (B) of this paragraph, but may not order compensatory damages pending a final order. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(B) If, in response to a complaint under paragraph (1) of this subsection, the Secretary determines that a violation of this paragraph has occurred, the Secretary shall order the person who committed such violation to (i) take affirmative action to abate the violation, and (ii) reinstate the complainant to his or her former position together with compensation (including back pay), terms, conditions, and privileges of his or her employment. The Secretary may order such person to provide compensatory damages to the complainant. If an order is issued under this subparagraph, the Secretary, at the request of the complainant, shall assess the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred (as determined by the Secretary), by the complainant for, or in connection with, the bringing of the complaint upon which the order is issued.

(3)(A) The Secretary shall dismiss a complaint filed under paragraph (1) of this subsection, and shall not conduct the investigation required under paragraph (2) of this subsection, unless the complainant has made a prima facie showing that any behavior described in subsection (a) of this section was a con-

tributing factor in the unfavorable personnel action alleged in the complaint.

(B) Notwithstanding a finding by the Secretary that the complainant has made the showing required by subparagraph (A) of this paragraph, no investigation required under paragraph (2) of this subsection shall be conducted if the manufacturer demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of such behavior. Relief may not be ordered under paragraph (1) of this subsection if the manufacturer demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of such behavior.

(C) The Secretary may determine that a violation of subsection (a) of this section has occurred only if the complainant has demonstrated that any behavior described in subsection (a) of this section was a contributing factor in unfavorable personnel action alleged in the complaint.

(c) JUDICIAL REVIEW.—

(1) Any person adversely affected or aggrieved by an order issued under subsection (a) of this section may obtain review of the order in the United States court of appeals for the circuit in which the violation,

with respect to which the order was issued, allegedly occurred. The petition for review must be filed within 60 days after the issuance of the Secretary's order. Judicial review shall be available as provided in chapter 7 of title 5, United States Code. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(2) An order of the Secretary with respect to which review could have been obtained under paragraph (1) of this subsection shall not be subject to judicial review in any criminal or civil proceeding.

(d) NONCOMPLIANCE.—Whenever a person has failed to comply with an order issued under subsection (b)(2) of this section, the Secretary may file a civil action in the United States district court for the district in which the violation occurred to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief, including injunctive relief and compensatory and exemplary damages.

(e) ACTION TO ENSURE COMPLIANCE.—

(1) Any person on whose behalf an order was issued under subsection (b)(2) of this section may commence a civil action to require compliance with such order against the person to whom such order was

issued. The appropriate United States district court shall have jurisdiction to enforce such order, without regard to the amount in controversy or the citizenship of the parties.

(2) The court, in issuing any final order under this subsection, may award costs of litigation (including reasonable attorneys' and expert witness fees) to any party whenever the court determines such award is appropriate.

(f) ENFORCEMENT.—Any non-discretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(g) APPLICABILITY TO CERTAIN EMPLOYEES.—Subsection (a) of this section shall not apply with respect to any employee who, acting without direction from the manufacturer (or the agent of the manufacturer) deliberately causes a violation of any requirement of this Act, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), or any other law or regulation relating to tobacco products.

(h) EFFECT ON OTHER LAWS.—This section shall not be construed to expand, diminish, or otherwise affect any right otherwise available to an employee under Federal or State law to redress the employee's discharge or other dis-

criminatory action taken by a tobacco product manufacturer against the employee.

(i) POSTING.—The provisions of this section shall be prominently posted in any place of employment to which this section applies.

TITLE IX—PUBLIC DISCLOSURE OF TOBACCO INDUSTRY DOCUMENTS

SEC. 901. FINDINGS.

The Congress finds that—

(1) the American tobacco industry has made claims of attorney-client privilege, attorney work product, and trade secrets to protect from public disclosure thousands of internal documents sought by civil litigants;

(2) a number of courts have found that these claims of privilege were not made in good faith; and

(3) a prompt and full exposition of tobacco documents will—

(A) promote understanding by the public of the tobacco industry's research and practices; and

(B) further the purposes of this Act.

SEC. 902. APPLICABILITY.

This title shall apply to all participating tobacco product manufacturers.

SEC. 903. NATIONAL TOBACCO DOCUMENT DEPOSITORY.

(a) ESTABLISHMENT.—Participating tobacco product manufacturers shall, within 180 days after the enactment of this Act, establish a National Tobacco Document Depository in the Washington, D.C., area. The cost of establishing and operating the Depository shall be allocated among such manufacturers on the basis of market share or as otherwise agreed among them.

(b) DOCUMENT CATEGORIES.—Within 30 days after the establishment of the Depository, each participating tobacco product manufacturer shall submit to the Depository—

(1) all original laboratory research conducted or funded, directly or indirectly, by any participating tobacco product manufacturers, the Center for Tobacco Research and Tobacco Institute relating to the health effects or safety of tobacco products, including without limitation all original laboratory research relating to any method or means of making tobacco products less hazardous to consumers;

(2) all documents produced by any participating tobacco product manufacturer, the Center of Tobacco Research or Tobacco Institute to the Attorney General

of any State during discovery in any action brought on behalf of any State and commenced after January 1, 1994;

(3) all documents produced by any participating tobacco product manufacturer, Center for Tobacco Research or Tobacco Institute to the Federal Trade Commission in connection with its investigation into the "Joe Camel" advertising campaign and any underage marketing of tobacco products to minors;

(4) all documents produced by any participating tobacco product manufacturers, the Center for Tobacco Research or the Tobacco Institute to litigation adversaries during discovery in any private litigation matters;

(5) all documents produced by any participating tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute in any of the following private litigation matters:

(A) Philip Morris v. American Broadcasting Co., Law No. 7609CL94x00181–00 (Cir. Ct. Va. filed Mar. 26, 1994);

(B) Estate of Butler v. R.J. Reynolds Tobacco Co., Civ. A. No. 94–5–53 (Cir. Ct. Miss., filed May 12, 1994);

(C) Haines v. Liggett Group, No. 84–CV–678 (D.N.J., filed Feb. 22, 1984); and

(D) Cipollone v. Liggett Group, No. 83–CV–284 (D.N.J., filed Aug. 1, 1983);

(6) any document produced as evidence or potential evidence or submitted to the court by participating tobacco product manufacturers in any of the actions described in paragraph (5), including briefs and other pleadings, memoranda, interrogatories, transcripts of depositions, and expert witnesses and consultants materials, including correspondence, reports, and testimony;

(7) any additional documents that any participating tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute have agreed or been required by any court to produce to litigation adversaries as part of discovery in any action listed in paragraph (2), (3), (4), or (5) but have not yet completed producing as of the date of enactment of this Act;

(8) all indices of documents relating to tobacco products and health, with any such indices that are maintained in computerized form placed into the depository in both a computerized and hard-copy form;

(9) a privilege log describing each document or portion of a document otherwise subject to production in the actions enumerated in this subsection that any participating tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute maintains, based upon a good faith de novo re-review conducted after June 20, 1997, is exempt from public disclosure under this title; and

(10) a trade secrecy log describing each document or portion of a document that any participating tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute maintains is exempt from public disclosure under this title.

(c) FUTURE DOCUMENTS.—With respect to documents created after the date of enactment of this Act, the participating tobacco product manufacturers and their trade associations shall place into the depository in accordance with a schedule established by the Board the following documents:

(1) All original laboratory research conducted or funded, directly or indirectly, by any participating tobacco product manufacturer relating to the health effects or safety of tobacco products, including without limitation all original laboratory research relating to any methods or means of making tobacco products less hazardous to consumers.

(2) All studies conducted or funded, directly or indirectly, by any participating tobacco product manufacturer, relating to tobacco product use by minors.

(3) All documents discussing or referring to the relationship, if any, between advertising and promotion and the use of tobacco products by minors.

(4) A privilege log describing each document or each portion of a document otherwise subject to public disclosure under this subsection that any participating tobacco product manufacturer maintains is exempt from public disclosure under this title.

(5) A trade secrecy log describing each document or each portion of a document otherwise subject to public disclosure under this subsection that any participating tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute maintains is exempt from public disclosure under this Act.

(d) DOCUMENT IDENTIFICATION AND INDEX.—Documents submitted to the Depository under this section shall be sequentially numbered and marked to identify the participating tobacco product manufacturer. Within 15 days after submission of documents to the Depository, each tobacco product manufacturer shall supply the Depository

with a comprehensive document index which references the applicable document categories contained in subsection (b).

SEC. 904. PRIVILEGE AND TRADE SECRET CLAIMS.

(a) SEPARATE SUBMISSION OF DOCUMENTS.—Any document that is subject to a claim by a participating tobacco product manufacturer of attorney-client privilege, attorney work product, or trade secret protection shall be so marked and shall be submitted separately to the Depository. Compliance with this subsection shall not be deemed to be a waiver of any applicable claim of privilege or trade secret protection.

(b) CONFIDENTIALITY.—Notwithstanding the provisions of section 552 of title 5 of the United States Code or the provisions of any State law, documents, and information provided to the United States Department of Justice or to State antitrust authorities under the Protocol shall be kept confidential by and among the United States Department of Justice and such authorities and shall be used only for the governmental purposes of enforcing this Act, the Protocol, and the consent decrees. The inspection and discovery rights provided to the States under the Protocol and this section shall be exercised by each State but coordinated through a multi-state States' Attorneys General oversight committee.

(c) PRIVILEGE AND TRADE SECRET LOGS.—

(1) In general.—Within 15 days after submitting documents to the Depository under subsection (a), each participating tobacco product manufacturer shall submit to the Depository a comprehensive log which identifies on a document-by-document basis all documents produced to the Depository for which the manufacturer asserts attorney-client privilege, attorney work-product, or trade secrecy. With respect to documents for which the manufacturer previously has asserted one or more of the aforementioned privileges or trade secret protection, the manufacturer shall conduct a good faith de novo review of such documents to determine whether such privilege or trade secret protection is appropriate.

(2) Organization of log.—The log shall be organized in numerical order based upon the document identifier assigned to each document. For each document, the log shall contain—

(A) a description of the document, including type of document, title of document, name and position or title of each author, addressee, and other recipient who was intended to receive a copy, document date, document purpose, and general subject matter;

(B) an explanation why the document or a portion of the document is privileged or subject to trade secret protection; and

(C) a statement whether any previous claim of privilege or trade secret was denied and, if so, in what proceeding.

(3) PUBLIC INSPECTION.—Within 5 days of receipt of such a log, the Depository shall make it available for public inspection and review.

(d) DECLARATION OF COMPLIANCE.—Each participating tobacco product manufacturer shall submit to the Board a declaration, in accordance with the requirements of section 1746 of title 28, United States Code, by an individual with responsibility for the de novo review of documents, preparation of the privilege log, and knowledge of its contents. The declarant shall attest to the manufacturer's compliance with the requirements of this title pertaining to the review of documents and preparation of a privilege log.

SEC. 905. DISCLOSURE BY THE DEPOSITORY.

(a) IN GENERAL.—Within 30 days after receipt of a document that is not subject to a claim of attorney-client privilege, attorney work product, or trade secret protection, the Depository shall make the document available to the public using the Internet and other means.

(b) EVIDENTIARY STATUS.—The provisions of section 2116(a) and (b) of title 44, United States Code, apply to records and documents submitted to the Depository in the same manner and to the same extent as if they were records submitted to the National Archives of the United States required by statute to be retained indefinitely.

(c) APPLICATION OF CONFIDENTIALITY LAW.—The release by the National Tobacco Documents Review Board established under section 906 or any employee of the Depository of any document recognized by the Depository as protected as a trade secret is a violation of section 1905 of title 18, United States Code.

SEC. 906. NATIONAL TOBACCO DOCUMENTS REVIEW BOARD.

(a) ESTABLISHMENT.—There shall be a National Tobacco Documents Review Board consisting of 5 members, qualified by training and experience to carry out the functions of the Board, each of whom shall be appointed by the President and with the advice and consent of the Senate. Any person who is a citizen of the United States shall be eligible to serve as a member of the Board. Each Board member shall be appointed for a term of 7 years and shall be eligible for reappointment. The Board shall have the power to hire such staff and establish such operating proce-

dures as it deems necessary to carry out its functions as specified hereunder.

(b) RESPONSIBILITY FOR DEPOSITORY.—The Board shall have the responsibility of maintaining the Depository and shall, in consultation with the General Services Administration, establish guidelines and procedures for the establishment and operation of the Depository, including guidelines for the immediate disclosure of documents that are not subject to unresolved claims of privilege or trade secrecy. The Depository shall be open to the public and maintained in a manner that permits it to be used as a resource for litigants, public health groups, and persons with an interest in tobacco industry records and research concerning smoking and health, addiction or nicotine dependency, safer or less hazardous cigarettes, and underage tobacco use and marketing. The Board may grant reasonable extensions of time for compliance upon a showing of good cause.

(c) PRIVILEGE.—The Board shall apply the attorney-client privilege and the attorney work-product doctrine in a manner consistent with Federal law.

SEC. 907. RESOLUTION OF DISPUTED PRIVILEGE AND TRADE SECRET CLAIMS.

(a) IN GENERAL.—The Board shall determine whether to uphold or reject disputed claims of attorney client privilege, attorney work product, or trade secret protection with

respect to documents submitted to the Depository. Any person may petition the Board to resolve a claim that a document submitted to the Depository may not be disclosed to the public. Such a determination shall be made by a majority of the Board, in writing, and shall be subject to judicial review as specified in this title. All such determinations shall be made solely on consideration of the subject document and written submissions from the person claiming that the document is privileged or protected by trade secrecy and from any person seeking disclosure of the document. The Board shall cause notice of the petition and the Board's decision to be published in the Federal Register.

(b) FINAL DECISION.—The Board may uphold a claim of privilege or protection in its entirety or, in its sole discretion, it may redact that portion of a document that it determines is protected from public disclosure under subsection (a). Any decision of the Board shall be final unless judicial review is sought under section 908. In the event that judicial review is so sought, the Board's decision shall be stayed pending a final judicial decision.

SEC. 908. APPEAL OF BOARD DECISION.

(a) PETITION; RIGHT OF APPEAL.—Any person may obtain judicial review of a final decision of the Board by filing a petition for review with the United States Court of Appeals for the Federal Circuit within 60 days after the

publication of such decision in the Federal Register. A copy of the petition shall be transmitted by the Clerk of the Court to the Board. The Board shall file in the court the record of the proceedings on which the Board based its decision (including any documents reviewed by the Board in camera) as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the Board's decision, except that until the filing of the record the Board may modify or set aside its decision.

(b) ADDITIONAL EVIDENCE AND ARGUMENTS.—If the any party applies to the court for leave to adduce additional evidence respecting the decision being reviewed and shows to the satisfaction of the court that such additional evidence or arguments are material and that there were reasonable grounds for the failure to adduce such evidence or arguments in the proceedings before the Board, the court may order the Board to provide additional opportunity for the presentation of evidence or arguments in such manner and upon such terms as the court deems proper. The Board may modify its findings or make new findings by reason of the additional evidence or arguments and shall file with the court such modified or new findings, and its recommendation, if any, for the modification or setting aside of the decision being reviewed.

(c) STANDARD OF REVIEW; FINALITY OF JUDGMENTS.—The Board's findings of fact, if supported by substantial evidence on the record taken as a whole, shall be conclusive. The court shall review the Board's legal conclusions de novo. The judgment of the court affirming or setting aside the Board's decision shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

(d) PUBLIC DISCLOSURE AFTER FINAL DECISION.—Within 30 days after a final decision that a document, as redacted by the Board or in its entirety, is not protected from disclosure by a claim of attorney-client privilege, attorney work product, or trade secret protection, the Board shall direct the Depository to make the document available to the public. No Federal, Tribal, or State court shall have jurisdiction to review a claim of attorney-client privilege, attorney work product, or trade secret protection for a document that has lawfully been made available to the public under this subsection.

(e) EFFECT OF NON-DISCLOSURE DECISION ON JUDICIAL PROCEEDINGS.—The Board's decision that a document is protected by attorney-client privilege, attorney work product, or trade secret protection is binding only for the purpose of protecting the document from disclosure by the

Depository. The decision by the Board shall not be construed to prevent a document from being disclosed in a judicial proceeding.

(f) DISCLOSURE TO THE FOOD AND DRUG ADMINISTRATION.—Within 240 days after the date of enactment of this Act, each participating tobacco product manufacturer shall submit to the Food and Drug Administration the documents identified in section 903(b) or 903(c), including documents for which trade secret protection is claimed, with the exception of any document for which privilege is claimed, and identified in accordance with section 904(a). Each such manufacturer shall provide the Administration with the privilege and trade secret logs identified under section 904(b). With respect to documents that are claimed to contain trade secret material, unless and until it is finally determined under this title, either through judicial review or because time for judicial review has expired, that such a document does not constitute or contain trade secret material, the Administration shall treat the document as a trade secret in accordance with section 708 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379) and the regulations promulgated thereunder. Nothing herein shall limit the authority of the Administration to obtain and use, in accordance with any provision of the Federal Food, Drug, and Cosmetic Act and the regulations promulgated there-

under, any document constituting or containing trade secret material. Documents and materials received by the Administration under this provision shall not be obtainable by or releasable to the public through section 552 of title 5, United States Code, or any other provision of law, and the only recourse to obtain these documents shall be through the Board and Depository.

SEC. 909. MISCELLANEOUS.

The disclosure process in this title is not intended to affect the Federal Rules of Civil or Criminal Procedure or any Federal law which requires the disclosure of documents or which deals with attorney-client privilege, attorney work product, or trade secret protection.

SEC. 910. PENALTIES.

(a) GOOD FAITH REQUIREMENT.—Each participating tobacco product manufacturer must act in good faith in asseting claims of privilege or trade secret protection based on fact and law. If the Board determines that a participating tobacco product manufacturer has not acted in good faith with full knowledge of the truth of the facts asserted and with a reasonable basis under existing law, the manufacturer shall be assessed costs, which shall include the full administrative costs of handling the claim of privilege, and all attorneys' fees incurred by the Board and any party contesting the privilege. The Board may also impose civil

penalties of up to $10,000 per violation if it determines that the manufacturer acted in bad faith in asserting a privilege, or knowingly acted with the intent to delay, frustrate, defraud, or obstruct the Board's determination of privilege or trade secret protection claims.

(b) FAILURE TO PRODUCE DOCUMENT.—A failure by a participating tobacco product manufacturer to produce indexes and documents in compliance with the schedule set forth in this title, or with such extension as may be granted by the Board, shall be punished by a civil penalty of up to $500 per violation. A separate violation occurs for each document the manufacturer has failed to produce in a timely manner. The maximum penalty under this subsection for a related series of violations is $10,000. In determining the amount of any civil penalty, the Board shall consider the number of documents, length of delay, any history of prior violations, the ability to pay, and such other matters as justice requires. Nothing in this title shall replace or supersede any criminal sanction under title 18, United States Code, or any other provision of law.

SEC. 911. DEFINITIONS.

For the purposes of this title—

(1) DOCUMENT.—The term "document" includes originals and drafts of any kind of written or graphic matter, regardless of the manner of production or re-

production, of any kind or description, whether sent or received or neither, and all copies thereof that are different in any way from the original (whether by interlineation, receipt stamp, notation, indication of copies sent or received or otherwise) regardless of whether confidential, privileged, or otherwise, including any paper, book, account, photograph, blueprint, drawing, agreement, contract, memorandum, advertising material, letter, telegram, object, report, record, transcript, study, note, notation, working paper, intra-office communication, intra-department communication, chart, minute, index sheet, routing sheet, computer software, computer data, delivery ticket, flow sheet, price list, quotation, bulletin, circular, manual, summary, recording of telephone or other conversation or of interviews, or of conferences, or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter, regardless of the manner produced or reproduced. Such term also includes any tape, recording, videotape, computerization, or other electronic recording, whether digital or analog or a combination thereof.

(2) TRADE SECRET.—The term "trade secret" means any commercially valuable plan, formula, process, or device that is used for making,

compounding, processing, or preparing trade commodities and that can be said to be the end-product of either innovation or substantial effort, for which there is a direct relationship between the plan, formula, process, or device and the productive process.

(3) CERTAIN ACTIONS DEEMED TO BE PROCEEDINGS.—Any action undertaken under this title, including the search, indexing, and production of documents, is deemed to be a "proceeding" before the executive branch of the United States.

(4) OTHER TERMS.—Any term used in this title that is defined in section 701 has the meaning given to it by that section.

TITLE X—LONG-TERM ECONOMIC ASSISTANCE FOR FARMERS

SEC. 1001. SHORT TITLE.

This title may be cited as the "Long-Term Economic Assistance for Farmers Act" or the "LEAF Act".

SEC. 1002. DEFINITIONS.

In this title:

(1) PARTICIPATING TOBACCO PRODUCER.—The term "participating tobacco producer" means a quota holder, quota lessee, or quota tenant.

(2) QUOTA HOLDER.—The term "quota holder" means a producer that owns a farm for which a to-

bacco farm marketing quota or farm acreage allotment was established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years.

(3) QUOTA LESSEE.—The term "quota lessee" means—

(A) a producer that owns a farm that produced tobacco pursuant to a lease and transfer to that farm of all or part of a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years; or

(B) a producer that rented land from a farm operator to produce tobacco under a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years.

(4) QUOTA TENANT.—The term "quota tenant" means a producer that—

(A) is the principal producer, as determined by the Secretary, of tobacco on a farm where tobacco is produced pursuant to a tobacco farm marketing quota or farm acreage allotment es-

tablished under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years; and

(B) is not a quota holder or quota lessee.

(5) SECRETARY.—The term "Secretary" means—

(A) in subtitles A and B, the Secretary of Agriculture; and

(B) in section 1031, the Secretary of Labor.

(6) TOBACCO PRODUCT IMPORTER.—The term "tobacco product importer" has the meaning given the term "importer" in section 5702 of the Internal Revenue Code of 1986.

(7) TOBACCO PRODUCT MANUFACTURER.—

(A) IN GENERAL.—The term "tobacco product manufacturer" has the meaning given the term "manufacturer of tobacco products" in section 5702 of the Internal Revenue Code of 1986.

(B) EXCLUSION.—The term "tobacco product manufacturer" does not include a person that manufactures cigars or pipe tobacco.

(8) TOBACCO WAREHOUSE OWNER.—The term "tobacco warehouse owner" means a warehouseman that participated in an auction market (as defined in

the first section of the Tobacco Inspection Act (7 U.S.C. 511)) during the 1998 marketing year.

(9) TRUST FUND.—The term "Trust Fund" means the Tobacco Community Revitalization Trust Fund established under section 1011.

Subtitle A—Tobacco Community Revitalization Trust Fund

SEC. 1011. ESTABLISHMENT OF TRUST FUND.

(a) IN GENERAL.—There is established in the Treasury of the United States a trust fund to be known as the "Tobacco Community Revitalization Trust Fund", consisting of such amounts as may be appropriated or credited to the Trust Fund. The Trust Fund shall be administered by the Secretary.

(b) TRANSFERS TO TRUST FUND.—There are appropriated and transferred to the Trust Fund for each fiscal year—

(1) amounts contributed by tobacco product manufacturers and tobacco product importers under section 1012; and

(2) an amount from the National Tobacco Settlement Trust Fund established by section 401 equal to the aggregate amount of assessments under section 1012 against participating tobacco manufacturers for that fiscal year.

(c) REPAYABLE ADVANCES.—

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

(2) REPAYMENT WITH INTEREST.—Repayable advances made to the Trust Fund shall be repaid, and interest on the advances shall be paid, to the general fund of the Treasury when the Secretary of the Treasury determines that moneys are available in the Trust Fund to make the payments.

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

(d) EXPENDITURES FROM TRUST FUND.—Amounts in the Trust Fund shall be available for making expenditures after October 1, 1998, to meet those necessary obligations of the Federal Government that are authorized to be paid under—

(1) section 1021 for payments for lost tobacco quota for each of fiscal years 1999 through 2023, but not to exceed $1,650,000,000 for any fiscal year except to the extent the payments are made in accordance with subsection (d)(12) or (e)(9) of section 1021;

(2) section 1022 for industry payments for all costs of the Department of Agriculture associated with the production of tobacco;

(3) section 1023 for tobacco community economic development grants, but not to exceed—

(A) $375,000,000 for each of fiscal years 1999 through 2008, less any amount required to be paid under section 1022 for the fiscal year; and

(B) $450,000,000 for each of fiscal year 2009 through 2023, less any amount required to be paid under section 1022 during the fiscal year;

(4) section 1031 for assistance provided under the tobacco worker transition program, but not to exceed $25,000,000 for any fiscal year; and

(5) subpart 9 of part A of title IV of the Higher Education Act of 1965 for farmer opportunity grants, but not to exceed—

(A) $42,500,000 for each of the academic years 1999–2000 through 2003–2004;

(B) $50,000,000 for each of the academic years 2004–2005 through 2008–2009;

(C) $57,500,000 for each of the academic years 2009–2010 through 2013–2014;

(D) $65,000,000 for each of the academic years 2014–2015 through 2018–2019; and

(E) $72,500,000 for each of the academic years 2019–2020 through 2023–2024.

(e) BUDGETARY TREATMENT.—This section constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide payments to States and eligible persons in accordance with this title.

SEC. 1012. CONTRIBUTIONS BY TOBACCO PRODUCT MANUFACTURERS AND IMPORTERS.

(a) DEFINITION OF MARKET SHARE.—In this section, the term "market share" means the ratio of—

(1) the tax liability of a tobacco product manufacturer or tobacco product importer for a calendar year under section 5703 of the Internal Revenue Code of 1986; to

(2) the tax liability of all tobacco product manufacturers or tobacco product importers for the cal-

endar year under section 5703 of the Internal Revenue Code of 1986.

(b) DETERMINATIONS.—Not later than September 30 of each fiscal year, the Secretary of the Treasury shall—

(1) determine—

(A) the market share of each tobacco product manufacturer or tobacco product importer during the most recent calendar year;

(B) the total amount of assessments payable for the subsequent fiscal year under subsection (c); and

(C) the amount of an assessment payable by the tobacco product manufacturer or tobacco product importer for the fiscal year under subsection (d); and

(2) notify each tobacco product manufacturer and tobacco product importer of the determinations made under paragraph (1) with respect to the manufacturer or importer.

(c) TOTAL AMOUNT OF ASSESSMENTS.—

(1) IN GENERAL.—The total amount of assessments payable by all tobacco product manufacturers and tobacco product importers into the Trust Fund for a fiscal year shall be equal to—

(A) the amount of the contribution to the Trust Fund for the fiscal year required under paragraph (2); less

(B) any amount made available during the preceding fiscal year to the Trust Fund out of funds transferred from National Tobacco Settlement Trust Fund under section 1011(b)(2).

(2) TRUST FUND CONTRIBUTIONS.—The amount of the contribution to the Trust Fund shall be—

(A) $2,100,000,000 for each of fiscal years 1999 through 2008;

(B) $500,000,000 for each of fiscal years 2009 through 2023; and

(C) for fiscal year 2024 and each subsequent fiscal year, the amount payable under section 1022.

(d) INDIVIDUAL AMOUNT OF ASSESSMENTS.—The amount of an assessment payable by each tobacco product manufacturer and tobacco product importer into the Trust Fund for a fiscal year shall be equal to the product obtained by multiplying—

(1) the total amount of assessments payable by all tobacco product manufacturers and tobacco product importers for the fiscal year under subsection (c); and

(2) the market share of the tobacco product manufacturer or tobacco product importer during the most recent calendar year determined under subsection (b)(1)(A).

(e) CREDIT FOR PAYMENTS BY PARTICIPATING TOBACCO PRODUCT MANUFACTURERS.—There shall be allowed as a credit against the amount of any assessment under this section for a participating tobacco product manufacturer an amount equal to the amount paid by that manufacturer under section 403 of this Act (other than as penalty or interest) for the calendar year ending in that fiscal year.

Subtitle B—Tobacco Market Transition Assistance

SEC. 1021. PAYMENTS FOR LOST TOBACCO QUOTA.

(a) IN GENERAL.—Beginning with the 1999 marketing year, the Secretary shall make payments for lost tobacco quota to eligible quota holders, quota lessees, and quota tenants as reimbursement for lost tobacco quota as a result of a decrease in demand for domestically produced tobacco.

(b) ELIGIBILITY.—To be eligible to receive payments under this section, a quota holder, quota lessee, or quota tenant shall—

(1) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require,

including information sufficient to make the demonstration required under paragraph (2); and

(2) demonstrate to the satisfaction of the Secretary that, with respect to the 1997 marketing year—

(A) the producer was a quota holder and realized income from the production of tobacco through—

(i) the active production of tobacco;

(ii) the lease and transfer of tobacco quota to another farm;

(iii) the rental of all or part of the farm of the quota holder, including the right to produce tobacco, to another tobacco producer; or

(iv) the hiring of a quota tenant to produce tobacco;

(B) the producer was a quota lessee; or

(C) the producer was a quota tenant.

(c) BASE QUOTA LEVEL.—

(1) IN GENERAL.—The Secretary shall determine, for each quota holder, quota lessee, and quota tenant, the base quota level for the 1995 through 1997 marketing years.

(2) QUOTA HOLDERS.—The base quota level for a quota holder shall be equal to the average tobacco farm marketing quota established for the farm owned by the quota holder for the 1995 through 1997 marketing years.

(3) QUOTA LESSEES.—The base quota level for a quota lessee shall be equal to—

(A) 50 percent of the average number of pounds of tobacco quota established for a farm for the 1995 through 1997 marketing years—

(i) that was leased and transferred to a farm owned by the quota lessee; or

(ii) for which the rights to produce the tobacco were rented to the quota lessee; less

(B) 25 percent of the average number of pounds of tobacco quota described in subparagraph (A) for which a quota tenant was the principal producer of the tobacco quota.

(4) QUOTA TENANTS.—The base quota level for a quota tenant shall be equal to the sum of—

(A) 50 percent of the average number of pounds of tobacco quota established for a farm for the 1995 through 1997 marketing years—

(i) that was owned by a quota holder; and

(ii) for which the quota tenant was the principal producer of the tobacco on the farm; and

(B) 25 percent of the average number of pounds of tobacco quota for the 1995 through 1997 marketing years—

(i)(I) that was leased and transferred to a farm owned by the quota lessee; or

(II) for which the rights to produce the tobacco were rented to the quota lessee; and

(ii) for which the quota tenant was the principal producer of the tobacco on the farm.

(5) MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—

(A) IN GENERAL.—For each type of tobacco for which there is a marketing quota or allotment (on an acreage basis), the base quota level for each quota holder, quota lessee, or quota tenant shall be determined in accordance with this subsection (based on a poundage conversion) by multiplying—

(i) the average tobacco farm marketing quota or allotment for the 1995 through 1997 marketing years; and

(ii) the average yield per acre for the farm for the type of tobacco for the marketing years.

(B) YIELDS NOT AVAILABLE.—If the average yield per acre is not available for a farm, the Secretary shall calculate the base quota for the quota holder, quota lessee, or quota tenant (based on a poundage conversion) by determining the amount equal to the product obtained by multiplying—

(i) the average tobacco farm marketing quota or allotment for the 1995 through 1997 marketing years; and

(ii) the average county yield per acre for the county in which the farm is located for the type of tobacco for the marketing years.

(d) PAYMENTS FOR LOST TOBACCO QUOTA FOR TYPES OF TOBACCO OTHER THAN FLUE-CURED TOBACCO.—

(1) ALLOCATION OF FUNDS.—Of the amounts made available under section 1011(d)(1) for payments for lost tobacco quota, the Secretary shall make available for payments under this subsection an amount that bears the same ratio to the amounts made available as—

(A) the sum of all national marketing quotas for all types of tobacco other than flue-cured tobacco during the 1995 through 1997 marketing years; bears to

(B) the sum of all national marketing quotas for all types of tobacco during the 1995 through 1997 marketing years.

(2) OPTION TO RELINQUISH QUOTA.—

(A) IN GENERAL.—Each quota holder shall be given the option to relinquish the farm marketing quota or farm acreage allotment of the quota holder in exchange for a payment made under paragraph (3).

(B) NOTIFICATION.—A quota holder shall give notification of the intention of the quota holder to exercise the option at such time and in such manner as the Secretary may require, but not later than January 15, 1999.

(3) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA HOLDERS EXERCISING OPTIONS TO RELINQUISH QUOTA.—

(A) IN GENERAL.—Subject to subparagraph (E), for each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost tobacco quota to each quota holder that has

relinquished the farm marketing quota or farm acreage allotment of the quota holder under paragraph (2).

(B) AMOUNT.—The amount of a payment made to a quota holder described in subparagraph (A) for a marketing year shall equal 1/10 of the lifetime limitation established under subparagraph (E).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the farm marketing quota or farm acreage allotment is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(E) LIFETIME LIMITATION ON PAYMENTS.—The total amount of payments made under this paragraph to a quota holder shall not exceed the product obtained by multiplying the base quota level for the quota holder by $8 per pound.

(4) REISSUANCE OF QUOTA.—

(A) REALLOCATION TO LESSEE OR TENANT.—If a quota holder exercises an option to re-

linquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), a quota lessee or quota tenant that was the primary producer during the 1997 marketing year of tobacco pursuant to the farm marketing quota or farm acreage allotment, as determined by the Secretary, shall be given the option of having an allotment of the farm marketing quota or farm acreage allotment reallocated to a farm owned by the quota lessee or quota tenant.

(B) CONDITIONS FOR REALLOCATION.—

(i) TIMING.—A quota lessee or quota tenant that is given the option of having an allotment of a farm marketing quota or farm acreage allotment reallocated to a farm owned by the quota lessee or quota tenant under subparagraph (A) shall have 1 year from the date on which a farm marketing quota or farm acreage allotment is relinquished under paragraph (2) to exercise the option.

(ii) LIMITATION ON ACREAGE ALLOTMENT.—In the case of a farm acreage allotment, the acreage allotment determined for any farm subsequent to any reallocation

under subparagraph (A) shall not exceed 50 percent of the acreage of cropland of the farm owned by the quota lessee or quota tenant.

(iii) LIMITATION ON MARKETING QUOTA.—In the case of a farm marketing quota, the marketing quota determined for any farm subsequent to any reallocation under subparagraph (A) shall not exceed an amount determined by multiplying—

(I) the average county farm yield, as determined by the Secretary; and

(II) 50 percent of the acreage of cropland of the farm owned by the quota lessee or quota tenant.

(C) ELIGIBILITY OF LESSEE OR TENANT FOR PAYMENTS.—If a farm marketing quota or farm acreage allotment is reallocated to a quota lessee or quota tenant under subparagraph (A)—

(i) the quota lessee or quota tenant shall not be eligible for any additional payments under paragraph (5) or (6) as a result of the reallocation; and

(ii) the base quota level for the quota lessee or quota tenant shall not be increased as a result of the reallocation.

(D) REALLOCATION TO QUOTA HOLDERS WITHIN SAME COUNTY OR STATE.—

(i) IN GENERAL.—Except as provided in clause (ii), if there was no quota lessee or quota tenant for the farm marketing quota or farm acreage allotment for a type of tobacco, or if no quota lessee or quota tenant exercises an option of having an allotment of the farm marketing quota or farm acreage allotment for a type of tobacco reallocated, the Secretary shall reapportion the farm marketing quota or farm acreage allotment among the remaining quota holders for the type of tobacco within the same county.

(ii) CROSS-COUNTY LEASING.—In a State in which cross-county leasing is authorized pursuant to section 319(l) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e(l)), the Secretary shall reapportion the farm marketing quota among

the remaining quota holders for the type of tobacco within the same State.

(iii) ELIGIBILITY OF QUOTA HOLDER FOR PAYMENTS.—If a farm marketing quota is reapportioned to a quota holder under this subparagraph—

(I) the quota holder shall not be eligible for any additional payments under paragraph (5) or (6) as a result of the reapportionment; and

(II) the base quota level for the quota holder shall not be increased as a result of the reapportionment.

(E) SPECIAL RULE FOR TENANT OF LEASED TOBACCO.—If a quota holder exercises an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), the farm marketing quota or farm acreage allotment shall be divided evenly between, and the option of reallocating the farm marketing quota or farm acreage allotment shall be offered in equal portions to, the quota lessee and to the quota tenant, if—

(i) during the 1997 marketing year, the farm marketing quota or farm acreage

(25.h)

allotment was leased and transferred to a farm owned by the quota lessee; and

(ii) the quota tenant was the primary producer, as determined by the Secretary, of tobacco pursuant to the farm marketing quota or farm acreage allotment.

(5) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA HOLDERS.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for a type of tobacco is less than the average national marketing quota for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota holder that is eligible under subsection (b), and has not exercised an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), in an amount that is equal to the product obtained by multiplying—

(i) the number of pounds by which the basic farm marketing quota (or poundage conversion) is less than the base quota level for the quota holder; and

(ii) $4 per pound.

(B) POUNDAGE CONVERSION FOR MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—

(i) IN GENERAL.—For each type of tobacco for which there is a marketing quota or allotment (on an acreage basis), the poundage conversion for each quota holder during a marketing year shall be determined by multiplying—

(I) the basic farm acreage allotment for the farm for the marketing year; and

(II) the average yield per acre for the farm for the type of tobacco.

(ii) YIELD NOT AVAILABLE.—If the average yield per acre is not available for a farm, the Secretary shall calculate the poundage conversion for each quota holder during a marketing year by multiplying—

(I) the basic farm acreage allotment for the farm for the marketing year; and

(II) the average county yield per acre for the county in which the farm is located for the type of tobacco.

(6) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for a type of tobacco is less than the average national marketing quota for the type of tobacco for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota lessee and quota tenant that is eligible under subsection (b) in an amount that is equal to the product obtained by multiplying—

(A) the percentage by which the national marketing quota for the type of tobacco is less than the average national marketing quota for the type of tobacco for the 1995 through 1997 marketing years;

(B) the base quota level for the quota lessee or quota tenant; and

(C) $4 per pound.

(7) LIFETIME LIMITATION ON PAYMENTS.—Except as otherwise provided in this subsection, the total amount of payments made under this subsection to a quota holder, quota lessee, or quota tenant during the lifetime of the quota holder, quota lessee, or quota ten-

ant shall not exceed the product obtained by multiplying—

(A) the base quota level for the quota holder, quota lessee, or quota tenant; and

(B) $8 per pound.

(8) LIMITATIONS ON AGGREGATE ANNUAL PAYMENTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the total amount payable under this subsection for any marketing year shall not exceed the amount made available under paragraph (1).

(B) ACCELERATED PAYMENTS.—Paragraph (1) shall not apply if accelerated payments for lost tobacco quota are made in accordance with paragraph (12).

(C) REDUCTIONS.—If the sum of the amounts determined under paragraphs (3), (5), and (6) for a marketing year exceeds the amount made available under paragraph (1), the Secretary shall make a pro rata reduction in the amounts payable under paragraphs (5) and (6) to quota holders, quota lessees, and quota tenants under this subsection to ensure that the total amount of payments for lost tobacco quota does

not exceed the amount made available under paragraph (1).

(D) ROLLOVER OF PAYMENTS FOR LOST TOBACCO QUOTA.—Subject to subparagraph (A), if the Secretary makes a reduction in accordance with subparagraph (C), the amount of the reduction shall be applied to the next marketing year and added to the payments for lost tobacco quota for the marketing year.

(E) ADDITIONAL PAYMENTS TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTA.—If the amount made available under paragraph (1) exceeds the sum of the amounts determined under paragraphs (3), (5), and (6) for a marketing year, the Secretary shall distribute the amount of the excess pro rata to quota holders that have exercised an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2) by increasing the amount payable to each such holder under paragraph (3).

(9) SUBSEQUENT SALE AND TRANSFER OF QUOTA.—Effective beginning with the 1999 marketing year, on the sale and transfer of a farm marketing quota or farm acreage allotment under section 316(g)