II

105TH CONGRESS
1ST SESSION

S. 1492

To amend the Public Health Service Act and the Federal Food, Drug and Cosmetic Act to prevent the use of tobacco products by minors, to reduce the level of tobacco addiction, to compensate Federal and State Governments for a portion of the health costs of tobacco-related illnesses, to enhance the national investment in biomedical and basic scientific research, and to expand programs to address the needs of children, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 8, 1997

Mr. KENNEDY (for himself, Mr. LAUTENBERG, Mr. DURBIN, Mr. REED, and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

---

A BILL

To amend the Public Health Service Act and the Federal Food, Drug and Cosmetic Act to prevent the use of tobacco products by minors, to reduce the level of tobacco addiction, to compensate Federal and State Governments for a portion of the health costs of tobacco-related illnesses, to enhance the national investment in biomedical and basic scientific research, and to expand programs to address the needs of children, and for other purposes.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Healthy and Smoke Free Children Act''.

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

SEC. 2. FINDINGS AND PURPOSES.

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

(1) Tobacco products are the foremost preventable health problem facing America today. More than 400,000 individuals die each year as a result of tobacco induced illnesses and conditions.

(2) Nicotine that is contained in tobacco products is extremely addictive.

(3) The tobacco industry has historically targeted tobacco product marketing and promotional efforts towards minors in order to entrap them into a lifetime of smoking.

(4) Over 90 percent of individuals who smoke began smoking regularly while they were still minors.

(5) Approximately 3000 minors begin smoking each day. 1000 of these minors will die prematurely from a tobacco induced illness or medical condition.

(6) Tobacco induced illnesses and medical conditions resulting from tobacco use cost the United States over $100,000,000,000 each year.

(7) Each year the Federal Government incurs costs in excess of $20,000,000,000 for the medical treatment of individuals suffering from tobacco induced illnesses and conditions.

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

(1) substantially reduce youth smoking;

(2) assist individuals who are currently addicted to tobacco products in overcoming that addiction;

(3) educate the public concerning the health dangers inherent in the use of tobacco products;

(4) fund medical research; and

(5) provide for the healthy development of young children and to enhance their learning capacity and improve the quality of their care.

TITLE I—AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT RELATING TO TOBACCO

SEC. 101. PUBLIC HEALTH AND EDUCATION PROGRAMS.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended by adding at the end thereof the following new title:

"TITLE XXVIII—PUBLIC HEALTH AND EDUCATION PROGRAMS AND TOBACCO CONTROL

"SEC. 2801. DEFINITIONS.

''In this title:

''(1) BRAND.—The term 'brand' means a variety of a tobacco product distinguished by the tobacco

used, tar content, nicotine content, flavoring used, size, filtration, or packaging.

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

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

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

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

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

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

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

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

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

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

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

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

''(9) LITTLE CIGAR.—The term 'little cigar' means any roll of tobacco wrapped in leaf tobacco or any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of subsection (1)) and as to which 1,000 units weigh not more than 3 pounds.

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

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

''(12) PACKAGE.—The term 'package' means a pack, box, carton, or container of any kind in which

tobacco products are offered for sale, sold, or otherwise distributed to consumers.

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

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

''(15) POINT OF SALE.—The term 'point of sale' means any location at which an individual can purchase or otherwise obtain tobacco products for personal consumption.

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

''(17) ROLL-YOUR-OWN TOBACCO.—The term 'roll-your-own tobacco'' has the meaning given such term by section 5702(p) of the Internal Revenue Code of 1986.

''(18) SALE.—The term 'sale' includes the selling, providing samples of, or otherwise making to-

bacco products available for personal consumption in any place within the scope of this title.

''(19) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services.

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

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

''(22) TOBACCO.—The term 'tobacco' means tobacco in its unmanufactured form.

''(23) TOBACCO PRODUCT.—The term 'tobacco product' means cigarettes, cigarillos, cigarette tobacco, little cigars, pipe tobacco, and smokeless tobacco, and roll-your-own tobacco.

"Subtitle A—Public Health and Education Programs

"SEC. 2811. PAYMENTS TO STATES.

"(a) FUNDS.—

"(1) IN GENERAL.—Subject to subsection (d), there are hereby made available to carry out this section for each fiscal year an amount equal to the amount necessary to reimburse States as provided for in subsection (b).

"(2) FISCAL YEAR LIMITATION.—Amounts made available for a fiscal year under paragraph (1) shall be equal to—

"(A) 43 percent of the net increase in revenues received in the Treasury for such fiscal year attributable to any amendments made to chapter 52 of the Internal Revenue Code of 1986 in the fiscal year in which this title is enacted, as estimated by the Secretary; less

"(B) amounts made available for such fiscal year under sections 2812 and 2814.

"(b) REIMBURSEMENT.—

"(1) IN GENERAL.—The Secretary shall use amounts made available under subsection (a) 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, and to permit States to utilize the Federal share of such expended amounts to provide services for children.

''(2) AMOUNT.—The amount for which a State is eligible for under paragraph (1) shall be based on the ratio of the expenditures of the State under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) for fiscal year 1996 to the expenditures by all States under such title for such fiscal year.

''(3) ADJUSTMENT.—With respect to a fiscal year in which the amount determined under subsection (a)(1) exceeds the limitation under subsection (a)(2), the Secretary shall make pro rata reductions in the amounts provided to States under this subsection.

''(c) USE OF FUNDS.—

''(1) DETERMINATION.—With respect to each State, the Secretary shall determine the proportion of the reimbursement under subsection (b) for each fiscal year that is equal to the amount that has been paid to the State as the Federal medical assistance percentage (as defined in section 1905(b)) of the Social Security Act (42 U.S.C. 1396d(b)) expenditures by the State for the preceding fiscal year.

''(2) REQUIRED USE.—With respect to the amount determined under paragraph (1) for a State for a fiscal year, the Secretary shall not treat such amount as an overpayment under any joint Federal-State health program if the State certifies to the Secretary that such amount will be used by the State to serve the needs of children in the State under 1 or more of the following programs:

''(A) An Even Start program under section of the Head Start Act (42 U.S.C. 9801 et seq.).

''(B) The Head Start program under the Head Start Act (42 U.S.C. 9801 et seq.).

''(C) A child care program under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 658A et seq.).

''(D) The Individuals with Disabilities Education Act.

''(E) The child care food program and start-up and expansion funds for school break programs and summer food programs under section 17 of the National School Lunch Act (42 U.S.C. 1766).

''(F) The special supplemental food program under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

''(G) The Maternal and Child Health Services Block Grant program under title V of the Social Security Act (42 U.S.C. 701 et seq.).

''(H) The State Children's Health Insurance Program of the State under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).

''(I) The family preservation and support services program under section 430B of the Social Security Act.

''(J) State initiated programs that are designed to serve the health and developmental needs of children and are approved by the Secretary.

''(3) COORDINATION.—A State may use not to exceed 20 percent of the amount determined under paragraph (1) for the State for a fiscal year to—

''(A) improve linkages and coordination among programs serving children and families, including the provision of funds to outpost outreach workers into Federally funded early childhood programs to ensure effective enrollment in child health initiatives referred to in paragraph (2)(H);

"(B) fund local collaboratives which shall be required to use such funds on needs assessments, planning, and investments to maximize efforts to improve child development; and

"(C) fund innovative demonstrations that address the outstanding needs of children and families as assessed by State and local entities.

"(4) STATE PLAN.—To be eligible to receive funds under this subsection a State shall prepare and submit to the Secretary a State plan, at such time, in such manner, and containing such information as the Secretary may require, including a description of the manner in which the State will use amounts provided under this subsection. Such plan shall demonstrate, based on standards established by the Secretary, that the State will comply with paragraph (6).

"(5) APPLICATION OF REQUIREMENTS.—The requirements of the respective provisions of law described in paragraph (2) shall apply to any funds made available under this subsection through State programs under any such provision of law to the same extent that such requirements would otherwise apply to such programs under such provisions of law.

''(6) SUPPLEMENT NOT SUPPLANT.—Amounts provided to a State under this subsection 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 paragraph (2) shall not be reduced solely as a result of the availability of funds under this section.

''(7) OVERPAYMENTS.—Any amount of the reimbursement of a State under paragraph (1) to which paragraph (2) applies that is not used in accordance with this subsection shall be treated by the Secretary as an overpayment under section 1903 of the Social Security Act (42 U.S.C. 1396b). Any such overpayments may be allotted among other States under this subsection in proportion to the amount that the State originally received under this section.

''SEC. 2812. PUBLIC HEALTH PROGRAMS.

''(a) FUNDING.—There are hereby made available to carry out this section—

''(1) for fiscal year 1998, $2,100,000,000;

''(2) for fiscal year 1999, $2,175,000,000 increased by an amount equal to the increase in the Consumer Price Index for the previous fiscal year

for all urban consumers (all items; U.S. city average);

''(3) for fiscal year 2000, $2,200,000,000 increased by an amount equal to the increase in the Consumer Price Index for the 2 previous fiscal years for all urban consumers (all items; U.S. city average);

''(4) for fiscal year 2001, $2,325,000,000 increased by an amount equal to the increase in the Consumer Price Index for the 3 previous fiscal years for all urban consumers (all items; U.S. city average); and

''(5) for fiscal year 2002 and subsequent fiscal years, the amount made available for fiscal year 2001 increased by an amount equal to the increase in the Consumer Price Index for the period encompassing the fiscal years from 1998 to the fiscal year prior to the fiscal year involved for all urban consumers (all items; U.S. city average).

''(b) USE OF FUNDS.—Amounts made available for a fiscal year under subsection (a) shall be distributed in the following manner:

''(1) USE REDUCTION AND ADDICTION PREVENTION RESEARCH.—

''(A) IN GENERAL.—The amount described in subparagraph (B) shall be used by Secretary to carry out Federal tobacco use reduction and addiction prevention research under section 2825(a).

''(B) AMOUNT.—The amount described in this subparagraph is—

''(i) for fiscal year 1998, $100,000,000; and

''(ii) for fiscal year 1999 and each subsequent fiscal year, the amount described in clause (i), increased for each such fiscal year by an amount equal to the increase in the Consumer Price Index for the period encompassing the fiscal years from 1998 to the fiscal year prior to the fiscal year involved for all urban consumers (all items; U.S. city average).

''(2) COUNTER-ADVERTISING.—

''(A) IN GENERAL.—The amount described in subparagraph (B) shall be used by Secretary to carry out the Federal tobacco product counter-advertising campaign under section 2825(b).

"(B) AMOUNT.—The amount described in this subparagraph is—

"(i) for fiscal year 1998, $500,000,000; and

"(ii) for fiscal year 1999 and each subsequent fiscal year, the amount described in clause (i), increased for each such fiscal year by an amount equal to the increase in the Consumer Price Index for the period encompassing the fiscal years from 1998 to the fiscal year prior to the fiscal year involved for all urban consumers (all items; U.S. city average).

"(3) CENTERS FOR DISEASE CONTROL AND PREVENTION PROGRAMS.—

"(A) IN GENERAL.—The amount described in subparagraph (B) shall be used by Secretary, acting through the Centers for Disease Control and Prevention, to carry programs to discourage the initiation of tobacco use, reduce the incidence of tobacco use among current users, and for other activities designed to reduce the risk of dependence and injury from tobacco products under section 2825(c).

''(B) AMOUNT.—The amount described in this subparagraph is—

''(i) for fiscal year 1998, $60,000,000;

''(ii) for each of the fiscal years 1998 and 2000, $60,000,000, increased for each such fiscal year by an amount equal to the increase in the Consumer Price Index for the period encompassing the fiscal years from 1998 to the fiscal year prior to the fiscal year involved for all urban consumers (all items; U.S. city average);

''(iii) for fiscal year 2001, $100,000,000, increased for such fiscal year by an amount equal to the increase in the Consumer Price Index for fiscal years 1998 through 2000 for all urban consumers (all items; U.S. city average); and

''(iv) for fiscal year 2002 and subsequent fiscal years, the amount described in clause (iii), increased for each such fiscal year by an amount equal to the increase in the Consumer Price Index for the period encompassing the fiscal years from 1998 to the fiscal year prior to the fiscal year in-

volved for all urban consumers (all items; U.S. city average).

''(4) FOOD AND DRUG ADMINISTRATION.—

''(A) IN GENERAL.—The amount described in subparagraph (B) shall be used by Secretary to assist in defraying the costs associated with the activities of the Food and Drug Administration relating to tobacco.

''(B) AMOUNT.—The amount described in this subparagraph is—

''(i) for fiscal year 1998, $300,000,000; and

''(ii) for fiscal year 1999 and each subsequent fiscal year, the amount described in clause (i), increased for each such fiscal year by an amount equal to the increase in the Consumer Price Index for the period encompassing the fiscal years from 1998 to the fiscal year prior to the fiscal year involved for all urban consumers (all items; U.S. city average).

''(5) STATE BLOCK GRANTS.—

''(A) IN GENERAL.—The amount described in subparagraph (B) shall be used by Secretary to make block grants to States under the Na-

tional Tobacco Usage Reduction and Education Block Grant Program under section 2826.

"(B) AMOUNT.—The amount described in this subparagraph is—

"(i) for fiscal year 1998, $1,144,000,000;

"(ii) for fiscal year 1999, $1,215,000,000, increased for such fiscal year by an amount equal to the increase in the Consumer Price Index for the previous fiscal year for all urban consumers (all items; U.S. city average);

"(iii) for fiscal year 2000, $1,240,000,000, increased for such fiscal year by an amount equal to the increase in the Consumer Price Index for fiscal years 1998 through 2000 for all urban consumers (all items; U.S. city average);

"(iv) for fiscal year 2001, $1,325,000,000, increased for such fiscal year by an amount equal to the increase in the Consumer Price Index for fiscal years 1998 through 2000 for all urban consumers (all items; U.S. city average);

''(v) for each of the fiscal years 2002 through 2008, $1,825,000,000, increased for each such fiscal year by an amount equal to the increase in the Consumer Price Index for the period encompassing the fiscal years from 1998 to the fiscal year prior to the fiscal year involved for all urban consumers (all items; U.S. city average); and

''(vi) for fiscal year 2009 and subsequent fiscal years, $1,750,000,000, increased for each such fiscal year by an amount equal to the increase in the Consumer Price Index for fiscal years 1998 through the fiscal year previous to the fiscal year for which the determination is being made for all urban consumers (all items; U.S. city average).

''SEC. 2813. BIOMEDICAL RESEARCH AND CHILD DEVELOPMENT INVESTMENTS.

''(a) FUNDING.—There are hereby made available to carry out this section for each fiscal year an amount equal to 57 percent of the net increase in revenues received in the Treasury for such fiscal year attributable to any amendments made to chapter 52 of the Internal Revenue

Code of 1986 in the fiscal year in which this title is enacted, as estimated by the Secretary.

''(b) USE OF FUNDS.—Amounts made available for a fiscal year under subsection (a) shall be used to carry out national biomedical and basic scientific research activities and child development and research activities under part 1 of subtitle C.

''SEC. 2814. TOBACCO VICTIMS COMPENSATION FUND.

''(a) FUNDING.—There are hereby made available to carry out this section for each fiscal year an amount equal to 14.2 percent of the net increase in revenues received in the Treasury for such fiscal year attributable to any amendments made to chapter 52 of the Internal Revenue Code of 1986 in the fiscal year in which this title is enacted, as estimated by the Secretary.

''(b) USE OF FUNDS.—Amounts made available for a fiscal year under subsection (a) shall be used to provide assistance and compensation to individuals suffering from tobacco-related illnesses and conditions, under a plan to be developed by the Secretary, not later than 1 year after the date of enactment of this Act, and submitted to Congress for approval.

"SEC. 2815. TOBACCO COMMUNITY TRANSITION ASSISTANCE.

"(a) FUNDING.—There are hereby made available to carry out this section—

"(1) for buyouts of quotas under section 411—

"(A) $3,100,000,000 for each of the fiscal years 1998 and 1999; and

"(B) $3,000,000,000 for fiscal 2000; and

"(2) for block grants under section 431—

"(A) $500,000,000 for each of the fiscal years 1998 and 1999;

"(B) $800,000,000 for each of the fiscal years 2000 through 2002; and

"(C) $400,000,000 for fiscal year 2003.

"(b) USE OF FUNDS.—Amounts made available for a fiscal year under subsection (a) shall remain available until expended (except that with respect to amounts under subsection (a)(1), such amounts shall only be available until September 30, 2001) and shall be used to provide tobacco transition assistance under title IV of the Healthy and Smoke Free Children Act.

"Subtitle B—National Health Initiatives

"PART 1—NATIONAL BASIC AND CHILD DEVELOPMENT RESEARCH

"SEC. 2821. NATIONAL BIOMEDICAL, BASIC AND CHILD DEVELOPMENT RESEARCH BOARD.

''(a) ESTABLISHMENT.—There is established a Federal board to be known as the 'National Biomedical and Basic Scientific Research Board' (referred to in this subpart as the 'Board').

''(b) MEMBERSHIP.—

''(1) COMPOSITION.—The board shall be composed of—

''(A) 9 voting members to be appointed by the President from among individuals with expertise in biomedical research, basic research, child development, and medicine; and

''(B) 3 ex officio (nonvoting) members of which—

''(i) 1 shall be the Secretary;

''(ii) 1 shall be the Secretary of Education; and

''(iii) 1 shall be the Assistant to the President for Science and Technology.

''(2) TERMS.—A member of the Board under paragraph (1)(A) shall be appointed for a term of 6 years, except that of the members first appointed—

''(A) 3 members shall be appointed for terms of 6 years;

''(B) 3 members shall be appointed for terms of 4 years; and

''(C) 3 members shall be appointed for terms of 2 years.

''(3) VACANCIES.—

''(A) IN GENERAL.—A vacancy on the Board shall be filled in the same manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

''(B) FILLING UNEXPIRED TERM.—An individual appointed to fill a vacancy on the Board shall be appointed for the unexpired term of the member replaced.

''(C) EXPIRATION OF TERMS.—The term of any member of the Board shall not expire before the date on which the member's successor takes office.

''(c) CHAIRPERSON.—The President shall designate a member of the Board appointed under subsection (b)(1)(A) as the Chairperson of the Board.

''(d) MEETINGS AND QUORUM.—

''(1) IN GENERAL.—The Commission shall meet at the call of the Chairperson.

''(2) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Board have been appointed, the Board shall hold its first meeting.

''(3) QUORUM.—A majority of the members of the Board appointed under subsection (b)(1)(A) shall constitute a quorum, but a lesser number of members may hold hearings.

''(e) PERSONNEL MATTERS.—

''(1) 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 Unit-

ed States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

''(2) 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.

''(3) STAFF.—

''(A) IN GENERAL.—The Chairperson of the Board may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Board to perform its duties. The employment of an executive director shall be subject to confirmation by the Board.

''(B) COMPENSATION.—The Chairperson of the Board may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of posi-

tions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

''(4) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Board without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

''(5) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

''(f) POWERS.—The Board shall award grants to, and enter into contracts with eligible entities under section 2822 for the expansion of basic and biomedical research and to provide graduate training with respect to such research.

''(g) DELEGATION.—The Board may delegate all or a portion of grant making authority under subsection (f)

to the Secretary, the Secretary of Education, the Director of the National Science Foundation, or the head of any other Federal agency determined appropriate by the Board.

''(h) AVAILABILITY OF FUNDS.—

''(1) IN GENERAL.—With respect to a fiscal year, no funds shall be made available under this part for such fiscal year until the Secretary certifies that the amounts appropriated for each of the entities or activities described in subparagraphs (A) and (B) of section 2822(a)(1) or subparagraphs (A), (B) and (F) of section 2823(a)(1) for such fiscal year has increased as compared to the amounts appropriated for the previous fiscal year—

''(A) by not less than the percentage increase in the consumer price index, as determined by the Secretary of Labor; or

''(B) by an amount equal to the percentage increase in the level of overall discretionary spending for such fiscal year as compared to the previous fiscal year;

whichever is greater.

''(2) APPLICATION TO CHILD DEVELOPMENT ACTIVITIES.—With respect to a fiscal year, no funds shall be made available under this part for such fis-

cal year until the Secretary certifies that the amounts appropriated for each of the entities or activities described in section 2823(a)(1)(F) for such fiscal has increased as compared to the amounts appropriated for the previous fiscal year—

"(A) by not less than the percentage increase in the consumer price index, as determined by the Secretary of Labor; or

"(B) by an amount equal to the percentage increase in the level of overall discretionary spending for such fiscal year as compared to the previous fiscal year;

whichever is less.

"(3) SUPPLEMENT NOT SUPPLANT.—Funds made available for use under this part shall be used to supplement and not supplant other funds appropriated to the entities described in section 2822(a) and 2823(a). Amounts appropriated to such entities under other provisions of law shall not be reduced solely as a result of the availability of funds under this section.

"SEC. 2822. GRANTS FOR BIOMEDICAL AND BASIC RESEARCH.

''(a) ELIGIBLE ENTITIES.—To be eligible to receive a grant or contract under section 2821(f) an entity shall be—

''(1) the National Institutes of Health (including a subdivision or grantee of such Institutes);

''(2) the National Science Foundation (including a subdivision or grantee of such Foundation);

''(3) nationally recognized research hospitals;

''(4) universities with recognized programs of basic and biomedical research;

''(5) research institutes with expertise in the conduct of basic or biomedical research;

''(6) cancer research centers that meet the standards of section 414; and

''(7) entities conducting quality basic or biomedical research as determined by the Board.

''(b) GRADUATE TRAINING.—Support may be provided under section 2821(f) for graduate training, including the following:

''(1) Grants for portable fellowships as defined for purposes of the National Science Foundation Act of 1950 (42 U.S.C. 1861 et seq.).

''(2) Grants to support an additional year of portable fellowship training to enhance the teaching

capabilities of fellows seeking careers in academic teaching settings.

''(3) Programs of student loan forgiveness for students in the sciences and biomedical sciences who pursue careers as teachers of science or biomedical science or researchers in such fields in nonprofit institutions. Loans may be forgiven under this paragraph at the rate of—

''(A) 15 percent per year for the first and second fiscal years after the date of enactment of this title;

''(B) 20 percent per year for the third and fourth fiscal years after the date of enactment of this title; and

''(C) 30 percent per year for the fifth fiscal year after the date of enactment of this title.

''(4) Programs of postdoctoral fellowships for individuals qualifying for such fellowships under the authority of the National Science Foundation of National Institutes of Health.

''(5) Programs of grants to universities and other research facilities to assist in the equipping of laboratories for new researchers of exceptional promise during the first 5 years of post-doctoral research.

''(6) Such other programs of grants and contracts as the Board determines will contribute to increasing the supply of high quality scientific and biomedical researchers.

''(c) FUNDING.—The Board shall use 50 percent of the amount made available for a fiscal year under section 2813 to carry out this subpart in such fiscal year.

''SEC. 2823. INVESTMENTS IN HEALTHY CHILD DEVELOPMENT AND RESEARCH PROJECTS AND TRAINING.

''(a) CHILDREN'S RESEARCH, TRAINING AND DEMONSTRATION PROJECTS.—

''(1) IN GENERAL.—The Secretary shall use not to exceed 10 percent of the funds allocated for use under this section to award grants of contracts for the conduct and support of research, training and demonstration projects relating to child health and development.

''(2) ENTITIES ELIGIBLE FOR RESEARCH PROJECTS.—To be eligible to receive a grant or contract under paragraph (1) for the conduct or support of research an entity shall be—

''(A) the National Institutes of Health (including a subdivision or grantee of such Institutes);

''(B) the National Science Foundation (including a subdivision or grantee of the Foundation);

''(C) a nationally recognized research hospital;

''(D) a university with a recognized program of research or training on children's development and health and childhood disabilities; and

''(E) entities conducting child development research and training; and

''(F) a public or private nonprofit organization, agency, or partnership with the capacity to implement research findings on brain development in the early years of life and for the support of continual physical, intellectual, and social development of young children, including infants and toddlers with disabilities.

''(3) TRAINING PROJECTS.—Support may be provided under subparagraphs (D), (E) and (F) of paragraph (1) for training, including programs to support undergraduate and graduate training programs to expand the early childhood development workforce by recruiting; training students for careers in early childhood development and care, which

may include grants to institutions, scholarships, and programs of loan work forgiveness; and preservice and inservice training programs to enhance the quality of the existing child care workforce.

''(4) DEMONSTRATION PROJECTS.—Support may be provided under subparagraphs (D), (E) and (F) of paragraph (1) for demonstration projects including public-private partnerships for paid leave to enable mothers with infants to choose to stay at home.

''(5) EVALUATIONS.—Each project under this subsection shall include an evaluation component to assess the effectiveness of the project in achieving its goals.

''(b) CHILD DEVELOPMENT PROJECTS.—

''(1) IN GENERAL.—The Secretary shall use not less than 90 percent of the funds allocated for use under this section as follows:

''(A) INVESTMENTS FOR EARLY CHILDHOOD DEVELOPMENT.—60 percent of such funds will be used for investments in early childhood development as follows:

''(i) 10 percent to expand the Early Head Start program under section 645A of the Head Start Act (42 U.S.C. 9841).

"(ii) 20 percent to the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 658A et seq.) to provide certificates and grants to increase the availability and affordability of quality child care for children of working families from birth through school age, including children with disabilities.

"(iii) 25 percent to expand the Head Start program under the Head Start Act (42 U.S.C. 9801) to increase enrollment and responsiveness of such program.

"(iv) 5 percent to early childhood development programs under part C and section 619 of the Individuals with Disabilities Education Act.

Not less than 30 percent of amounts made available under clause (ii) shall be set-aside for innovative programs for babies and toddlers, including the development of family child care networks, start-up for infant care programs, the training of providers, or the provision of parent education and support.

"(B) IMPROVEMENT OF THE QUALITY OF CHILD CARE.—20 percent to establish a health

and safety fund through the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 658A et seq.), 50 percent of which shall be used to provide incentives to reward States that improve the quality of child care programs in the State by adopting the essential components of the child care program of the armed services or the essential components of other proven child care models. Such components include the provision of training linked to increased wages, improved standards and enforcement, lower child to staff ratios, higher rates for accredited programs, and consumer education including resources referral services.

''(C) PROGRAMS TO PROMOTE HEALTHY BEHAVIOR.—20 percent to the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 658A et seq.) to expand the availability and affordability of quality before- and after-school care, and summer and weekend activities for school age (through 15 years of age) children, including children with disabilities, to promote good health and academic achievement and to help in avoiding high risk behaviors. Eligible entities for grants under this clause shall

include elementary and secondary schools, community-based organizations, child care centers, family child care homes, youth centers, or partnerships and should be targeted to communities with high rates of poverty or at-risk children.

''(c) SUPPLEMENT NOT SUPPLANT.—Amounts provided 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.

''(d) FUNDING.—The Board shall use 50 percent of the amount made available for a fiscal year under section 2813 to carry out this subpart in such fiscal year.

''PART 2—PUBLIC HEALTH PROGRAMS

''SEC. 2825. RESEARCH, COUNTER-ADVERTISING, AND CDC PROGRAMS.

''(a) REDUCTION AND ADDICTION PREVENTION RESEARCH.—The Secretary shall provide for the conduct of research concerning the development of methods, drugs, and devices to discourage individuals from using tobacco products and to assist individuals who use such products in quitting such use.

''(b) COUNTER-ADVERTISING.—The Secretary shall carry out programs to reduce tobacco usage through media-based (such as counter-advertising campaigns) and nonmedia-based education, prevention and cessation campaigns designed to discourage the use of tobacco products by individuals and to encourage those who use such products to quit.

''(c) CENTERS FOR DISEASE CONTROL AND PREVENTION PROGRAMS.—The Secretary, acting through the Centers for Disease Control and Prevention, shall carry programs to discourage the initiation of tobacco use, reduce the incidence of tobacco use among current users, and for other activities designed to reduce the risk of dependence and injury from tobacco products.

''(d) FUNDING.—

''(1) RESEARCH.—The Secretary shall use amounts available under section 2812(b)(1) to carry out subsection (a).

''(2) COUNTER-ADVERTISING.—The Secretary shall use amounts available under section 2812(b)(2) to carry out subsection (b).

''(3) CDC PROGRAMS.—The Secretary shall use amounts available under section 2812(b)(3) to carry out subsection (c).

"SEC. 2826. NATIONAL TOBACCO USAGE REDUCTION AND EDUCATION BLOCK GRANT PROGRAM.

"(a) BLOCK GRANTS.—The Secretary shall award block grants to States to enable such States to carry out activities for the purpose of planning, carrying out, and evaluating tobacco use reduction and education activities described in subsection (c).

"(b) APPLICATION.—

"(1) IN GENERAL.—A State that desires to receive a grant under subsection (a) shall prepare and submit to the Secretary an application, at such time, in such manner, and accompanied by such information as the Secretary may require.

"(2) CONTENTS.—An application submitted under paragraph (1) shall—

"(A) describe the activities that will be carried out using assistance under this section; and

"(B) provide such assurances as the Secretary determines to be necessary to carry out this section.

"(c) USE OF FUNDS.—A State shall use amounts received under this section to carry out the following activities:

"(1) TOBACCO USE CESSATION.—

"(A) IN GENERAL.—Activities to assist individuals in quitting the use of cigarettes or other tobacco products.

"(B) MODEL STATE PROGRAM.—The Secretary shall establish a model smoking cessation program that may be used by States in the design of State-based smoking cessation programs. Such model program shall provide for the provision of grants and other assistance by such States to eligible entities and individuals in the State for the establishment or administration of tobacco product use cessation programs that are approved in accordance with subparagraph (D).

"(C) USE OF ASSISTANCE.—Under a State smoking cessation program under this paragraph an entity that receives assistance shall use such amounts to establish or administer tobacco product use cessation programs that are approved in accordance with subparagraph (D).

"(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 de-

vices. Such regulations shall be designed to ensure that tobacco product users, if requested, are provided with reasonable access to safe and effective cessation programs and devices. Such regulations shall ensure that such individuals have access to a broad range of cessation options that are tailored to the needs of the individual tobacco user.

''(2) TOBACCO USAGE REDUCTION AND EDUCATION PROGRAM.—Activities—

''(A) to reduce tobacco usage through media-based (such as counter-advertising campaigns) and nonmedia-based education, prevention and cessation campaigns designed to discourage the use of tobacco products by individuals who are under 18 years of age and to encourage those who use such products to quit;

''(B) to carry out informational campaigns that are designed to discourage and de-glamorize the use of tobacco products;

''(C) for tobacco use reduction in elementary and secondary schools; or

''(D) for community-based tobacco control efforts that are designed to encourage commu-

nity involvement in reducing tobacco product use.

''(3) EVENT TRANSITIONAL SPONSORSHIP PROGRAM.—

''(A) IN GENERAL.—Activities for the transitional sponsorship of certain activities, including grants to—

''(i)(I) pay the costs associated with the transitional sponsorship of an event or activity;

''(II) provide for the transitional sponsorship of an individual or team;

''(III) pay the required entry fees associated with the participation of an individual or team in an event or activity;

''(IV) provide financial or technical support to an individual or team in connection with the participation of that individual or team in an activity described in subparagraph (C)(iii); or

''(V) for any other purposes determined appropriate by the State; and

''(ii) promote images or activities to discourage individuals from using tobacco

products or encourage individuals who use such products to quit.

''(B) ELIGIBILITY.—A State program funded under this paragraph shall ensure that to be eligible to receive assistance under this paragraph an entity or individual shall prepare and submit to the State an application at such time, in such manner, and containing such information as the State may require, including—

''(i) a description of the event, activity, team, or entry for which the grant is to be provided;

''(ii) documentation that the event, activity, team, or entry involved was sponsored or otherwise funded by a tobacco manufacturer or distributor prior to the date of the application; and

''(iii) a certification that the applicant is unable to secure funding for the event, activity, team, or entry involved from sources other than those described in clause (ii).

''(C) PERMISSIBLE SPONSORSHIP ACTIVITIES.—Events, activities, teams, or entries for

which a grant may be provided under this paragraph include—

''(i) an athletic, musical, artistic, or other social or cultural event or activity that was sponsored in whole or in part by a tobacco manufacturer or distributor prior to the date of enactment of this title;

''(ii) the participation of a team that was sponsored in whole or in part by a tobacco manufacturer or distributor prior to the date of enactment of this title, in an athletic event or activity; and

''(iii) the payment of a portion or all of the entry fees of, or other financial or technical support provided to, an individual or team by a tobacco manufacturer or distributor prior to the date of enactment of this title, for participation of the individual in an athletic, musical, artistic, or other social or cultural event.

''(d) ALLOCATION OF FUNDS.—A State shall ensure that amounts received under a block grant under subsection (a) are used to carry out each of the activities described in subsection (c).

''(e) FUNDING.—The Secretary shall use amounts available under section 2812(b)(4) to carry out this section.

''Subtitle C—Reduction in Underage Tobacco Use

''SEC. 2831. PURPOSE.

''It is the purpose of this subtitle to encourage the achievement of reductions in the number of underage consumers of tobacco products through the imposition of additional financial deterrents relating to tobacco products if certain underage tobacco-use reduction targets are not met.

''SEC. 2832. CHILD TOBACCO USE SURVEYS.

''(a) ANNUAL PERFORMANCE SURVEY.—Not later than 1 year after the date of the enactment of this Act and annually thereafter the Secretary shall conduct a survey to determine the number of children who used each manufacturer's tobacco products within the past 30 days.

''(b) EXCLUSION OF CERTAIN AGES.—The Secretary may exclude from the survey conducted under subsection (a), children under the age of 12 years (or such other lesser age as the Secretary may establish) to strengthen the validity of the survey.

''(c) BASELINE LEVEL.—The baseline level of the child tobacco product use of a manufacturer (referred to

in this subtitle as the 'baseline level') is the number of children determined to have used the tobacco products of such manufacturer in the first annual performance survey for 1998.

''(d) ADDITIONAL MEASURES.—In order to increase the understanding of youth tobacco product use, the Secretary may, for informational purposes only, add additional measures to the survey under subsection (a), conduct periodic or occasional surveys at other times, and conduct surveys of other populations such as young adults. The results of such surveys shall be made available to manufacturers and the public to assist in efforts to reduce youth tobacco use.

''(e) DEFINITION.—As used in this subtitle, the term 'tobacco product' means cigarettes, smokeless tobacco products, and roll-your-own tobacco products.

"SEC. 2833. REDUCTION IN UNDERAGE TOBACCO PRODUCT USAGE.

''(a) STANDARDS FOR EXISTING MANUFACTURERS.—Each manufacturer which manufactured a tobacco product on or before the date of the enactment of this title shall reduce the number of children who use its tobacco products so that the number of children determined to have used its tobacco products on the basis of—

''(1) the fourth annual performance survey is equal to or less than—

''(A) 60 percent of the manufacturer's baseline level; or

''(B) the de minimis level;

whichever is greater;

''(2) the fifth annual performance survey is equal to or less than—

''(A) 50 percent of the manufacturer's baseline level; or

''(B) the de minimis level;

whichever is greater;

''(3) the sixth annual performance survey is equal to or less than—

''(A) 40 percent of the manufacturer's baseline level; or

''(B) the de minimis level;

whichever is greater;

''(4) the seventh annual performance survey is equal to or less than—

''(A) 35 percent of the manufacturer's baseline level; or

''(B) the de minimis level;

whichever is greater;

''(5) the eighth annual performance survey is equal to or less than—

''(A) 30 percent of the manufacturer's baseline level; or

''(B) the de minimis level;

whichever is greater;

''(6) the ninth annual performance survey is equal to or less than—

''(A) 25 percent of the manufacturer's baseline level; or

''(B) the de minimis level;

whichever is greater; and

''(7) the 10th annual performance survey and each annual performance survey conducted thereafter is equal to or less than—

''(A) 20 percent of the manufacturer's baseline level; or

''(B) the de minimis level;

whichever is greater.

''(b) STANDARDS FOR NEW MANUFACTURERS.—Any manufacturer of a tobacco product which begins to manufacture a tobacco product after the date of the enactment of this title shall ensure that the number of children determined to have used the manufacturer's tobacco products in each annual performance survey conducted after the

manufacturer begins to manufacture tobacco products is equal to or less than the de minimis level.

''(c) DE MINIMIS LEVEL.—The de minimis level shall be 0.5 percent of the total number of children determined to have used tobacco products in the first annual performance survey.

''SEC. 2834. NONCOMPLIANCE.

''(a) VIOLATION OF STANDARD.—If, with respect to a year, a manufacturer of a tobacco product fails to comply with the required reduction under section 2833(a), the manufacturer shall pay to the Secretary a noncompliance fee for each unit of tobacco products manufactured by the manufacturer which is distributed for consumer use in the year following the year in which the noncompliance occurs, in the amount specified in subsection (b).

''(b) NONCOMPLIANCE FEE PER UNIT.—

''(1) IN GENERAL.—With respect to a year, a manufacturer of a tobacco product shall be required to pay a noncompliance fee for each unit of tobacco products manufactured by the manufacturer if the noncompliance factor of the manufacturer (as determined under paragraph (3)) for the year is greater than zero.

''(2) AMOUNT OF FEE.—The amount of the noncompliance fee that is required to be paid by a

manufacturer under this section for each unit of tobacco products manufactured by the manufacturer for the year involved shall be equal to—

"(A) 2 cents multiplied by so much of the noncompliance factor as does not exceed 5;

"(B) 3 cents multiplied by so much of the noncompliance factor as exceeds 5 but does not exceed 10;

"(C) 4 cents multiplied by so much of the noncompliance factor as exceeds 10 but does not exceed 15;

"(D) 5 cents multiplied by so much of the noncompliance factor as exceeds 15 but does not exceed 20; and

"(E) 6 cents multiplied by so much of the noncompliance factor as exceeds 20 but does not exceed 25.

"(3) NONCOMPLIANCE FACTOR.—The noncompliance factor of a manufacturer shall be equal to 100 multiplied by the noncompliance percentage of the manufacturer (as determined under paragraph (4)).

"(4) NONCOMPLIANCE PERCENTAGE.—The noncompliance percentage (if any) of a manufacturer shall be equal to 1 less the ratio of—

''(A) the actual reduction that is achieved by the manufacturer in the number of children who use the manufacturer's tobacco products in the year involved; and

''(B) the reduction required under section 2833(a) in the number of children who use the manufacturer's tobacco products for the year.

''(c) NONCOMPLIANCE FEES FOR CONSECUTIVE VIOLATIONS.—If a manufacturer of a tobacco product fails to comply with the required reduction under section 2833(a) in 2 or more consecutive years, the noncompliance fee that is required to be paid by the manufacturer under this section for each unit of tobacco products manufactured by such manufacturer which is distributed for consumer use in the year following the year in which the noncompliance occurs, shall be the amount determined under subsection (b) for the year multiplied by the number of consecutive years in which the manufacturer has failed to comply with such required reductions.

''(d) PROHIBITION ON SINGLE-PACK SALES IN CASES OF REPEATED NONCOMPLIANCE.—Not later than 1 year after the date of enactment of this title, the Secretary shall establish regulations to prohibit the sale of single packs of a manufacturer's tobacco products in cases of repeated noncompliance with the reductions required

under section 2833(a). Such regulations shall require that, if a manufacturer fails to comply with such reductions in 3 or more consecutive years, the manufacturer's tobacco products may be sold in the following year only in packages containing not less than 10 units of the product per package (200 cigarettes per package in the case of cigarettes, and a corresponding package size for other tobacco products).

''(e) REQUIRED GENERIC PACKAGING IN SEVERE CASES OF REPEATED NONCOMPLIANCE.—Not later than 1 year after the date of enactment of this title, the Secretary shall establish regulations to require units and packages of a manufacturer's tobacco products to have generic packaging in severe cases of repeated noncompliance with the reductions required under section 2833(a). Such regulations shall require that, if a manufacturer fails to comply with such reductions in 4 or more consecutive years, the manufacturer's tobacco products may be sold in the following year only in units and packages whose packaging contains no external images, logos, or text (other than any required labels), except that the brand name and the identifier 'tobacco' may appear on the packaging in block lettering in black type on a white background.

''(f) PAYMENT.—The noncompliance fee to be paid by a manufacturer under this section shall be paid on a quarterly basis, with payments due not later than 30 days after the end of each calendar quarter.

''SEC. 2835. USE OF AMOUNTS.

''Of the amounts received under section 2834—

''(1) 37.5 percent of such amounts shall be made available to the National Biomedical and Basic Scientific Research Board for research, training and demonstration project grants under section 2822;

''(2) 37.5 percent of such amounts shall be made available to the Secretary for healthy child development grants under section 2823; and

''(3) 25 percent of such amounts shall be made available to the Secretary for reduction and addiction prevention research grants and for grants under the national tobacco usage reduction and education program under part 2 of subtitle C.

''SEC. 2836. MISCELLANEOUS PROVISIONS.

''(a) JUDICIAL REVIEW.—A manufacturer of tobacco products may seek judicial review of any action under this subtitle only after a noncompliance fee has been assessed and paid by the manufacturer and only in the United States District Court for the District of Columbia. In an

action by a manufacturer seeking judicial review of an annual performance survey, the manufacturer may prevail—

"(1) only if the manufacturer shows that the results of the performance survey were arbitrary and capricious; and

"(2) only to the extent that the manufacturer shows that it would have been required to pay a lesser noncompliance fee if the results of the performance survey were not arbitrary and capricious.

"(b) PASS-THROUGH.—Nothing in this subtitle shall be construed as prohibiting a manufacturer from passing the costs of the amount of any noncompliance fee assessed under this subtitle on to consumers of tobacco products as a further economic deterrent to the use of such products.

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

"(d) CHILD.—As used in this subtitle, the term 'child' means, except as provided in section 2832(b), an individual who is under the age of 18.

"Subtitle D—Miscellaneous Provisions

"SEC. 2841. WHISTLEBLOWER PROTECTIONS.

''(a) PROHIBITION OF REPRISALS.—An employee of any manufacturer, distributor, or retailer of a tobacco product may not be discharged, demoted, or otherwise discriminated against (with respect to compensation, terms, conditions, or privileges of employment) as a reprisal for disclosing to an employee of the Food and Drug Administration, the Department of Health and Human Services, the Department of Justice, or any State or local regulatory or enforcement authority, information relating to a substantial violation of law related to this title or a State or local law enacted to further the purposes of this title.

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

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

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

''(2) pay compensatory damages; or

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

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

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

''(2) knowingly or recklessly provides substantially false information to the Food and Drug Administration, the Department of Health and Human Services, the Department of Justice, or any State or local regulatory or enforcement authority.

''SEC. 2842. NATIONAL TOBACCO DOCUMENT DEPOSITORY.

''(a) PURPOSE.—It is the purpose of this section to provide for the disclosure of previously nonpublic or confidential documents by manufacturers of tobacco products, including the results of internal health research, and to provide for a procedure to settle claims of attorney-client privilege, work product, or trade secrets with respect to such documents.

''(b) ESTABLISHMENT.—

''(1) IN GENERAL.—The Secretary shall provide for the establishment, either within the Department

of Health and Human Services or through a private nonprofit entity, of a National Tobacco Document Depository (in this section referred to as the 'Depository'). Such Depository shall be located in the Washington, D.C. area and be open to the public.

''(2) DOCUMENTS.—Manufacturers of tobacco products, acting in conjunction with the Tobacco Institute and the Council for Tobacco Research, U.S.A., shall, not later than 30 days after the date of enactment of this title, provide documents to the Depository in accordance with this section.

''(3) FUNDING.—The entities described in paragraph (2) shall bear the sole responsibility for funding the Depository.

''(c) USE OF DEPOSITORY.—The Depository shall be maintained in a manner that permits the Depository to be used as a resource for litigants, public health groups, and any other individuals who have an interest in the corporate records and research of the manufacturers concerning smoking and health, addiction or nicotine dependency, safer or less hazardous cigarettes, and underage tobacco use and marketing.

''(d) CONTENTS.—The Depository shall include (and manufacturers and the Tobacco Institute and the Council for Tobacco Research, U.S.A. shall provide)—

''(1) within 90 days of the date of the establishment of the Depository, all documents provided by such entities to plaintiffs in—

''(A) civil or criminal actions brought by State attorneys general (including all documents selected by plaintiffs from the Guilford Repository of the United Kingdom);

''(B) Philip Morris Companies Inc.'s defamation action against Capital Cities/American Broadcasting Company News;

''(C) the Federal Trade Commission's investigation concerning Joe Camel and underage marketing;

''(D) Haines v. Liggett Group, Inc. (814 F. Supp. 414 (D.N.J., Jan. 26, 1993)) and Cippollone v. Liggett Group, Inc. (822 F. 2d 335, 56 USLW 2028, 7 Fed. R. Serv. 3d 1438 (3rd Cir. (N.J.), Jun. 8, 1987)); and

''(E) Estate of Burl Butler v. Philip Morris, Inc. (case No. 94–4–53);

''(2) within 90 days after the date of the establishment of the Depository, any existing documents discussing or referring to health research, addiction or dependency, safer or less hazardous cigarettes, studies of the smoking habits of minors, and the re-

lationship between advertising or promotion and youth smoking, that the entities described in subsection (b) have not completed producing as required in the actions described in paragraph (1);

''(3) within 30 days of the date of the establishment of the Depository, all documents relating to indices (as defined by the court in State of Minnesota and Blue Cross and Blue Shield of Minnesota v. Philip Morris, Inc., et al.) of documents relating to smoking and health, including all indices identified by the manufacturers in the State of Texas v. American Tobacco Company, et al.;

''(4) upon the settlement of any action referred to in this subsection, and after a good-faith, de novo, document-by-document review of all documents previously withheld from production in any actions on the grounds of attorney-client privilege, all documents determined to be outside of the scope of the privilege;

''(5) all existing or future documents relating to original laboratory research concerning the health or safety of tobacco products, including all laboratory research results relating to methods used to make tobacco products less hazardous to consumers;

''(6) a comprehensive new attorney-client privilege log of all documents, itemized in sufficient detail so as to enable any interested individual to determine whether the individual will challenge the claim of privilege, that the entities described in subsection (b) (based on the de novo review of such documents by such entities) claim are protected from disclosure under the attorney-client privilege;

''(7) all existing or future documents relating to studies of the smoking habits of minors or documents referring to any relationship between advertising and promotion and underage smoking; and

''(8) all other documents determined appropriate under regulations promulgated by the Secretary.

''(e) DISPUTE RESOLUTION PANEL.—

''(1) ESTABLISHMENT.—The Judicial Conference of the United States shall establish a Tobacco Documents Dispute Resolution Panel, to be composed of 3 Federal judges to be appointed by the Conference, to resolve all disputes involving claims of attorney-client, work product, or trade secrets privilege with respect to documents required to be deposited into the Depository under subsection (d) that may be brought by Federal, State, or local gov-

ernmental officials or the public or asserted in any action by a manufacturer.

''(2) BASIS FOR DETERMINATIONS.—The determinations of the Panel established under paragraph (1) shall be based on—

''(A) the American Bar Association/American Law Institute Model Rules or the principals of Federal law with respect to attorney-client or work product privilege; and

''(B) the Uniform Trade Secrets Act with respect to trade secrecy.

''(3) DECISION.—Any decision of the Panel established under paragraph (1) shall be final and binding upon all Federal and State courts.

''(4) ASSESSING OF FEES.—As part of a determination under this subsection, the Panel established under paragraph (1) shall determine whether a claimant of the privilege acted in good faith and had a factual and legal basis for asserting the claim. If the Panel determines that the claimant did not act in good faith, the Panel may assess costs against the claimant, including a reasonable attorneys' fee, and may apply such other sanctions as the Panel determines appropriate.

''(5) ACCELERATED REVIEW.—The Panel established under paragraph (1) shall establish procedures for the accelerated review of challenges to a claim of privilege. Such procedures shall include assurances that an individual filing a challenge to such a claim need not make a prima facie showing of any kind as a prerequisite to an in-camera review of the documents at issue.

''(6) SPECIAL MASTERS.—The Panel established under paragraph (1) may appoint Special Masters in accordance with Rule 53 of the Federal Rules of Civil Procedure. The cost relating to any Special Master shall be assessed to the manufacturers as part of a fee process to be established under regulations promulgated by the Secretary.

''(f) OTHER PROVISIONS.—

''(1) NO WAIVER OF PRIVILEGE.—Compliance with this section by the entities described in subsection (b) shall not be deemed to be a waiver on behalf of such entities of any applicable privilege or protection.

''(2) AVOIDANCE OF DESTRUCTION.—In establishing the Depository, procedures shall be implemented to protect against the destruction of documents.

''(3) DEEMED PRODUCED.—Any documents contained in the Depository shall be deemed to have been produced for purposes of any tobacco-related litigation in the United States.

''(g) DOCUMENTS.—For purposes of this section, the term 'documents' shall include any paper documents that may be printed using data that is contained in computer files.

''(h) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to interfere in any way with the discovery rights of courts or parties in civil or criminal actions involving tobacco products, or the right of access to such documents under any other provision of law.

"SEC. 2843. TOBACCO OVERSIGHT AND COMPLIANCE BOARD.

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—There is established an independent board to be known as the Tobacco Oversight and Compliance Board (referred to in this section as the 'Board').

''(2) MEMBERSHIP.—The Board shall consist of 5 members with expertise relating to tobacco and public health. The members, including the chairperson, shall be appointed by the Secretary. The initial members of the Board shall be appointed by the

Secretary within 30 days of the date of the enactment of this title. A member of the Board may be removed by the Secretary only for neglect of duty or malfeasance in office.

''(3) TERMS.—The term of office of a member of the Board shall be 6 years, except that the members first appointed shall have terms of 2, 3, 4, and 5 years, respectively, as determined by the Secretary.

''(b) GENERAL DUTY.—The Board shall oversee and monitor the operations of the tobacco industry to determine whether tobacco product manufacturers are in compliance with this Act.

''(c) DISCLOSURE OF TOBACCO INDUSTRY DOCUMENTS.—

''(1) SUBMISSION BY MANUFACTURERS.—Not later than 3 months after the date of the enactment of this title, and as otherwise required by the Board, each tobacco manufacturer shall submit to the Board a copy of all documents in the manufacturer's possession—

''(A) relating to—

''(i) any health effects, including addiction, caused by the use of tobacco products;

"(ii) the manipulation or control of nicotine in tobacco products; or

"(iii) the sale or marketing of tobacco products to children; or

"(B) produced, or ordered to be produced, by the tobacco manufacturer in the case entitled State of Minnesota v. Philip Morris, Inc., Civ. Action No. C1–94–8565 (Ramsey County, Minn.) including attorney-client and other documents produced or ordered to be produced for in camera inspection.

"(2) DISCLOSURE BY THE BOARD.—Not later than 6 months after the date of the enactment of this title, and otherwise as required by the Board, the Board shall, subject to paragraph (3), make available to the public the documents submitted under paragraph (1).

"(3) PROTECTION OF TRADE SECRETS.—The Board, members of the Board, and staff of the Board shall not disclose information that is entitled to protection as a trade secret unless the Board determines that disclosure of such information is necessary to protect the public health. This paragraph shall not be construed to prevent the disclosure of

relevant information to other Federal agencies or to committees of the Congress.

''(d) INVESTIGATION AND ANNUAL REPORTS.—The Board shall investigate all matters relating to the tobacco industry and public health and report annually on the results of the investigation to Congress. Each annual report to Congress shall, at a minimum, disclose—

''(1) whether tobacco manufacturers are in compliance with the provisions of this Act;

''(2) any efforts by tobacco manufacturers to conceal research relating to the adverse health effects or addiction caused by the use of tobacco products;

''(3) any efforts by tobacco manufacturers to mislead the public or any Federal, State, or local elected body, agency, or court about the adverse health effects or addiction caused by the use of tobacco products;

''(4) any efforts by tobacco manufacturers to sell or market tobacco products to children; and

''(5) any efforts by tobacco manufacturers to circumvent, repeal, modify, impede the implementation of, or prevent the adoption of any Federal, State, or local law or regulation intended to reduce

the adverse health effects or addiction caused by the use of tobacco products.

''(e) AUTHORITY.—The Board, any member of the Board, or staff designated by the Board may hold hearings, administer oaths, issue subpoena, require the testimony or deposition of witnesses, the production of documents, or the answering of interrogatories, or, upon presentation of the proper credentials, enter and inspect facilities.

''(f) ENFORCEMENT.—Notwithstanding any other provision of law, tobacco manufacturers shall provide any testimony, deposition, documents, or other information, answer any interrogatories, and allow any entry or inspection required pursuant to this section, except to the extent that a constitutional privilege protects the tobacco manufacturer from complying with such requirement.

''(g) ADMINISTRATION.—

''(1) STAFF.—The Chairperson of the Board shall exercise the executive and administrative functions of the Board and shall have the authority to hire such staff as may be necessary for the operation of the Board.

''(2) SALARIES.—The members of the Board shall receive such salary and benefits as the Secretary deems necessary, except that the salary of the

Chairperson shall not be less than that provided for under level III of the Executive Schedule in section 5314 of title 5, United States Code.

''SEC. 2844. PRESERVATION OF STATE AND LOCAL AUTHORITY.

''Except as otherwise provided for in this title or the Healthy and Smoke Free Children Act (or an amendment made by such Act), nothing in this title or such Act shall be construed as prohibiting a State from imposing requirements, prohibitions, penalties or other measures to further the purposes of this title or Act that are in addition to the requirements, prohibitions, or penalties required under this title or Act. To the extent not inconsistent with the purposes of this title or Act, State and local governments may impose additional tobacco product control measures to further restrict or limit the use of such products by minors.

''SEC. 2845. REGULATIONS.

''The Secretary may promulgate regulations to enforce the provisions of this title, or to modify, alter, or expand the requirements and protections provided for in this title if the Secretary determines that such modifications, alternations, or expansion is necessary.''.

TITLE II—FDA JURISDICTION OVER TOBACCO PRODUCTS

Subtitle A—Amendments to the Federal Food, Drug and Cosmetic Act

SEC. 201. REFERENCE.

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

SEC. 202. STATEMENT OF GENERAL AUTHORITY.

The Secretary of Health and Human Services, acting through the Food and Drug Administration, shall have the authority under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et seq.) (above and beyond the existing authority of the Secretary to regulate tobacco products as of the date of enactment of this Act) to regulate the manufacture, labeling, sale, distribution, and advertising of tobacco products.

SEC. 203. TREATMENT OF TOBACCO PRODUCTS AS DRUGS AND DEVICES.

(a) DEFINITIONS.—

(1) DRUG.—Section 201(g)(1) (21 U.S.C. 321(g)(1)) is amended by striking ''; and (D)'' and inserting ''(including nicotine in tobacco products); and (D)''.

(2) DEVICES.—Section 201(h) (21 U.S.C. 321(h)) is amended—

(A) in paragraph (3), by inserting before the comma the following: ''(including tobacco products containing nicotine); and

(B) by adding at the end the following: ''For purposes of this Act a tobacco product shall be classified as a class II device.''.

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

''(ii)(1) The term 'tobacco product' means cigarettes, cigarillos, cigarette tobacco, little cigars, pipe tobacco, and smokeless tobacco, and roll-your-own tobacco.

''(2) The term 'cigarette' means any product which contains nicotine, is intended to be burned under ordinary conditions of use, and consists of—

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

''(B) any roll of tobacco wrapped in any substance containing tobacco which, because of its ap-

pearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A).

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

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

''(5) The term 'roll-your-own tobacco' has the meaning given such term by section 5702(p) of the Internal Revenue Code of 1986.

''(6) The term 'little cigars' means any roll of tobacco wrapped in leaf tobacco or any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of this Act) and as to which 1,000 units weigh not more than 3 pounds.

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

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

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

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

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

''(12) The term 'tar' means mainstream total articulate matter minus nicotine and water.''.

(b) MISBRANDING.—Section 502(q) (21 U.S.C. 352(q)) is amended—

(1) by striking ''or (2)'' and inserting ''(2)''; and

(2) by inserting before the period the following: ''or (3) in the case of a tobacco product, it is sold, distributed, advertised, labeled, or used in violation of this Act or the regulations prescribed under this Act.''.

(c) REGULATORY AUTHORITY.—Section 503(g)(1) (21 U.S.C. 353(g)(1)) is amended by inserting ''(including any tobacco product)'' after ''products'' the first place such term appears.

(d) CLASS II DEVICES.—Section 513(a)(1)(B) (21 U.S.C. 360c(a)(1)(B)) is amended—

(1) by striking ''A device'' and inserting ''(i) A device''; and

(2) by adding at the end the following: ''Tobacco products shall be categorized as Class II devices.

''(ii) The sale of tobacco products to adults that comply with Performance Standards established for these products pursuant to section 514, title XXVIII of the Public Health Service Act, and this Act, and any regulations prescribed under this Act, shall not be prohibited

by the Secretary, notwithstanding sections 502(j), 516, and 518.''.

(e) PERFORMANCE STANDARDS.—Section 514(a) (21 U.S.C. 360d(a)) is amended—

(1) in paragraph (2), by striking ''device—'' and inserting ''non-tobacco product device—'';

(2) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(3) by adding at the end the following:

''(3)(A) A performance standard established under this section for a tobacco product device—

''(i) shall include provisions to reduce the overall health risks to the public, including the reduction in risk to consumers thereof and the reduction in harm which will result from those who continue to use the product, but less often and from those who stop or do not start using the product, taking into account all factors that the Secretary determines to be relevant;

''(ii) shall, where necessary to provide a reduction in the overall health risks to the public, include—

''(I) provisions regarding the construction, components, constituents, ingredients, and properties of the tobacco product device, includ-

ing the reduction or elimination of nicotine and the other components, ingredients, and constituents of the tobacco product and its components, based upon the best available technology;

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

''(III) provisions for the measurement of the performance characteristics of the tobacco product device;

''(IV) provisions requiring that the results of each or of certain of the tests of the tobacco product device required to be made under subclause (II) show that the tobacco product device is in conformity with the portions of the standard for which the test or tests were required; and

''(V) a provision that the sale, advertising, and distribution of the tobacco product device be restricted but only to the extent the sale, advertising, and distribution of a tobacco product device may be restricted under this Act or title XXVIII of the Public Health Service Act; and

''(iii) shall, where appropriate, require the use and prescribe the form and content of labeling for use of the tobacco product device.

''(B) The Secretary shall provide for the periodic evaluation of a performance standard established under this paragraph to determine if such standards should be changed to reflect new medical, scientific, or other technological data.

''(C) In carrying out this paragraph, the Secretary shall, to the maximum extent practicable—

''(i) use personnel, facilities, and other technical support available in other Federal agencies;

''(ii) consult with the Scientific Advisory Committee established under section 905 and other Federal agencies concerned with standard-setting and other nationally or internationally recognized standard-setting entities; and

''(iii) invite appropriate participation, through joint or other conferences, workshops, or other

means, by informed persons representative of scientific, professional, industry, or consumer organizations who in the judgment of the Secretary can make a significant contribution.''.

(f) RESTRICTED DEVICES.—Section 520(e) (21 U.S.C. 360j(e)) is amended by adding at the end the following:

''(3) A tobacco product is a restricted device.''.

(g) REGULATIONS.—Section 701(a) (21 U.S.C. 371(a)) is amended by inserting before the period the following: '', including the authority to regulate the manufacture, sale, distribution, advertising and marketing of tobacco products''.

SEC. 204. GENERAL HEALTH AND SAFETY REGULATION OF TOBACCO PRODUCTS.

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

(1) by redesignating chapter IX as chapter X;

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

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

''CHAPTER IX—TOBACCO PRODUCTS

''SEC. 901. DEFINITIONS.

''For purposes of this chapter and in addition to the definitions contained in section 201, the definitions under section 2801 of the Public Health Service Act shall apply.

''SEC. 902. PURPOSE.

''It is the purpose of this chapter to impose a regulatory scheme applicable to the development and manufacturing of tobacco products. Such scheme shall include—

''(1) with respect to ingredients contained in such products—

''(A) the immediate and annual reporting, in accordance with section 909(a), of all ingredients contained in such products;

''(B) the performance, in accordance with section 909(b), of safety assessments with respect to ingredients contained in such products; and

''(C) the approval, in accordance with section 909(b), of ingredients contained in such products; and

''(2) the imposition of standards to reduce the level of certain constituents contained in such products, including nicotine.

"SEC. 903. PROMULGATION OF REGULATIONS.

''The Commissioner shall promulgate regulations governing the misbranding, adulteration, and dispensing of tobacco products that are consistent with this chapter and with the manner in which other products that are ingested into the body are regulated under this Act. Such regulations shall be promulgated not later than 12 months after the date of enactment of this chapter.

"SEC. 904. MINIMUM REQUIREMENTS.

''(a) MISBRANDING.—The regulations promulgated under section 903 shall at a minimum require that a tobacco product be deemed to be misbranded if the labeling of the package of such product is not in compliance with the provisions of this chapter, of other applicable provisions of this Act, or of section 910 (as applicable to the type of product involved) of the Public Health Service Act.

''(b) ADULTERATION.—The regulations promulgated under section 903 shall at a minimum require that a tobacco product be deemed to be adulterated if the Commissioner determines that any tobacco additive in such product, regardless of the amount of such tobacco additive, either by itself or in conjunction with any other tobacco additive or ingredient is harmful under the intended conditions of use when used in a specified amount.

"SEC. 905. SCIENTIFIC ADVISORY COMMITTEE.

''(a) ESTABLISHMENT.—Not later than 1 year after the date of enactment of this chapter, the Secretary shall establish an advisory committee, to be known as the 'Scientific Advisory Committee', to assist the Secretary in establishing, amending, or revoking a performance standard under section 512(a)(3).

''(b) MEMBERSHIP.—The Secretary shall appoint as members of the Scientific Advisory Committee any individuals with expertise in the medical, scientific, or other technological data involving the manufacture and use of tobacco products, and of appropriately diversified professional backgrounds. The Secretary may not appoint to the Committee any individual who is in the regular full-time employ of the Federal Government. The Secretary shall designate 1 of the members of each advisory committee to serve as chairperson of the Committee.

''(c) COMPENSATION AND EXPENSES.—

''(1) COMPENSATION.—Members of the Scientific Advisory Committee who are not officers or employees of the United States, while attending conferences or meetings of the Committee or otherwise serving at the request of the Secretary, shall be entitled to receive compensation at rates to be fixed by the Secretary, which rates may not exceed the daily equivalent of the rate of pay for level 4 of the Senior

Executive Schedule under section 5382 of title 5, United States Code, for each day (including travel-time) they are so engaged.

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

''(d) DUTIES.—The Scientific Advisory Committee shall—

''(1) assist the Secretary in establishing, amending, or revoking performance standards under section 514(a)(3);

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

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

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

''SEC. 906. REQUIREMENTS RELATING TO NICOTINE AND OTHER CONSTITUENTS.

''(a) GENERAL RULE.—The Secretary may adopt a performance standard under section 514(a)(3) that requires the modification of a tobacco product in a manner that involves—

''(1) the reduction or elimination of nicotine yields of the product; or

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

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

''(c) LIMITATION ON TAR.—Not later than 3 years after the date of enactment of this chapter, the Secretary shall promulgate regulations that limit the amount of tar in a cigarette to no more than 12 milligrams. Nothing in the preceding sentence shall be construed as limiting the

authority of the Secretary to promulgate regulations further limiting the amount of tar that may be contained in a cigarette.

"SEC. 907. REDUCED RISK PRODUCTS.

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

''(b) EXCEPTION.—

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

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

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

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

''(c) DEVELOPMENT OF REDUCED RISK PRODUCT TECHNOLOGY.—

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

''(2) CONFIDENTIALITY.—The Commissioner shall promulgate regulations to provide a manufacturer with appropriate confidentiality protections with respect to technology that is the subject of a

notification under paragraph (1) that contains evidence that the technology involved is in the early developmental stages.

''(3) LICENSING.—

''(A) IN GENERAL.—With respect to any technology developed or acquired under paragraph (1), the manufacturer shall—

''(i) use such technology in the manufacture of its tobacco products; or

''(ii) permit the use of such technology (for a reasonable fee) by other manufacturers of tobacco products to which this chapter applies.

''(B) FEES.—The Commissioner shall promulgate regulations to provide for the payment of a commercially reasonable fee by each manufacturer that uses the technology described under subparagraph (A) to the manufacturer that submits the notice under paragraph (1) for such technology. Such regulations shall contain procedures for the resolution of fee disputes between manufacturers under this subparagraph.

''(d) REQUIREMENT OF MANUFACTURE AND MARKETING.—

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

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

''(3) MANUFACTURER.—

''(A) REQUIREMENT.—Except as provided in subparagraph (B), the requirement under paragraph (2) shall apply to any manufacturer that provides a notification to the Commissioner under subsection (c)(1) concerning the technology that is the subject of the determination of the Commissioner.

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

''(i) the manufacturer elects not to manufacture such products and provides

notice to the Commissioner of such election; and

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

''SEC. 908. GOOD MANUFACTURING PRACTICE STANDARDS.

''(a) AUTHORITY.—

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

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

''(A) afford the Scientific Advisory Committee established under section 905 an opportunity (with a reasonable time period) to submit recommendations with respect to the regulations proposed to be promulgated; and

''(B) afford an opportunity for an oral hearing.

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

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

''(2) a process for the inspection, in accordance with this Act, of tobacco product material prior to the packaging of such product;

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

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

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

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

''(c) PETITIONS FOR EXEMPTIONS AND VARIANCES.—

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

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

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

of the methods, facilities, and controls prescribed by the requirement; and

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

''(2) SCIENTIFIC ADVISORY COMMITTEE.—The Secretary may refer to the Scientific Advisory Committee established under section 905 any petition submitted under paragraph (1). The Scientific Advisory Committee shall report its recommendations to the Secretary with respect to a petition referred to it within 60 days of the date of the petition's referral. Within 60 days after—

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

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

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

''(3) APPROVAL OF PETITION.—

''(A) IN GENERAL.—The Secretary may approve—

''(i) a petition for an exemption for a tobacco product from a requirement if the

Secretary determines that compliance with such requirement is not required to assure that the product will comply with this chapter; and

''(ii) a petition for a variance for a tobacco product from a requirement if the Secretary determines that the methods to be used in, and the facilities and controls to be used for, the manufacture, packing, and storage of the product in lieu of the methods, controls, and facilities prescribed by the requirement are sufficient to ensure that the product will comply with this chapter.

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

''(4) INFORMAL HEARING.—After the issuance of an order under paragraph (2) respecting a peti-

tion, the petitioner shall have an opportunity for an informal hearing on such order.

''(d) AGRICULTURAL PRODUCERS.—The Secretary may not promulgate any regulation under this section that has the effect of placing regulatory burdens on tobacco producers (as such term is used for purposes of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) and the Agricultural Act of 1949 (7 U.S.C. 1441 et seq.)) in excess of the regulatory burdens generally placed on other agricultural commodity producers.

''SEC. 909. DISCLOSURE AND REPORTING OF NONTOBACCO INGREDIENTS AND CONSTITUENTS.

''(a) DISCLOSURE OF ALL INGREDIENTS.—

''(1) IMMEDIATE AND ANNUAL DISCLOSURE.—Not later than 30 days after the date of enactment of this chapter, and annually thereafter, each manufacturer of a tobacco product shall submit to the Secretary an ingredient list for all brands of tobacco products that contains the information described in paragraph (2).

''(2) REQUIREMENTS.—The list described in paragraph (1) shall, with respect to each brand of tobacco product of a manufacturer, include

''(A) a list of all ingredients, constituents, substances, and compounds that are added to

the tobacco (and the paper or filter of the product if applicable) in the manufacture of the tobacco product, for each brand of tobacco product so manufactured;

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

''(C) a description of the nicotine content of the product, measured in milligrams of nicotine;

''(D) with respect to cigarettes a description of—

''(i) the filter ventilation percentage (the level of air dilution in the cigarette as provided by the ventilation holes in the filter, described as a percentage);

''(ii) the pH level of the smoke of the cigarette; and

''(iii) the nicotine delivery level under average smoking conditions reported in milligrams of nicotine per cigarette;

''(E) with respect to smokeless tobacco products a description of—

''(i) the pH level of the tobacco;

''(ii) the moisture content of the tobacco expressed as a percentage of the weight of the tobacco; and

''(iii) the nicotine content—

''(I) for each gram of the product, measured in milligrams of nicotine;

''(II) expressed as a percentage of the dry weight of the tobacco; and

''(III) with respect to unionized (free) nicotine, expressed as a percentage per gram of the tobacco and expressed in milligrams per gram of the tobacco; and

''(F) any other information determined appropriate by the Secretary.

''(b) SAFETY ASSESSMENTS.—

''(1) APPLICATION TO NEW INGREDIENTS.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of this chapter, and annually thereafter, each manufacturer shall submit to the Secretary a safety assessment for each new ingredient, constituent, substance, or compound that such manufacturer desires to make a part of a tobacco product. Such new in-

gredient, constituent, substance, or compound shall not be included in a tobacco product prior to approval of such a safety assessment.

''(B) DEFINITION OF NEW INGREDIENT.—For purposes of subparagraph (A), the term 'new ingredient, constituent, substance, or compound' means an ingredient, constituent substance, or compound listed under subsection (a)(1) that was not used in the brand of tobacco product involved prior to the date of enactment of this chapter.

''(2) APPLICATION TO OTHER INGREDIENTS.—With respect to the application of this section to ingredients, constituents substances, or compounds listed under subsection (a) to which paragraph (1) does not apply, all such ingredients, constituents, substances, or compounds shall be approved through the safety assessment process within the 5-year period beginning on the date of enactment of this chapter. The Secretary shall develop a procedure that staggers the percentage of such ingredients, constituents, substances, or compounds for which safety assessments must be submitted for approval by manufacturers in each year.

''(3) BASIS OF ASSESSMENT.—The safety assessment of an ingredient, constituents, substance, or compound described in paragraphs (1) and (2) shall—

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

''(B) result in a finding that there is a reasonable certainty in the minds of competent scientists that the ingredient, constituents, substance, or compound is not harmful in the quantities used under the intended conditions of use.

''(c) PROHIBITION.—

''(1) REGULATIONS.—Not later than 12 months after the date of enactment of this chapter, the Secretary shall promulgate regulations to prohibit the use of any ingredient, constituent, substance, or compound in the tobacco product of a manufacturer—

''(A) if no safety assessment has been submitted by the manufacturer for the ingredient, constituent, substance, or compound as otherwise required under this section;

''(B) if the Secretary disapproves of the safety of the ingredient, constituent, substance, or compound that was the subject of the assessment under paragraph (2); or

''(C) if such ingredient, constituent, substance, or compound is a new ingredient that has not been approved for use by the Secretary.

''(2) REVIEW OF ASSESSMENTS.—

''(A) GENERAL REVIEW.—Not later than 180 days after the receipt of a safety assessment under subsection (b), the Secretary shall review the findings contained in such assessment and approve or disapprove of the safety of the ingredient, constituents, substance, or compound that was the subject of the assessment. The Secretary may, for good cause, extend the period for such approval. The Secretary shall provide notice to the manufacturer of an action under this subparagraph.

''(B) INACTION BY SECRETARY.—If the Secretary fails to act with respect to an assessment of an existing ingredient, constituent, substance, or additive during the period referred to in subparagraph (A), the manufacturer of the tobacco product involved may continue to use

the ingredient, constituents, substance, or compound involved until such time as the Secretary makes a determination with respect to the assessment.

''(d) DISCLOSURE OF INGREDIENTS TO THE PUBLIC.—

''(1) INITIAL DISCLOSURE.—The regulations promulgated in accordance with section 904(a) shall, at a minimum, require that a tobacco product be deemed to be misbranded if the labeling of the package of such product does not disclose all ingredients, constituents, substances, or compounds contained in the product in accordance with regulations promulgated by the Secretary.

''(2) DISCLOSURE OF PERCENTAGE OF DOMESTIC AND FOREIGN TOBACCO.—The regulations referred to in paragraph (1) shall, at a minimum, require that a tobacco product be deemed to be misbranded if the labeling of the package of such product does not disclose, with respect to the tobacco contained in the product—

''(A) the percentage that is domestic tobacco; and

''(B) the percentage that is foreign tobacco.

''(e) CONFIDENTIALITY.—

''(1) PETITION BY MANUFACTURER.—Upon the submission of a list under subsection (a), a manufacturer may petition the Secretary to exempt certain ingredients, constituents, substances, or compounds on such list from public disclosure under subsection (e) on the basis that such information should be considered confidential as a trade secret. Such petition may be accompanied by such data as the manufacturer elects to submit.

''(2) DETERMINATION.—Not later than 60 days after receiving a petition under paragraph (1), the Secretary, in consultation with the Attorney General, shall make a determination with respect to whether the information described in the petition should be exempt from disclosure under paragraph (1) as a trade secret. The Secretary shall provide the manufacturer involved with notice of such determination. but the decision of the Secretary shall be final.

''(3) PROCEDURES FOR CONFIDENTIAL INFORMATION.—The Secretary shall develop procedures to maintain the confidentiality of information that is treated as a trade secret under a determination under paragraph (2). Such procedures shall include—

"(A) a requirement that such information be maintained in a secure facility; and

"(B) a requirement that only the Secretary, or the authorized agents of the Secretary, will have access to the information and shall be instructed to maintain the confidentiality of such information.

"(4) HEALTH DISCLOSURE.—Notwithstanding a determination under paragraph (2), the Secretary may require that any ingredient, constituents, substance, or compound contained in a tobacco product that is determined to be exempt from disclosure as a trade secret be disclosed if the Secretary determines that such ingredient, constituents, substance, or compound is not safe as provided for in subsection (d).

"(5) OTHER DISCLOSURE.—Any information that the Secretary determines is not subject to disclosure to the public under this subsection, shall be exempt from disclosure pursuant to subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) of such section, and shall be considered confidential and shall not be disclosed, except that such information may be disclosed to other officers or employees as provided for in para-

graph (3)(B) or when relevant in any proceeding under this Act.

"SEC. 910. TOBACCO PRODUCT WARNINGS, LABELING AND PACKAGING.

"(a) CIGARETTE WARNINGS.—

"(1) IN GENERAL.—

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

"WARNING: Cigarettes Are Addictive.

"WARNING: Tobacco Smoke Can Harm Your Children.

"WARNING: Cigarettes Cause Fatal Lung Disease.

"WARNING: Cigarettes Cause Cancer.

"WARNING: Cigarettes Cause Strokes And Heart Disease.

"WARNING: Smoking During Pregnancy Can Harm Your Baby.

"WARNING: Smoking Can Kill You.

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

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

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

"WARNING: Cigarettes Are Addictive.

"WARNING: Tobacco Smoke Can Harm Your Children.

"WARNING: Cigarettes Cause Fatal Lung Disease.

"WARNING: Cigarettes Cause Cancer.

"WARNING: Cigarettes Cause Strokes And Heart Disease.

"WARNING: Smoking During Pregnancy Can Harm Your Baby.

"WARNING: Smoking Can Kill You.

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

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

''(2) REQUIREMENTS FOR LABELING.—

''(A) LOCATION.—Each label statement required by subparagraph (A) of paragraph (1) shall be located on the upper portion of the front panel of the cigarette package (or carton) and occupy not less than 25 percent of such front panel.

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

''(C) EXCEPTION.—The provisions of subparagraph (A) shall not apply in the case of a flip-top cigarette package (offered for sale on June 1, 1997) where the front portion of the

flip-top does not comprise at least 25 percent of the front panel. In the case of such a package, the label statement required by subparagraph (A) of paragraph (1) shall occupy the entire front portion of the flip-top.

''(3) REQUIREMENTS FOR ADVERTISING.—

''(A) LOCATION.—Each label statement required by subparagraph (B) of paragraph (1) shall occupy not less than 20 percent of the area of the advertisement involved.

''(B) TYPE AND COLOR.—

''(i) TYPE.—With respect to each label statement required by subparagraph (B) of paragraph (1), the phrase 'WARNING' shall appear in capital letters and the label statement shall be printed in the following types:

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

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

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

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

''(V) With respect to DPS magazine advertisements—31.5 point type.

''(VI) With respect to whole page magazine advertisements—31.5 point type.

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

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

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

''(ii) COLOR.—All the letters in the label under this subparagraph shall appear in conspicuous and legible type, in contrast by typography, layout, or color with all other printed material on the package, and

be printed in an alternating black-on-white and white-on-black format as determined appropriate by the Secretary.

''(4) ROTATION OF LABEL STATEMENTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the label statements specified in subparagraphs (A) and (B) of paragraph (1) shall be rotated by each manufacturer or importer of cigarettes quarterly in alternating sequence on packages of each brand of cigarettes manufactured by the manufacturer or importer and in the advertisements for each such brand of cigarettes in accordance with a plan submitted by the manufacturer or importer and approved by the Secretary. The Secretary shall approve a plan submitted by a manufacturer or importer of cigarettes which will provide the rotation required by this paragraph and which assures that all of the labels required by subparagraphs (A) and (B) will be displayed by the manufacturer or importer at the same time.

''(B) APPLICATION OF OTHER ROTATION REQUIREMENTS.—

"(i) IN GENERAL.—A manufacturer or importer of cigarettes may apply to the Secretary to have the label rotation described in clause (iii) apply with respect to a brand style of cigarettes manufactured or imported by such manufacturer or importer if—

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

"(II) more than ½ of the cigarettes manufactured or imported by such manufacturer or importer for sale in the United States are packaged into brand styles which meet the requirements of subclause (I).

If an application is approved by the Secretary, the label rotation described in clause (iii) shall apply with respect to the applicant during the 1-year period begin-

ning on the date of the application approval.

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

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

"(5) APPLICATION OF REQUIREMENT.—Paragraph (1) does not apply to a distributor, a retailer of cigarettes who does not manufacture, package, or

import cigarettes for sale or distribution within the United States.

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

''(b) SMOKELESS TOBACCO PRODUCTS.—

''(1) IN GENERAL.—

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

''WARNING: This Product Can Cause Mouth Cancer.

''WARNING: This Product Can Kill You.

''WARNING: This Product Can Cause Gum Disease And Tooth Loss.

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

''WARNING: This Product Contains Cancer-Causing Chemicals.

''WARNING: Smokeless Tobacco Is Addictive.

''(B) ADVERTISING.—It shall be unlawful for any manufacturer or importer of smokeless tobacco products to advertise or cause to be advertised within the United States any smokeless tobacco product unless the advertising bears, in accordance with the requirements of this subsection, one of the following labels:

''WARNING: This Product Can Cause Mouth Cancer.

''WARNING: This Product Can Kill You.

''WARNING: This Product Can Cause Gum Disease And Tooth Loss.

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

''WARNING: This Product Contains Cancer-Causing Chemicals.

''WARNING: Smokeless Tobacco Is Addictive.

''(2) REQUIREMENTS FOR LABELING.—

''(A) LOCATION.—Each label statement required by subparagraph (A) of paragraph (1) shall be located on the principal display panel

of the product and occupy not less than 25 percent of such panel.

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

''(3) ADVERTISING AND ROTATION.—The provisions of paragraph (3) and (4)(A) of subsection (a) shall apply to advertisements for smokeless tobacco products and the rotation of the label statements required under paragraph (1)(A) on such products.

''(4) APPLICATION OF REQUIREMENT.—Paragraph (1) does not apply to a distributor or a retailer of smokeless tobacco products who does not

manufacture, package, or import such products for sale or distribution within the United States.

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

''(c) ENFORCEMENT.—Not later than 180 days after the date of the enactment of this title, the Secretary shall promulgate such regulations as may be necessary to enforce subsections (a) and (b).

''(d) INJUNCTIONS.—The several district courts of the United States are vested with jurisdiction, for cause shown, to prevent and restrain violations of this section upon the application of the Secretary in the case of a violation of subsection (a) or (b).

''(e) CONSTRUCTION.—

''(1) IN GENERAL.—Noting in this section shall be construed to limit the ability of the Secretary the change the text or layout of any of the warning statements, or any of the labeling provisions, under subsections (a) and (b), if determined necessary by the Secretary.

''(2) UNFAIR ACTS.—Nothing in this section (other than the requirements of subsections (a) and

(b)) shall be construed to limit or restrict the authority of the Secretary with respect to unfair or deceptive acts or practices in the advertising of cigarettes or smokeless tobacco products.

''(f) LIMITED PREEMPTION.—

''(1) STATE AND LOCAL ACTION.—

''(A) LIMITATION.—No warning label with respect to cigarettes or smokeless tobacco products, other than the warning labels required by subsections (a) and (b), shall be required by any State or local statute or regulation to be included on any package or in any advertisement of cigarettes or a smokeless tobacco product.

''(B) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as prohibiting a State or political subdivision of a State from enacting statutes or regulations concerning cigarettes or smokeless tobacco products so long as such statutes or regulations do not conflict with the labeling and advertising requirements of this section or require additional statements on cigarette or smokeless tobacco packages.

''(2) EFFECT ON LIABILITY LAW.—Except as otherwise provided in this section, nothing in this section shall relieve any person from liability at com-

mon law or under State statutory law to any other person.

''(g) REPORTS.—Not later than 1 year after the date of enactment of this chapter, and biennially thereafter, the Secretary shall prepare and submit to Congress a report containing—

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

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

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

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

''(h) EXPORTS.—Packages of cigarettes or smokeless tobacco products manufactured, imported, or packaged—

''(1) for export from the United States; or

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

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

''(i) APPLICATION.—The Secretary shall exercise the authority provided for in this section notwithstanding the provisions of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1331 et seq.) and the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4401 et seq.).

''SEC. 911. STATEMENT OF INTENDED USE.

''(a) REQUIREMENT.—Each manufacturer, distributor, and retailer advertising or causing to be advertised, disseminating or causing to be disseminated, advertising concerning cigarettes, cigarette tobacco, or smokeless tobacco products otherwise permitted under this chapter shall include, as provided in section 502, the established name of the product and a statement of the intended use of the product as provided for in subsection (b).

''(b) USE STATEMENTS.—

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

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

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

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

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

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

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

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

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

''(c) TYPE AND LOCATION.—The Secretary shall promulgate regulations with respect to the type, color, size, and placement of statements required under this section on labels and in advertisements.

''SEC. 912. MISCELLANEOUS PROVISIONS.

''(a) PRESERVATION OF STATE AND LOCAL AUTHORITY.—Except as otherwise provided for in this chapter, nothing in this chapter shall be construed as prohibiting

a State from imposing requirements, prohibitions, penalties or other measures to further the purposes of this chapter that are in addition to the requirements, prohibitions, or penalties required under this chapter. To the extent not inconsistent with the purposes of this chapter, State and local governments may impose additional tobacco product control measures to further restrict or limit the use of such products by minors.

''(b) REGULATIONS.—The Secretary may promulgate regulations to enforce the provisions of this chapter, or to modify, alter, or expand the requirements and protections provided for in this chapter if the Secretary determines that such modifications, alternations, or expansion is necessary.''.

TITLE III—STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE

SEC. 301. STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE.

The Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) is amended by adding at the end the following:

''SEC. 35. STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE.

''(a) DEFINITIONS.—In this section—

''(1) PUBLIC FACILITY.—

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

''(B) EXCLUSIONS.—The term 'public facility' does not include a portion of a building which is used as a bar, tobacco merchant, a hotel guest room that is designated as a smoking room, or prison.

''(2) 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.

''(b) SMOKE-FREE ENVIRONMENT POLICY.—

''(1) 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 paragraph (2) or (4).

''(2) ELEMENTS OF POLICY.—

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

''(i) 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

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

''(B) EXCEPTION.—The smoke-free environment policy for a public facility may provide an exception to the prohibition specified in subparagraph (A) for 1 or more specially designated smoking areas within a public facility if such area or areas meet the requirements of paragraph (3).

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

''(A) the area is ventilated in accordance with specifications promulgated by the Secretary of Labor 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;

''(B) the area is maintained at negative pressure, as compared to adjoined nonsmoking areas, as determined under regulations promulgated by the Secretary of Labor; and

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

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

''(4) SPECIAL RULES.—

''(A) SCHOOLS AND OTHER FACILITIES SERVING CHILDREN.—

''(i) IN GENERAL.—With respect to a facility described in clause (ii), the responsible entity for the facility shall adopt and

implement at such facility a smoke-free environment policy that—

''(I) prohibits the smoking of cigarettes, cigars, and pipes, and any other combustion of tobacco within the facility and on facility property;

''(II) prohibits the use of smokeless tobacco products within the facility and on facility property; and

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

''(ii) FACILITY.—A facility described in this clause is—

''(I) an elementary or secondary school (as such term is defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801);

''(II) any facility at which a Head Start program or project is being carried out under the Head Start Act (42 U.S.C. 9831 et seq.);

"(III) any facility at which a licensed or certified child care provider provides child care services; and

"(IV) any recreation or other facility maintained primarily to provide services to children as determined by the Secretary of Labor.

"(B) PUBLIC TRANSPORTATION.—With respect to any responsible entity which operates conveyances of public transportation (including bus, rail, aircraft, boat, or any other conveyance determined appropriate by the Secretary of Labor), the responsible entity shall adopt and implement on such conveyances a smoke-free environment policy that—

"(i) prohibits the smoking of cigarettes, cigars, and pipes, and any other combustion of tobacco within the conveyance and on property affiliated with the conveyance; and

"(ii) post a clear and prominent notice of the smoking prohibition in appropriate and visible locations on the conveyance.

''(c) ENFORCEMENT.—To be eligible to receive funds under title XXVIII of the Public Health Service Act, a State shall have in effect laws or procedures to provide for the enforcement of this section within the State. Such laws or procedures shall permit aggrieved individuals to enforce this section through administrative or judicial means.

''(d) PREEMPTION.—Nothing in this section shall preempt or otherwise affect any other Federal, State or local law which provides protection from health hazards from environmental tobacco smoke that are as least as stringent as those provided for in this section.

''(e) REGULATIONS.—The Secretary of Labor is authorized to promulgate such regulations as the Secretary deems necessary to carry out this section.

''(f) EFFECTIVE DATE.—The provisions of this section shall take effect on the date that is 1 year after the date of enactment of this section.''.

TITLE IV—TOBACCO MARKET TRANSITION ASSISTANCE

SEC. 401. DEFINITIONS.

In this title:

(1) BUYOUT PAYMENT.—The term ''buyout payment'' means a payment made under section 411, 412, or 413.

(2) CONTRACT.—The term ''contract'' means a contract entered into under section 411, 412, or 413.

(3) LEASE.—The term ''lease'' means a rental of quota on either a cash rent or crop share basis.

(4) MARKETING YEAR.—The term ''marketing year'' means—

(A) in the case of Flue-cured tobacco, the period beginning July 1 and ending the following June 30; and

(B) in the case of each other kind of tobacco, the period beginning October 1 and ending the following September 30.

(5) QUOTA OWNER.—The term ''quota owner'' means a person that, at the time of entering into a contract, owns quota provided by the Secretary.

(6) PRODUCER OF QUOTA.—The term ''producer of quota'' means a person that during at least 3 of the 1993 through 1997 crops of tobacco (as determined by the Secretary) that were subject to quota—

(A) leased quota;

(B) shared in the risk of producing a crop of tobacco; and

(C) marketed the tobacco subject to quota.

(7) PRODUCER OF NON-TOBACCO QUOTA.—The term ''producer of non-tobacco quota'' means a person that during at least 1 of the crop years 1995 through 1997 grew and marketed tobacco not subject to quota.

(8) QUOTA.—The term ''quota'' means basic marketing quota for tobacco determined by the Secretary under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.).

(9) QUOTA HOLDER.—The term ''quota holder'' means a producer that owns a farm for which a tobacco farm marketing quota or farm acreage allotment was established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1994, 1995, or 1996 crop years.

(10) QUOTA LESSEE.—The term ''quota lessee'' means—

(A) a producer that owns a farm that produced tobacco pursuant to a lease and transfer to that farm of all or part of a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1994, 1995, or 1996 crop years; or

(B) a producer that rented land from a farm operator to produce tobacco under a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1994, 1995, or 1996 crop years.

(11) QUOTA TENANT.—The term ''quota tenant'' means a producer that—

(A) is the principal producer, as determined by the Secretary, of tobacco on a farm where tobacco is produced pursuant to a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1994, 1995, or 1996 crop years; and

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

(12) SECRETARY.—In subtitles A and C, the term ''Secretary'' means the Secretary of Agriculture.

(13) STATE.—The term ''State'' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

(14) TOBACCO.—The term ''tobacco'' means any kind of tobacco produced and marketed in the United States.

(15) TOBACCO-GROWING STATE.—The term ''tobacco-growing State'' means Georgia, Kentucky, North Carolina, South Carolina, Tennessee, or Virginia.

(16) TRANSITION PAYMENT.—The term ''transition payment'' means a payment made to a producer under section 411, 412, or 413.

(17) UNITED STATES.—The term ''United States'', when used in a geographical sense, means all of the States.

Subtitle A—Tobacco Quota Buyout Contracts and Producer Transition Payments

SEC. 411. QUOTA OWNER BUYOUT CONTRACTS.

(a) OFFER.—The Secretary shall offer to enter into a quota buyout contract with the quota owner on each farm to which a quota was assigned in 1997.

(b) TERMS.—

(1) RELINQUISHMENT OF QUOTA.—Under the terms of the contract, the owner shall agree, in exchange for a buyout payment, to permanently relinquish the quota.

(2) ELIGIBILITY FOR TOBACCO PROGRAM BENEFITS.—Neither the farm, in its current or future ownership configuration, nor the contracting owner shall be eligible for any tobacco program benefits under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.), or the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.).

(c) PAYMENT CALCULATION.—The total amount of the buyout payment made to a quota owner shall be determined by multiplying—

(1) $4; by

(2) the average quantity of basic quota assigned to the farm during the period 1995 through 1997.

SEC. 412. PRODUCER TRANSITION PAYMENTS FOR QUOTA TOBACCO.

(a) OFFER.—The Secretary shall offer to producers of quota tobacco that do not own the quota, but were quota lessees or quota tenants in 1997, producer transition payment contracts.

(b) TERMS.—Under the terms of the transition contract, the producer shall agree, in exchange for a payment, to permanently refrain from growing tobacco for which a quota program is in effect.

(c) PAYMENT CALCULATION.—The total amount of the transition payment made to a producer shall be determined by multiplying—

(1) $4; by

(2) the average quantity of quota tobacco leased or rented from quota owners during the period 1995 through 1997.

SEC. 413. PRODUCER TRANSITION PAYMENTS FOR NONQUOTA TOBACCO.

(a) OFFER.—The Secretary shall offer to producers of nonquota tobacco a producer nonquota transition payment contract.

(b) TERMS.—Under the terms of the transition payment, the producer shall agree, in exchange for a payment, to permanently refrain from growing tobacco for which a quota program is in effect.

(c) PAYMENT CALCULATION.—The total amount of the transition payment made to a producer shall be determined by multiplying—

(1) $4; by

(2) the average annual quantity of nonquota tobacco marketed during the period 1995 through 1997.

SEC. 414. ELEMENTS OF CONTRACTS.

(a) COMMENCEMENT.—To the maximum extent practicable, the Secretary shall commence entering into contracts under this subtitle not later than 90 days after the date of enactment of this Act.

(b) DEADLINE.—The Secretary may not enter into a contract under this subtitle after the date that is 3 years after the date of enactment of this Act.

(c) BEGINNING DATE.—A contract under this subtitle shall take effect and become binding beginning in the tobacco marketing year following the year in which the contract is entered into.

(d) TIME FOR PAYMENT.—A contract payment shall be made not later than the date that is the beginning of the marketing year in which the contract becomes binding, or at any later time selected by the quota owner or producer.

(e) PROHIBITION OF DOUBLE PAYMENTS.—In no case shall a contract holder receive overlapping payments as a quota owner and as a producer on the same tobacco.

Subtitle B—No Net Cost Tobacco Program

SEC. 421. BUDGET DEFICIT ASSESSMENT.

Section 106(g)(1) of the Agricultural Act of 1949 (7 U.S.C. 1445(g)(1)) is amended—

(1) by striking ''only for each of the 1994 through 1998 crops'' and inserting ''for the 1998 and each subsequent crop''; and

(2) by striking ''equal to—'' and all that follows and inserting ''equal to 1 or more amounts determined by the Secretary that are sufficient to cover the costs of the administration of the tobacco quota and price support programs administered by the Secretary.''.

Subtitle C—Tobacco Community Empowerment Block Grants

SEC. 431. TOBACCO COMMUNITY EMPOWERMENT BLOCK GRANTS.

(a) AUTHORITY.—The Secretary shall make grants to tobacco States in accordance with this section to enable the States to—

(1) empower active tobacco producers and tobacco product manufacturing workers by providing economic alternatives to tobacco; and

(2) carry out non-tobacco economic development initiatives in tobacco communities.

(b) APPLICATION.—To be eligible to receive payments under this section, a tobacco State shall prepare and submit to the Secretary an application at such time, in such

manner, and containing such information as the Secretary may require, including—

(1) a description of the activities that the State will carry out using amounts received under the grant;

(2) a designation of an appropriate State agency to administer amounts received under the grant; and

(3) a description of the steps to be taken to ensure that the funds are distributed in accordance with subsection (e).

(c) AMOUNT OF GRANT.—

(1) IN GENERAL.—From the amounts available to carry out this section for a fiscal year, the Secretary shall allot to each tobacco State an amount that bears the same ratio to the amounts available as the total income of the State derived from the production of tobacco and the manufacture of tobacco products during the 1994 through 1996 marketing years (as determined under paragraph (2)) bears to the total income of all tobacco States derived from the production of tobacco and the manufacturing of tobacco products during the 1994 through 1996 marketing years.

(2) TOBACCO INCOME.—For the 1994 through 1996 marketing years, the Secretary shall determine the amount of income derived from the production of tobacco and the manufacture of tobacco products in each tobacco State and in all tobacco States.

(d) PAYMENTS.—

(1) IN GENERAL.—A tobacco State that has an application approved by the Secretary under subsection (b) shall be entitled to a payment under this section in an amount that is equal to its allotment under subsection (c).

(2) FORM OF PAYMENTS.—The Secretary may make payments under this section to a tobacco State in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(3) REALLOTMENTS.—Any portion of the allotment of a tobacco State under subsection (c) that the Secretary determines will not be used to carry out this section in accordance with an approved State application required under subsection (b), shall be reallotted by the Secretary to other tobacco States in proportion to the original allotments to the other States.

(e) USE AND DISTRIBUTION OF FUNDS.—

(1) IN GENERAL.—Amounts received by a tobacco State under this section shall be used to carry out economic development activities, including—

(A) rural business enterprise activities described in subsections (c) and (e) of section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932);

(B) down payment loan assistance programs that are similar to the program described in section 310E of the Consolidated Farm and Rural Development Act (7 U.S.C. 1935);

(C) activities designed to help create productive farm or off-farm employment in rural areas to provide a more viable economic base and enhance opportunities for improved incomes, living standards, and contributions by rural individuals to the economic and social development of tobacco communities;

(D) activities that expand existing infrastructure, facilities, and services to capitalize on opportunities to diversify economies in tobacco communities and that support the development of new industries or commercial ventures;

(E) activities by agricultural organizations that provide assistance directly to active tobacco producers to assist in developing other agricultural activities that supplement tobacco-producing activities;

(F) initiatives designed to create or expand locally owned value-added processing and marketing operations in tobacco communities;

(G) technical assistance activities by persons to support farmer-owned enterprises, or agriculture-based rural development enterprises, of the type described in section 252 or 253 of the Trade Act of 1974 (19 U.S.C. 2342, 2343); and

(H) investments in community colleges and trade schools to provide skills training to active tobacco producers and tobacco product manufacturing workers and ensure that the off-farm sector remains vital and robust.

(2) TOBACCO COUNTIES.—Assistance may be provided by a tobacco State under this section only to assist a county in the State that has been determined by the Secretary to have in excess of $100,000 in income derived from the production of tobacco and the manufacture of tobacco products

during 1 or more of the 1994 through 1996 marketing years.

(3) DISTRIBUTION.—

(A) ECONOMIC DEVELOPMENT ACTIVITIES.—Not less than 20 percent of the amounts received by a tobacco State under this section shall be used to carry out—

(i) economic development activities described in subparagraph (E) or (F) of paragraph (1); or

(ii) agriculture-based rural development activities described in paragraph (1)(G).

(B) TECHNICAL ASSISTANCE ACTIVITIES.—Not less than 4 percent of the amounts received by a tobacco State under this section shall be used to carry out technical assistance activities described in paragraph (1)(G).

(C) TOBACCO COUNTIES.—To be eligible to receive payments under this section, a tobacco State shall demonstrate to the Secretary that funding will be provided, during the 1999 through 2004 fiscal years, for activities in each county in the State that has been determined under paragraph (2) to have in excess of

$100,000 in income derived from the production of tobacco and the manufacture of tobacco products, in amounts that are at least equal to the product obtained by multiplying—

(i) the ratio that the tobacco production and tobacco product manufacturing income in the county determined under paragraph (2) bears to the total tobacco production and tobacco product manufacturing income for the State determined under subsection (c); by

(ii) 50 percent of the total amounts received by the State under this section during the 1999 through 2004 fiscal years.

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. SENSE OF THE SENATE.

It is the sense of the Senate that, in order to provide funds to carry out this Act, Congress should enact an increase in the excise taxes on tobacco products of approximately $1.50 per pack of cigarettes (and corresponding increases on taxes on other tobacco products) over a 3-year period, that increases in such tax in future years should be indexed to inflation, and that the payment of such tax should not be considered to be an ordinary and

necessary expense in carrying on a trade or business and should not be deductible.

○