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Senate

The Senate met at 11 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, You have told us that You are for us and not against us. Help us to receive Your correctives as well as Your guidance as signs of Your faithful love. In the same way, free us to befriend the struggling, sometimes anxious and insecure person inside of each of us. Encourage us to say with Lincoln, ''When I lay down the reins of this administration, I want to have one friend left and may that friend be inside myself.''

Make us so secure in Your unqualified grace that we reach out to others with good will and encouragement. Free us from thinking of people in the other party, Republican or Democrat, as opponents.

Father, You know that these are pressured times in the Senate. Grant the Senators a renewed commitment to agree whenever possible, to debate fairly when agreement is not easily reached, and when votes are taken neither gloat over victory nor be discouraged by defeat.

Our times are in Your hands. Shape our destiny as planned. Through our Lord and Saviour. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader, the distinguished Senator from Georgia, is recognized.

SCHEDULE

Mr. COVERDELL. Mr. President, this morning the Senate will immediately proceed to a second attempt to invoke cloture on the pending tobacco bill. Assuming cloture is not invoked, it will be the leader's intention to try to reach an agreement similar to the agreement reached yesterday with respect to the drug issue. If an agreement can be reached, Members should expect two votes on the marriage penalty issue at 1 or 2 p.m. That would be this afternoon. Following those votes, it is hoped that Members will come to the floor to offer and debate remaining amendments to the tobacco bill. Therefore, votes will occur throughout Wednesday's session of the Senate, with the first vote being on the second attempt to invoke cloture on the tobacco bill.

I thank my colleagues for their attention.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1415, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1415) to reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Gregg/Leahy amendment No. 2433 (to amendment No. 2420), to modify the provisions relating to civil liability for tobacco manufacturers.

Gregg/Leahy amendment No. 2434 (to amendment No. 2433), in the nature of a substitute.

Gramm motion to recommit the bill to the Committee on Finance with instructions to report back forthwith, with amendment No. 2436, to modify the provisions relating to civil liability for tobacco manufacturers, and to eliminate the marriage penalty reflected in the standard deduction and to ensure the earned income credit takes into account the elimination of such penalty.

Daschle (for Durbin) amendment No. 2437 (to amendment No. 2436), relating to reductions in underage tobacco usage.

CLOTURE MOTION

The PRESIDING OFFICER. The clerk will report the cloture motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the modified committee substitute for S. 1415, the tobacco legislation.

John Kerry, Bob Kerrey, Kent Conrad, Harry Reid, Paul Wellstone, Dick Durbin, Patty Murray, Richard Bryan, Tom Harkin, Carl Levin, Joe Biden, J. Lieberman, John Glenn, Jeff Bingaman, Ron Wyden, and Max Baucus.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the quorum call under rule XXII is waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the committee substitute for S. 1415 shall be brought to a close?

The yeas and nays are required.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Hampshire (Mr. GREGG) is necessarily absent.

I also announce that the Senator from Pennsylvania (Mr. SPECTER) is absent because of illness.

The yeas and nays resulted—yeas 43, nays 55, as follows:

[Rollcall Vote No. 153 Leg.]

YEAS—43

Akaka	Conrad	Hollings
Baucus	Daschle	Inouye
Biden	Dodd	Johnson
Bingaman	Dorgan	Kennedy
Boxer	Durbin	Kerrey
Breaux	Feingold	Kerry
Bryan	Feinstein	Kohl
Bumpers	Glenn	Landrieu
Byrd	Graham	Lautenberg
Cleland	Harkin	Leahy

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Levin	Murray	Torricelli
Lieberman	Reed	Wellstone
Mikulski	Reid	Wyden
Moseley-Braun	Rockefeller	
Moynihan	Sarbanes	

NAYS—55

Abraham	Ford	McConnell
Allard	Frist	Murkowski
Ashcroft	Gorton	Nickles
Bennett	Gramm	Robb
Bond	Grams	Roberts
Brownback	Grassley	Roth
Burns	Hagel	Santorum
Campbell	Hatch	Sessions
Chafee	Helms	Shelby
Coats	Hutchinson	Smith (NH)
Cochran	Hutchison	Smith (OR)
Collins	Inhofe	Snowe
Coverdell	Jeffords	Stevens
Craig	Kempthorne	Thomas
D'Amato	Kyl	Thompson
DeWine	Lott	Thurmond
Domenici	Lugar	Warner
Enzi	Mack	
Faircloth	McCain	

NOT VOTING—2

Gregg	Specter

The PRESIDING OFFICER (Mr. HUTCHINSON). On this vote the yeas are 43; the nays are 55. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The Senator from Arizona.

Mr. MCCAIN. Mr. President, on behalf of the leader, I ask unanimous consent that the bill remain in status quo until 12 noon, for the purpose of debate only.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, let me just say that may even go until 12:30. The problem is the amendment we had agreed to take up next—that would have been Senator GRAMM, Senator DOMENICI, and Senator ROTH—they have not completed the language so the other side is able to examine this language, which is a courtesy, obviously, that is expected around here. But we do expect to move forward with the Gramm amendment and debate on it either within a half-hour or an hour.

Mr. President, let me just say again, it is my understanding that Senator HATCH had a substitute he wanted considered, that Senator GRAMM and Senator DOMENICI had a substitute, and there is also the very important issue of the farmer aspect of this bill to which the Senator from Kentucky, Senator FORD, is obviously very involved in and committed. There is also the issue of attorneys' fees that would be the subject of an amendment.

I also am aware that there are several hundred, maybe, other amendments that have been—quote—filed. Those are amendments which I know in the view of the sponsors are important amendments, but I have to say I do not believe that they are vital to the progress of this bill. Many of them we could accept. Many of them I think could be dispensed with in a short period of time.

After the disposition of the Gramm amendment, which I understand there will be a time agreement on, I hope then that would be an appropriate time to determine not only where we go for the rest of the day, but for the rest of this bill. We are in the middle of the third week of consideration of this legislation. I thought the passage of the drug amendment yesterday was important. A tax cut, as we may enact today—although there certainly are some concerns I have about the size of it—if it passes, then I think it is important for us to determine on both sides of the aisle as to where we want to go after that.

Mr. FORD. Mr. President, will the Senator yield for a question?

Mr. MCCAIN. I will be glad to yield at any time to the Senator from Kentucky.

Mr. FORD. I thank my friend. When you go to the marriage penalty amendment, or at least the minority has an opportunity to visit with it, and then you indicate that you want to go maybe to the substitute—you have at least one, possibly two—would it take a unanimous consent agreement to set aside the pending amendments, then, in order to go to the substitutes?

Mr. MCCAIN. It is my understanding, if I could respond to the Senator from Kentucky, that we have been conducting this whole procedure on a sort of agreement basis. I would like to say in response to the Senator from Kentucky, I understand what he is getting at here. The Senator from Kentucky wants the issue of the farmers in his State, and throughout America——

Mr. FORD. And I prefer it not to be under cloture, when my time is limited.

Mr. MCCAIN. I understand. I think it is important the Senator's concerns be satisfied. I think the Senator from Massachusetts and I, along with the leaders, should sit down with him and try to address this very important concern that he has.

Mr. FORD. I will be more than happy to do that. As the majority leader set out the sequence of getting this bill out of here, that we would have to pull a bill from the calendar in order to have a tax bill to put this one on to get it back to the House, there are a lot of slips between the lip and the cup before this bill will leave the Chamber as it relates to the farmer question.

I thank the Chair.

Mr. MCCAIN. As I mentioned yesterday, after we passed the drug bill and had an agreement to move forward with tax cuts, I felt a lot more like Bob Hope felt——

Mr. FORD. He is alive.

Mr. MCCAIN. In that the bill is alive, than I did some sense of exhilaration.

So I also am very aware of how difficult this agriculture—tobacco farmer issue is to the Senator from Kentucky. He and I have worked together for many, many years on many, many issues. I know the Senator from Kentucky and I have such a relationship that he will not be mistreated, given the consideration which he deserves on this issue.

Mr. FORD. I thank my friend. I will not mistreat him until I tell him I am going to.

Mr. MCCAIN. Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. If I could just add to the list the Senator from Arizona just ran through, in addition to the amendments that he mentioned is also an amendment by the Senator from Rhode Island, Senator REED, on advertising, and there is an amendment of mine, joined with a number of different colleagues on both sides of the aisle, on the issue of children. So those are two other issues. Time agreements on both of them, however, will be easily arrived at, and they should not delay us as I think most of the issues the Senator listed will be subject to time agreement. Obviously the issue of the Senator from Kentucky is more contentious, and one we need to work on over the course of the next days. And we will.

With that said, we are waiting for the language from Senator ROTH to add to the language from Senator GRAMM. Then, hopefully, we will be able to proceed. I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I ask unanimous consent to speak for up to 10 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Illinois is recognized.

Mr. DURBIN. I thank the Chair.

(The remarks of Mr. DURBIN pertaining to the introduction of S. 2152 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. DURBIN. Mr. President, I yield back the remainder of my time.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, as we speak, there is work going on on redrafting the Gramm-Roth amendment to add what I think is a vitally important provision to provide tax relief through full deductibility of health insurance for the self-employed. To me that is another very, very significant step that we should take for the purpose of fairness, the purpose of assuring that all people in this country have health care, to ensure that those who may suffer illnesses or disability as a result of the use of tobacco have adequate care when they become ill.

The revised amendment has not yet been offered, but I rise in strong support of the Gramm-Roth amendment, because it will return a portion of the revenues raised from the tobacco tax to taxpayers who are bearing the burden of this tax increase. I am pleased to be a cosponsor.

The objective is to discourage use of tobacco by raising the price, and certainly tax increases will do that, but the purpose of the bill should not be to raise the taxes and produce massive

new Government spending. I think it is appropriate that we use this bill to provide tax relief to the people who are going to be paying increased taxes on tobacco.

The amendment's phaseout of the marriage penalty for couples with incomes of less than $50,000 is a solid first step to eliminating the marriage penalty completely. We should be encouraging people to marry and raise their children in a marriage.

Under current law, many two-income wage earners, particularly if they are both earning good wages, are penalized by paying higher taxes as a result of being married than they would be paying if they were single. In addition, I think it is fitting that part of the tobacco tax revenues will be used to ease the burdens of the tax increase which will be borne by Americans in the lowest tax brackets.

I am also extremely pleased that part of these revenues will be used to eliminate another inequity in the Tax Code—the deductibility of health insurance for the self-employed. This amendment will finally—finally—make full deductibility a reality beginning next year.

Again, it is fitting to use tobacco revenues for this purpose since two-thirds of families headed by a self-employed individual with no health insurance earn less than $50,000 a year. That is from a March 1997 Current Population Survey. I don't have in hand the statistics on the number of those people who may be tobacco users, but I suspect that it is a significant number who would be taxed by the increased cost of cigarettes who would find it difficult to make commitments, like buying health insurance, if they don't have this relief.

Today, while the self-employed, as a result of our actions in the last couple of years, which I led and strongly supported, can deduct 45 percent of their health insurance costs, they are still not on a level playing field with large businesses which can deduct 100 percent.

While the self-employed are slated to have full deductibility in 2007, and I am very grateful to the Members of this body who supported our efforts to get that goal, what self-employed person or family members can wait 9 more years to get sick? It just isn't going to happen. Nobody is willing to wait 9 years to get their health insurance, and we should not wait 9 years to give them fair tax treatment for buying health insurance for themselves and their families.

An immediate increase in the deduction to 100 percent would make health insurance more affordable and accessible to 5.4 million Americans in families headed by self-employed individuals who currently have no health insurance. Full deductibility will also help bring insurance to 1.5 million children who live in households headed by self-employed individuals where there is no health insurance.

Coverage of these self-employed individuals and their children through the self-employed health insurance deduction will enable the private sector to address the health care needs of these individuals rather than having an expensive, intrusive, and burdensome Federal bureaucracy to do it.

It has long been my goal that the self-employed have immediate 100 percent deductibility of health insurance costs. I have sought every opportunity to achieve that goal.

In 1995, my amendment to the Balanced Budget Act, which President Clinton vetoed, would have increased the health insurance deduction for the self-employed to 50 percent.

In 1996, I worked with Senator Kassebaum and Senator KENNEDY to include in the Health Insurance Portability and Accountability Act an increase in the self-employed health insurance deduction incrementally over 10 years to 80 percent.

In 1997, provisions of my Home-Based Business Fairness Act were included in the Taxpayer Relief Act of 1997, finally increasing the deduction to 100 percent in 2007 and accelerating the phase-in over existing law.

This year, I and others who have been strong supporters, on a bipartisan basis, of this measure worked with Chairman DOMENICI to include language in the budget resolution calling for funds to be available to accelerate the 100-percent deductibility of health insurance by the self-employed.

If this tobacco bill is signed into law without full deductibility, I intend to be back—and I will be back as many times as it takes—to finish the job. Right now, full deductibility is available in 2007. I intend to be here to see it move up to an immediate deductibility to end the glaring unfairness of the discrimination against people who have to buy their own health insurance who are not provided health insurance by their employer.

The goal of providing full deductibility of health insurance costs for the self-employed has long enjoyed broad bipartisan support. My colleague who was just on the floor has long championed it. We do have support on both sides of the aisle. We have support from small business, we have support from agriculture, because it is right, it is necessary.

We are talking about health care. We are talking about eliminating a penalty, a tax penalty that discourages people from being able to acquire their own health insurance for themselves and their families.

Let us continue the spirit of bipartisanship by adopting this amendment and not miss an opportunity to help the self-employed get the insurance coverage they need and deserve. I look forward to working with my colleagues on this amendment when it comes to the floor. I intend to be a cosponsor. And I trust that we will have a strong bipartisan majority for the amendment when it is offered.

Mr. President, I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

PRIVILEGE OF THE FLOOR

Mr. WELLSTONE. Mr. President, I ask unanimous consent that Robin Buhrke, who is a fellow in my office, be allowed to be on the floor while I speak.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. I thank the Chair.

I ask unanimous consent that I be allowed to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF JAMES C. HORMEL

Mr. WELLSTONE. Mr. President, I rise today to speak again—and I shall be relatively brief—about the nomination of James C. Hormel to be United States Ambassador to Luxembourg.

I point out to colleagues that it has now been more than 8 months that his nomination has languished, awaiting an opportunity for us to consider this on the Senate floor. I have spoken on the floor before about Mr. Hormel.

Let me just make one point. We in fact have voted before on Mr. Hormel when we made the decision as to whether or not he would be a representative to the U.S. delegation to the 51st U.N. General Assembly. As I look at his qualifications, he has had a tremendous amount of success as a businessman, a tremendous amount of success as a lawyer, a tremendous amount of success in philanthropy, a tremendous amount of success from the point of view of very, very moving, very personal testimony by his former wife, his children, his family members, people who really know him well—and, I say to the Chair, people who know him not from the point of view of formal credentials, not from the point of view of any political fight, but from the point of view of kind of measuring the character of a person.

My feeling is, colleagues can have different views about this nomination, but I believe it is extremely important that this nomination be brought to the floor. I've said it before. I have spoken any number of different times on the floor about Mr. Hormel. What I have said is that if there is a debate about his qualifications, that is quite one thing. If so, then let us have that debate.

But I do not want the Senate to deny a nomination to anyone because of their sexual orientation. I think that would be discrimination. It's not just that I think that would be discrimination; it would be discrimination. And I think it is terribly important that the Senate take a long, hard look at itself and, at the very minimum, we have the debate. I think to be silent about this

is a betrayal of what the Senate stands for, which is a fundamental respect for the dignity and worth of each and every person.

The reason I come to the floor is just to say, colleagues, we have the tobacco bill before us. And we have had a number of amendments. We have still got a long ways to go. I do not know that I will bring an amendment to the floor on this bill or not, in any case. But certainly if not the tobacco bill, on the next bill—or the next appropriate vehicle, as soon as possible; the sooner the better—I will have an amendment which in some way puts a focus on this whole question of judging a person by the content of his or her character, judging them by their qualifications, judging them by their leadership, and in no way, shape, or form making any kind of judgment based upon any form of discrimination.

Understand me, because I am talking—and a friend of mine is presiding, a good friend, someone whom I disagree with, but whom I really like a lot. And I hope it is mutual. I am not arguing that different people can't have different views, and I am not arguing that there are some who in very good faith may oppose this nomination. Absolutely not. But I just think that there are some big questions to be resolved here.

It is terribly important we not just block this. It is terribly important we have an honest discussion and an honest debate and we have an up-or-down vote. I think my role as a Senator is to bring some amendments to the floor on pieces of legislation to put this into very sharp focus.

PRIVATIZATION OF SOCIAL SECURITY

Mr. WELLSTONE. Mr. President, I also, if I could, want to take just a few minutes to speak about Social Security, about its future, and about a campaign under way to trade it in for a privatized system like the one we have in Chile.

President Clinton has called for a nationwide debate on Social Security for the balance of this year, to be followed by a White House conference in December and legislative action early next year. I think it is time—perhaps well past time—for the defenders of Social Security to speak up and be heard.

As far as I am concerned, Social Security is one of America's proudest accomplishments of the 20th century. It has given retirement security to Americans of all ages and has rescued millions of seniors from the scourge of poverty. Everyone says they want to protect and preserve this remarkably efficient and effective program which is so beloved by the American people. But you would never know it, judging from the direction the debate is taking.

The premise of the debate is that Social Security is on the verge of bankruptcy and must be transformed in order to survive. I strongly disagree. Social Security is not in crisis. It is not broke. It is not facing bankruptcy. It may need some modest adjustments, but the greatest dangers facing Social Security today are the many misguided proposals to ''fix'' it.

You can hardly open a newspaper these days without reading about the impending collapse of Social Security. This is nonsense. Social Security is now taking in $101 billion more each year than it pays out in benefits.

In April, the Social Security trustees reported that the trust funds will be able to cover benefits for the next 34 years, until the year 2032. After that, without any changes to the system, it will still be able to pay out 70 to 75 percent of the promised benefits, virtually indefinitely without any change whatever in the system. There is no reason why Social Security should come to an abrupt end in 2032 or any time thereafter.

Some would seize upon this projected funding imbalance decades from now as an excuse to undermine the program. They want to replace Social Security with a privatized system in which retirement security depends solely on success in playing the financial markets. But why would we want to get rid of a program that has worked so well? Why should we want to ''end Social Security as we know it?'' In fact, that's what I think some of these proposals should be called—''ending Social Security as we know it.''

If we really want to protect and preserve Social Security, we should be guided by two principles. First, we should focus all of our energies on the real problem, which is a possible imbalance in the trust funds after the year 2032. Second, under no circumstances should we allow funding for Social Security to be squandered on the fees, commissions, and overhead of Wall Street middlemen.

There are a number of ways to go about this. Several prominent economists have come forward with detailed reform packages that would guarantee long-term balance of the trust funds. Other proposals will be coming out soon. These are relatively minor adjustments to the current system. They are not radical surgery.

Privatization, on the other hand, is radical surgery. And it doesn't even solve the problem. In fact, it actually takes away money from the trust funds.

How could that be? The answer is so-called ''transition costs.'' They are really going to be a huge problem. Right now, over 80 percent of payroll taxes are used to pay benefits for current retirees. Under a privatized system, those payroll taxes would be diverted into individual retirement accounts. But younger workers would still have to pay payroll taxes to fund benefits for current retirees. In effect, they would be paying twice. There is no way of doing that without increasing taxes, cutting benefits, or depleting the trust funds.

Here is an idea: Instead of paying unnecessary transition costs, what if we used that money to restore the trust funds? The same goes for the more modest steps toward privatization now being discussed in Congress. Some members have proposed diverting 1, 2 or 3 percent of the 12.4-percent payroll tax into new individual accounts. Others would use a budget surplus to do the same thing. Instead of setting up private accounts, we could just as easily use that money to shore up the trust funds. That is the problem we are supposed to be fixing, isn't it? It's hard to explain how you are saving the trust funds when you're taking money out instead of putting money in.

The important thing, Mr. President, is to stay focused. As our guiding principle, we should insist that any legislation purporting to save Social Security actually live up to its billing. It should reserve for the trust funds any new savings or revenues. We shouldn't let some speculative shortfall, 34 years from now, be used as an excuse to force through a very different—and, I would add, a very radical—agenda.

Why are we getting sidetracked with individual accounts and privatization schemes that don't actually solve the problem? The reason is simple—money. Wall Street money, and lots of it. Mutual fund companies, stock brokerages, life insurance companies and banks are all salivating at the prospect of 130 million potential new customers coming their way. Privatization of Social Security could bring them untold billions of dollars in extra fees and commissions. That is why they have invested millions of dollars in a massive public relations campaign promoting privatization, and they are doing a heck of a good job of it. That is one reason why they have contributed so heavily to congressional and Presidential campaigns. The heavy hitters, the big givers, they are heavily involved in this campaign.

Let me read from a story in the Washington Post on September 30, 1996. The headline says, ''Wall Street's Quiet Message: Privatize Social Security.''

It reads:

> Wall Street is putting its weight behind the movement in Washington to privatize Social Security . . .
>
> Lobbyists for Wall Street are trying to stay behind the scenes as they argue for privatization because they and their firms so obviously stand to profit by the changes they are promoting, according to financial industry executives. Representatives of mutual funds, brokerages, life insurance companies, and banks are involved in a lobbying effort to have the government let Wall Street manage a slice of Social Security's money . . .
>
> Representatives of investment firms have begun lobbying Capitol Hill and the White House to advance their agenda, according to financial service industry executives . . .
>
> Wall Street officials want to avoid or at least deflect accusations that they are seeking to transform Social Security to line their own purses.

And, I might add, their own purposes.

There has been some very good reporting in the Post, in the Wall Street

Journal, and elsewhere on exactly who is paying how much money to whom.

It is absolutely unbelievable the way in which these Wall Street interests have hijacked this debate. It is time for those of us who want to protect this system to stand up and begin to speak out and fight back against these very radical efforts to privatize a social insurance program that has been such a huge success, not just for senior citizens, but for our parents and our grandparents.

I think it would be a tragedy if we stood by and let the trust funds be squandered by Wall Street—and squandered on Wall Street. In Chile, where they privatized Social Security in 1981, an estimated 19 percent of worker contributions gets skimmed off the top by pension companies. That's 19 percent skimmed off the top by the middlemen.

Social Security in our country, by contrast, has administrative costs of less than 1 percent with no fees, no commissions. One percent administrative costs, no fees, no commissions, not going to the big Wall Street interests. And now we have these efforts to privatize the system and turn over a large part of the surplus to Wall Street? Unbelievable.

Champions of privatization like to brag about higher returns on the stock market as compared to Social Security. I think those claims are exaggerated. But even if they were true, you don't need individual accounts managed by Wall Street campaign contributors to capture the higher yields. You would get the same average returns if Social Security did the investing itself. And that way, seniors would still be guaranteed a monthly benefit indexed for inflation.

I'm not saying we should do that, necessarily. Stock markets go down as well as up. With all the financial turmoil in Asia and Russia right now, we might want to think twice about betting the future of the trust funds on go-go emerging markets. But whatever we do, we should insist that the trust fund money not be siphoned off to Wall Street middlemen.

I want to say that again to my colleagues. We might want to think twice about betting the future of the trust funds on go-go emerging markets. But whatever we do, we should insist that this trust fund money not be siphoned off to the Wall Street middlemen, which is actually what the privatization proposals do.

Our immediate focus should be on fixing the problem at hand—a projected shortfall in the trust funds 34 years in the future. We should not be diverting resources to half-baked schemes that would only make the problem worse.

We should not let Wall Street campaign contributors push through a ''reform plan'' that would only give them a slice of the trust funds. Privatization is a phony solution to a phony crisis.

Social Security has been phenomenally successful for over a half a century—60 years. It ensures millions of Americans against disability, death of a spouse, and destitution in their old age. Compared to private retirement plans, it is a very good deal. And it is the most successful antipoverty program America has ever devised.

It is simple. You reach the age of 62 or 65, you get older, you are no longer working, your earnings decline. There was a time when probably half of the poverty population in our country were the elderly. That was a national disgrace. That is no longer the case. This is a very successful program.

While all of us should be saving more, the fact is that there will always be millions and millions of Americans who depend solely on Social Security for their retirement security. In fact, as fewer and fewer Americans have employer-provided pensions and as businesses are rapidly shifting from defined benefit plans to defined contribution, we need Social Security now more than ever. This is no time to end ''Social Security as we know it.''

We now have proposals, privatization schemes, to ''end Social Security as we know it.'' That is what this is all about. I am amazed that we have not had more discussion about how to modify and support Social Security as opposed to the privatization schemes that dismantle Social Security.

I will give some of my colleagues credit. They have been able to take, 34 years in the future, a potential shortfall and reduce it to an agenda that dismantles the Social Security system as we know it.

We need to have a major discussion and debate over this. In the coming weeks and months, I plan to be talking at great length about how we can correct the projected shortfall 34 years from now without ending Social Security as we know it. Right now, friends of Social Security are generating a number of proposals that do not amount to radical surgery. Those ideas deserve to be heard. Advocates for the privatization plan favored by Wall Street should not have a monopoly over this debate. If we have a fully informed discussion and all options are really on the table, I am very confident that the American people will support a progressive solution that does not end Social Security as we know it.

I yield the floor.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from Texas is recognized.

Mr. GRAMM. Mr. President, I ask unanimous consent that the bill remain in the status quo until 1 p.m. today.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. GRAMM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SAVING THE E-RATE

Mr. DASCHLE. Mr. President, I have been concerned over the last few days to hear growing attacks against the so-called e-rate—the program Congress created just 2 years ago to help schools, libraries and hospitals connect to the information superhighway.

I am concerned because of the timing of these attacks. Only last month, the Senate approved a bill increasing immigration quotas for highly skilled workers from other countries. Why? Because there are not enough American workers with the technological skills to meet the needs of our economy. If that is not an acknowledgment that we need to do a better job of teaching technological skills in this country, frankly, I don't know what is. I supported raising the quotas for skilled workers, but that was a one-shot emergency response to a crisis.

By the year 2000, 60 percent of all jobs in our country will require technological skills that only a fraction of Americans now have. In the longrun, the only way we can keep America's economy growing is by giving our own workers the skills to compete and win in a high-skills economy. That is why the sudden course of criticism of the e-rate is so alarming.

Today, only 27 percent of the classrooms in America are connected to the Internet. In poor communities, rural and urban, only 14 percent of classrooms are linked to the Internet. If we don't take the opportunity now to address this problem, we simply will not have enough skilled workers to retain America's position as the world's strongest economy. We will also consign our children to two very different futures, separate and unequal.

It seems like every week we hear more and more talk about the year 2000 problem. What about the ''year 2010 problem''?

That is when—if we do nothing—children who are in kindergarten now will be graduating from high school without the technological skills they need to get a decent job or get a good college education. We simply can't allow that to happen. We can't do that to our economy, and we can't do that to our kids.

Congress understood that two years ago. That's why we created, on a strong bipartisan basis, the e-rate program as part of the Telecommunications Act of 1996.

The e-rate program gives crucial discounts to schools and libraries to establish or upgrade Internet connections. The steepest discounts going to

the neediest communities. All commercially available telecommunications services are eligible for discounts.

Across the country, 30,000 schools and libraries have already applied for help from the e-rate program to establish or upgrade Internet connections.

In my own state of South Dakota, 280 schools have already applied.

Educational technology is critical in rural states like ours, Mr. President. Through teleconferencing and other kinds of long-distance learning, students in South Dakota can take all kinds of classes they never would have had the chance to take.

If we pull the plug on the e-rate, we will slam the doors to countless educational opportunities—not just in South Dakota, but all across America.

The United States is the most prosperous nation on earth. We are currently enjoying incredible economic growth. It is a travesty to say we can't afford to give our children access to the tools they need to share in this economic miracle.

Yet, if we kill the e-rate program—as some would clearly like—that is exactly what we will be saying to children in poor rural and urban communities.

How have we reached this sad state?

In a nutshell, some telecommunications companies are not playing straight with the American public. They are trying to use schoolchildren as an excuse for costs they themselves choose to pass on to consumers.

Mr. President, the big long-distance companies have reaped a $3 billion windfall in the last 18 months.

That is $3 billion!

That's how much long-distance carriers saved in reduced access charges they paid to local telephone companies in the past year and a half. Because of the direct actions of the FCC, these companies have received more than enough money to pay for the entire e-rate program.

Over that same period, they have been asked to collect only $625 million for the e-rate.

But the long-distance carriers want to retain the $3 billion in savings and insist consumers should pay for connections for schools and libraries.

They would have us believe that the e-rate is driving up the cost of long-distance phone service.

They say they intend to add a new line-item to their customers' bills telling them just that.

The strategy is clear: Opponents know they can't attack the e-rate on its merits—because Americans care deeply about their children's education.

So they call the e-rate a new tax—and hope people get so mad about another tax that they demand an end to it.

The problem with their rhetoric is: it's not true.

The FCC is not requiring long-distance phone carriers to line-item the costs of the e-rate program on to their customers. The carriers made that decision themselves.

In addition, only a small part of the amount the carriers want to include in that line item actually goes to schools and libraries.

Most of it is used to provide phone service to rural America and other hard-to-reach customers. This is not a new responsibility. Phone companies have had that legal obligation for 60 years. It's called ''universal service.''

In 1996, Congress expanded universal service to include schools and libraries. We should keep our word—and keep the e-rate program.

That's why I have asked the Chairman of the FCC, Bill Kennard, to require strong truth-in-billing standards for long-distance companies. Those that choose to place line-item charges on their phone bills should also tell their customers about savings they have reaped from reduced access charges. We should not allow these companies to mislead their customers by charging for certain costs without disclosing savings they gain from other governmental actions.

This issue has sparked an important debate in Congress and the FCC about the future of universal service. The FCC's top priority must now be to secure the long-term viability of the high-cost fund as well as the e-rate.

Learning how to use the basic tools of modern communications is not a luxury for our children. It's not a frill. It is a necessity.

The e-rate was created with strong bipartisan support. It deserves our continued bipartisan support. And I hope it will receive it.

Mr. President, I yield the floor.

Mr. KENNEDY. Mr. President, I wonder if the Senator will yield for a brief question.

Does the Senator remember the debate on the telecommunications legislation where at least there was an understanding that the major carriers were going to be favorably disposed, as a result of the competitiveness, to give those assurances to schools, to libraries, and to rural public health settings around the country?

Telemedicine is extremely important, I know, in many regions of the country. It provides extraordinary upgrading of quality health in terms of diagnosis and treatment and care for many of those who live in remote areas, whether it is in urban areas that might benefit from the museums and libraries or educational centers, or those kinds of facilities that exist in rural America, or the public health facilities, small clinics, that provide in many instances life support services for people who live in those communities. It seems to me that many of us were under the understanding that there was an agreement to provide for those kinds of services.

I am just wondering whether the leader shared my impression that this was something they had every reason to expect to go into effect, that they had planned on it and made provisions for it, and in many instances are very dependent upon these kinds of services.

Mr. DASCHLE. Mr. President, I think the senior Senator from Massachusetts makes a very important point in his question. I believe that not only people all over the country made that assumption but many of us in the Senate did as well, as we contemplated our vote on that bill. That was not an easy vote, as I know the Senator from Massachusetts remembers. That was a very, very difficult vote. I ultimately decided that, on balance, this bill merited my support. I give great credit to many Senators who put a lot more time in bringing that product to the Senate than I did. But I voted for it in part because of the assumptions that we made about the opportunities and services it would provide to people across this country, especially in improving education and information in schools, libraries and rural health care centers.

So the Senator is right. We made some promises. We made some commitments. We also made a deal that said as a result of all of this, the long distance carriers would ensure proper collections for the schools and libraries program. They knew they were going to see some reduced costs. Indeed, according to figures I have been provided, $3 billion in reduced access charges has already been achieved. Now all we have done so far with regard to the e-rate is collect about $625 million, a fraction of that $3 billion. Some of these companies have now indicated that they are fighting a small increase, the amount that, as the Senator says, has been assumed would be available for the schools and libraries across this country to improve the technological skills of every child in our schools.

I hope they will come forth with an explanation. If they are going to put in this new line item indicating the e-rate cost to people across this country, why aren't they going to show equally the $3 billion in reduced costs they have already reaped? There has to be some fairness here. There has to be truth in billing.

I think the Senator from Massachusetts has made a very important point. We made a commitment when we passed that bill, and I hope it can be realized.

Mr. KENNEDY. If the Senator will yield further, it seems to me that we have been talking about whether it has been in the area of education, the area of health care, about partnerships. We have understood that we don't have all the resources given the budgetary considerations, but we are talking about the partnership that exists between the public and the private sector.

We also listened, I thought with very strong approval, to the excellent presentation that the President made up in my own State of Massachusetts at the Massachusetts Institute of Technology.

I see the chairman of the Foreign Relations Committee. If I could yield for

whatever interventions he would like to make, I see an outstanding guest who honors us and who made a wonderful speech that many of us had the chance to listen to a short time ago. It is a great pleasure to yield at this time.

The PRESIDING OFFICER. The distinguished Senator from North Carolina is recognized.

VISIT BY HIS EXCELLENCY KIM DAE-JUNG, PRESIDENT OF THE REPUBLIC OF SOUTH KOREA

Mr. HELMS. Mr. President, the distinguished Senator from Massachusetts has made my speech for me. The distinguished and honored guest from the Republic of Korea is with us, and I ask unanimous consent that the Senate stand in recess for a couple minutes so that Senators and others may greet him.

RECESS

There being no objection, the Senate, at 12:30 p.m., recessed until 12:33 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. ROBERTS)

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. No amendments are in order until 1 o'clock.

The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I would like to ask unanimous consent to be able to proceed maybe for 20 minutes, 10 minutes for myself and the other 10 minutes for our friend, the Senator from Minnesota.

Mr. GRAMS. I would like to request 15 minutes.

Mr. KENNEDY. I will.

The PRESIDING OFFICER. Is there objection? Hearing no objection, it is so ordered.

The Senator is recognized.

Mr. KENNEDY. I thank the Chair.

Mr. President, the Senate has been considering the comprehensive tobacco legislation offered by Senator MCCAIN for three weeks.

In fact, since the Senate began to debate the tobacco bill on May 18, 69,000 children have begun to smoke, and 23,000 will die prematurely from a smoking-caused disease.

In the past day, however, we have made significant progress in moving forward in a bipartisan manner to resolve our differences and bring this bill to final passage.

The Senate should once and for all reject the dilatory tactics of the opponents of this legislation, who care more about protecting the profits of Big Tobacco than they do about protecting the health of the nation's children. They have used every strategy in the book to delay and obstruct this important legislation while thousands of children begin a lifetime of nicotine addiction and smoking-caused illness. But the pressure is starting to build in every corner of this nation, and the American voters are demanding that the Senate take quick and decisive action to bring this bill to a vote.

The stakes have rarely, if ever, been higher on any public health issue. Tobacco use is the leading preventable cause of death and disability in the nation. Of the 48 million smokers in the United States today, it is estimated that 20 million adults and 5 million children will die prematurely from a tobacco-induced disease.

In fact, tobacco products are responsible for a third of all cancers, and 90% of all lung cancers. 170,000 new cases of lung cancer are expected in 1998. 90,000 men and 65,000 women are expected to die of the disease in this year alone.

Tobacco use is also linked to a wide variety of other illnesses. Smoking by children and adolescents is associated with higher cholesterol levels which can significantly increase the risk of early development of cardiovascular diseases.

New research also indicates that tobacco use is a risk factor in alcoholism, depression, hearing loss, and vision loss among the elderly.

The use of smokeless tobacco products is associated with cancers of the mouth, gum disease, and tooth loss.

The dangers of secondhand smoke are also becoming increasingly clear. It is linked to low birthweight, respiratory distress syndrome, and sudden infant death syndrome. A recent report by the Agency for Health Care Policy and Research says that secondhand smoke is responsible for as many as 60% of cases of asthma, bronchitis, and wheezing among young children.

It is also clear that smoking-related illnesses impose an enormous burden on the United States economy. According to the Department of Treasury, smoking will cost society $130 billion this year, of which $45 million is attributable to medical costs due to smoking-caused diseases.

Smoking during pregnancy, which results in increased costs from complicated deliveries, medical care of low-weight babies, and developmental disabilities, adds up to a $4 billion loss for the U.S. economy.

The damage resulting from smoking-caused fires is $500 million a year, which does not even account for the 2,000 lives lost in these tragic accidents.

$500 million is attributable to lost productivity, since smokers miss 50% more work days than nonsmokers. In addition, smokers tend to die younger and retire sooner, which costs society an astounding $80 billion in lost output and wages.

Much higher priority is obviously needed for smoking cessation programs and tobacco prevention initiatives, which are among the most cost-effective means available to reduce health care costs while, at the same time, improve the lives of millions of Americans.

The pending amendment by the Senator from Texas seeks to divert approximately $47 billion over the next ten years away from smoking prevention, away from smoking cessation, away from medical research, and away from reimbursing states.

When we add the combined impact of the pending Gramm amendment and the Coverdell amendment which was approved yesterday, no funds would be left for programs which are essential to reducing youth smoking and to helping current smokers quit. In fact, the Gramm amendment alone would result in roughly 4 million fewer Americans served by smoking cessation programs, 20 million fewer people discouraged from smoking by counteradvertising campaigns, and 48 million fewer children participating in school-based smoking prevention activities.

These numbers speak for themselves. Reasonable marriage penalty relief makes sense. But the Gramm amendment goes too far. It would destroy the underlying smoking prevention legislation.

All of the money raised by the cigarette price increase contained in the legislation is currently earmarked for smoking related purposes: 22 percent is directed to smoking prevention and cessation, 22 percent is to be used for medical research, 16 percent is for transitional assistance for tobacco farmers, and 40 percent is to compensate states for the cost of medical treatment of smoking related illnesses.

Which of these smoking related initiatives would the Senator from Texas eliminate? Does he propose to eliminate all compensation to the states for their tobacco related health costs? After all, it was the state lawsuits which provided the genesis for this legislation and which exposed the most dramatic evidence of industry wrongdoing. That would not be fair. Even if every dollar intended for the states was taken to fund the Gramm amendment, it would not be enough to cover the cost.

Does he propose to eliminate all transition assistance for tobacco farmers and communities? It would not even cover one-third of the cost of the Gramm amendment.

All of the remaining dollars are directed to smoking prevention, to smoking cessation, and to medical research. These initiatives are the heart of the legislation, yet both the pending Gramm amendment and the Coverdell amendment approved yesterday will deny needed resources to prevent teenagers from beginning to smoke. If we are serious about stopping children from smoking and saving lives from tobacco-induced diseases, we have to make these investments.

These programs work. Let me give you a few examples:

Every dollar invested in a smoking cessation program for a pregnant

woman saves $6 in costs for neonatal intensive care and long-term care for low birth weight babies. In addition, smoking cessation programs have an added benefit of reducing tobacco use among children. According to Michael Fiore, Director of Tobacco Research at the University of Wisconsin Medical School, children who smoke have twice the risk of becoming smokers than children of nonsmokers have. By helping parents to quit, the risk of children becoming smokers is reduced as well. The effect of the Gramm amendment would be to reduce funds for these programs, and that makes no sense.

The Gramm amendment would deny funds needed to help states and communities conduct educational programs on the health dangers of smoking. The tobacco industry spends $5 billion a year—$5 billion—on advertising to encourage young people to smoke. Shouldn't we spend at least one tenth of that amount to counteract the industry's lethal message?

Counteradvertising is a key element of an effective tobacco control strategy. We know that children are easily swayed by the tobacco industry's marketing campaigns, which promise popularity, excitement, and success for those who take up smoking. We can use counteradvertising to reverse the damage by deglamorizing the use of tobacco among children.

Both Massachusetts and California have demonstrated that paid counteradvertising can cut smoking rates. It helped reduce cigarette use in Massachusetts by 17 percent between 1992 and 1996, or three times the national average. Smoking by junior high students dropped 8 percent, while the rest of the nation has seen an increase. In California, a counteradvertising campaign also reduced smoking rates by 15 percent over the last three years.

The Gramm amendment also would take money from law enforcement efforts to prevent the sale of tobacco products to minors, even though young people currently spend $1 billion a year to buy tobacco products illegally. According to Professor Joseph DiFranza of the University of Massachusetts Medical Center, ''if $1 billion in illegal sales were spread out evenly over an estimated 1 million tobacco retailers nationwide, it would indicate that the average retailer breaks the law about 500 times a year.''

The Gramm amendment will diminish funding for medical research on tobacco-related diseases, which kill 400,000 Americans each year and incapacitate millions more. Given the damage that smoking inflicts on the nation's public health, it makes little sense to deny funds that should be directed to finding a cure for cancer and other tobacco-induced illnesses.

In essence, the Gramm amendment would destroy much of the public health benefit this legislation is designed to achieve. The goal of eliminating the marriage penalty for low and moderate income families is a worthy one. It is shared on both sides of the aisle. However, it must be accomplished in a way that does not imperil our primary goal—preventing youth smoking and helping smokers overcome their addiction.

The Daschle amendment, which offers relief from the marriage penalty without imperiling our smoking prevention efforts, will cost far less than the Gramm amendment, and it does a much better job of targeting tax relief to those most in need.

The Daschle amendment will cost only $27 billion over the first ten years. That is the most which can be accommodated without damaging our ability to achieve the legislation's core antismoking purposes. The cost of the Gramm proposal mushrooms after the fifth year. Thus, over ten years, the cost of the Daschle amendment is approximately $20 billion less than the Gramm amendment. This is the difference between preserving a viable youth smoking reduction effort and destroying it. That is the difference between helping millions of smokers quit and leaving them at the mercy of their addiction. That is the difference between advancing medical research that can cure tobacco induced diseases and indefinitely delaying it.

Because it is carefully targeted, the Daschle amendment actually provides more tax relief to those two income families earning $50,000 a year or less who currently pay the marriage penalty. By contrast, more than half the tax relief provided by the Gramm amendment would go to families that are not subject to the marriage penalty. Senator DASCHLE's proposal will do more to achieve tax fairness at a much lower cost.

Once this issue is decided, there is little excuse for further delay. The remaining amendments can be considered in a few days if we move conscientiously forward. There is no valid reason why the Senate cannot vote on final passage soon. If we do not, the American people will know why. A small group of willful defenders of Big Tobacco will have succeeded in obstructing the work of the Senate on this vital issue of public health. On an issue of this importance, our constituents will not tolerate such obstruction. Now is the time for the Senate to act.

I yield the floor.

The PRESIDING OFFICER. The distinguished Senator from Minnesota.

Mr. GRAMS. Mr. President, I ask unanimous consent to speak in morning business for up to 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator is recognized.

HOLDING CONGRESS TO ITS TAX CUT PROMISE

Mr. GRAMS. Mr. President, I rise today to make a few brief remarks about tax cuts and the budget, and the promises that have so tightly entwined the two.

The House passed its budget resolution last Friday by a vote of 216 to 204. The House budget plan would cut $101 billion in government spending over the next 5 years. It would also repeal the marriage penalty tax, which has unjustly punished 21 million couples just for getting married.

However, the House-passed budget plan failed to provide reconciliation instructions for achieving this tax relief, and failed to provide clear guidance on how to use any budget surpluses.

While the efforts by our colleagues in the House represent a move in the right direction, Congress must do better by the taxpayers. It now falls to the conference committee to ensure we keep our promise to offer meaningful tax relief to working Americans.

That promise must provide the framework for the budget resolution produced by this Congress.

Thanks to the exceptionally healthy economy, our short-term fiscal condition has greatly improved in the past few years, not because of what Congress did—in spite of what Congress did. But it is the economy.

In fact, we will soon see a unified budget surplus for the first time since 1969.

On May 26, President Clinton announced that this year's budget surplus would be $39 billion.

His figure is significantly less than the $43-to-$63 billion surplus forecast by the CBO and contradicts the President's own Treasury report, which revealed that through April, revenues were surging into the Treasury even faster than CBO thought.

Treasury officials forecast that the surplus could be as large as $100 billion if the revenue flow follows last year's pattern. According to some estimates, the budget surplus could reach $1.34 trillion over the next 5 years.

The question is, what do we do with the surplus? Basically, what Washington has done is overcharged our American workers and industry.

I would just like to show in the Washington Post, yesterday's edition, June 9, it says: Virginia Power Agrees To Rebates.

Why is this similar? I would like to read this. It says:

> Virginia's largest power company agreed today to $920 million in refunds and rate cuts for 2 million residential and business customers who have been overcharged for electricity, the biggest rate adjustment in State history [and that is under a] deal with utility regulators.

If a company overcharges its consumers, the Government steps in and says: You have to pay it back. You took a surplus. You have to pay it back to the customers. Also, you have to drop the rates so we do not have surpluses in the future.

But what does Washington do when it has a surplus? It starts to make plans on how to spend it. There is nobody that tells Washington you have to give it back, and they should.

Comparing these numbers with the $100 billion tax cut, when we talk about

a projected budget surplus, there could be as much as $1.3 trillion or more; or if we even look at just this surplus, it would be less than 10 percent of that projected surplus. I can assure you, there are plans already being made around this Congress of what to do and how to spend the other 90 percent.

Americans, I believe, should be outraged, and a growing number are. They do not want Washington to grow even bigger—they want their money back.

Mr. President, regardless of all these different surplus estimates, one thing is clear: it is not any action by the Federal Government that is producing this budget surplus. We must credit that turnaround to the working men and women who are fueling the robust American economy. These unexpected dollars have come directly from working Americans through taxes paid by corporations, individuals, and investors. This money belongs to the people. Washington should not stand first in line to take this money. It is only moral and fair to return it to them. Washington again, has no right to spend it on their behalf.

With total taxation at an all-time high, it is critical that Congress cut taxes for working Americans. Taxes consumed about 19 percent of GDP when President Clinton took office. It now stands at 21.5 percent, the highest rate since World War II. This means every American, not just the rich, are paying more in taxes today than they did just 5 years ago.

As proof of just how heavy the tax burden has become, taxpayers did not mark the arrival of Tax Freedom Day this year until May 10.

That is the day on which working folks stop punching the clock just to pay Uncle Sam and begin working for themselves, and that is a full week later than when President Clinton took office. We all gave the Government another week of our time and money in the last 5 years to pay those higher taxes. This year, the taxpayers had to work 129 days before they could count a single penny of their salary as their own. In fact, it marks the latest-ever arrival of Tax Freedom Day.

And that is not the whole picture, because if the cost of complying with the tax system itself were included in the calculations, Tax Freedom Day would be pushed forward another 13 days.

As proof of just how far we have traveled—in the wrong direction—Tax Freedom Day in 1925 arrived on February 6. This year it was May 10.

After 16 major tax increases over the past 30 years, the need for tax relief has never been more pressing.

Do I need to remind my colleagues that Republicans gained control of Congress in 1994 and retained control in 1996 because we were the champions of the taxpayers, the champions of the American workers?

Did not the taxpayers elect us with the expectation that the new Congress would seize every opportunity to lessen the tax burden on America's families and shrink the size of Government?

They did not elect a new majority expecting that Congress would be a collaborator in the President's tax-and-spend policies, that Congress would build a bigger, more expensive Government at the first chance it got and completely give up on its promise of significant tax relief.

Unfortunately, that is exactly what Congress did. And if we do not slow it down now by providing some larger tax cuts, the Federal Government is going to explode in both size and cost. Again, that is not what I believe working Americans are asking for.

Last year, after spending by the way, the $225 billion unexpected revenue windfall and busting the 1993 spending caps, Congress cut a deal with President Clinton and delivered tax cuts only one-third as large as what we had promised and worked for in 1994.

The tax relief amounted to less than one cent of every dollar the Federal Government took from the taxpayers.

With its measly $30 billion in tax cuts over five years, this year's Senate-passed budget resolution is no better.

It spends more taxpayer dollars while continuing the path of the flawed budget deal struck between the Congressional leadership and President Clinton last year.

Tax relief I believe is the right solution because it takes power out of the hands of Washington's big spenders and puts it back where it can do the most good and that is with America's families and job providers.

When the much-bragged about Clinton tax increase of 1993 was passed by the Democrats, again, no Republican votes, but with this much-bragged about tax increase no one was out there asking working Americans how they were going to survive with less money in their paychecks. They were evidently going to have to try to do more with less, or go without. Congress did not go out and ask working Americans, if we raise your taxes, how are you going to do with less money? Americans were expected to do more with less or go without.

But now, when we talk of even taking one penny for every $10, Congress says ''We cannot go without.'' To borrow a phrase from Ohio Congressman TRAFICANT, ''Beam me up, Scotty!''

I am proud that during this year's budget debate, five Senators, myself included, reached agreement with the Senate leadership to include more tax relief in the budget for hardworking Americans.

We agreed to take the higher tax relief number in either the House or Senate-passed resolution. We also agreed there should be reconciliation legislation to achieve those tax cuts.

Carrying out these principles will improve the FY 1999 budget resolution, and it will help to forge a compromise between those who want massive tax relief and those who want massive spending.

This will eventually help us not only to balance our budget and keep it balanced, but to reduce the size of the government and also let the American taxpayers keep a little more of their own money. With our improved fiscal condition and a large budget surplus, it should not be hard to achieve these goals.

Then why is tax relief such a battle?

Mr. President, there is a special interest group to represent every disgruntled, oppressed, and persecuted group of Americans to plead their case in the media and in the Halls of Congress.

But where is the special interest group that represents the taxpayers? Where is the chorus of voices speaking up for the discontented multitude? Who will come to the Senate floor and plead the case of the taxpayers?

I submit, Mr. President, that the American taxpayers are poorly represented by their Congress. Not only are the taxpayers heavily burdened, but their burden has been imposed by their own Government.

Congress takes the taxpayers' precious dollars and spends them lavishly, at times recklessly. Congress demands more and more with little consideration for the sacrifices of those it taxes. Congress never seems to be satisfied.

So is it any wonder that when the opportunity arises to give something back to the taxpayers, Congress balks? The taxpayers fuel the fire of government spending, and Congress demands that the furnace remain fully stoked.

These are real people we are talking about, not faceless Social Security numbers. Yet Congress chooses not to see the faces of the families it taxes.

By a single vote, this Congress can tell working Americans that it is going to take even more, and you can either work more—both spouses, overtime, two jobs—or go without, without money for your children's education, without health care insurance or child care, without a family vacation, without a night out.

''But wait,'' you can just hear Congress say, ''maybe we can create a new government program to help you. By the way, we will have to raise your taxes a little to pay for it.''

Mr. President, my colleagues and I who demanded that tax relief be an integral part of the Senate budget must not and will not back off from our commitments.

We made those commitments in good faith, not only to each other, but most importantly, to America's taxpayers. Senators ASHCROFT, BROWNBACK, INHOFE, SMITH, and myself are prepared to vote against any budget that fails to provide the full $101 or more billion in tax relief called for in the House budget resolution.

We have made our intentions known to the Senate leadership. It is time that this Congress delivers on its promises to the taxpayers. We must not forget the lessons we learned in the past.

In the 1950s, the Republican Party leadership deviated from the basic

principles that distinguish us from the Democrats by adopting a fiscal policy of ''Republican austerity.''

This slowed the economy and therefore, the voters tossed out the Republican Congress and declined to elect a Republican president. The American people instead chose John F. Kennedy, a Democrat who promised tax cuts—and kept that promise.

President Ronald Reagan also promised tax relief, and he delivered by proposing tax cuts totaling $747 billion. That equals $1.6 trillion in today's dollars. These massive tax cuts propelled the economy forward. President Reagan stood with Republican principles, and today we are still benefiting from his sound economic policy. This was done while the Congress faced deficits, not surpluses that we are enjoying today.

In 1990, President Bush, unfortunately, reached a budget compromise with the Democrats to spend more and tax more. As a result, the American voters tossed him out for abandoning his promise not to raise taxes.

Finally, history is a mirror. If we cannot keep our promise to the American people, we will lose a Republican Congress, and more importantly, a unique opportunity to create a sustainable economy, increase real income, and improve the living standard for working Americans.

Mr. President, I am deeply disappointed and frustrated by the reluctance of the Congress and the congressional leadership to provide substantial tax relief, despite projections of huge surpluses. Nothing I believe, can justify this.

This Senator intends to stand firm on his promise to work for lower taxes that allow the working men and women of Minnesota and the 49 other states to keep more of their own money. I urge our leadership to follow.

Thank you very much, Mr. President. I yield the floor.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from Arizona is recognized.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

Mr. MCCAIN. Mr. President, I ask unanimous consent that we remain in status quo until the hour of 2 o'clock, and then I will have additional remarks after the Senator from Texas speaks.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mrs. HUTCHISON. Mr. President, excuse me——

Mr. MCCAIN. Just status quo until 2 o'clock.

Mrs. HUTCHISON. We will have time to talk?

Mr. MCCAIN. Yes.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, at 2 o'clock, we should have distributed our amendment to both sides of the aisle. We will have given everybody an opportunity to look at it. We are in the final stages of getting the amendment done by legislative counsel. We went over it this morning with Senator MCCAIN's staff.

I think probably the best part of valor is to get it over here in a few minutes, distribute it widely, get everybody to look at it, and then be ready to begin at 2 o'clock. At that time, it will be my objective to offer the amendment. There is an open spot on the tree. I will offer the amendment. Hopefully, we will have support from both sides, it will be adopted, and we will take a major step toward repealing the marriage penalty and giving tax equity to the self-employed on health insurance.

This is a good amendment. I think it will serve a good purpose, and I hope my colleagues on both sides of the aisle will vote for the amendment. I yield the floor.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I assume from our previous conversations, too, that the Senator from Texas is agreeable to a time agreement?

Mr. GRAMM. I am agreeable to a time agreement on this amendment, yes.

Mr. MCCAIN. Mr. President, I thank the Senator from Texas. I think it is an important amendment as well. I hope we can negotiate time and move forward on this amendment and others throughout the remainder of the day. I yield the floor.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, thank you. I want to talk about the tobacco bill in the context of where we started and where we are now.

I was on the Commerce Committee, and although I thought the bill had flaws in the Commerce Committee, nevertheless there was a balance to the bill. Our purpose in the tobacco bill is to try to keep teenagers from experimenting and getting hooked on cigarettes before they have the full judgment to understand that nicotine is addictive.

That has been everyone's stated purpose. The President said that. Every Member who makes a speech on the floor says that. Everyone agrees. What we came out of the Commerce Committee with was a bill that I felt had a good chance of reaching the goal of severely limiting the amount of teen smoking in this country.

Here is what the bill did, in a broad generalization. It had an agreement from the tobacco companies that they would not advertise. That is a key component to curbing youth smoking, not making it seem attractive to smoke. If you are not advertising with the Marlboro Man, it may not be nearly as appealing to smoke. So the tobacco companies voluntarily agree that they are not going to advertise provided a huge part of the balance of this bill.

The second part, and what the tobacco companies needed, I suppose, or asked for in order to give up a major right that we could not take away from them—their constitutional right under the first amendment to advertise. Congress could not pass a law saying they could not advertise. We had to have something to which they would agree. What they wanted was some limitation on the liability in any 1 year.

So in the bill that came out of committee, there was a limitation of about $8 billion. And if someone sued, and it was above that limit, their claim would not be thrown out but it would roll over until next year. I thought that was a fair balance because it would allow us to go for the target of stopping teenagers from starting to smoke because of advertising, which we now know has been targeted toward them, in return for having what I think is a huge liability limit. Nobody at this point has even come close in this country to $3 or $5 billion in any year from a lawsuit on liability. So I thought we had a balance.

What has happened on the floor is, I think—a combination of people who had different purposes in addition to stopping teen smoking, removed all the liability limits, therefore, you lose the tobacco companies agreeing to give up their constitutional right to advertise. I think we lost track of the major target.

In the meantime it was also decided that we would tax the people who legally smoke, at least $1.10 a pack, so that the price of a pack of cigarettes would go toward $5 a pack. So now you have what I think is a terrible principle; and that is, that you are taxing one sector of the population to have new programs that may or may not be effective in curbing teen smoking.

So now we have an amendment that is going to be offered in the next hour that would say, ''Well, we've got this huge tax increase and I don't like where the spending is going, so let us give it back in tax cuts to somebody else.'' I do not like that principle. I do not want to tax a working person who is making $20,000 a year in order to give money back to a working family making under $50,000. I do want to give money back to the working family that is making under $50,000, but I want to do it in the context of our budget, like we do every other tax cut or every other tax increase, for that matter.

This bill violates both principles that we would tax or give tax cuts within a budget and that we would tax one person to give it to someone else.

I am the sponsor of the bill that would eliminate the marriage tax penalty. It is my bill. Senator FAIRCLOTH and I are cosponsoring this bill together because we believe the highest priority for tax cuts in this country should be eliminating the marriage tax penalty.

So given the choice that I am going to have before me of not wanting to tax one person in order to give it to someone else, but my choice being we are going to have the tax increase, what do we do with it? Go spend money on new Government programs or give it back to people who make under $50,000, I am going to choose the latter. I am going to choose to try to start eliminating the marriage tax penalty by giving a higher level of exemption before you have to start paying taxes.

So I am going to make the tough choice in favor of giving money back to the people who work for it. But I do not like this bill. And I hope and I urge my colleagues not to continue to try to put this bill in shape but instead to go back and start all over. I think we can pass a responsible bill in this Congress that would severely limit the number of teenagers who start smoking. That is a worthy goal.

I also think in this Congress that we should pass the elimination of the marriage tax penalty because it hits people who make $30,000, $40,000, $50,000, couples who get married, who want to make that downpayment on their first home; and when they do, they are hit with a $1,000 or $2,000 tax increase just because they got married.

So I want to do both of these things. I do not like the choices that we are looking at in the bill before us. And I do not like the choices being given to us by the amendment. But as the lesser of two evils, I am certainly going to support a tax cut when we already have a tax increase on the floor. But what I would suggest is that we scrap the whole thing and try to do this right.

Doing it right means two things: It means, first of all, eliminating the marriage tax penalty in the budget; and, secondly, coming back with a balanced bill that will have the purpose of stopping or severely curtailing teen smoking, but not on the back of a person who is working for a living, not making much money, and is smoking, unfortunately, but nevertheless by his or her own choice. That is a choice that a person makes. I do not think that we should be taxing someone at this level—it is a regressive tax—when we are not sure that the purpose is going to be achieved.

So I hope my colleagues will look at this issue, step back—first of all, pass Senator GRAMM's amendment because at least we can take the first step towards eliminating the marriage tax penalty—then I hope we will bring this bill down and start from scratch and try to put forward a bill that will stop teen smoking or at least put a big dent in it. I think we can do that with the balance that we had in the original bill before it got worked over by the U.S. Senate.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. THOMAS). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. COATS). Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I ask unanimous consent to speak as in morning business for 6 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The Senator from Iowa is recognized to speak as in morning business for 6 minutes.

UNITED STATES-MEXICAN COOPERATION ON DRUG CONTROL

Mr. GRASSLEY. Mr. President, I am puzzled. In the last week or so, we have seen U.S. Customs' agents wrap up one of the most successful undercover operations in history. This effort, Operation Casablanca, has nailed a bunch of international bankers, mostly in Mexico, who have been laundering drug money. These white collar drug thugs have violated United States law, Mexican law, and international law. They have violated their trust. They have abetted one of the nastiest businesses on the planet. And they have conspired to do all of this to make an illegal dollar. Drug traffickers are bad enough. But their financial advisers and bankers are truly despicable. Thus, the Customs' undercover operation that exposed some of these low lifes is to be celebrated. My hat is off to the agents and informants that risked their lives to help defend our institutions and bring these pinstripe bandits to justice.

But I am still puzzled. What has me scratching my head is the reaction of the Mexican Government to this event. Instead of joining hands in congratulating efforts to protect the integrity of our international banking institutions and our shared concern to stop drug trafficking, what have they done. The Foreign Minister of Mexico has called the law enforcement people the criminals. She has raised the banner of so-called national sovereignty to provide cover to criminal activities of Mexican nationals. Mexico has called for the extradition of the law enforcement people in this operation, claiming they have violated Mexican law. What is wrong with this picture? Let me count the ways.

First, money laundering is the illegal act we are talking about. It is, by its nature, an activity without borders. It is also illegal in every legitimate country on the planet.

Second, the bankers in Mexico who engaged in laundering drug money, did so with knowledge of the illegality of their acts. They did so in a manner aimed at avoiding detection. They did so in defiance of bank regulations and Mexican law.

Third, these bankers engaged knowingly in using their expertise to violate United States law. And they provided the facilities of their banks to move money around the globe in violation of international law.

Fourth, we know they did this because it's on tape. We know they did it knowingly because the indictments spell it out.

Fifth, they used their expertise to try to improve the ease with which the money was laundered. They provided advice on how to avoid Mexican law.

They acted with criminal intent and used the interconnectivity of the modern banking system to hide their acts. They committed these acts in this country, in Mexico, and elsewhere, either in person or by using computers.

Now, the Foreign Secretary in Mexico would have it that in exposing these activities and in tracking the process, United States agents violated Mexican sovereignty and law. It would seem, in her view, that this means the undercover operatives committed criminal acts by engaging in money laundering. But in this country and most others, a criminal act involves intent. There is no criminal intent involved here by U.S. law enforcement. Just the reverse. Thus, law is not offended.

As to sovereignty, well, if we insist on this point, whose sovereignty is violated? Sovereignty is not meant to be a shield for criminality. It would be a fine world if that were the principle. It is not. I can think of few more useful tools for drug traffickers, money launderers, and thugs of every description than to find a safe haven in some country willing to use its sovereignty to harbor international criminality. What has happened here, is that bankers have violated the laws of this country by using the international banking system to freely commit crimes. They have done this in person in this country and they have done it electronically across borders. These are the criminals, not the law enforcement people who have corralled this gang of crooks.

But according to the Foreign Secretary of Mexico, it is the law enforcement folks who are to be labeled villains. In some of the most intemperate rhetoric I have seen from a senior government official, the Foreign Secretary not only castigates the good guys, but is calling for their extradition. I find this situation outrageous. I am equally concerned about the response from our own State Department. I have a letter here that our Secretary of State has sent to the Secretary of the Treasury. I will submit this for the RECORD. Instead of congratulating the law enforcement effort and joining hands with Secretary Rubin, Secretary Albright complains about inadequate consultation with Mexico. What is wrong with this picture?

Given the important steps Mexico and the United States have taken to

improve bilateral cooperation and to go after the real thugs in the story, I hope we can get past this case quickly. I hope the Foreign Secretary of Mexico and Secretary of State of the United States wake up and smell the coffee.

Mr. President, I ask unanimous consent that the letter from Secretary Albright to Secretary Rubin be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF STATE,
Washington, DC, May 22, 1998.

Hon. ROBERT RUBIN,
Secretary of the Treasury.

DEAR MR. BOB: I know that both you and Attorney General Reno are aware of the negative reaction in Mexico to the announcement of Operation Casablanca and have had contact with Mexican officials about this. I spoke May 21 with Foreign Secretary Rosario Green who expressed her government's deep resentment for not having been informed of the operation prior to the public announcement. Other Mexican officials have voiced concern that the activities undertaken by U.S. agents in Mexico may have been illegal under Mexican law or contrary to understandings between the United States and Mexico.

Mexico's reaction is a product of many factors, not least of which is great sensitivity within the Zedillo government to preexisting charges from the opposition that it is attempting to bail out a corrupt banking system. However, I am concerned about the negative tone this development introduces into the relationship and that Mexican cooperation on several fronts, particularly counternarcotics, may be affected.

We might have achieved more favorable results if we had brought Attorney General Madrazo and a few others into our confidence a few days before the public announcement. In this regard, I believe State should have been consulted. We would have been able to offer some advice that could have ameliorated the negative reaction.

I would appreciate being kept personally informed of developing investigations in Mexico and other foreign countries that could have a significant foreign policy fallout. I do not wish to interfere with your law enforcement work, but I do believe we need to do a better job of coordination.

It is essential that in the coming days you find ways in your public statements and private contacts with Mexican officials to indicate that we are actively working to avoid similar difficulties in the future. I hope to discuss this with you soon.

Sincerely,

MADELEINE K. ALBRIGHT.

Mr. GRASSLEY. I yield the floor.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER (Mr. BURNS). The Senator from Texas.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 2686 TO AMENDMENT NO. 2437

(Purpose: To eliminate the marriage penalty reflected in the standard deduction, to ensure the earned income credit takes into account the elimination of such penalty, and to provide a full deduction for health insurance costs of self-employed individuals)

Mr. GRAMM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Texas [Mr. GRAMM], for himself, Mr. DOMENICI, Mr. ROTH, Mr. FAIRCLOTH and Mr. BOND, proposes an amendment numbered 2686 to amendment No. 2437.

Mr. GRAMM. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the amendment, insert:

SEC. ___. ELIMINATION OF MARRIAGE PENALTY.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 222 as section 223 and by inserting after section 221 the following new section:

"SEC. 222. DEDUCTION FOR MARRIED COUPLES TO ELIMINATE THE MARRIAGE PENALTY.

''(a) IN GENERAL.—In the case of a joint return under section 6013 for the taxable year, there shall be allowed as a deduction an amount equal to the applicable percentage of the excess (if any) of—

''(1) the sum of the amounts determined under subparagraphs (B) and (C) of section 63(c)(2) for such taxable year (relating to the basic standard deduction for a head of a household and a single individual, respectively), over

''(2) the amount determined under section 63(c)(2)(A) for such taxable year (relating to the basic standard deduction for a joint return).

''(b) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

''(1) IN GENERAL.—No deduction shall be allowed under subsection (a) if the modified adjusted gross income of the taxpayer for the taxable year exceeds $50,000.

''(2) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this subsection, the term 'modified adjusted gross income' means adjusted gross income determined—

''(A) after application of sections 86, 219, and 469, and

''(B) without regard to sections 135, 137, and 911 or the deduction allowable under this section.

''(3) COST-OF-LIVING ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2007, the $50,000 amount under paragraph (1) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, except that subparagraph (B) thereof shall be applied by substituting 'calendar year 2008' for 'calendar year 1992'. If any amount as adjusted under this paragraph is not a multiple of $5,000, such amount shall be rounded to the next lowest multiple of $5,000.

''(c) APPLICABLE PERCENTAGE.—For purposes of this section, the applicable percentage shall be—

''(1) 25 percent in the case of taxable years beginning in 1999,

''(2) 30 percent in the case of taxable years beginning in 2000, 2001, and 2002,

''(3) 40 percent in the case of taxable years beginning in 2003, 2004, and 2005,

''(4) 50 percent in the case of taxable years beginning in 2006,

''(5) 60 percent in the case of taxable years beginning in 2007, and

''(6) 100 percent in the case of taxable years beginning in 2008 and thereafter.''

(b) DEDUCTION TO BE ABOVE-THE-LINE.—Section 62(a) of the Internal Revenue Code of 1986 (defining adjusted gross income) is amended by adding after paragraph (17) the following new paragraph:

''(18) DEDUCTION FOR MARRIED COUPLES.—The deduction allowed by section 222.''

(c) EARNED INCOME CREDIT PHASEOUT TO REFLECT DEDUCTION.—Section 32(c)(2) of the Internal Revenue Code of 1986 (defining earned income) is amended by adding at the end the following new subparagraph:

''(C) MARRIAGE PENALTY REDUCTION.—Solely for purposes of applying subsection (a)(2)(B), earned income for any taxable year shall be reduced by an amount equal to the amount of the deduction allowed to the taxpayer for such taxable year under section 222.''

(d) FULL DEDUCTION FOR HEALTH INSURANCE FOR SELF-EMPLOYEDS.—The table contained in section 162(l)(1)(B) is amended—

(1) by striking ''and 1999'',

(2) by striking the items relating to years 1998 through 2006, and

(3) by striking ''2007 and thereafter'' and inserting ''1999 and thereafter''.

(e) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the item relating to section 222 and inserting the following new items:

''Sec. 222. Deduction for married couples to eliminate the marriage penalty.

''Sec. 223. Cross reference.''

(f) REDUCTION IN TRANSFERS TO NATIONAL TOBACCO TRUST FUND.—

(1) IN GENERAL.—Except as provided in paragraph (2) and notwithstanding any other provision of this Act, the amount credited to the National Tobacco Trust Fund under section 401(b) of this Act for any fiscal year shall be reduced by the amount of the decrease in Federal revenues for such fiscal year which the Secretary of the Treasury estimates will result from the amendments made by this title. The Secretary shall increase or decrease the amount of any reduction under this section to reflect any incorrect estimate for any preceding fiscal year.

(2) LIMITATION ON REDUCTION AFTER FISCAL YEAR 2007.—

(A) IN GENERAL.—Except as provided in subparagraph (B), with respect to any fiscal year after fiscal year 2007, the reduction determined under paragraph (1) shall not exceed 33 percent of the total amount credited to the National Tobacco Trust Fund for such fiscal year.

(B) SPECIAL RULE.—If in any fiscal year the youth smoking reduction goals under section 203 are attained, subparagraph (A) shall be applied by substituting ''50 percent'' for ''33 percent''.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

Mr. GRAMM. Mr. President, I apologize to my colleagues that it took so long to get this amendment together. We were trying to do several things, to bring together several provisions of different Members into one amendment. We also were trying to deal with a concern that the authors of the bill have

about their trust fund and how much money we will take out of the trust fund in each ensuing year as a result of the amendment. We are still looking at some of those provisions.

The net result is that we have the amendment together. What I would like to do in offering it is to outline the problem with the existing bill in terms of the impoverishment of blue-collar workers who dominate the ranks of smokers in the country.

I would like to talk about the need to rebate some of the tax money we are getting, in an effort to raise the price of cigarettes, to the very people who are going to be impoverished by this confiscatory tax. I would like to talk about why the marriage penalty is a good choice for that tax rebate. I would like to then talk about how this marriage penalty repeal works and how the numbers work out in terms of the budget. And that will constitute the relevant information in offering the amendment.

First of all, the problem. We have heard now for weeks and weeks a running debate about tobacco companies and their conspiracy to induce people to smoke. With just cause, those tobacco companies have been denounced on the floor of the Senate over and over again. However, people have become so fixed on these tobacco companies, they have totally lost sight of the fact that a giant bait and switch has occurred. In reality tobacco companies are not paying taxes under this bill, consumers are paying taxes under this bill. In fact, the provisions of this bill make it illegal for a tobacco company to refuse to pass the price through to the consumer. So they are held harmless in terms of the tax, but blue-collar Americans who smoke are devastated economically by this tax.

So the problem with the bill is that, in the name of raising the price of cigarettes to discourage smoking, we are, if this bill goes unamended, imposing one of the most regressive taxes in American history. And ''regressive tax'' means that poor people pay an increasing share of the tax burden.

Why do I say that? Well, I say it basically because in America smoking is primarily a blue-collar phenomenon. Obviously, people at all income levels smoke, but if you look at who will pay this tax, it really brings home the fact that in our country most of the people who smoke are moderate-income, blue-collar workers.

Of all of the tax collection that will occur under this bill, in an effort to drive up the price of cigarettes, 34 percent of those taxes will be paid by Americans who make less than $15,000; 47.1 percent of these taxes will be paid not by tobacco companies but by Americans who make $22,000 a year or less; 59.1 percent of these taxes will be paid for by Americans in families with incomes of $30,000 a year or less.

So whether it is the intent of the underlying tobacco bill or not, the net result is that this bill imposes no taxes on tobacco companies whatsoever. It shields tobacco companies by requiring that they pass the tax through to their consumers, and it squarely hits moderate-income, blue-collar workers right in the wallet and in the pocketbook.

Those who favor this bill have said over and over again that their objective in this bill is, not to raise money so they can spend it, but their objective in the bill is to drive up the price of cigarettes to discourage smoking. So recognizing the problem, that while the proponents of the bill vilify the tobacco companies, in reality they are taxing blue-collar workers. While they say they are not imposing the tax to get money to spend, in truth they are spending all the money. I have offered this amendment with Senator DOMENICI, Senator ROTH, and others, to achieve what the bill proponents claim they want to do. My amendment gives a part of the money that is collected in this tax back to the very people who are going to bear the burden of this tax.

Let me give some examples. In my State of Texas, we have 3.1 million Texans who smoke. If this bill drives the price of a pack of cigarettes up by $2.78, which is the general estimate that is given, a Texan who smokes one pack of cigarettes a day would pay $1,015 in new Federal taxes and would see their Federal tax burden grow by over 50 percent as a result of this tobacco tax.

Under this bill if a moderate-income family made up of two blue-collar workers, one might be a local delivery person and one might be a waitress, each smoke a pack of cigarettes a day and are earning less than $30,000 a year, they are going to pay $2,000 in additional Federal taxes.

So Senator DOMENICI, Senator ROTH, other Senators and I, have offered an amendment that says: Let us target people who make $50,000 or less because they are going to pay some 75 to 80 percent of these taxes, and let us take a portion of the taxes, roughly a third, and give that money back to the people who will be paying the taxes in the form of repealing the so-called marriage penalty.

Mr. KERRY. Would the Senator yield for a question?

Mr. GRAMM. I would be happy to yield.

Mr. KERRY. I agree with the Senator that some people who pay the marriage penalty will also buy cigarettes, but I am sure the Senator has to acknowledge, and would acknowledge, would he not, that some people who will buy cigarettes, who are called sort of the ''victims'' here, will not get a benefit by this necessarily and some people who do not smoke will get a benefit by this? Is that a fair statement?

Mr. GRAMM. Let me reclaim my time to say it is true that moderate-income Americans who do not smoke will benefit from this tax cut, if they are married. It is true that high-income people who smoke will bear a burden from the bill, and they will not get a benefit from this tax cut. But it is also true that Americans who pay 80 percent of the tax that will be imposed in the name of discouraging smoking, they are in families who earn less than $50,000 a year, and they will get a benefit from this bill. There is no way we can target it just to smokers, nor does anybody want to.

The point that we are making is, if we are trying to raise the price of cigarettes to discourage consumption, that is one thing. But many of the critics of the bill have viewed this as a tax and spend bill, and with great justification, in my opinion. Therefore if we are raising the price of cigarettes to fund tens of billions of dollars of new Government spending, then why not give part of it back? There is no perfect tool in giving it back. The best we have found is to repeal the marriage penalty and to make health insurance tax deductible for the self-employed.

Let me explain how the marriage penalty works and how our amendment will work.

Many Americans are surprised when they learn that we have roughly 31 million families in this country who pay higher taxes because they are married than they would have paid had they remained single. In fact, the average tax burden that is incurred by these couples is about $1,400 a year higher. They pay the Federal Government $1,400 a year for the privilege of being married rather than continuing to file as single individuals. In fact, during a Finance Committee hearing, we actually had the startling testimony from a young woman who said she was living with her boyfriend and would like to get married but, because of the burden of the marriage penalty, they had delayed that decision.

I think we all understand that the family is the most powerful institution for progress and happiness in history. Strong families, I think we would all agree on a bipartisan basis, represent the solution to everything from drugs and gangs and violence, and for the perpetuation of the basic values that we all treasure as Americans. And so I think anyone would want to get rid of a provision of tax law that discourages people from getting married.

Our amendment does not try to get into a position of discriminating for or against couples based on the decisions they make about whether both parents or just one of them work outside the home. Some people have criticized our amendment, and perhaps will do it today, by saying that this marriage penalty provision will benefit families where only one of the couple works outside the home. But our objective is to have a provision that corrects the marriage penalty but doesn't do so in such a way as to discriminate against stay-home parents. A vast majority of the time, that is stay-home moms. We don't believe the Tax Code should treat people differently based on whether they decide to stay home and raise

their children or whether they decide to work in the marketplace.

My mama worked my whole life because she had to. My wife has chosen to work the whole life of our children because she wanted to. But we believe, those of us who are authors of this amendment, that it is not the business of the Government to try to dictate through the Tax Code that very important personal family decision. We want to be sure that for those who do choose to give up the income by having one parent stay at home and raise the children, that we don't see them discriminated against in the Tax Code.

So here is how our provision works: What our provision will do is give every couple who makes less than $50,000 a year relief from the marriage penalty. We chose $50,000 a year because we really are rebating part of the revenue from the cigarette tax back to those people who pay 80 percent of the taxes. It is my goal, in the tax cut that I believe will flow from the budget, to repeal the marriage penalty for every American, no matter what their income. But we have targeted $50,000 and below here because that is where the smokers in America are, in the middle- and moderate-income range. We are using this to rebate part of the money collected in this bill due to the increase in the price of cigarettes to them.

What we will do for every married couple is, compared to the tax return they filed last year, they will get a $3,300 deduction above the line, before they calculate what their income is for taxation purposes. This will repeal the marriage penalty. In addition, it will save the average family about $1,400 a year in taxes. For low-income people who are still working to try to get ahead and trying to become self-sufficient, we will let them deduct this $3,300 from their income before they calculate their eligibility for the earned-income tax credit. As Senator DOMENICI knows, some of the heaviest tax penalty burden falls on moderate-income people who are getting an earned-income tax credit if they stay single, but if they get married, which is part of the solution to their problem in terms of helping to put together a strong family, they end up losing their earned-income tax credit. So under our amendment we will give a substantial tax cut to the very Americans who are bearing the burden of this increased price of cigarettes.

Finally, we deal with a problem related to the self-employed by immediately making health insurance deductible for the self-employed. If I work for General Motors and they buy my health insurance, it is fully tax deductible. But if I quit working for General Motors and go into business for myself, not only do I have to pay both sides of my payroll tax, but my insurance is not tax deductible and I have to pay it with after tax money. We have started the process of phasing this out over an extended period of time. What this bill will do is it will immediately give full tax equity to those Americans who are self-employed.

So the net result of our amendment will be to give back $16 billion in the first 4 years, to give back $30 billion over the ensuing 5 years, to the very people who pay 80 percent of the cigarette tax under this bill. We will give about a $1,400 tax break to working couples in that income category by repealing the marriage penalty, and we will make health insurance fully tax deductible for the self-employed.

We have crafted the bill carefully so that we take about a third of the revenues that flow from the tax that is collected on cigarettes. Quite frankly, in the final bill I believe this number should be bigger. This is a number we picked when we introduced the amendment. We have tried to structure it to stay with that through the end of the budget cycle, which will terminate in 2007, and we tried to stay faithful to that agreement in the drafting of the amendment.

I think this is an important amendment. I believe that it does provide some degree of tax relief for the people who are going to pay this confiscatory tobacco tax. I hope my colleagues on both sides of the aisle will support this amendment. I do believe that we have gone to great lengths to try to make the amendment fair. We have listened to the concerns that have been raised by our colleagues who are in support of this bill. I think this is a good amendment. I commend it to my colleagues.

It does not correct the many wrongs in the bill that is before the Senate. It does not eliminate the marriage penalty for all Americans. It is a major step in that direction. This is not the end of the marriage penalty debate. This is the beginning of it.

By the end of this year we will have repealed the marriage penalty for every American family. This will allow us to do it immediately in this bill for those in moderate-income areas who pay the bulk of the cigarette tax. We will do it for the rest of Americans in the budget, in my opinion. I commend this amendment to my colleagues.

I want to thank Senator DOMENICI for his leadership in this area.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I don't intend this afternoon to repeat much of the explanation which was made by the distinguished senior Senator from Texas but I just will emphasize it as I see it.

First of all, it is very important to me that when we articulate an American policy and say we are for this or we are for that, that sooner, rather than later, we look at what our laws are and see if we can make them match the policy that we would like for our country.

No. 1, everybody on the Senate floor, it seems to me, from time to time has been concerned about families in America. Obviously, the marriage tax penalty works against families, because if a married couple with two or three children are penalized to the extent of $1,400 a year in taxes that they pay—just because they are married, which they would not pay if they had their exact same earnings and filed separately or were not married—that is clearly an American policy out of step with a profamily position of the United States and certainly of this Senator and most Senators I associate with in the U.S. Senate.

Secondly, maybe it isn't articulated as precisely as the previous one tenet of philosophy, but I say we, as a nation, ought to espouse marriage and we ought to look with favor upon the relationship that is called marriage historically and traditionally.

As my friend from Texas says, of all the institutions around, it seems to be that marriage is the one that has endured. It also seems to be one that when marriage does not endure or work properly it causes a lot of other problems within a family and throughout society. So to put an extra tax on that institution is wrong.

In the United States of America, 24 million married couples have endured and paid through the nose because of this marriage penalty.

I don't think they really thought when they said, ''I do,'' that they were also saying, ''and we shall pay.'' I don't believe that is what they thought they were doing when they took their marriage vows.

The average penalty is about $1,400. I think everybody knows what an average means. Plenty of couples are paying much more. Obviously, there are plenty paying somewhat less.

In my State of New Mexico, 203,00 New Mexican families will be helped by this change. We are a State with just a little bit over 1,600,000 people. That is a pretty significant benefit we are passing on to people who are married and raising families, and both spouses are working.

By way of an aside, the second portion of our bill has to do with businesses that are self-employed people. Let me just give you that number. In New Mexico, 222,000 businesses are going to find that health insurance is going to be available to them now and be more affordable because under this provision they are going to be able to deduct the entire health cost, as do corporations and as do many others that are not self-employed.

So if anybody is interested in how we got into this mess with the marriage penalty, I will put in some facts about it later.

Obviously, this has come about with each major change we have made in the Tax Code, either to phase something out or to phase something in. There are about 63 provisions in the code, where couples are penalized for being married. The standard deduction and the progressive tax brackets are two of the major contributors to the marriage

penalty. So many of these provisions in the code vary, as I indicated, with marital status. The provision that primarily is responsible for the marriage penalty, the standard deduction for married filing jointly, is not two times the standard deduction for filing if you are single. That is the major reason that we have a problem.

Having said that, I want to relate this proposal to the bill that is before us. Every time we discuss a budget of the United States, or the economy of the United States, somebody talks about—and quite properly—what the level of taxation on the American people is. It is relevant to America's future, in my opinion and in the opinion of most economists looking at our country, that our tax on the American people, the total tax, be at the lowest possible level. Now, this bill before us, whatever its other interests are, is a very large tax imposition on the American people. Although it is not paid by everybody, you add it to the myriad of other taxes, and then you find out America is paying a higher total tax level than it was before this bill was passed.

So, to me, it is very simple. If this is a tax bill—and clearly there are many people who want to spend every penny of it on some kind of program. In spite of a budget that said we would not spend any more, there are scores of programs on which people would like to spend money. It seems to me that the forgotten people would be the taxpayers who would get no benefit unless we reduce taxes and charge the reduction to the tax income coming under this bill.

I think it is very logical and very reasonable—$16 billion in the first 5 years, $30 billion in the second 5 years, coming from the taxes raised in this bill from cigarettes. It will ultimately come from consumers. People think the tobacco companies are paying, but actually it will be added to the price of cigarettes and consumers will pay it.

We are saying give $16 billion back to the taxpayers and $30 billion back in the form of these two tax reductions over ten years. That is a third of the tax take in the first 5 years and about 37 or 38 percent in the second 5 years. Under the bill, about 40 percent of the program goes to the States. I am not sure I favor that much going to the States, but we are not amending that provision here. That is to be considered at another time if the Senate wants to consider it. But so long as the states are expected to get 40 percent of the overall trust fund, Senator GRAMM and I have agreed we won't offer any more tax cuts. But if indeed that 40 percent is reduced and we attempt to take some of that money back to the Federal Government and spend it, then obviously we reserve the right to offer some additional tax rebates or reductions or reforms at that time.

I am hopeful that the Senate will adopt this amendment. There may be other tax measures, but I think essentially we are going to be separating Senators into two groups—Group One: Those Senators who want to spend all the money and group two who are Senators who want to give some of it back to the people. That is the issue. Do you want to give some of this back to the people, or do you want to spend it all for one program or regime or another that costs money, or a series of programs by which we give money back to the States for them to spend it?

I think the American people are going to judge us very, very precisely on this and I don't think the judgment is going to be a difficult one. They are pretty astute. When we have just crowed about a balanced budget with caps on expenditures and we come and say now we found a new source of revenue, all those ideas about keeping Government under control can go out the window. We will spend all of this on new programs. I think they will understand very easily. They will focus quickly that those who vote no on this amendment will be saying they want to spend all the money; those who vote yes on this amendment are saying we ought to give some of it back to the American taxpayer—in this case, to that huge number of Americans who are married, with both couples working, wherein they are being penalized by the adverse effect of our tax laws, and that they must pay a penalty for being married and for earning a living and filing jointly.

I am rather confident this is the right approach. Why do we stop at $50,000 worth of wage earnings? I will agree that is just an arbitrary number. But we can't fix everything in one bill. If there is a tax bill this year—and there probably will be one—I would think high on the list would be to repair the marital tax problem so the higher brackets of earners are entitled to receive that benefit also. I thank Senator GRAMM for his untiring efforts on behalf of this. It is a privilege to work with him. I believe we will have a victory today.

I yield the floor.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, let me begin with some comments about where we find ourselves, and then I will come back a little bit later and go into greater detail about it.

At the outset of the presentation of the amendment as originally filed by the Senator from Texas to repeal the marriage penalty, I and Senator MCCAIN and others said at that time that we were prepared, because we are supportive in principle of the notion of reducing the marriage penalty—we said we are prepared to embrace in this bill a component of marriage penalty reduction, provided that it doesn't strip away so much money that we are unable to accomplish the other purposes of the bill. And we have gone through a long week now—maybe a little bit more than a week—and the Senate has essentially been in a stalemate position as we have negotiated around the concept of how much is appropriate and how do you arrive at how much is appropriate.

During the course of that week, the Gramm amendment as originally filed has undergone several changes. We are very pleased with that. I think there has been a bona fide effort here to try to arrive at some kind of sensible approach to the marriage penalty issue. The original Gramm amendment presented us with an estimated cost of $113 billion over 10 years. That would have represented over that 10-year period 80 percent of the costs of all of the tobacco revenues. In other words, all of the tobacco revenues that would have come in, 80 percent of them under Gramm I, as we should call it, would have gone out to the marriage penalty rebate as he had designed it at that time.

Last week, at the end of the week, Senator GRAMM revised his proposal to what we would call Gramm II. Gramm II made mostly some sort of cosmetic changes that took the full measure of the cost, the $113 billion I have just described, the 80 percent of the revenues, and rather than have them all show up within the first 10 years, it took those revenues and pushed a significant portion of them outside of the 10-year budget window. In other words, we look at the budget of the country in these 5-year periods, and we are looking at a 10-year budget window within which we have an ability to measure what we are doing. Beyond that, it becomes relatively more speculative.

Under Gramm II, the Senator from Texas would have still spent nearly 80 percent of the tobacco revenues in years 11 through 25 of the bill. So there would have been a reduction for the years 1 through 10 within the budget process, and outside of that, knowing that we are looking at a 25-year revenue stream as we measure the tobacco bill, that would have then taken the better part of the 80 percent. So you would have taken funds that were intended for public health, research, farmers, and the States, and that would have been significantly reduced. That clearly was also unacceptable. So we stayed locked in sort of a status of essentially negotiating with not a lot happening.

We then responded. We responded with an alternative that would have reduced the marriage penalty for most families. But it would have been done at a fraction of the cost of both Gramm I and Gramm II, which brings us now to Gramm III. Gramm III is what we were presented with just a few moments ago as we began this debate when the Senator filed this particular amendment. Under Gramm III, there is now an expenditure of approximately one-third of the funds under the tobacco funding. So it has been significantly reduced in the road that we have traveled as to tobacco funding.

In other words, from the revenues raised, if and when this bill passes, no

more than a third of that can be taken for the purposes of reducing the marriage penalty. But that is only half the story, because what the Senator from Texas does is maintain a level of benefits. In other words, he has geared his marriage penalty reduction in a way that there are still significant resources necessary in order to fund the benefits that he wishes to give, and he chooses not to take them all as part of our negotiating process from the tobacco bill.

But the question then has to be asked, Where does the Senator from Texas take them from? I respectfully submit that as a result of the fact that he has left in the breadth of generosity of benefits that he seeks to return in the form of the marriage penalty, while not taking it from the tobacco bill, he nevertheless seeks to fund it and take it from the other available funds of the Federal Government. That means that he will have to tap a new source of revenue; i.e, the general budget surplus of the country.

That means that the Senator from Texas will now look to Social Security, which is where we had originally designated that those funds would go. We have said as a matter of budget policy that we are going to preserve the budget surplus to take care of Social Security. But since the Senator is agreeing that only one-third of this revenue will come from the tobacco bill, the rest of it can only come from the surplus, unless, of course, the Senator has a bunch of offsets he is willing to offer up to suggest where that funding is going to come from.

A vote for the Gramm amendment in its current form, Mr. President, is a vote to take $90 billion to $125 billion of surpluses away from Social Security. This is $90 billion to $125 billion that will not be available for the long-term reform of Social Security, because once this tax cut of the Senator becomes law, assuming it does, it is law outside of the budget process. The Tax Code is not part of the budget process. That is then a right that has been created, an expectation as to what people will pay. And it has to be funded. The only place you can turn to fund it is to the general revenues and, therefore, to the surplus.

That is one side of what is being offered here. But I want to speak about another side.

I would like to ask my colleagues whether or not it is possible to take away the label ''Democrat and Republican,'' take away the contentiousness of this bill, and just look at these two alternatives as a matter of good public policy and of common sense in terms of the budgeting of the country. The alternative that Senator DASCHLE and others of us on our side are offering, and we would hope with good common sense apply to the analysis that a number of colleagues on the Republican side of the aisle would say is really better policy—and I will say why I believe it is better policy—the fact is that the alternative we will offer provides a greater marriage penalty relief than the Senator from Texas, but it does so with less cost to the Federal Treasury and to the tobacco bill. I want to repeat that. The alternative that we offer will give more marriage penalty relief than the Senator from Texas, but it will do so with less damage to the capacity of the tobacco legislation to be able to provide for public health for research for the States, and so forth.

The question is obviously, How do you do that? How do you avoid—is that some kind of a shell game and flimflam artistry, or is it real? I will tell you why it is real. The Senator from Texas, by his own admission, has agreed that he will reward those people who do not smoke. Or let's talk about the targeting. He says it is impossible to target this to accomplish a goal where you would actually wind up targeting nonsmokers versus smokers. I would agree with that. He is absolutely correct. That is pretty hard to do. But you can easily target this marriage penalty reward so that it is actually dealing with the marriage penalty. If the purpose of this is to fix the marriage penalty, then it is possible to target this benefit in a way that it goes to the people who pay a penalty, not paid to the people who get a bonus.

The Congressional Budget Office will tell you that 51 percent of American married taxpayers get a bonus. And there is absolutely nothing in the approach of the Senator from Texas that limits them from getting rewarded above the bonus. There is no practical policy here given the difficulties we face of taking from the Social Security surplus, or taking from the tobacco bill, which we have now agreed we don't want to take more than a third from—there is no rationale for coming in and rewarding those people who already get a bonus. So what we have done is guarantee that we are going to give the tax relief to the people who are actually penalized. Senator GRAMM's amendment costs 50 percent more than the Democrat alternative, and it gives less marriage penalty relief.

The reason is that we have focused on giving about 90 percent of our tax cut to those families that are actually penalized, whereas Senator GRAMM is only 40 percent—90 percent versus 40 percent. Sixty percent of the people who are going to get a reward under Senator GRAMM's approach don't even pay a marriage penalty. It is not even fixing the marriage penalty. It seems to me as a matter of public policy what we ought to do is guarantee that we reach the maximum number of people who pay the penalty with the maximum amount of dollars back to those people.

Our alternative would provide a 20-percent deduction against the income of the lesser-earning spouse. The way the marriage penalty works, as I think most people know by now, is that either on a standard deduction or on the earned-income tax credit or on the marginal rate you pay more or less according to what the income of both members of the household, both married partners pay. But it depends. The vagaries of the Tax Code are such that you could be a married couple with one person working, earning a big salary, one person not working at all, and you won't be affected the same way; you would actually have a bonus versus the two married partners who are both working, both earning sort of a similar amount of money. So if you have two income earners each earning about $25,000, they wind up paying a penalty versus the high-income earner, single earner within the family and the other partner who is not, and there are other aberrations like that as you go through the various levels of income earning.

It makes no sense to jeopardize this legislation and to place pressure on the surplus, which we have now decided we ought to reserve to save Social Security in order to reward people who are already rewarded. There is simply no matter of public policy of common sense in doing that, and that is why there is a very significant difference between the two approaches here.

Let me give as an example a couple making $35,000. Let us split the $35,000, $20,000 to the husband or vice versa, $15,000 between the two spouses—you have 20 to one and 15 to the other, making $35,000. Under the GRAMM approach, that couple would receive an average additional deduction of about $1—$1. By comparison, under the 20-percent, second-earner deduction alternative that we propose, the couple would receive an additional deduction of $3,000—$3,000 deduction versus $1 under Senator GRAMM, 20 percent of the $15,000. That represents about twice as large a tax deduction, and it would provide twice as much actual tax relief without any of the negative downside that is carried with the proposal of the Senator from Texas.

Let me give you another example. For a couple making $50,000, let's split it evenly between both spouses—$25,000 husband, $25,000 wife. And that is a very realistic, very realistic division in the kind of two-person income of the families that we are trying to reach. Again, under GRAMM, the couple would receive an average additional deduction of $1.

By contrast, under the 20-percent, second-earner deduction alternative that we propose, the couple would receive an extra $5,000 deduction representing more than three times as much tax relief.

So that is the choice here, Mr. President. You can have a reward to people who are already getting a benefit by getting married, which is not a marriage penalty fix at all; you can structure it so that you wind up having to take the money from the general revenues, from the surplus; or you can come in with much greater tax relief that goes to the people who really need it, and you can do so without the negative impact on Social Security and

without the negative impact on the tobacco bill itself.

I think the choice is very clear. The difficulties presented to the overall budget situation by Senator GRAMM's current approach are very significant. It was the understanding, we thought, that we were not going to take more than one-third of the revenues in total, in whatever form they were going to come, that the Senator was going to structure his benefits so that no more than a third was represented in them.

What is happening here is the Senator is giving the guarantee that no more than a third comes out of the tobacco bill, but he goes elsewhere to look for the rest of the larger sum of money that he is going to give back by not structuring the benefits downwards. So, in other words, it is essentially outside of the notion that you have an agreement that is going to restrict the total benefits of the marriage penalty to one-third of the level of the tax bill.

Now, he can come back and argue: Wait a minute; we are just taking one-third of the tax bill.

Well, that is true, except that in total for the marriage penalty they are looking to one-third, significantly more than one-third from these other sources, which is a very different consideration from that with which I think most of us thought we were going to be presented.

The bottom line is that the amendment proposed by the Senator from Texas costs 50 percent more in the first 10 years than the Democrat alternative—that is $46 billion total in the first 10 years—versus about $31 billion. But it delivers far less in marriage penalty tax relief.

Finally, at this point—I would reserve some time later—but at this point in time, if you have $30 billion taken out of this bill in the first 10 years—9 years, 10 years—added to the 40 percent that goes to the States, and add to that the component of the drug plan that came through yesterday, which takes 50 percent of the public health money, and we all know this bill is not leaving the floor of the Senate unless there is some kind of fix for the farmers, and we are going to look at somewhere between $9 and $18 billion—that is what you have, $9 billion; $18 billion, Senator LUGAR, I believe; $9 billion, the Senator from Kentucky.

All of a sudden the question has to be asked: Where is the money to stop kids from smoking? Where is the fundamental notion that this is a bill directed at children in order to stop those kids from smoking? And everyone has come to understand that you need counteradvertising, cessation, professional training, and other kinds of things in order to do that. So it is simply unacceptable that suddenly all of the fundamental purpose of the legislation could be stripped away in a manner that would be unacceptable.

Now, obviously, if this were to pass, I think everyone knows it is not going to be able to stay that way. There is no way. So the choice before the Senate is very clear: Do we want to make good policy about the marriage penalty, which I support fixing, but I have said all along it has to be done within the confines of reasonableness as to how much is available in this overall package so that we can still accomplish the fundamental purposes of the legislation. We are going to have to clearly visit that a little more over the course of the afternoon.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, the pending amendment begins to address tax relief in two important areas. The first is the marriage penalty that exists in the code. The second is health care costs. This amendment begins to give back to the people some of the money that is raised through the tobacco tax in the bill. And for these reasons I intend to support the pending amendment.

Personally, I think the spending is still too high in the tobacco bill. More of the revenue should be returned to the taxpayer.

In addition, there are many measures that the Finance Committee recommended which are not adequately included in the final bill. For example, the tobacco bill is inconsistent with the work of the Finance Committee, which has jurisdiction over the Medicaid program. The tobacco bill also reopens the Balanced Budget Act by increasing spending beyond the $24 billion we have already provided for the State Children's Health Insurance Program. Another aspect of the overall bill which concerns me is the way that the international trade provisions are drafted.

Mr. President, there have been media reports that the tobacco bill is in trouble because the managers have to accommodate so many factions within the Senate and that today they have to accommodate the tax-cutters to make progress on the bill. I take exception with the suggestion that tax relief is just another nuisance to be accommodated. My perspective on this bill is quite different.

It is repeatedly asserted that this bill's purpose is to reduce teen smoking. That is a very desirable goal. I support that goal. However, in the bill I find only two policies that bear on that goal.

The first one—the tax increase—is said to bring in $65 billion over 5 years. The second one—under $1 billion in the President's budget—is a cessation program for teenagers.

In my opinion, we have accomplished the goal with $64 billion left on the table. That money should be returned to the people, not be used as a slush fund to make government bigger. Making government bigger is not the goal of this legislation. But it seems to be the effect.

In my opinion, the debate on this bill should center on how we rebate excess revenues to the people not on how we can fund government spending increases that cannot survive the traditional discipline of the budget and appropriations process. I support this amendment because it is philosophically the only legitimate course, in my opinion, for the Senate to take.

The pending amendment provides tax relief in two specific ways. First, it partially reduces the inequity of the marriage tax penalty.

As my colleagues know, this penalty places an unfair burden on two-earner married couples.

According to a recent Congressional Budget Office study, a married couple filing a joint tax return in 1996 could face a tax bill more than $20,000 higher than they would pay if they were not married and could file individual tax returns. The same study estimated that according to one measure of the marriage penalty more than 21 million married couples paid an average of nearly $1,400 in additional taxes in 1996 because they filed jointly. Marriage tax penalties totaled $29 billion in 1996.

Let me take a few minutes to describe the history of the penalty—which has been around for almost 30 years. Before 1948, all taxpayers filed as single individuals. In that year, Congress gave taxpayers the ability to file jointly—meaning that a couple had the benefit on income splitting. The tax bracket for married couples was double the bracket for single individuals. Because of complaints that singles were being unfairly penalized, in 1969, Congress devised a special rate schedule and standard deduction amounts for singles. This new rate schedule created a marriage penalty for some taxpayers.

Because of changing demographics and the prevalence of two-earner couples in America, the marriage tax penalty has become an even greater concern. Moreover, after being reduced during the 1980s, the tax increases and creation of additional tax brackets in 1990 and 1993 have made it much worse today.

In the current tax code, there are over 65 examples of provisions causing the marriage tax penalty. The most obvious and dramatic one is the rate structure itself.

But there are numerous others, all of which can have a significant effect on the pocketbook of a married couple. The penalty provisions are built into deductions, exemptions, credits, and other facets of the code.

What the pending amendment does is take a step toward providing some relief for this inequitable condition. It provides a deduction, up to an amount of roughly $3,400, for married couples. This deduction is phased in over 10 years. It will partially alleviate the burden, and toward doing this, I am a strong advocate. However, I regret that this relief does not go far enough.

The phased-in deduction is only available to couples with an adjusted gross income of less than $50,000. In other words, Mr. President, someone

who works in the Chrysler or GM plant in Delaware and whose spouse is a school teacher would have too high an income to qualify for marriage penalty relief. That doesn't seem fair. I would have liked to see us give relief from the marriage penalty to many more Americans. Frankly, I would like to see us get rid of the marriage penalty altogether.

The second major component of tax relief in this amendment is in the area of health care. The amendment provides self-employed individuals next year with a 100 percent deduction for their health insurance. This is long over-due. It will help farmers, small business people, and others who buy their own health insurance. Because of this amendment, 3 million taxpayers and their families will have more affordable health care, and you cannot overstate how important this is.

This is a good first step. But I want to be clear that I do not consider it to be everything we must do. There are 18 million other Americans who lack health insurance, some are unemployed, others are elderly, and many have jobs. Simply put, I would like to see these individuals receive an above-the-line deduction for the cost of their health care. This is something I have worked on for some time.

When the Finance Committee marked up the tobacco legislation I placed before the committee a two-part proposal in the area of health care.

The first part was an immediate increase to 100 percent deductibility for health insurance for the self-employed. The second part provided the same benefit to the other 18 million Americans who need health insurance. This attempt was a natural follow-on to my successful efforts in 1995 to raise the deductible percentage from 25 to 30 percent and to make it permanent. Unfortunately, this time my tax cut proposal was not approved by the Finance Committee.

I intended to offer the same tax cut amendment on the floor, and I was pleased that several members—Republicans and Democrats—agreed to support it.

This proposal was also supported by farmers and small business, and I am pleased that it is reflected in the amendment before us now. Though, again, I want to go further. This is a good start, but I hope that in the future we revisit this with a mind to making health insurance more affordable for millions more of American workers.

It is the same with the marriage penalty. It is egregious that married couples are penalized by our tax code. I believe this sends the wrong message in more ways than one, and it must be addressed. We have attempted to do this in the past. For example, in 1995, in the Balanced Budget Act, Congress approved a proposal to phase out the marriage penalty in the standard deduction. Our legislation was vetoed by President Clinton.

I realize that at this point we are constrained by financial limitations and other priorities, and I compliment my colleagues for moving as far as they have with this bill. But I want all of my colleagues to agree with me that this should be seen as only the beginning. There is no justification for a married couple to be penalized just because they are married.

Mr. President, though it is not perfect, and while it does not go as far as I would like, I intend to support this amendment. It sends the right message.

It does provide partial relief. And it is a step in the right direction. I encourage my colleagues to support this effort.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER (Ms. COLLINS). The Senator from Alaska is recognized.

VISIT TO THE SENATE BY ANSON CHAN, CHIEF SECRETARY OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

Mr. MURKOWSKI. Madam President, it gives me a great deal of pleasure to introduce to this body, the U.S. Senate, Mrs. Anson Chan. Anson Chan is the Chief Secretary of the Hong Kong Special Administrative Region, known to many Senators in this body.

Anson Chan is the head of Hong Kong's 190,000-strong Civil Service. She was appointed to the position back in 1993 by then-Governor Chris Patten and has continued to serve in this capacity under C.H. Tung, the Chief Executive of the Hong Kong Special Administrative Region.

RECESS

Mr. MURKOWSKI. Madam President, I ask unanimous consent the Senate stand in recess for 5 minutes, so colleagues may greet Anson Chan, our dear friend.

There being no objection, the Senate, at 3:10 p.m., recessed until 3:14 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Ms. COLLINS).

Mr. MURKOWSKI. I thank the Chair for recognizing Anson Chan. I thank my colleagues who visited with her, as well as the pages.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GRAMM. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

Mr. GRAMM. Madam President, I think somewhere I heard the old saying, ''No good deed goes unpunished.'' In trying to see if we might find some consensus on this issue, I tried to write our marriage penalty repeal amendment in such a way as to limit the amount of resources that it took from the underlying bill.

I did it recognizing that the underlying bill is as full of fat as any bill could possibly be. It is a bill that provides funding for a Native American antismoking campaign that will spend $18,615.55 per Native American who will be served. It is a bill that pays trial lawyers $92,000 an hour. It is a bill that pays tobacco farmers $23,000 an acre, and they can keep the land and go on farming tobacco.

With all of these gross expenditures, our colleagues say that if we take more than a third of the money we are raising in taxes—which they say they are not increasing the tax to raise money—but if we take any more than a third of it and give it back, then somehow the bill is going to collapse.

Then I try to adjust the amendment to keep it within those constraints, and our dear colleague from Massachusetts accuses me of taking money from Social Security. And it goes on and on and on. ''No good deed goes unpunished.''

I have the ability to modify my amendment. I want my colleagues to understand that if we don't work out something on this amendment pretty soon, I am going to modify my amendment, and I am going to take every penny of this money out of this larded bill. So I can solve all of these problems. I tried to help somebody. I tried to work out a consensus, and now we are not able to do it. But I can fix that problem. I can fix the problem by taking the money out of this bill, and I am prepared to do that. I am not going to do it right now. I am going to wait and see if we can work something out. But I am prepared to do it. I have a modification. I have a right to modify my amendment, and I will modify my amendment at some point if we don't work something out.

Madam President, I want to address a number of issues that our colleague from Massachusetts raised.

Our colleague from Massachusetts says, ''Well, I have a marriage penalty correction device, but mine doesn't cost as much and gives more relief.''

So the question is, How is that possible? Well, the answer is that it gives no relief to one particular kind of family. That is a family where one of the parents decides to stay at home and work within the home—one of the hardest and most difficult jobs in America and one of the most important jobs in America.

We have not seen their amendment, but the way our Democrat colleagues could give a marriage penalty for so much less money is that it is a marriage penalty correction that you get only if both parents work outside the

home. That is not the way we have done it. We have not done it that way because I do not want the Government to be making the decision as to whether a parent works outside the home or works inside the home.

Let me say, it is a tough decision for people to make. Some people make it based on economics; some people make it based on their careers. And I think families need to make it, not the Government. My mama, as I have said earlier, worked all my life because she had to. My wife has worked all my children's lives because she chose to. She had a career. She wanted to do it. But the point is, the Tax Code should not discriminate against parents who choose to make an economic sacrifice to have one of the parents stay home and raise the children.

So the magic in this Democrat alternative, if such an alternative exists, is they can do it for less but the way they do it for less is, they say if you have a stay-at-home parent, you get no relief from the marriage penalty.

They are going to complicate this issue. But, fortunately, I understand this issue. So let me try to straighten it all out before they waste all the time trying to complicate it, because I can answer it and will save everybody time.

There is something called a marriage bonus. If there has ever been a totally fraudulent concept, it is the marriage bonus. This thing that we call in the Tax Code a marriage bonus is, if you marry—and let me just speak from the point of view of a male—if you marry a lady and she comes and lives with you in marriage, you get to take her personal exemption and you also get an adjustment to your standard deduction.

So I am sure that people will laugh at this, but since our colleagues are going to go to great lengths to talk about it, let me just destroy it, and we will not waste our time.

Something is called a marriage bonus when—let us say you have John and Josephine who fall in love. And Josephine is just getting out of college. Her father and mother have been taking a personal exemption for Josephine. She marries John. And John is already working. Josephine is getting ready to go into the labor market. They went to the graduation and she got her diploma. Then they walked down the aisle and said, ''I do.'' And sure enough, John gets to declare $2,700 on his tax return for her personal exemption. And John gets $2,850 added to his standard deduction. But does anybody believe that John can feed, clothe, and house Josephine for $5,550? Some bonus. That is no bonus.

Let me show you what has happened. In 1950, the Tax Code of America was such that for the average family of four—husband, wife, two children—75.3 percent of their income was totally shielded from any Federal income tax. This meant that by the time they took their personal exemptions—and they got four of them—that shield was 65.3 percent of their income. Then they got their standard deduction, and that shielded 10 percent of their income, for a total of 75.3 percent.

So in 1950, the cold war had heated up, we were going into Korea, defense spending was rising, but we still shielded 75.3 percent of the income of the average family of four in America from any income taxes because of the personal exemptions and the standard deduction.

The personal exemption was $500 in 1950. To be the same level today, the personal exemption would have to be $5,000. But it is $2,700. So today, the same family of four, making the average income in the country in 1996, has only 32.8 percent of their income shielded. Every bit of the additional income is being subject to income taxes.

So what happened between 1950 and 1998? What happened between 1950 and 1998 is that the real value of the standard deduction and the personal exemption declined dramatically because it did not keep pace with inflation. So whereas in 1950, 75.3 percent of the income of the average working family in America was totally shielded from income taxes, now the average family in America, family of four, making the average income, has only 32.8 percent of their income shielded from taxes.

So since 1950, what has happened? Rich people paid a lot of taxes in 1950, and rich people pay a lot of taxes today. Poor people paid no income taxes in 1950, and they do not pay any income taxes today. What happened to the tax burden between 1950 and today? It almost doubled. Who paid it? Middle-class families. Today, the number that just came out showed that 20.4 percent of all income earned by all Americans is taken by the Federal Government, and when you take State and local taxes, the tax burden today is at the highest level in the peacetime history of the United States of America. No American has ever lived with a peacetime tax burden higher than today. Even though we won the cold war, tore down the Berlin Wall, cut defense by 50 percent, we still have the highest tax burden in American peacetime history because of passing bills like the one that is before us today.

What is the amendment that I have offered with Senator DOMENICI and Senator ROTH trying to do? What it is trying to do is address the problem, shown on this chart, where working families end up paying more and more of their income. When you have a working spouse today, that working spouse is paying 60 percent of their income in taxes that did not exist in 1950.

What Senator DOMENICI, Senator ROTH, and I are trying to do is to correct that. We are trying to take a first step to correct this marriage penalty, which is basically a penalty that falls on 31 million Americans where they actually pay an average of $1,400 a year more because they are married than they would pay if they were single. We want to give them an additional $3,300 deduction. We want to put it above the line so it applies to the earned-income tax credit. And our Democrat colleagues say, ''No, we don't want to do it that way.''

Let me tell you what they want to do. No. 1, they want to say that if a family chooses to have one of the parents stay at home with their children, that that parent is worthless and therefore they should get no correction for the marriage penalty at all.

What Senator DOMENICI, Senator ROTH, and I are trying to do is to not tilt the Tax Code against stay-at-home parents.

I am not trying to make a judgment. In the two families I have had the privilege to live in my parents'; and now my own family—both parents have worked. I am not trying to stand in judgment on whether both parents should work or they should not work. Families should do what works for them. But we should not have a Tax Code that penalizes people who give up income in order to have one parent stay at home with the children. That is the proposal that the Democrats are making.

The second proposal they are making is, do not give any of this to moderate-income people. I did not hear anything in their proposal about making it a rebate to people who are getting the earned-income tax credit.

Let me tell you why that is so important. You have a lady who is washing dishes and you have a man who is a janitor in a school. They might be about as well off on welfare as they are working, but they are proud, they are ambitious, they want to be self-reliant. So every morning they set the alarm for 6 o'clock. When the alarm clock goes off, their feet hit the ground. They get up, they get dressed, they go to work. They often work more than one job. They meet and fall in love. It looks like their dream has come true because together they can have more.

But under the existing Tax Code each of them making very low income qualifies them for an earned-income tax credit. They lose the earned-income tax credit if they get married. So they face a huge penalty, often more than $1,400 a year if they get married.

In our amendment, we apply the correction to this perversion in the Tax Code called the marriage penalty so that even people that are getting the earned-income tax credit can deduct this $3,300 before they gauge their eligibility. Why? First of all, we are for love. Secondly, if a lady washing dishes and a man who is a janitor in a school fall in love, we want them to get married. What society would want to discourage that from happening? They may get married, have a child, their child may become President of the United States.

The alternative being offered is so much cheaper. One of the reasons it is cheaper is that it doesn't apply to these very low-income people. We thought it should apply to very low-income people. The reason is 34 percent

of the money they are taking out of the pockets of working Americans through this tobacco tax come from people that make $15,000 a year or less. They should not be excluded from this provision.

To sum up the points I wanted to make, I want the marriage penalty to be corrected. I want this tax deduction to apply to families, whether they both work outside the home or whether they decide they will sacrifice, take less income, and one of them will stay home and raise their children. I am not trying to make a judgment as to whether that is better or worse. I think it depends on the people and what they want. But I don't think the Tax Code should treat people differently based on that decision. Our colleagues who supposedly are offering an alternative think it should. Our colleagues say, look, if you don't work outside the home, you don't work. If you don't work outside the home, you are not due any correction for this penalty.

Then as the final absurdity they say, after all, John, by marrying Josephine, he already got $5,550 tax deduction by getting her personal exemption and part of her standard deduction. But who can live on $5,550? What kind of bonus is that? It just shows you the absurd language we have developed to defend a provision in the Tax Code which is absolutely indefensible.

I want, in this amendment, to give at least a third of the money we are taking from working Americans back to them. Our colleagues try to get us to focus on these terrible tobacco companies and forget about the fact that tobacco companies are paying no taxes at all under this bill. In fact, this bill makes it illegal for the tobacco companies not to pass through the tax to consumers. Who is paying this tax? A majority, 59.1 percent of this tax is being paid by families that make less than $30,000 a year. So I have made the modest proposal to give a third of the money back to moderate-income families so that those who were in favor of the bill can say, well, we raised tobacco prices. Hopefully, that will discourage children from smoking. Hopefully, it will discourage other people from smoking. Just don't impoverish blue-collar workers in America who smoke and who, paradoxically, are the victims of this whole process.

The incredible, unthinkable, virtually unspeakable truth about this bill is it doesn't penalize the tobacco companies. It penalizes the victims. We tell everybody you have been victimized by the tobacco companies. They knew you would get addicted to nicotine, and they conspired to get you to smoke. Then this bill says we are going to do something about it; we are going to tax you, not the tobacco companies.

Always seeking to do good, I had this modest amendment to take a third of the money and give it back to moderate-income families in repealing the marriage penalty and making health insurance tax deductible for the self-employed. I tried to do it in such a way as to protect some of their huge trust funds. Now they say, no; you can't do that. So at some point, if we don't work this out, I am going to modify my amendment and I am going to take all the money out of the bills trust fund.

The truth is we should be giving back about 80 percent of this money in tax cuts. We should be using the other 20 percent—10 percent of it on anti-smoking, 10 percent of it on antidrugs, and that ought to be it.

In any case, if we are going to debate this issue, I think our colleagues are going to be a long time explaining why, if mom or dad decides to stay at home, they are discriminated against under this Tax Code. I don't think people are going to be in favor of that and I hope something can be worked out.

Finally, at the end of the budget cycle in the year 2007, we have a choice: We can repeal these marriage penalty provisions and take all of it out of this trust fund, or we can set a portion of it out of this trust fund. I can do it either way.

I am beginning to be convinced, as my dear colleague from Arizona has been convinced throughout this debate, that no good deed goes unpunished, even when you try to do what you believe is a good work. If you try to do something good and you try to be reasonable and you try to make things work, something is going to happen to punish you for it. I think that is a shame for the process.

I wanted my colleagues to be aware, when we are talking about giving a $3,300 tax deduction for working families, that you have to wonder why is that reasonable? Well, in 1950, 75.3 percent of their income was totally shielded from income taxes because of the standard deduction and the dependent exemption. Because of inflation since that time and because the personal exemption has not been raised to equal inflation, now only 32.8 percent of their income is shielded from taxes.

I am not going to apologize for trying to let working families keep more of what they earn. Nor am I going to apologize for having a provision that says to parents you can get this tax deduction if both of you work or you can get it if one of you works and you have to make the decision about what works for you and your family. I don't think doing it any other way is going to be successful. I hope we can work this out. But it may be preordained somewhere at a higher level than we are and maybe for some good purpose that this can never work out and this might never be done.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, I will speak for a moment and then spend a moment to visit with the Senator from Arizona.

Let me correct one thing the Senator from Texas said. The Senator knows just a little while ago I was talking to him and I offered him a compromise which includes the capacity to raise the level of benefit to the spouse—working mom or pop—who stays home with kids.

But what the Senator is ignoring also is that under the marriage penalty, so-called, the mother who stays home, or father who stays home today and isn't working and that he wants to reward, is, in fact, already rewarded because the structure of tax is such that with a single earner and one parent staying home, they get a marriage bonus.

So we have a tax structure that already rewards the very person the Senator from Texas is talking about. In addition to that, I suggested to him that we ought to be able to work out some way to augment that a little bit. I think that is reasonable. So let's not get into a notion that somehow people want to be more protective of mom and pop who want to stay home with the kids. This debate is about whether or not we are going to be able to have enough money to do the things this tobacco bill must do, which is to reduce the number of kids smoking.

You never hear the Senator from Texas talk about how we are going to save lives in America. We hear him talking about saving taxes, but not saving lives. We never hear him talk about the 400,000 people a year who die because they smoke. You also don't hear him refute the tobacco company's own memoranda, which talks about how they know that when the price goes up, the number of people who buy their cigarettes goes down. That is tobacco company fact; it is not made up on the floor of the Senate.

So let's begin to deal with the reality here. The reality is that if you don't have the ability to affect the behavior of our kids in this country, we are not doing the job on this legislation. And while it is all well and good to want to restore some money back to people to take care of the marriage penalty—and I am for that—we want to do that in a way that is reasonable within the other obligations of this legislation. That is what we are fighting for here—to maintain common sense in this.

I am happy to work out some kind of compromise with the Senator. I think it is important to understand that has to be fair. If we take 80 percent of this bill in order to rebate people who are already getting benefits, we will have departed from all common sense and fairness.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Madam President, I am interested to see that at a time when the tobacco bill is on the floor of

the Senate, we are debating the marriage tax penalty. It is unique, I suppose, that in the U.S. Senate one does not have to talk about the subject that is on the Senate floor at that time. We experienced, earlier in this session, the majority leader bringing to the floor a piece of legislation which created a parliamentary situation where no one could offer any other amendments except those he would prefer to have offered because he was afraid someone on this side of the political aisle would offer an amendment not related to the subject. So we had a legislative logjam on a number of pieces of legislation. That was his right, and I complained about it at the time. And at the same time, the majority leader was complaining that somebody might offer an amendment that had nothing to do with the bill on the floor of the Senate.

Well, here we are. We have a tobacco bill on the floor of the Senate and what have we been talking about now for a number of days? The marriage tax penalty. We had a tax bill on the floor of the Senate some long while ago and we debated that. But now, on the tobacco bill, we are talking about the marriage tax penalty.

I don't think the Senator from Texas will get anybody to swallow the bait here that a marriage tax penalty is justifiable. The Congress has worked on the marriage tax penalty attempting to fix it, to reduce it, to abolish it, and to otherwise change it for a long, long time. Long after this debate is over, there will be discussion about this so-called marriage tax penalty. Should it be abolished, should it be fixed? Of course, it should. Easier said than done, but we ought to do it.

But we are now on a tobacco bill. I bring this discussion back to the reason that we have a bill on the floor of the Senate dealing with tobacco. I want to read again, for some of my colleagues and those who are interested, what persuades those of us in the Senate who support this tobacco legislation and think this legislation is necessary.

I was on the Senate Commerce Committee when we passed the legislation out of the committee. I voted for it, and I supported it. Senator MCCAIN was the principal author of the bill, and Senator CONRAD, my colleague from North Dakota, has also written a piece of legislation which found its way, or at least in large part, into the McCain legislation. I compliment both of them, and others, including the Senator from Massachusetts, and a number of others who have worked hard on this legislation.

But why tobacco legislation? Because many of us believe that it is inappropriate in this country to allow the tobacco industry to continue to try to addict America's children to nicotine. Some say, ''Well, gee, that is not what has been happening.'' Of course it has been happening. Several court cases have now unearthed the memoranda and the information from the bowels of the tobacco companies that they didn't want to disclose but were required to disclose. This information showed exactly what their strategies were in recent decades to try to addict America's children to tobacco.

Almost no one reaches adult age and discovers that what we really wanted to do and have failed to do is start smoking. Does anybody know a thoughtful adult who scratches their head and says, ''Gosh, what have I missed in life? I know what it is. I need to start smoking. That is what I am missing. That is what will enrich my life.'' Did you ever hear of anybody doing that? I don't think so. The only way you get new smokers is to get kids to smoke.

On Friday, I described for my colleagues some of the data and the memoranda that were in the files of the tobacco companies. I want to read some of them again, because I want us to be talking about the subject of tobacco on the floor of the Senate.

But why do we want to do something to tell the tobacco industry they can't addict America's children to nicotine when it is legal to smoke, and it will always be legal to smoke. It is an adult choice. But it is not legal, and ought not be legal nor morally defensible for anyone to say we are going to try to addict 15-year-old kids, or 13-year-old kids, to our cigarettes in the name of profit.

So let me proceed to describe some of the documents, that we have unearthed in various court cases and elsewhere, that describe what the tobacco industry has done. At the end of that, I will ask my colleagues if they think this behavior is defensible. If you don't, then we ought to pass this kind of legislation and stop talking about other subjects.

In 1972, Brown & Williamson, a tobacco company: ''It is a well known fact that teenagers like sweet products. Honey might be considered.''

In 1972, they are talking about adding honey to cigarettes. Why? Because kids like sweet products. Does that sound like a company that is trying to addict kids to cigarettes? It does to me.

In 1973, RJR, a tobacco company, says: ''Comic strip type of copy might get a much higher readership among younger people than another type of copy.''

They are talking about advertising. Does this sound like a cigarette company that is interested in trying to get kids to smoke? It does to me.

In 1973, Brown & Williamson: ''Kool''—

This is a quote. The cigarette brand Kool:

> Kool has shown little or no growth in the share of the users in the 26 and up age group. Growth is from 16- to 25-year-olds. At the present rate, a smoker in the 16- to 25-year-old age group will soon be three times as important to Kool as a prospect in any other broad age category.

This is a company that is talking about 16-year-olds and how attractive it is that 16-year-olds are using their cigarettes.

Philip Morris, 1974: ''We are not sure that anything can be done to halt a major exodus if one gets going among the young.''

''This group''—now speaking to the young, according to Philip Morris—''follows the crowd, and we don't pretend to know what gets them going from one thing or another. Certainly Philip Morris should continue efforts for Marlboro in the youth market.''

Is this a company looking at selling cigarettes to kids? I think so.

In 1974, R.J. Reynolds, they write, speaking of kids: ''They represent tomorrow's cigarette business. As this 14- to 24-age group matures, they will account for a key share of the total cigarette volume for at least the next 25 years.''

This is a company talking about the 14-year-old smoker.

In 1975, a researcher for Philip Morris writes: ''Marlboro's phenomenal growth rate in the past has been attributable in large part to our high market penetration among young smokers 15 to 19 years old. My own data, which includes younger teenagers, even shows higher Marlboro market penetration among 15- to 17-year-olds.''

Does anybody who reads believe after reading this that the tobacco companies weren't vitally interested in selling cigarettes to these kids? Of course they were.

In 1975, RJR-Nabisco talks about increasing penetration among the 14- to 24-year-olds: ''Evidence is now available to indicate the 14- to 18-year-old group is an increasing segment of the smoking population. RJR Tobacco must soon establish a successful new brand in this market if our position in the industry is to be maintained.''

In 1976, that is RJR saying about 14- to 18-year-olds that we have got to get a new cigarette out there to attract these people if we are going to retain our position.

In 1978, the Lorillard Cigarette Company said the following: ''The base of our business is the high school student.''

''The base of our business is the high school student!'' This from a tobacco company.

In 1979: ''Marlboro dominates in the 17 and younger category capturing over 50 percent of the market,'' Philip Morris writes proudly.

In the name of profit, they say: Our cigarettes dominated the 17-year and younger category. We capture over 50 percent of the market.

They make it sound like a county fair, don't they? A blue ribbon—a fat steer gets a blue ribbon. We were able to get 15-, 16-, and 17-year-old kids to smoke. We win.

Now tell me that this industry doesn't target young kids to smoke.

Marlboro Red, a derivative of Marlboro, I guess—I have not seen a Marlboro Red cigarette. But a Marlboro Red in 1981, a Philip Morris researcher

writes: ''The overwhelming majority of smokers first begin to smoke while in their teens. At least part of the success of our Marlboro Red during its most rapid growth period was because it became the brand of choice among teenagers who then stuck with it.''

I think maybe ''stuck with it'' is a misnomer. I think maybe ''who were addicted to it'' rather than ''stuck with it.'' The whole purpose, of course, is you attract a 15-year-old to start smoking and you have got a customer for life.

Smoking is legal in this country, and it will always be legal. Adults have the right to make the choice to smoke. Three hundred thousand to four hundred thousand people a year die in this country from choosing to smoke, from smoking and smoking-related causes. Three hundred thousand to four hundred thousand people a year die from having made that choice. You have heard the statistics: every day, 3,000 kids will start to smoke; 1,000 of them will die from having made that choice.

The question for us is, will we as a country continue to sit on our hands and say to the tobacco industry, ''It is all right, we understand your future customers are our children; it is all right, our sons and daughters are available to be a marketing target for you? Should it be all right to say that you can advertise to them; you can make pitches to them; you can provide all kinds of subtle approaches to our kids that smoking is cool, smoking is something you ought to do, smoking tastes good, smoking feels good, your peers smoke so you ought to smoke''? Is that something this country wants? Is that something this country is going to allow to continue? I don't think so.

Let me continue.

The tobacco industry in 1983, says Brown & Williamson, will not support a youth smoking program which discourages young people from smoking. In 1983, you heard all of the references that I used about the pitches that were made by the industry to the children and the importance they placed in having those children as their customer base.

And then in 1983 they say this tobacco company ''will not support a youth smoking program which discourages young people from smoking.''

Well, I guess that is because they knew who their customers were. They knew where their future profits would come from.

''Strategies and Opportunities,'' a memorandum, 1984, from R.J. Reynolds, and I quote:

> Younger adult smokers have been the critical factor in the growth and decline of every major brand and company over the last 50 years. They will continue to be just as important to brands [and] companies in the future for two simple reasons: The renewal of the market stems almost entirely from 18-year-old smokers. No more than 5 percent of smokers start after age 24. . . . Younger adult smokers are the only source of replacement smokers. . . . If younger adults turn away from smoking, the industry must decline, just as a population which does not give birth will eventually dwindle.

Let me read again what the tobacco industry understood.

> No more than 5 percent of the smokers start after the age 24.

If you don't get them when they are kids, you are not likely to get them. If you don't addict someone in childhood to nicotine, you are not likely to be able to addict them when they become adults.

In 1986, R.J. Reynolds—they were talking about their advertising for Camels:

> [Camel advertising will create] the perception that Camel smokers are non-conformist, self-confident, and [they] project a cool attitude, which is admired by their peers. . . . [They aspire] to be perceived as cool [and] a member of the in-group is one of the strongest influences affecting the behavior of [young adults].

It is pretty clear. And this is just a smidgeon of the evidence that has come from the tobacco industry about what they have been doing over the years to appeal to a customer base coming from our children.

Now, they have always insisted they have not been doing this. In fact, until a couple of years ago the CEOs of tobacco companies insisted that nicotine was not addictive. Nicotine was not addictive. They are the last Americans, apparently, to be willing to testify under oath that nicotine was not addictive. But, of course, now most of them admit they understand nicotine is addictive. And we raised the question in a piece of tobacco legislation whether this country wants to continue to countenance this behavior. Smoking is legal, but should we allow tobacco companies to target children to become addicted to nicotine? The answer clearly ought to be no, and the answer ought to be delivered with some urgency on the floor of the Senate.

We have a tobacco bill that was brought to the floor of the Senate which had a number of very important goals, the most important of which, in my judgment, was to interrupt, intercept, and stop the tobacco industry from appealing to our children. Among other things, it will raise the price of a pack of cigarettes. But what will happen as a result of that price increase and the revenue that comes from it will be a range of programs such as smoking cessation programs, so that those who are now addicted to cigarettes and want to get off of that addiction will have the opportunity, the resources, and the wherewithal to do that.

Also, the bill had a prohibition on advertising directed at children and a prohibition on vending machines in areas that are available to children. The smoking cessation programs will be supplemented by counteradvertising programs. Counteradvertising programs that tell America's children that smoking does not make sense, smoking can injure your health, smoking can cause death, smoking is a contributing factor to causing heart disease and cancer and more. Counteradvertising will be very helpful, it seems to me, to warn kids away from cigarettes.

Additionally, the resources will be used to invest in the National Institutes of Health where research occurs every single day to try to respond to the health consequences of not just the addiction to cigarettes, but cancer and heart disease, and a range of other problems as well. I cannot think of anything that gives me more pride than to decide that we are going to take substantial new resources and invest them in the National Institutes of Health which will result in exciting, wonderful, and breathtaking new changes in health care and medicines.

That is the subject for the Senate: Do we want to stop the tobacco industry from trying to addict our children? Do we want to put together an approach that does all of these things, counteradvertising, smoking cessation, investment in the National Institutes of Health, and a whole range of things? I think most people would say, absolutely, this legislation makes a great deal of sense?

And so the bill comes to the floor of the Senate, and to describe the pace in the Senate as a glacial pace is to describe a condition of speeding. I mean, glacial doesn't begin to describe the pace of the Senate when we have a bunch of people who are determined to slow something down. Glaciers at least move forward by inches. You bring a tobacco bill to the floor of the Senate and then we have somebody who wants to speak for 46 hours on the Tax Code. Well, God love them, they have every right under the rules of the Senate to talk about whatever they want. We could talk about almost anything that anybody wants to come and talk about on the floor of the Senate, and so today we are talking about the marriage tax penalty.

The Tax Code is a fascinating subject, and if ever there was anything in need of reform it is America's Tax Code. It seems to me that there is a time and a place for us to work together in a thoughtful way to reform the Tax Code, to fix the marriage penalty, and to do a whole range of other things that decrease its complexity, make the code much more understandable, and much fairer. But I wonder if we ought not keep our eye on the ball this afternoon and see if we can't pass the tobacco bill, see if we can't do what this piece of legislation that we designed will do, and that includes the five or six steps I have just described.

If one thinks they are unimportant, I suppose you can conceive of a dozen other things that you want to do to change the subject. We could have a discussion, I suppose, this afternoon about the space station. Gee, that is a controversial subject. You could have an amendment here and we could debate the space station for the next 4 or 5 hours. Or we could have a discussion about the nutrition of canned soup

from the grocery store shelves or our trade problems with Australia.

There is no end to the subjects if somebody wants to change the subject. There is no end to the other things to ruminate about or talk about if one doesn't like the subject of this bill, which is producing a piece of legislation that deals with the tobacco issue the way I have just described it.

Let me go back to where I started. After having read the evidence and information that comes from the files of the tobacco industry, if anyone does not yet believe that these companies were targeting children because they knew the only opportunity for them to profit in the future would be to get a customer base among young people, if anyone doesn't yet believe that, they are not prepared to believe anything about this subject.

The evidence is clear. It is not debatable. It is in black and white. The industry didn't want to give it up. They were forced to. And this country now should make a decision: is this behavior tolerable or should we stop it? I hope at every desk of this Senate when the roll is called and the Senator is named, I hope they would stand up and say that we ought to stop it. No company in this country has the right to try to attract a 14-year-old son or daughter in an American family to become addicted to tobacco. No company has that right. Tobacco is a legal product for those age 21 or over. It ought not be right for any company to try to addict our children to tobacco.

That is what this is all about. It is not about the marriage tax penalty. It is not about the space program. It is not about Food for Peace. It is not about the Food Stamp Program. It is not about any of that. It is about the tobacco issue.

I am as patient as anybody. I can be here 2 weeks from now and we can be talking about new discoveries in the habits of earthworms or whatever it is somebody wants to talk about 2 weeks from now.

But in the end, this Congress will have to deal with this bill. Are we going to pass a tobacco bill? And to those who do not want to pass it, those who do not want to vote for it, I would say: Just give it your best shot and then stand up and vote against it. If you don't like it, vote against it. But don't thwart the will of the American people to pass legislation that will stop the tobacco companies from addicting our children. Don't do that. You will be on the wrong side of history on this question.

Ten years from now, 5 years from now, you will look back at that vote, you will look back at this debate, and you will have to ask yourself, if you vote the wrong way—How on Earth could I have been so out of step with common sense? How on Earth could I have been so out of step with what this country needed to have done at that time?

I notice my colleague from North Dakota is on his feet, waiting patiently to speak. I have only 25 more minutes—I am, of course, only kidding. Senator CONRAD from North Dakota has been a principal author of a piece of legislation that has become a part of the bill that is now on the floor of the Senate. I mentioned the role that Senator MCCAIN and Senator CONRAD and others have played. I think it has been very important. I know there are people outside this Chamber who watch this debate and whose teeth you can hear gritting a mile away, they are so upset about what is going on here. Tough luck. Just tough luck. Times have changed.

With Senator CONRAD's help and Senator MCCAIN's help and the help of others who have done, I think, remarkable work on this kind of legislation, we will in the end—whether the opponents like it or not—pass this tobacco bill. There will be enormous pressure on the House of Representatives to pass a similar piece of legislation. We will have a conference. I predict we will have a new law in this country before the end of this session of Congress that does something that we can be proud of and should be proud of on behalf of our children.

So as I yield the floor, let me compliment my colleague, Senator CONRAD, for the work he has done for so many months on this legislation. And, as I do, let me also pay a compliment to the chairman of the committee on which I serve, Senator MCCAIN, who similarly has done some wonderful work on this legislation.

I yield the floor.

The PRESIDING OFFICER (Mr. FAIRCLOTH). The Chair recognizes the distinguished Senator from North Dakota.

Mr. CONRAD. Mr. President, I thank my colleague from North Dakota for his strong advocacy, because this is an important issue. It is an issue that is going to affect the lives of the American people for years to come. We all know the statistics—over 400,000 people a year die in this country from tobacco-related illness. As we have held hearings all across the country, we have heard from the people affected by those deaths very moving testimony. I still remember very clearly in Newark, NJ, hearing from a coach, Pierce Frauenheim, a big, tough, strong guy who is a football coach and assistant principal.

When he testified, you could barely hear him talk. He described how after a lifetime of smoking he was diagnosed with cancer of the larynx, and he described to us the terror that he felt when the doctor told him that his life was threatened and that the only hope for him was a laryngectomy in which his larynx would be taken out. He went through that procedure, and thank God it did save his life. But he is left now as somebody who can barely talk. You can barely hear him. He told us of how much he hoped his message would influence others and that perhaps by his experience and his suffering others could avoid the fate that he had experienced. How often we heard that story.

Most recently, when the task force met we heard from a former Winston man. He would go around to parties and events, representing Winston. Now he has lung cancer. He described to us what it is like to be under a death threat.

And we heard from a woman who was a model for Lucky Strike, who has also had a laryngectomy, and also had other forms of cancer. She was required by the terms of her contract to smoke. She took up the habit as a very young woman and now describes the pain and suffering she has experienced.

So many of these witnesses have actually broken down and cried at our hearings, moved by the emotion of what they have experienced. I wish my colleagues could have been there through every hour of what we heard, because I don't think there is a Member of this Chamber who could have remained unmoved. But we know the history of this industry.

We had a representative of the industry come and see me and tell me we are unfairly vilifying this industry. I said to him, frankly, this industry has done a great job of vilifying itself. They came before Congress. They said under oath their products didn't cause these diseases. They said their products were not addictive. They said they had not targeted kids. They said they had not manipulated nicotine levels to foster addiction.

We now know each and every one of those statements was false. We do not know it by somebody else's words, we know it by the industry's own words, because we have now seen the documents. I have read hundreds of pages of these documents that reveal how this industry testified falsely, knowing full well what they were saying was untrue.

I was kind of struck by this cartoon by Herblock that was just in the Washington Post on May 27. The headline is, ''Have I Ever Lied To You?'' It is a picture of the tobacco companies. This man in the fancy suit has a button on saying ''tobacco companies.'' He is a representative of the tobacco companies. Here is a person who is reading a tobacco industry ad and watching a tobacco message on taxes on television, all with the headline, ''Have I Ever Lied To You?'' We know the tobacco industry has lied to us. They have done it repeatedly. I regret to say they are doing it in this debate.

I would like to focus now on the question that is before us, the amendment of the Senator from Texas, because during the budget debate the Republicans on the Budget Committee repeatedly said: The tobacco funds should go to Medicare and should not be used as a piggy bank for unrelated spending or tax priorities. That was the position they took in the Budget Committee.

The Senator from Texas serves on the Budget Committee. Now he is sponsoring an amendment that uses the

money substantially in a way that is at variance from what he said in the Budget Committee. He said, and I quote:

> The fundamental issue is going to be that we want to dedicate the tobacco settlement to saving Medicare, and the minority wants to spend the money on a myriad of programs, many of which have absolutely nothing to do with the tobacco settlement.

That is what the Senator from Texas said in the Budget Committee. He said all of the money ought to go to Medicare. Now we look at his amendment—not a dime of the money goes to Medicare. My, what a change a few months has made. We in the Budget Committee debated this issue for an entire day, and over and over and over the Senator from Texas said: All of the money ought to go to save Medicare. Now he offered an amendment on the floor of the U.S. Senate and guess what? There is not one penny for Medicare. What happened? We were supposed to be using this money, he said in the Budget Committee, to save Medicare. Now all of a sudden Medicare gets nothing.

Under the bill I introduced, Medicare got a chunk. We also gave a substantial chunk to the States because they are the ones that brought the suits that are before us. We also used the money for health research and for public health care campaigns—countertobacco advertising, smoking cessation, smoking prevention. Under the amendment of the Senator from Texas, not only is there no money left for Medicare, which he said all the money should go to just a few months ago, but you know what? There is no money left for public health programs—none—zero. This is a bill that is supposed to be protecting the public health. There is no money left for public health and there is no money for Medicare, which just a few months ago he said was the absolute priority.

This chart shows the effect of the Gramm amendment which really does turn the tobacco bill into a piggy bank for unrelated matters that our colleagues on the other side of the aisle were decrying during the Budget Committee deliberations. Look what has happened here: 35 percent of the money, if we agree to the Gramm amendment, goes for an unrelated tax cut. We have the Coverdell amendment that takes 13 percent of the money, so now half the money is for matters that are unrelated to tobacco legislation—half the money.

There is no money for Medicare. Research will get 13 percent of the money. Veterans will get 4 percent. Farmers will get 9.8 percent. The States, boy, they are going to be in for a big surprise. The States were going to get 40 percent of the money. They are the ones who brought the lawsuits. They were given 40 percent of the money because that is the amount of the money they got in the settlement with the tobacco industry. If we adopt the Gramm amendment, they are going to get 24 percent of the money.

Tobacco control and public health gets zero. Medicare gets zero, which they argued in the Budget Committee hour after hour ought to get all the money and now gets no money. And public health gets no money—nothing for smoking cessation, nothing for smoking prevention, nothing for countertobacco advertising.

I thought this was a public health bill. I thought that is what this was about. Our friends on the other side said it was a bill to help save Medicare. That is when we were in the Budget Committee. Now they come up with nothing for Medicare, not a penny. What a difference a few months makes.

The Gramm amendment, in conjunction with the Coverdell amendment, will spend tobacco money on programs that have nothing to do with the tobacco settlement.

Frankly, I am in favor of using some of the funds for drug control. I am in favor of using some of the money to address the marriage penalty. But the way they have done it, there is nothing left for Medicare and there is nothing left for public health. I just don't think that makes sense. I don't think that can stand the light of day. I don't think that can stand scrutiny. I think our colleagues are going to have some explaining to do if these amendments are adopted.

Every single public health expert has testified that if we are going to be serious about protecting the public health and reducing youth smoking, then we have to have a program that is comprehensive in nature, and part of that has to be smoking prevention programs, smoking cessation programs to help those who are addicted get off the products, and we also need countertobacco advertising to warn people of the dangers of using these products, to warn them of the cancer risks, to warn them of the risks to their heart, the risks of heart disease, the risks of emphysema and the other diseases which cost so many people in our country their lives.

I can remember very well a young woman who came and testified at our hearing, again, in New Jersey, a young woman named Gina Seagrave. She told about her mother who took up smoking at a young age and died at a very young age from a smoking-related illness. This young woman broke down and cried. She described to us the devastating effect this had on her whole family, because losing their mother really hurt the entire family. It hurt it very badly. She described what they had been through since their mother had passed away.

In every town and in every State I have gone to, to listen to witnesses, they have described to us the trauma that they have experienced because of the addiction and disease caused by the use of these products.

I grew up in a household where my grandparents raised me. My grandfather was a smoker. It probably shortened his life. I think of all those families we have heard from who told us of what it meant to have a father taken, a mother lost, a brother who died because of the addiction and disease caused by these products. This is the only legal product in America, when used as intended by the manufacturer, that addicts and kills its customers. Those are pretty harsh words, but it is the truth, and it is the reason we have a challenge and an opportunity. The challenge is to overcome the power of this industry that wants nothing done. The opportunity is for us to act and to make a difference in the lives of the people we represent.

The Senator from Texas talks a lot about this being a huge tax on low-income Americans. He doesn't tell the other side of the story. The other side of the story is that there is a huge tax already being placed on low-income Americans, and it is because of the use of these products. There is a massive shift that is going on in this country because of the costs of this industry.

Mr. President, $130 billion a year is the consensus calculation on what this industry costs Americans—$60 billion in health care costs, $60 billion in lost productivity, $10 billion in other costs. Nobody gets hurt worse by those facts than low-income Americans. Low-income workers' payroll taxes are paying about $18 billion a year in Medicare costs.

Our friends on the other side talked about that incessantly in the Budget Committee, that it is costing Medicare $18 billion a year and that all of the money ought to go to protect Medicare. That was their argument in the Budget Committee. Now they come out here on the floor and offer an amendment that gives zero for Medicare. How do they justify that? What caused this dramatic transformation? What caused this incredible change from being the defenders of Medicare to now not caring about Medicare at all? I don't know what happened. It is amazing what occurs in this body, the inconsistency. One month, Medicare is the priority; in fact, it is the only priority. The next month, it matters not at all. What a difference a few months makes.

The fact is, smoking is a huge tax on low-income Americans. The average pack-a-day smoker will spend $25,000 on cigarettes over his or her lifetime. The average pack-a-day smoker is being affected in many ways. Not only are they paying $25,000 for cigarettes, but they are paying $20,000 in medical costs over their lifetime—$25,000 for the cigarettes, $20,000 for medical costs. That is $45,000 tobacco use is costing the average pack-a-day smoker. We talk about a heavy economic impact on low-income folks; that is the heavy impact. It dwarfs anything that is being done here to counteract it.

Mr. President, the biggest tax cut we could give low-income Americans is to reduce that cost. The McCain bill will cut smoking by about one-third. That will produce a savings of $1.6 trillion over the next 25 years. That is the

smart way of helping low-income Americans.

When we look at the Gramm proposal with respect to the so-called marriage penalty, we see that he is not really just addressing the marriage penalty. In fact, a lot of folks are benefited in the Tax Code by being married. Maybe we can put that next chart up that shows what I am talking about.

This is something we know with great certainty, because we can study married couples and we can see who would benefit by filing as single individuals, who gets helped and who gets hurt by filing as a married couple. What we find is, for adjusted gross incomes of under $20,000, the significant majority of people get a bonus by filing as a married couple. We see a very small group—those are in red—who are actually penalized. A little over 10 percent of couples with combined income under $20,000 have a penalty by being married. The significant majority of people, almost two-thirds, receive a bonus by filing as a married couple, those who have adjusted gross incomes of under $20,000.

If we go to AGIs—adjusted gross incomes—of $20,000 to $50,000, over 50 percent benefit. They pay less filing as a married couple than they would pay filing separately. About 40 percent have a marriage penalty.

From adjusted gross incomes of $50,000 to $100,000, more of those, as a percentage, are penalized. About 50 percent have a marriage penalty; about 40 percent have a marriage bonus.

That is also true of those with adjusted gross incomes of over $100,000. About 50 percent have a penalty; about 40 percent have a bonus.

Given this information, it is relatively easy to put together a remedy that delivers the relief directly to those who actually have a marriage penalty. That is what the Democratic proposal does.

Unfortunately, this is not the approach of the Senator from Texas. He has opted instead to take a scattershot approach that benefits equally those who are helped and those who are hurt. The result is, those who are hurt get less help than they really deserve. That is why the Democratic alternative is superior for those who really have a marriage penalty.

I believe that this is unfair. We ought to give those who actually experience the marriage penalty the help they really need to overcome it. It does not make sense to me to give the help to those who are benefited by being married in the same way that you help those who are being hurt. The result is, you do not give enough to those who are being hurt. That is not fair. I just do not know what sense it makes.

The Senator from Texas has told us on the floor that the average family would save about $1,400 in taxes under his proposal. Let us look at an example. A couple earning $25,000 is in the 15 percent tax bracket. Under the Gramm proposal, this couple would get a $3,300 above-the-line deduction, but only when fully phased in. In actual tax savings, this couple would realize 15 percent of that deduction, or $495. That is a far cry from the $1,400 advertised on the floor of the Senate. A couple earning $50,000, in the 28 percent bracket, would get a savings of $924—again, a far cry from the $1,400 advertised here on the Senate floor.

Bear in mind that those calculations are based on the $3,300 deduction being fully phased in. The $25,000 couple waiting to realize its $495 savings is going to have to wait until the year 2008, because that is when it is fully phased in. What they will get next year, under the Gramm plan, is not the $1,400 that has been advertised, but $125. That is what they are going to get next year, not $1,400; they are going to get $125. For the year 2002, that savings goes up to almost $150. Well, that is a whole lot less than $1,400. By 2007, the savings is up to $297.

So millions of families, who think of themselves as average hard-working people, are going to be wondering where their $1,400 of savings are. The fact is, they are not going to see it, because it has been overstated here on the floor of the Senate what the savings actually will be.

I am hard pressed to decide what is the worst feature of the amendment of the Senator from Texas: The reckless reductions it will require in public health programs or the downright stinginess of the remedy it purports to deliver to couples who actually incur a marriage penalty.

If we are going to do something about the marriage penalty, we ought to focus the benefit on those who are being hurt. That would be dealing with the marriage penalty. But to spread it around to people who are helped and hurt by the marriage penalty denies those who are actually penalized from getting the help they deserve.

Mr. President, I think what we have before us is an important choice. The Democratic alternative focuses its relief on those taxpayers who are actually being penalized. By contrast, the proposal offered by the Senator from Texas dilutes that relief to provide for couples paying a marriage penalty as well as those who are actually receiving a marriage bonus.

You hear a lot of talk about the marriage penalty. We do not hear much talk about the marriage bonus. But the fact is, at many income levels many more are being benefited by the marriage bonus than are being affected by the marriage penalty. Because the Democratic alternative is targeted to low- and moderate-income couples, we can make their relief much greater. I think that makes sense for those who are actually experiencing a marriage penalty.

In addition, we can save money to use to promote the public health. After all, that is what this bill is supposed to be about. I must say, I have viewed with some concern the developments on the floor over the last week, because now we have an amendment before us that, amazingly enough in a public health bill, provides no money for public health.

And after the arguments of our friends on the other side of the aisle that were so strenuous in the Budget Committee—they said we had to take every dime of this money and use it for Medicare—now we are about to vote for an amendment that does not give one dime to Medicare. What a transformation. They have gone from 100 percent of the money going to protect Medicare to none of the money going for Medicare. While they are at it, there is not going to be a dime of money to protect public health, either, in a public health bill.

Let us defeat the Gramm amendment and stay on course with a public health bill that addresses the real concerns and the real challenges facing the American people.

I thank the Chair and yield the floor.

Mr. FORD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CONRAD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CONRAD. Mr. President, while we are waiting, I thought I would just go through what I call the top 10 tobacco ''tall tales'' that we have heard from the tobacco industry during this debate.

Tall tale No. 1 was that tobacco has no ill-health effects. Remember that? They came up to the Capitol, and they put up their hands, and they swore under oath that these products did not cause ill-health effects. But then we got the documents. We got them because of court action. We got access to the documents, and we found out, in the industry's own words, what the truth is.

Here is the truth on that claim that tobacco has no ill-health effects:

> Boy! Wouldn't it be wonderful if our company was first to produce a cancer-free cigarette. What we could do to the competition.

This is from a mid-1950s Hill & Knowlton memo quoting an unnamed tobacco company research director.

That is tall tale No. 1.

Tall tale No. 2 is, again, tobacco has no ill-health effects. Again, we have an industry document that reveals the falsity of that claim. This is from a 1978 Brown & Williamson document that says: ''Very few customers are aware of the effects of nicotine, i.e., its addictive nature and that nicotine is a poison.''

Again, that is not from the public health community. That is from the tobacco industry's own documents.

Tall tale No. 3: Nicotine is not addictive.

The truth, from a 1972 research planning memo by RJR Tobacco: ''Happily

for the tobacco industry, nicotine is both habituating and unique in its variety of physiological actions.''

This industry, I tell you, these guys come up here, they don't come with a lot of credibility because they have told a lot of tall tales.

Tall tale No. 4, again, the claim that nicotine is not addictive.

This is from a 1992 memo from the director of portfolio management for Philip Morris' domestic tobacco business: ''Different people smoke cigarettes for different reasons. But, the primary reason is to deliver nicotine into their bodies . . . similar organic chemicals include nicotine, quinine, cocaine, atropine and morphine.''

Now, again, this is the industry—their documents—revealing what they know and what they think of their own products. They say it is not addictive and yet they say it is the same as cocaine, the same as morphine, the same as atropine.

Tall tale No. 5: The tobacco companies did not manipulate nicotine levels.

The truth, again, from an industry document, a 1991 RJR report: ''We are basically in the nicotine business . . . effective control of nicotine in our products should equate to a significant product performance and cost advantage.''

Tall tale No. 6: Tobacco companies did not manipulate nicotine levels.

This is from a 1984 British-American Tobacco memo: ''Irrespective of the ethics involved,''—that is an interesting statement—''Irrespective of the ethics involved, we should develop alternative designs which will allow the smoker to obtain significant enhanced deliveries [of nicotine] should he so wish.''

They have been manipulating nicotine levels for a long time.

Tall tale No. 7: Tobacco companies don't market to children.

This is from a 1978 memo from a Lorillard Tobacco executive: ''The base of our business are high school students.''

They didn't market to kids? They didn't target kids? Here you have a major tobacco company executive saying the major business is high school kids, the same kids tobacco companies don't market to—children.

This is from a 1976 RJR research department forecast: ''Evidence is now available to indicate that the 14- to 18-year-old age group is an increasing segment of the smoking population. RJR must soon establish a successful new brand in this market if our position in the industry is to be maintained over the long term.''

Well, I don't know how it can be more clear.

Tall tale No. 9: Tobacco companies don't market to children.

This is from a 1975 report from a Philip Morris researcher: ''Marlboro's phenomenal growth rate in the past has been attributable in large part to our high market penetration among young smokers . . . 15 to 19 years old . . . my own data . . . shows an even higher Marlboro market penetration among 15–17-year-olds.''

You wonder what they thought when they went home at night.

Tall tale number 10, again, the claim tobacco companies don't market to children.

This is from ''apparently problematic research,'' a Brown & Williamson document:

''The studies reported on youngsters' motivation for starting, their brand preferences, as well as the starting behavior of children as young as 5 years old . . . the studies examined . . . young smokers' attitudes toward addiction and contain multiple references to how very young smokers at first believe they cannot become addicted, only to later discover, to their regret, that they are.''

That kind of sums it up. That is the issue before the Senate. Are we here to protect kids or are we here to protect the bottom line of the tobacco industry?

The Wall Street analysts that came before my task force indicated that, indeed, if this legislation were passed, it would reduce the profits of the industry, but not dramatically. In fact, the industry would still enjoy very, very high profit levels. Remember, this industry has a profit margin that is three times the profit margin of most companies that are in packaged good industries in America. They have a profit margin of 30 percent. Other package goods average a profit margin of 10 percent. They would still enjoy dramatic profits, even if we passed this legislation according to the analysis of the people who should know best, the Wall Street analysts that report on this industry.

I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the distinguished Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, thank you.

With this amendment we are debating today, which is a critical amendment, we will bring the last significant aspect of our Federal Tax Code that is of particular concern to Idahoans, and I think really all Americans, and that is the marriage tax penalty.

I ask myself one fundamental question before I make up my mind on any issue we deal with on the floor of the U.S. Senate. That is, Does this policy make sense for the American people?

Let's apply this question to our current Federal Tax Code which, quite simply, penalizes a working couple for getting married. Should folks pay more tax because they are married? Absolutely not.

The marriage tax penalty raises revenue for the government—no question about that. It raises revenue. But it is bad public policy. It most often raises taxes on lower and middle-income families who claim the standard deduction. Now, that is wrong. We must strengthen the bonds of family to strengthen the fabric of our society. If we believe in family, we believe in marriage. So why in the world do we have a public policy on the books that somehow creates a penalty for being married? That is totally counterproductive to our values of this society, of this Nation.

Before 1969, marriages were treated by the Federal Tax Code like partnerships, allowing husbands and wives to split their income evenly. In 1969, however, this practice of income splitting was ended, and thus was created the marriage tax penalty.

Since that time, with our Nation's progressive tax rates, tax laws have meant that working married couples are forced, forced to pay significantly more money in taxes than they would if they were both single. Currently, 42 percent of married couples suffer because of the marriage tax penalty.

Let me provide an example. A single person earning $24,000 per year is taxed at a 15 percent rate. Now, if two people, each earning $24,000, get married, however, the IRS, by taxing them on their combined income, taxes them in the 28 percent bracket, not the 15 percent that they would be taxed as individuals, but 28 percent because they have joined in holy matrimony.

It is also important to be aware that the marriage tax penalty hits the American people not only at the Federal level but also on their State taxes. Idaho generally conforms its State tax code to the Federal law. If the Federal Government alters its standard deduction levels, for instance, Idaho most likely will as well. While the focus of ending the marriage tax penalty has been primarily at the Federal level, we cannot discount the fact that this is, in essence, a double hit for working American couples who are trying to fulfill what this country believes in.

I think that we can all agree that the Federal Government should not be penalizing marriages, a sacrosanct institution and the bedrock of our social structure. It is time for the Federal Government to end this injustice to the American family.

I urge my colleagues to support the amendment of the Senator from Texas, Senator GRAMM. I commend him for his efforts.

Mr. President, just to reiterate, we think about this society and we think about all the problems and challenges that are facing America today. Senator FRIST of Tennessee was chairman of a task force on education in America. He pointed out many of the statistics, many of the problems that we are having with regard to our children. He pointed out how many of these children, more and more, are coming from families where there is not both a father and a mother. That is a significant problem—a significant problem.

How do we respond with public policy? Well, if you are married, there will be a penalty. I happen to be the chairman of the Military Personnel Subcommittee of the Armed Services Committee. We are starting to have problems with recruitment of young people

to the military services. We need 176,000 young people every year to join the military—the finest military in the world. At one of the hearings, I asked the generals and admirals testifying this: ''Tell me, is there something about this issue of values that we are hearing about?'' And they said: ''Yes, there is; there is very much a problem with values among all people.'' In fact, all branches of the military services have now added 1 week to the basic training to try to somehow instill in them core values—knowing right from wrong. A three-star general of the Marine Corps said, ''We now have a new category of young person; we just call them 'evil,' and there is nothing we can do with them.''

As the occupant of the Chair knows, it used to be that if you had a troubled youth, in all likelihood if you could send them off to the military, they would be straightened out. That is not the case anymore. I mention these challenges because it comes back. Do any of us believe that 1 week of basic training with 17- and 18-year-olds is somehow going to instill in them the values they should have learned many, many years ago, that they should have been raised upon, knowing right from wrong? That comes from a family environment, a family environment where a mother and father are there, where mother and father will tuck the child into bed, where mother and father will listen to their prayers—a mother and father, a married couple.

Yet, we have public policy on the books today that penalizes married couples. That is wrong; that is flawed public policy. It is time that this Nation correct that. That is why I am proud to stand in support of this amendment that will correct this. It is a clear signal, a loud signal, that we are going to reclaim this society and the fabric of this society by affirming that marriage is positive; we will not penalize those who choose to go into marriage.

So, again, I urge all my colleagues to support this amendment by the Senator from Texas.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GRAMM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ABRAHAM). Without objection, it is so ordered.

Mr. GRAMM. Mr. President, I wanted to respond to some comments. I was over in a conference on the IRS reform bill when several of our colleagues came over to comment on the pending amendment. I want to try to address briefly some of the issues that they raised.

Let me begin by trying to delineate between the marriage penalty that is pending in the amendment before us and some of the alternatives that appear to be supported by opponents of this amendment.

The principal feature of the amendment before us is an effort to give back roughly a third of the money that is collected in the cigarette tax embodied in the bill before us. A tax that is very regressive in its impact. As I noted earlier, 59.1 percent of the taxes are collected from people who make less than $30,000 a year.

This amendment gives a rebate to moderate-income Americans, who will be devastated by this bill which will raise the tax by $1,015 per year, for the average smoker who smokes one pack of cigarettes a day. If the objective of the tax is to discourage smoking, if we hope to get a 50-percent reduction in smoking among teenagers as a result of raising the tax, if the objective is to discourage smoking and not to take money away from blue-collar workers to give to Government to spend, then the logic of the amendment that is now pending is that we should take roughly a third of the money we collect and give it back to people and families who make less than $50,000 a year by repealing the marriage penalty.

Some of our colleagues have come to the floor with very pretty charts with my name on them. I appreciate the free advertising. I hope my mother saw them. They were beautiful charts. But they refer to something called a marriage bonus, and I think what is happening is this whole debate is getting skewed by people who do not want to focus on the issue. So let me explain what we are doing. Then I want to say a little bit about this marriage bonus, and then talk about why doing the marriage penalty in the way that is being suggested by the minority will discriminate against stay-at-home parents.

First of all, under the current Tax Code there are 31 million families that end up paying an average of $1,400 a year more in income taxes because they fall in love and get married than they would pay if they stayed single. I think it is a uniform position in the country as a whole and in the Senate in particular that it cannot be prudent tax policy, even in the economy of the greatest nation in the history of the world, to have a tax policy that discourages people that fall in love from getting married.

I think our colleagues on both sides of the aisle would agree with the premise that the family has been the most powerful institution in the history of mankind in terms of promoting progress and happiness. Those are two important things. So what I am trying to do in this amendment is to repeal that marriage penalty so we do not discourage people who fall in love from getting married and forming families and achieving the stability and the happiness and the fulfillment that comes from being married.

Now, I think there is a general view that we should do that. Not everybody wants to pay for it. Not everybody supports the fact that I am taking a third of the money from this bill which was going to things like paying lawyers $92,000 an hour, or paying farmers $23,000 an acre when they do not have to give up the land and do not have to stop farming tobacco, or paying $18,615.55 for smoker cessation programs for every Native American who smokes. They would rather spend the money on those things than to correct the marriage penalty. But I do not think philosophically anybody objects to the thesis that a tax policy that discriminates against marriage is counterproductive, in this Nation or any other nation.

Now, there are two issues that have been raised by opponents. One issue has been that we could do it cheaper if we excluded couples where one of the parents does not work outside the home. That is, if we only gave the marriage penalty correction to those couples that make roughly the same income.

Now, when we put our amendment together, we looked at that. We thought about it for about a microsecond, and we rejected it because if you do it the way the minority wants to do it, you end up giving a tax break only to those couples where both have roughly equal incomes. But for families that make a decision to sacrifice so that one of them can stay home and work in the home, which is real work, maybe the most important work on the planet, for those who choose to do that they would be discriminated against by the provision that the minority is proposing to offer.

Under our amendment, you get $3,300 of deductions whether or not both parents work outside the home.

Now, why did we do that? We did it because we do not believe the tax policy of the country should discriminate against people based on whether or not they both work outside the home. And let me make it clear. I am not trying to tilt the Tax Code one direction or the other. My mother worked all my life because she had to work. My wife has worked all our children's lives because she wanted to work. And I am not making a judgment about whether it is better for both parents to work or one parent to stay at home. I think that is something each family has to make a decision on based on what they want for themselves, their children and what they can afford. But the point I want people to understand is that the amendment that is before us treats couples exactly the same whether they both work outside of the home or whether one works outside the home and one stays home to be a homemaker, to raise the children. I do not believe the Tax Code should discriminate against people based on the decision they make about whether to work inside or outside the home.

The way we have written the bill we do not discriminate. You get the benefit if both parents work and you get the benefit if only one parent works because we give a $3,300 tax deduction.

We do it above the line so you get to deduct it before you calculate what your taxable income is.

So that very modest-income people who get an earned tax credit, but who still work, can still take the credit. For example: a lady who is washing dishes and a man who is a janitor are both working. They are trying to get ahead, they are trying to be self-sufficient, they both get an earned-income tax credit, and they each have two children. They meet and say, ''I have found the solution; I am going to form a family.'' They find if they get married, they lose the earned-income tax credit and they suffer a substantial decline in income. So they decide not to get married.

Well, one of the things we wanted to do in our amendment was to assure that we made this adjustment so that people at very low-income levels who in many cases are penalized most by the marriage penalty would get the relief. That is why we did our amendment the way we did, and it does cost more to do it that way. But if you do not do it that way, you discriminate against families where one parent stays at home and works at home, and you discriminate against very low-income people who are working and often working two or more jobs, but are still getting some assistance in the earned-income tax credit.

I think when our colleagues criticize this they do not really understand that what they are saying is if you stay home and raise your children, you should be discriminated against. I think when people understand the distinction they are not going to be for doing it their way.

The second issue I wanted to address because it did come up while I was gone is the so-called misnomer of a marriage bonus. If there has ever been a fraudulent concept in the history of American taxation, it is the so-called marriage bonus.

Now, let me define this marriage bonus. You have a guy named John, and he has a job, and he is out working. He is a sales representative, and he is traveling all over the country selling school supplies. And you have a girl named Josephine, a young lady who is graduating from high school. Now, she graduates from high school and then the next day she and John walk down the aisle and get married.

What the minority is calling a tax bonus is that Josephine's father was taking a dependent exemption because he was supporting Josephine while she was living in the family home, going to school. He was paying her expenses, and he got to write off on his income taxes every year or deduct $2,700.

Now, what is being called a marriage bonus is that by marrying Josephine and forming this family, before Josephine goes out next year and gets a job herself, John is going to be able to write off $2,700 in a dependent exemption. He is also going to be able to raise his standard deduction, because he is married, by $2,850. So that he is going to get a deduction by marrying Josephine of $5,550.

I want to pose this question to our colleagues who think that is such a terrible thing and that anybody who is getting that should not get the benefit of eliminating the marriage penalty. How many fathers go to the wedding and when they get to the point where they say, ''Is there anybody here who objects?'' Bill, Josephine's father, stands up and says, ''Wait a minute, I object to this marriage, because if Josephine gets married, I'm going to lose $2,700 of deductions and, as a result, it is a bad deal for me''? I never heard of that happening.

How many people rush out to get married because, by marrying someone with no income, you get $5,550 of deductions? That is not that much less in taxes; that is just the amount you get to deduct. Does anybody believe that you can feed, clothe, and house a spouse for $5,550?

But to listen to our colleagues talk, you get the idea that this is some big bonus, that this is some unfair provision in the Tax Code, because by John marrying Josephine and forming a couple and filing jointly, his deductions go up by $5,500, and that is a ''marriage bonus.'' Some bonus. Does anybody believe that John can pay for having a wife for $5,550? No. It is not a bonus; it is simply the way the Tax Code works.

Why should we give more protection to family income? This chart really tells the whole story. This chart shows 1950 and 1996, the last year when we have complete data on how much of the income of average-income working families with two children was shielded from Federal income taxes by personal exemptions and by the standard deduction. Basically, what this chart shows is that in 1950 the personal exemption and the standard deduction for a family of four making the average income in the country shielded 75.3 percent of their income from any Federal taxes. In fact, in 1950 the average family with two children was sending $1 out of every $50 it earned to Washington, DC; $1 out of every $50. Because of inflation not keeping up with the rise in real income and because the standard deduction and personal exemption didn't keep up with inflation, today they shield only 32.8 percent of the income of the average family of four. So, whereas in 1950 the average family making the average income, with two children, was sending $1 out of every $50 it earned to Washington, today the average family with two children is sending $1 out of every $4 it earns to Washington, DC.

Under these circumstances, is it obvious that one of the things we need to do is to shield more family income from Federal taxes? That is what this amendment is about. In 1950, rich people paid a lot of taxes. Today, rich people pay a lot of taxes. In 1950, poor people paid no income taxes. And in 1996, poor people pay no income taxes.

How did the tax take double? How did taxes, as a percentage of the economy, double the Federal level between 1950 and 1996? It doubled by raising the burden on families with children from $1 out of every $50 to $1 out of every $4. So, under these circumstances, it makes perfectly good sense to me that we would want to do something to help working families shield more of their income and, in doing so, end the starvation of the one institution in America that works, and that is the family. We are feeding Government, and we are starving families.

What the amendment I have offered, with Senator DOMENICI and Senator ROTH, tries to do is to give some of this money that is being taken from working families in this confiscatory excise tax back to working families. So while raising the price of tobacco products and hopefully discouraging people from using it, we do not impoverish people who are, in this case, the victims by having become addicted to tobacco products.

That is what this debate is about. So I hope people do not get confused about this silly business about a marriage bonus. The idea that somehow you are getting a bonus when you take a spouse, by the fact that your tax deductions go up by $5,500 ridiculous. Nobody ever got married thinking that they were going to benefit with a $5,500 is deduction when they have to pay for the expenses of their spouse. That is not a bonus. In fact, that is inadequate. That is outrageous. It ought to be higher.

Finally, to suggest that we want to fix the marriage penalty but only if both parents work is ludicrous. I want to fix the marriage penalty, but I don't want to tilt the Tax Code against families where one parent decides to stay at home. That is really what the debate is about.

I hope reason will prevail here. Sometimes it does; sometimes it doesn't. But, I hope it will in this case. And I yield the floor.

Ms. MOSELEY-BRAUN. Mr. President, I oppose the Gramm amendment. It is an attempt to distract the Senate's attention from what should be the focus of our attention. It is a thinly veiled ploy to kill this bill, the only vehicle this body has had to address the epidemic of teen smoking and the disastrous effects on the health and well-being of generations of Americans who were lured into smoking by tobacco companies.

This amendment has no place as a part of this bill, and because of the way it is financed, it has no place in any bill. I strongly agree we ought to face the marriage penalty issue as soon as possible, and I also would like to accelerate full deduction of health insurance expenses for the self-employed. I do not think, however, that we can address these issues by adding to one of the greatest problems facing our country's future economy—the solvency of the Social Security system.

Just two months ago, this body agreed that the budget surplus should be reserved for reforming our Social Security System. It was a wise decision, for no one can honestly deny that the Social Security Trust Fund faces long-term problems. Based on information from the 1998 Social Security Trustees' report, it appears that, by the year 2013, Social Security benefit payments will begin to exceed the payments into the Social Security Trust Fund from employers and employees. By the year 2032, the Trust Fund will have used up its accumulated surpluses and will be unable to fully meet its obligations to American retirees. In order to guarantee the viability of the Trust Fund for our children and grandchildren, we must focus on its long-term future and begin the process of making necessary changes.

Workers, the very workers that Senator GRAMM seeks to help under his amendment, pay into the Trust Fund all their lives and expect—rightfully so, I might add—Social Security to be there for them when they retire.

Because Congress has not yet acted to preserve the long-term viability of Social Security, I cannot support any proposal that would exacerbate the financial difficulties facing the Social Security Trust Fund. This amendment, however, will do exactly that. I cannot, in good conscience, vote for this amendment.

I want to be clear that I am extremely troubled that some married couples are being taxed at a higher rate than they would be if they were single filers. I find it appalling that 20.9 million couples, some 42% of all American couples paid penalties totaling $28.8 billion just last year alone. Senator Gramm's right—we ought to fix this problem. But it is wrong to do it at the expense of further damaging a retirement security component that is so vital to the American people.

Fortunately, we have another option. The Democratic alternative would address the marriage penalty problem without further endangering Social Security. This alternative targets more tax relief directly to the couples who are actually penalized by the tax code. The Gramm amendment, on the other hand, would not only provide less relief to the 42% of couples who currently pay a penalty, but would also provide a windfall to the 51% of married couples who currently receive a bonus (on average of $1,380 per couple) under our tax code. In addition, the Democratic alternative addresses the need to accelerate the health insurance deduction for the self employed in an manner that is sensible and sound.

Overall, the Democratic alternative is a more thorough, more targeted, and more sound proposal, and in any event, it is better tax policy.

I do not believe that it is wise to try to solve one problem by creating another, and I believe that the Democratic alternative avoids that pitfall, whereas the Gramm amendment does not. I urge all my colleagues to vote against the Gramm amendment, and for the Democratic alternative.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. TORRICELLI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TORRICELLI. Mr. President, anyone who has been listening to this debate on the Senate floor in the last few weeks is now familiar with the painful but very real statistics. Each day, 3,000 young Americans begin smoking and eventually 1,000 will die. I can think of no issue on the floor of this Congress which could more directly affect the lives of Americans for a generation to come to finally deal with the reality of tobacco and its assorted dangers.

Legislation offered by Senator MCCAIN, which I enthusiastically support, makes a contribution in several important ways to dealing with this problem: First, it requires a warning label and restricts advertising designed to attract children to smoking cigarettes; second, it grants broad authority to the Federal Drug and Food Administration to regulate tobacco products, their advertising, and their distribution; third, it establishes a national tobacco trust fund for smoke cessation programs, health research, and compensation for States and farmers as a result of tobacco smoking and the program; and, finally, it also penalizes companies up to $3.5 billion per year if they fail to meet their targets to reduce youth smoking.

There is, however, a less addressed but equally significant impact of this legislation that also needs to be addressed. It has been raised by the Senator from Texas, Senator GRAMM, and now by the Senator from South Dakota, Senator DASCHLE, that there are unintended tax consequences of this legislation. I am relieved that my colleagues joined in the judgment not to raise the tobacco tax to $1.50 per pack but cast their votes, as I did, to keep this tax $1.10. It is, nevertheless, the reality that this taxation upon cigarettes could be the most regressive tax ever passed in American history. This tax burden is falling disproportionately on the working poor and, indeed, on poor families themselves.

It has been noted that the total tax burden of families who earn under $10,000 a year would increase by 40 percent as a result of this tobacco tax. Indeed, three-quarters of the tax would be paid by families who earn under $50,000 per year. This would add a tax burden to an American population that is already excessively taxed.

I understand that it is President Clinton's priority that a new Federal surplus be used primarily to deal with the future obligations of Social Security. I support him in that initiative, as I believe there are important initiatives of education and health care that are unaddressed in our country. But the tobacco legislation brings into focus another reality: The average American family is still paying too much taxation. Indeed, the CBO reports that taxes on the American public have recently reached 20 percent of the gross domestic product. Not since the Second World War has the total tax burden on the American people, as a percentage of our economy, been so high. According to the Joint Committee on Tax, Americans earning $30,000 and less will pay 59 percent of this new tobacco tax, which is being added on this already heavy burden.

The answer of the Senator from Texas is to primarily deal with this new burden by dealing with what is known as the marriage penalty. Indeed, in 1996, 21 million couples encountered an average penalty because of their joint filings as a result of their marriage of $1,400. That represents 42 percent of the American people—married couples—are paying more as a consequence of their marriage.

A proposal by Senator GRAMM combines a phase-in of tax relief for the marriage penalty, with tax credits for the self-employed to purchase health insurance, for costs of upwards of $16 billion during the first 5 years, and $30 billion in years 6 through 10.

Responding to criticism that earlier versions of his amendment would have completely drained the public health funds in this bill, Senator GRAMM now proposes to limit the use of the tobacco trust fund from one-half to one-third of the revenues in the outyears for dealing with this elimination of the marriage penalty. He does so, however, by using the general revenues of the Federal Government. The consequences of using these general revenues for the admittedly important objective of eliminating the marriage penalty is that it contradicts President Clinton's goal of first using Federal surpluses to deal with Social Security.

Indeed, on a bipartisan basis, I could not understand and it would be difficult to accept that this Congress would not want to first deal with ensuring the financial safety of Social Security before dealing with other admittedly important tax objectives. Specifically, the Gramm amendment potentially would remove $90 to $125 billion worth of Federal revenues that the President has designed to deal with the future security of Social Security, specifically for the baby boom generation.

I think Senator DASCHLE has a better idea. He offers an alternative which allows this Congress to remain focused on securing Social Security for the next generation while dealing with this admittedly high tax burden and the unintended consequence of regressivity of the tobacco tax.

First, Senator DASCHLE would ease the tax burden on American families

by providing full deductibility for health insurance premiums for the self-employed. No issue could be more important for people starting their own businesses, for middle-income families, than dealing with this full deductibility of health insurance.

Second, it maintains the integrity of the tobacco bill and still protects Social Security. So the programs now envisioned in the tobacco bill would remain—dealing with public health, tobacco farmers, reimbursement to the States—while at the same time allowing us to provide this tax relief.

The difference, of course, between Senator DASCHLE's proposal and Senator GRAMM's proposal is that Senator GRAMM did not simply deal with the marriage penalty—because only 40 percent of all married couples are paying a marriage penalty, he was providing tax relief beyond this and thereby causing this financial strain. The alternative offered by the Senator from South Dakota, Senator DASCHLE, deals simply with those families who are actually paying the marriage penalty and thereby allows us to do so in a more responsible fashion.

This, I believe, is the better alternative, but I hope the Senate does not simply deal this year with the question of the tax burden on the American people by only addressing the question of the marriage tax penalty. That will suffice for the tobacco legislation. I hope and I trust by the time the Senate is finished dealing with tobacco legislation that we have dealt with deductibility for the self-employed of their health insurance and the elimination of the marriage penalty.

Before yielding the floor, I hope that the Senate would follow the debate that has now begun as a consequence of the important analysis offered by the Senator from Texas, Senator GRAMM, on both the overall national tax burden and its regressivity by dealing with other tax issues in the remainder of this session.

First, if not in this legislation, then before this session adjourns, the Senate should deal with the fact that there are too many Americans of modest means who are finding themselves in the highest tax bracket. Today, a single individual is paying a 28 percent Federal income tax with a salary of $25,300, and a married couple with only $42,350 in income is paying a Federal tax of 28 percent in income taxes. Therefore, we are applying the highest rate to people of genuinely modest means.

I believe we would make a real contribution to tax fairness in the Senate in this year if the 15 percent bracket could be expanded to $35,000 for individuals and $70,000 for married couples. This would move more than 10 million Americans from the 28 percent tax bracket to the 15 percent tax bracket and genuinely ensure that middle-income people are able to take advantage of a lower 15 percent bracket. No single proposal would grant tax relief on a broader, more comprehensive basis to middle-income Americans.

Second, before this Congress adjourns this year, I hope the Congress will return to the issue of capital gains simplification. I have joined with Senator MACK and Senator BREAUX to encourage that savings and investment income be restored to a 12-month holding period in order to avail ourselves of the lower capital gains tax rate that was instituted by this Congress on an earlier date.

Third, return again to the issue of estate taxes by building on the $1 million exemption from the estate tax in last year's tax bill by slashing the estate tax rate by 25 percent. We made real progress last year by raising the exemption to a $1 million, but the Federal tax rate and the State tax remain confiscatory at an unbelievable 55 percent.

Fourth, and finally, I hope this Congress, before concluding its work this year on the Federal Tax Code, will return to the incredibly poor savings rates in this Nation. The United States now suffers from the lowest savings rate in nearly 60 years. I believe this Senate should exempt the first $500 in interest from taxation, ensuring that any family in America that saves $10,000, whether in equity or bonds or savings accounts, would not pay taxes on that first $10,000. Nothing would do more for Americans to prepare for their own retirement, to provide security for American families, than transforming every $10,000 in savings in America by every family instantly into a tax-free account. This could be done simply by exempting the first $500 in interest. For those 60 percent of American families that have no equity, no savings other than their house, and live in the dangerous position of paycheck-to-paycheck, this, for the first time, would provide a real incentive for those families to save money.

Mr. President, my purpose today primarily was to draw attention to the worthwhile objective of providing some tax relief in the tobacco legislation for those families, primarily of low and moderate means, who will disproportionately be shouldering this burden of increased tobacco taxes. But I wanted to take advantage of the opportunity both to demonstrate the relative advantage of Senator DASCHLE's proposal, to provide this tax relief within the tobacco bill, thereby not jeopardizing the revenues available to deal with providing some safety for Social Security, but also to point out to the Senate that, beyond dealing with the tax burden of families because of the tobacco legislation and thereby providing relief in the marriage penalty and the self-employment full deductibility on health insurance, the Senate should be setting its sights on other areas as well in the remainder of this year—an encouragement in savings, general income tax relief for middle-income families, and on the inheritance tax. The Senate has a larger obligation of easing the tax burden, and I believe the debate that has begun in the Senate has begun to outline the possible components, beyond the tobacco legislation, of broader tax relief for the American families.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SANTORUM). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRAMM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2686, AS MODIFIED

Mr. GRAMM. Mr. President, I send a modification of my amendment to the desk.

The PRESIDING OFFICER. The amendment is so modified.

The amendment (No. 2686), as modified, is as follows:

At the end of the amendment, insert:

SEC. ___. ELIMINATION OF MARRIAGE PENALTY.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 222 as section 223 and by inserting after section 221 the following new section:

"SEC. 222. DEDUCTION FOR MARRIED COUPLES TO ELIMINATE THE MARRIAGE PENALTY.

''(a) IN GENERAL.—In the case of a joint return under section 6013 for the taxable year, there shall be allowed as a deduction an amount equal to the applicable percentage of the excess (if any) of—

''(1) the sum of the amounts determined under subparagraphs (B) and (C) of section 63(c)(2) for such taxable year (relating to the basic standard deduction for a head of a household and a single individual, respectively), over

''(2) the amount determined under section 63(c)(2)(A) for such taxable year (relating to the basic standard deduction for a joint return).

''(b) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

''(1) IN GENERAL.—No deduction shall be allowed under subsection (a) if the modified adjusted gross income of the taxpayer for the taxable year exceeds $50,000.

''(2) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this subsection, the term 'modified adjusted gross income' means adjusted gross income determined—

''(A) after application of sections 86, 219, and 469, and

''(B) without regard to sections 135, 137, and 911 or the deduction allowable under this section.

''(3) COST-OF-LIVING ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2007, the $50,000 amount under paragraph (1) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, except that subparagraph (B) thereof shall be applied by substituting 'calendar year 2008' for 'calendar year 1992'. If any amount as adjusted under this paragraph is not a multiple of $5,000, such amount shall be rounded to the next lowest multiple of $5,000.

''(c) APPLICABLE PERCENTAGE.—For purposes of this section, the applicable percentage shall be—

''(1) 25 percent in the case of taxable years beginning in 1999,

''(2) 30 percent in the case of taxable years beginning in 2000, 2001, and 2002,

''(3) 40 percent in the case of taxable years beginning in 2003, 2004, and 2005,

''(4) 50 percent in the case of taxable years beginning in 2006,

''(5) 60 percent in the case of taxable years beginning in 2007, and

''(6) 100 percent in the case of taxable years beginning in 2008 and thereafter.''

(b) DEDUCTION TO BE ABOVE-THE-LINE.—Section 62(a) of the Internal Revenue Code of 1986 (defining adjusted gross income) is amended by adding after paragraph (17) the following new paragraph:

''(18) DEDUCTION FOR MARRIED COUPLES.—The deduction allowed by section 222.''

(c) EARNED INCOME CREDIT PHASEOUT TO REFLECT DEDUCTION.—Section 32(c)(2) of the Internal Revenue Code of 1986 (defining earned income) is amended by adding at the end the following new subparagraph:

''(C) MARRIAGE PENALTY REDUCTION.—Solely for purposes of applying subsection (a)(2)(B), earned income for any taxable year shall be reduced by an amount equal to the amount of the deduction allowed to the taxpayer for such taxable year under section 222.''

(d) FULL DEDUCTION FOR HEALTH INSURANCE FOR SELF-EMPLOYEDS.—The table contained in section 162(l)(1)(B) is amended—

(1) by striking ''and 1999'',

(2) by striking the items relating to years 1998 through 2006, and

(3) by striking ''2007 and thereafter'' and inserting ''1999 and thereafter''.

(e) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the item relating to section 222 and inserting the following new items:

''Sec. 222. Deduction for married couples to eliminate the marriage penalty.

''Sec. 223. Cross reference.''

(f) REDUCTION IN TRANSFERS TO NATIONAL TOBACCO TRUST FUND.—

(1) IN GENERAL.—Except as provided in paragraph (2) and notwithstanding any other provision of this Act, the amount credited to the National Tobacco Trust Fund under section 401(b) of this Act for any fiscal year shall be reduced by the amount of the decrease in Federal revenues for such fiscal year which the Secretary of the Treasury estimates will result from the amendments made by this title. The Secretary shall increase or decrease the amount of any reduction under this section to reflect any incorrect estimate for any preceding fiscal year.

(2) LIMITATION ON REDUCTION AFTER FISCAL YEAR 2007.—

(A) IN GENERAL.—Except as provided in subparagraph (B), with respect to any fiscal year after fiscal year 2007, the reduction determined under paragraph (1) shall not exceed 33 percent of the total amount credited to the National Tobacco Trust Fund for such fiscal year.

(B) SPECIAL RULE.—If in any fiscal year the youth smoking reduction goals under section 203 are attained, the limitation under subparagraph (A) shall not apply.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

Mr. GRAMM. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KERRY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KERRY. Mr. President, the pending business, I believe, is the Gramm amendment; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. KERRY. Mr. President, I move to table the Gramm amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment No. 2686, as modified. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Pennsylvania (Mr. SPECTER) is absent because of illness.

Mr. FORD. I announce that the Senator from Delaware (Mr. BIDEN) is necessarily absent.

The result was announced—yeas 48, nays 50, as follows:

[Rollcall Vote No. 154 Leg.]

YEAS—48

Akaka	Feingold	Levin
Baucus	Feinstein	Lieberman
Bingaman	Ford	Mack
Boxer	Glenn	Mikulski
Breaux	Graham	Moseley-Braun
Bryan	Harkin	Moynihan
Bumpers	Inouye	Murray
Byrd	Jeffords	Reed
Chafee	Johnson	Reid
Cleland	Kennedy	Robb
Collins	Kerrey	Rockefeller
Conrad	Kerry	Sarbanes
Daschle	Kohl	Snowe
Dodd	Landrieu	Torricelli
Dorgan	Lautenberg	Wellstone
Durbin	Leahy	Wyden

NAYS—50

Abraham	Frist	McCain
Allard	Gorton	McConnell
Ashcroft	Gramm	Murkowski
Bennett	Grams	Nickles
Bond	Grassley	Roberts
Brownback	Gregg	Roth
Burns	Hagel	Santorum
Campbell	Hatch	Sessions
Coats	Helms	Shelby
Cochran	Hollings	Smith (NH)
Coverdell	Hutchinson	Smith (OR)
Craig	Hutchison	Stevens
D'Amato	Inhofe	Thomas
DeWine	Kempthorne	Thompson
Domenici	Kyl	Thurmond
Enzi	Lott	Warner
Faircloth	Lugar	

NOT VOTING—2

Biden	Specter

The motion to lay on the table the amendment (No. 2686), as modified, was rejected.

Mr. GRAMM. Mr. President, I move to reconsider the vote.

Mr. LOTT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 2686, as modified.

The amendment (No. 2686), as modified, was agreed to.

AMENDMENT NO. 2688 TO AMENDMENT NO. 2437

(Purpose: To provide a deduction for two-earner married couples, to allow self-employed individuals a 100-percent deduction for health insurance costs, and for other purposes)

Mr. DASCHLE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE] proposes an amendment numbered 2688 to amendment No. 2437.

Mr. DASCHLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the amendment add the following:

The provisons of Senate Amendment No. 2686 are null and void.

TITLE ___—TAX BENEFITS FOR MARRIED COUPLES AND SELF-EMPLOYED INDIVIDUALS

SEC. ___01. DEDUCTION FOR TWO-EARNER MARRIED COUPLES.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 222 as section 223 and by inserting after section 221 the following new section:

''SEC. 222. DEDUCTION FOR MARRIED COUPLES TO ELIMINATE THE MARRIAGE PENALTY.

''(a) IN GENERAL.—In the case of a joint return under section 6013 for the taxable year, there shall be allowed as a deduction an amount equal to the applicable percentage of the qualified earned income of the spouse with the lower qualified earned income for the taxable year.

''(b) APPLICABLE PERCENTAGE.—For purposes of this section—

''(1) IN GENERAL.—The term 'applicable percentage' means 20 percent, reduced by 2 percentage points for each $1,000 (or fraction thereof) by which the taxpayer's modified adjusted gross income for the taxable year exceeds $50,000.

''(2) TRANSITION RULE FOR 1999 AND 2000.—In the case of taxable years beginning in 1999 and 2000, paragraph (1) shall be applied by substituting '10 percent' for '20 percent' and '1 percentage point' for '2 percentage points'.

''(3) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this subsection, the term 'modified adjusted gross income' means adjusted gross income determined—

''(A) after application of sections 86, 219, and 469, and

''(B) without regard to sections 135, 137, and 911 or the deduction allowable under this section.

''(4) COST-OF-LIVING ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2002, the $50,000 amount under paragraph (1) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, except that subparagraph (B) thereof shall be applied by substituting 'calendar year 2002' for 'calendar year 1992'. If any amount as adjusted under this paragraph is not a multiple of $2,000, such amount shall be rounded to the next lowest multiple of $2,000.

''(c) QUALIFIED EARNED INCOME DEFINED.—

''(1) IN GENERAL.—For purposes of this section, the term 'qualified earned income' means an amount equal to the excess of—

''(A) the earned income of the spouse for the taxable year, over

''(B) an amount equal to the sum of the deductions described in paragraphs (1), (2), (7), and (15) of section 62 to the extent such deductions are properly allocable to or chargeable against earned income described in subparagraph (A).

The amount of qualified earned income shall be determined without regard to any community property laws.''

''(2) EARNED INCOME.—For purposes of paragraph (1), the term 'earned income' means income which is earned income within the meaning of section 911(d)(2) or 401(c)(2)(C), except that—

''(A) such term shall not include any amount—

''(i) not includible in gross income,

''(ii) received as a pension or annuity,

''(iii) paid or distributed out of an individual retirement plan (within the meaning of section 7701(a)(37)),

''(iv) received as deferred compensation, or

''(v) received for services performed by an individual in the employ of his spouse (within the meaning of section 3121(b)(3)(A)), and

''(B) section 911(d)(2)(B) shall be applied without regard to the phrase 'not in excess of 30 percent of his share of net profits of such trade or business'.''

(b) DEDUCTION TO BE ABOVE-THE-LINE.—Section 62(a) of the Internal Revenue Code of 1986 (defining adjusted gross income) is amended by adding after paragraph (17) the following new paragraph:

''(18) DEDUCTION FOR TWO-EARNER MARRIED COUPLES.—The deduction allowed by section 222.''

(c) EARNED INCOME CREDIT PHASEOUT TO REFLECT DEDUCTION.—Section 32(c)(2) of the Internal Revenue Code of 1986 (defining earned income) is amended by adding at the end the following new subparagraph:

''(C) MARRIAGE PENALTY REDUCTION.—Solely for purposes of applying subsection (a)(2)(B), earned income for any taxable year shall be reduced by an amount equal to the amount of the deduction allowed to the taxpayer for such taxable year under section 222.''

(d) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the item relating to section 222 and inserting the following new items:

''Sec. 222. Deduction for married couples to eliminate the marriage penalty.

''Sec. 223. Cross reference.''

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

SEC. ___02. DEDUCTION FOR HEALTH INSURANCE COSTS FOR SELF-EMPLOYED INDIVIDUALS.

(a) IN GENERAL.—Paragraph (1) of section 162(l) of the Internal Revenue Code of 1986 is amended to read as follows:

''(1) ALLOWANCE OF DEDUCTION.—In the case of an individual who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to 100 percent (75 percent in the case of taxable years beginning in 1999 and 2000) of the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer, his spouse, and dependents.''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

SEC. ___03. REDUCTION IN TRANSFERS TO NATIONAL TOBACCO TRUST FUND.

Notwithstanding any other provision of this Act—

(1) the amount credited to the National Tobacco Trust Fund under section 401(b) of this Act for any fiscal year shall be reduced by the amount of the decrease in Federal revenues for such fiscal year which the Secretary of the Treasury estimates will result from the amendments made by this title, and

(2) for purposes of allocating amounts to accounts under section 451 of this Act, the reduction under paragraph (1) shall be treated as having been made proportionately from the amounts described in paragraphs (1), (2), and (3) of section 401(b) of this Act.

The Secretary shall increase or decrease the amount of any reduction under this section to reflect any incorrect estimate for any preceding fiscal year.

Mr. DASCHLE. Mr. President, I want to explain this particular amendment because I believe it is very important that everyone understand the juxtaposition of the Democratic amendment and the so-called Gramm amendment.

A vote for the Gramm amendment was a vote either to take about $120 billion of budget surpluses away from our effort to shore up Social Security or to drain 80 percent of the money out of the tobacco trust fund, money that would otherwise be going to States' antismoking efforts, medical research and farmers. That is the choice presented by the Gramm amendment from 2008 through 2022.

That was the problem we had with the Gramm amendment. In the out years, after 2008, it either took so much money out of Social Security and out of the surplus, or it took 80 percent of the tobacco money. We were not satisfied with this choice. We were not supportive of, first, the overall amount of money to be taken, and, secondly, the pots from which it was to be taken.

That is only the first problem—where the money to fund the tax cut would be drawn from in the out years. The second problem is that, in the first ten years, the revised amendment costs 50 percent more than the Democratic alternative; that is, $46 billion versus about $31 billion. But, here is the catch: it actually delivers far less marriage penalty tax relief. So while it costs more, it does far less with regard to the marriage penalty itself. The reason for that is about 60 percent of the Republican tax cut goes to couples who have a marriage bonus in the sense that they pay less if they are married than if they filed single returns.

Keep in mind that today about 52 percent of those who are married get a marriage bonus. There is actually an incentive built into the Tax Code to be married. The other 48 percent incur a marriage penalty. Sixty percent of the Gramm amendment goes to those who have a marriage bonus. So, in addition to the current marriage bonus, they will get a Gramm bonus. In our view, given the fact that this additional bonus costs so much and comes from either Social Security or tobacco, the additional Gramm bonus does not make a lot of sense.

The Democratic alternative, by contrast, focuses about 90 percent of its tax cut on families who are actually penalized by providing a 20% deduction against the income of the lesser-earning spouse, phased out between $50,000 and $60,000 of family income. If the Republicans were genuinely interested in the marriage penalty relief problem as Senator GRAMM and others have proclaimed, they would vote for the Democratic amendment. It would provide a bigger cut in the marriage penalty for most couples than the Gramm amendment over the next 10 years.

Let me give a couple of examples. A couple making $35,000, with income split $20,000 and $15,000 between the two spouses, would see the following circumstances if this amendment were to pass. In the year 2002, under Gramm the couple would receive an average additional income of about $1,000. By comparison, under our 20-percent second earner deduction alternative, the couple would receive an additional reduction of $3,000, that is, 20 percent of $15,000.

Mr. President, that represents about three times as large a tax deduction and would provide nearly three times as much tax relief—three times more tax relief under the Democratic amendment than under the so-called Gramm amendment. Next, take a couple making $50,000, split $25,000 and $25,000 between the two spouses. Again, under the Gramm amendment the couple would receive an average additional deduction of about $1,000 in 2002. By contrast, our amendment would provide an extra $5,000 deduction, representing five times the amount of relief as under the Gramm amendment.

So because we target our benefit to those who are actually penalized by the penalty rather than spread it across those who now enjoy a tax bonus for being married, we are able to deal with the penalty in a far more consequential way over the next ten years.

To recap, the Gramm amendment costs 50 percent more over the first 10 years than the Democratic alternative and gives far less marriage penalty relief during this period. It makes more sense to redirect the additional $15 billion that Senator GRAMM spends on bigger marriage bonuses to the original purposes of this bill—to public health, to research, to state programs, and to farmers.

That in essence is the difference between our two approaches. Let's spend and invest those resources on the things that this bill is designed to do. Let's do as Senator GRAMM suggests, focus on the problem he has described, that is, the marriage penalty, and try to deal with it as effectively as we can. By following that counsel, by taking that approach, we should pass the Democratic amendment, we should ultimately accept this compromise and the balance that it reflects, a balance between investments in public health and tax reductions. This is a prudent balance that recognizes the importance of this tobacco legislation as it was originally intended.

Mr. President, I yield the floor.

Mr. LOTT. Mr. President, I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Pennsylvania (Mr. SPECTER) is absent because of illness.

Mr. FORD. I announce that the Senator from Delaware (Mr. BIDEN) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 55, nays 43, as follows:

[Rollcall Vote No. 155 Leg.]

YEAS—55

Abraham	Feingold	McCain
Allard	Frist	McConnell
Ashcroft	Gorton	Murkowski
Bennett	Gramm	Nickles
Bond	Grams	Roberts
Brownback	Grassley	Roth
Burns	Gregg	Santorum
Campbell	Hagel	Sessions
Chafee	Hatch	Shelby
Coats	Helms	Smith (NH)
Cochran	Hutchinson	Smith (OR)
Collins	Hutchison	Snowe
Coverdell	Inhofe	Stevens
Craig	Jeffords	Thomas
D'Amato	Kempthorne	Thompson
DeWine	Kyl	Thurmond
Domenici	Lott	Warner
Enzi	Lugar	
Faircloth	Mack	

NAYS—43

Akaka	Ford	Lieberman
Baucus	Glenn	Mikulski
Bingaman	Graham	Moseley-Braun
Boxer	Harkin	Moynihan
Breaux	Hollings	Murray
Bryan	Inouye	Reed
Bumpers	Johnson	Reid
Byrd	Kennedy	Robb
Cleland	Kerrey	Rockefeller
Conrad	Kerry	Sarbanes
Daschle	Kohl	Torricelli
Dodd	Landrieu	Wellstone
Dorgan	Lautenberg	Wyden
Durbin	Leahy	
Feinstein	Levin	

NOT VOTING—2

Biden	Specter

The motion to lay on the table the amendment (No. 2688) was agreed to.

PRIVILEGE OF THE FLOOR

Mr. KERRY. Mr. President, I ask unanimous consent that the following members of my staff: Scott Bunton and Dave Kass, and Gregg Rothschild of the Small Business Committee staff be granted privileges of the floor during the pendency of the tobacco legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Ms. COLLINS. Mr. President, I ask unanimous consent there now be a period for the transaction of morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE 35TH ANNIVERSARY OF THE EQUAL PAY ACT

Mr. DASCHLE. Mr. President, 35 years ago, President Kennedy took the bold first step to secure equal pay for women. Although there has been much progress since 1963, women continue to earn less than men. That is why we mut take action to improve and strengthen President Kennedy's landmark law and ensure that America's working women and families are paid the wages they deserve.

In 1963, President Kennedy signed the Equal Pay Act prohibiting employers from paying women less than men for the same job. Knowing that the legislation was merely a first step in the right direction, President Kennedy noted that ''much remains to be done to achieve full equality of economic opportunity.''

While the Equal Pay Act prohibited discrimination against women in terms of wages, substantial pay disparities continue to exist. Women still earn, on average, only 74 cents to a man's dollar.

That's why fair pay continues to be a major issue for American women and working families. In fact, the dramatic increase in the number of women in the work force and the number of families who depend on women's earnings make fair pay a matter of justice and necessity now more than ever. My state of South Dakota has the highest percentage in the nation of working mothers with children under the age of 6. These families need and deserve both parents to be paid fairly for an honest day's work. Now is the time to take another step toward fair pay and equal treatment for all people.

Last year, I introduced the Paycheck Fairness Act to address the glaring inequities between men's and women's earnings. The bill seeks to eliminate the wage gap by beefing up enforcement of the Equal Pay Act, increasing penalties for pay discrimination, and lifting the gag rule imposed by many employees who forbid employees from discussing their wages with their coworkers. The bill would also ensure that employers who make real strides in establishing fair and equal workplaces would be recognized and celebrated.

As we commemorate the 35th anniversary of the passage of the Equal Pay Act, I join my colleagues, the President, and the Vice President in calling on Congress to schedule a vote on the Paycheck Fairness Act, and renew our efforts to advance the principles of equal pay for equal work. Through the Paycheck Fairness Act, Democrats honor and continue President Kennedy's legacy of equality for a better workplace economy, and country.

THE 50TH ANNIVERSARY OF MCCARRAN INTERNATIONAL AIRPORT

Mr. BRYAN. Mr. President. I rise today to recognize a milestone in Nevada history. This weekend, Nevadans will celebrate the 50th anniversary of McCarran International Airport and on Monday the opening of the new ''D'' gates.

Seventy-eight years ago, in 1920, pilot Randall Henderson landed his plane on a makeshift dirt runway marking Las Vegas' first flight. I am sure that Mr. Henderson had no idea that some 78 years later the McCarran International Airport would be one of the fastest growing airports in the country.

That runway was later used by such famous people as Amelia Earhart, Clarence Prest, and Emery Rogers and came to be named Rockwell Field.

Rockwell Field was sold in 1929. Fortunately, P.A. ''Pop'' Simon bought the land northeast of Las Vegas, the site of today's Nellis Air Force Base, and built the Las Vegas Airport. It was later named Western Air Express Field. In 1948, Clark County purchased an existing airfield on Las Vegas Boulevard South and established the Clark County Public Airport.

That year, the airport was renamed McCarran Field, after Nevada's senior Senator, Senator Pat McCarran, who authored the Civil Aeronautics Act and played a major role in the development of aviation not only in Nevada but in the country. McCarran Airport was at that time already servicing 12 flights a day, by four airlines. Later, the growth of Las Vegas necessitated the move of the airport terminal from the Las Vegas Boulevard South location to Paradise Road, and the present McCarran Field Terminal was opened in 1963. At this time the airport was serving nearly 1.5 million passengers. Three short years later, the annual passenger volume exceeded the two-million mark for the first time in the airport's history. By 1978, tourism to the Las Vegas area had increased dramatically, and the McCarran 2000 master plan was established to respond to the burgeoning tourism industry. This plan brought the addition of more terminals, parking, runways, and passenger assistance facilities. After Phase I of the McCarran 2000 project was completed, the size of the airport quadrupled, adding 16 more gates. Later, a fourth runway was added along with major renovations to the runways and terminals, and in 1994, a 1,400-foot extension was added, making it one of the longest civilian runways in the United States.

This Monday, McCarran will celebrate the opening of the new ''D'' gates, which will ultimately consist of 48 gates throughout four concourse wings. The completion of the ''D'' gates will enable the airport to serve a total of 55 million passengers per year, nearly double the current capacity.

The growth of Las Vegas is a fact that has been recorded on many occasions. It has been dramatic. That growth could not have occurred if McCarran International had not kept pace and indeed anticipated the phenomenal tourism growth in southern Nevada. We salute McCarran on the 50th anniversary of its establishment. It has become an international gateway to the entertainment capital of the world. We are sure it was the farsighted leadership that has been provided in the past and its present expansion that will allow McCarran to continue to enjoy another 50 years of service to the community and to the millions of people who arrive by air each year making Las Vegas their destination.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Wednesday, June 9, 1998, the federal debt stood at $5,493,569,839,079.81 (Five trillion, four hundred ninety-three billion, five hundred sixty-nine million, eight hundred thirty-nine thousand, seventy-nine dollars and eighty-one cents).

One year ago, June 9, 1997, the federal debt stood at $5,348,704,000,000 (Five trillion, three hundred forty-eight billion, seven hundred four million).

Five years ago, June 9, 1993, the federal debt stood at $4,300,363,000,000 (Four trillion, three hundred billion, three hundred sixty-three million).

Ten years ago, June 9, 1988, the federal debt stood at $2,534,222,000,000 (Two trillion, five hundred thirty-four billion, two hundred twenty-two million).

Fifteen years ago, June 9, 1983, the federal debt stood at $1,309,407,000,000 (One trillion, three hundred nine billion, four hundred seven million) which reflects a debt increase of more than $4 trillion—$4,184,162,839,079.81 (Four trillion, one hundred eighty-four billion, one hundred sixty-two million, eight hundred thirty-nine thousand, seventy-nine dollars and eighty-one cents) during the past 15 years.

TEST BAN TREATY—35TH ANNIVERSARY

Mr. KENNEDY. Mr. President, thirty-five years ago today, in his commencement address to the graduating class of The American University in 1963, President Kennedy announced his support for a comprehensive nuclear test ban. As he said on that occasion:

> The conclusion of such a treaty, so near and yet so far, would check the spiraling arms race in one of its most dangerous areas. It would place the nuclear powers in a position to deal more effectively with one of the greatest hazards which man faces in 1963, the further spread of nuclear arms. It would increase our security—it would decrease the prospects of war. Surely this goal is sufficiently important to require our steady pursuit, yielding neither to the temptation to give up the whole effort nor the temptation to give up our insistence on vital and responsible safeguards.

In the weeks that followed, President Kennedy secured one of the most important of successes of his New Frontier—the signing of the Limited Test Ban Treaty.

But, today, 35 years later, we still have not achieved the larger goal of a Comprehensive Test Ban Treaty. Especially in the wake of the recent nuclear tests by India and Pakistan, we need to do all we can to achieve the rapid ratification of this important treaty.

The arguments in favor of the CTBT are stronger and more important than ever. The recent tests are a reminder that the greatest threat to humanity is still the danger of nuclear war.

The end of the Cold War has presented us with a unique opportunity to step back from the nuclear brink and end nuclear testing worldwide. A Comprehensive Test Ban now would also end the current discrepancy between the world's recognized nuclear states which are permitted to test and the rest of the world's countries which are not. The Senate can take the lead in creating a more secure world by putting the United States in the front of the international effort to achieve a Comprehensive Test Ban.

This is the right time for the CTBT. We no longer need to develop more powerful or more accurate nuclear weapons to deter the nations of the former Soviet Union, or any other nuclear-capable state. Through the Stockpile Stewardship Program, we are learning more each day about how to keep our nuclear arsenal safe and reliable without testing.

One-hundred and forty-nine nations around the world have already signed the CTBT, including all five of the recognized nuclear states. The United States signed it in September 1996, but the Senate has not yet ratified it.

President Kennedy said it best 35 years ago when he told the students at American University, ''. . . in the final analysis, our most basic common link is that we all inhabit this small planet. We all breathe the same air. We all cherish our children's future. And we are all mortal.''

I urge the Senate to act on the ratification of the Comprehensive Test Ban Treaty. The most important single step we can take today to reduce the dangers of nuclear war.

MESSAGES FROM THE HOUSE

At 2:05 p.m., a message from the House of Representatives, delivered by one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1635. An act to establish within the United States National Park Service the National Underground Railroad Network to Freedom program, and for other purposes.

H.R. 3520. An act to adjust the boundaries of the Lake Chelan National Recreation Area and the adjacent Wenatchee National Forest in the State of Washington.

The message also announced that the House has passed the following bill, with an amendment, in which it requests the concurrence of the Senate:

S. 1990. An act to establish a commission to examine issues pertaining to the disposition of Holocaust-era assets in the United States before, during, and after World War II, and to make recommendations to the President on further action, and for other purposes.

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 270. Concurrent resolution acknowledging Taiwan's desire to play a positive role in the current Asian financial crisis and affirming the support of the American people for peace and stability on the Taiwan Strait and security for Taiwan's democracy.

The message also announced that the House has passed the following bill, without amendment:

S. 423. An act to extend the legislative authority for the Board of Regents of Gunston Hall to establish a memorial to honor George Mason.

The message further announced that the House agrees to the amendments of the Senate to the bill (H.R. 2709) to impose certain sanctions on foreign persons who transfer items contributing to Iran's efforts to acquire, develop, or produce ballistic missiles, and to implement to obligations of the United States under the Chemical Weapons Conventions.

ENROLLED BILLS SIGNED

The message also announced that the Speaker has signed the following enrolled bills:

H.R. 2709. An act to improve certain sanctions on foreign persons who transfer persons who transfer items contributing to Iran's efforts to acquire, develop, or produce ballistic missiles, and to implement to obligations of the United States under the Chemical Weapons Conventions.

H.R. 3811. An act to establish felony violations for the failure to pay legal child support obligations, and for other purposes.

The enrolled bills were signed subsequently by the President pro tempore (Mr. THURMOND).

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent and referred as indicated:

H.R. 1635. An act to establish within the United States National Park Service the National Underground Railroad Network to Freedom program, and for other purposes; to the Committee on Energy and Natural Resources.

The following concurrent resolution was read and referred as indicated:

H. Con. Res. 270. Concurrent resolution acknowledging Taiwan's desire to play a positive role in the current Asian financial crisis and affirming the support of the American people for peace and stability on the Taiwan Strait and security for Taiwan's democracy; to the Committee on Foreign Relations.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times, and placed on the calendar:

H.R. 3520. An act to adjust the boundaries of the Lake Chelan National Recreation Area and the adjacent Wenatchee National Forest in the State of Washington.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on June 10, 1998 he had presented to the President of the United States, the following enrolled bill:

S. 1244. An act to amend title 11, United States Code, to protect certain charitable contributions, and for other purposes.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–449. A resolution adopted by the St. Augustine Beach City Commission relative to funding of a shore protection project; to the Committee on Appropriations.

POM–450. A resolution adopted by the Nevada Legislature's Committee on Public Lands relative to the Interior Columbia Basin Ecosystem Management Project; to the Committee on Energy and Natural Resources.

POM–451. A joint resolution adopted by the Legislature of the State of New Hampshire; to the Committee on Environment and Public Works.

HOUSE JOINT RESOLUTION 23

Whereas, the state of New Hampshire has continued to decrease air pollution emissions in accordance with the federal Clean Air Act Amendments of 1990; and

Whereas, certain regions of the country, including the state of New Hampshire, are currently victims of air pollution emitted upwind from the region, but are being held responsible for that pollution by the federal Clean Air Act; and

Whereas, section 126 of the federal Clean Air Act allows states to petition the Administrator of the federal Environmental Protection Agency (EPA) to find that any stationary source or group of stationary sources emits any air pollutant in amounts which significantly contribute to levels of air pollution in excess of the national air quality standard outside of the state; and

Whereas, the state of New Hampshire filed a petition to section 126 before the EPA in August 1997; now therefore, be it

Resolved by the Senate and House of Representatives in General Court convened:

That the New Hampshire Senate and House of Representatives support the section 126 petition filed by the state of New Hampshire in August 1997; and

That the federal Clean Air Act should be amended so that section 126 petitions may refer not only to stationary sources and groups of stationary sources, but also to non-stationary sources and groups of non-stationary sources; and

That the EPA should exercise its duty under section 110 of the federal Clean Air Act to require states to submit plans consistent with attainment of the national air standards in their own state and in all areas downwind from them; and to refuse to accept plans containing emissions which significantly contribute to non-attainment of the national air standards in areas downwind, by determining what total reductions are needed to attain the standards and then apportioning the responsibility for reductions in a cost-effective equitable manner among all states that contribute significantly to non-attainment; and

That copies of this resolution be sent by the hours clerk to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the chairpersons of committees of the United State Congress having jurisdiction over the Clean Air Act, the Administrator of the United States Environmental Protection Agency, and each member of the New Hampshire congressional delegation.

POM–452. A resolution adopted by the Senate of the Legislature of the State of Tennessee; to the Committee on Commerce, Science, and Transportation.

SENATE RESOLUTION NO. 132

Whereas, This General Assembly acknowledges the importance and emerging dependence of business, government and society on the Internet as a growing part of our system of communications and commerce; and

Whereas, The members of this legislative body also recognizes that the Internet as a medium of free speech contains, in addition to its many salutory features, potential dangers for society and especially our youth, in that it can provide uncontrolled and instantaneous access to obscenity, child pornography and other adult-oriented materials that are harmful to youth; and

Whereas, in 1996 Congress attempted to place restrictions on the Internet to curb these dangers by the passage of the Communications Decency Act of 1996, which was declared unconstitutional in part by the United States Supreme Court in the case of *Reno* v. *ACLU;* and

Whereas, The Internet is in a developing stage and software developments and other market forces may eventually allow Internet providers to provide clean Internet services or products that will protect children from the harms of the Internet and permit users to block out offensive materials and services without compromising the beneficial aspects of the Internet; and

Whereas, The technology currently exists to more readily control these problems by the use of a designated top-level domain site for web sites that contain pornographic and adult-oriented materials and services which, if employed, will expedite and facilitate the development of clean Internet materials and services by the lawful classification of web sites; and

Whereas, In October of this year, the United States Department of Commerce plans to set up a private not-for-profit corporation whose directors will create five new top-level domains that will register web sites by subject type; and

Whereas, A federal requirement that an adult-oriented domain site be created and that all adult-oriented web sites be registered to such domain would greatly aid Internet users, parents and teachers in shielding America's youth from the harms of pornography and adult-oriented materials and services that are available and proliferating on the Internet, and

Whereas, The states are somewhat limited in the regulation they can provide in this area because of the federal Commerce Clause; and

Whereas, Congress and the Executive Branch are the appropriate governmental branches to provide leadership in this area and may lawfully act to resolve quickly this issue in a responsible manner that comports with the ideals of the First Amendment; now, therefore, be it

Resolved by the Senate of the One-Hundredth General Assembly of the State of Tennessee, That this Body hereby urges the United States Congress to establish and maintain a uniform resource locator system that contains a top-level domain for all Internet web sites providing pornographic or adult-oriented materials or services so as to facilitate and assist Internet users, service providers and software developers to manage the problem of uncontrolled access to obscenity, child pornography and other adult-oriented materials and services via the Internet. Be it

Further Resolved, That this Body respectfully urges the President and Vice President of the United States and the Secretary of the Department of Commerce to use their offices and considerable influence to bring about the aims of this resolution by the means of executive order or department regulation, or the promotion of federal regulation, as they deem appropriate. Be it

Further Resolved, That the Clerk of the Senate deliver enrolled copies of this resolution to each member of the Tennessee delegation, to the United States Senate and the United States House of Representatives, to the Chairmen of the United States Senate Commerce, Science and Transportation Committee and the United States House Commerce Committee, and to the President and Vice President of the United States and the Secretary of the United States Department of Commerce.

POM–453. A resolution adopted by the House of the Legislature of the State of Michigan; to the Committee on Finance.

HOUSE RESOLUTION NO. 212

Whereas, Housing credits are the primary state-federal tool for making affordable rental housing available for low-income people. Since 1987, state agencies have allocated housing credits that have helped finance nearly 900,000 apartments for low-income families; and

Whereas, The cap on the amount of housing credits was set ten years ago. Over the past decade, less and less housing is becoming available. As a result of the impact of inflation, demand for this highly successful program exceeds supply by a three-to-one ratio; and

Whereas, The Congress of the United States is considering two bills that would rectify the problem of inadequate housing credits by adjusting the cap to reflect inflationary growth. These bills, H.R. 2990 and S. 1252, will reopen doors to more low-income housing. In Michigan, it is estimated that the legislation will result in enough credit authority to create another 1,000 units of much-needed housing. Another key to the bills is a provision to index the cap for housing credits to reflect inflationary change. This is an appropriate strategy to ensure the continuing availability of low-income housing; now, therefore, be it

Resolved by the House of Representatives, That we memorialize the Congress of the United States to enact legislation to increase the cap on low-income housing credits; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM–454. A resolution adopted by the Senate of the Legislature of the State of Michigan; to the Committee on Finance.

SENATE RESOLUTION NO. 171

Whereas, The Internal Revenue Code is beyond repair; and

Whereas, The Internal Revenue Code is the core of the distrust of government the American people feel; and

Whereas, the current tax code is 7 million words, compared to Lincoln's Gettysburg Address of 269 words and the Declaration of Independence, which is 1,337 words; and

Whereas, The IRS's ''simplest'' return, the EZ Form 1040, has 33 pages of instructions, and the IRS Form 1040 has 76 pages of instructions; and

Whereas, Individual taxpayers spend 1.7 billion hours and American business will spend 3.4 billion hours each year simply trying to comply with the tax code. That effort is equivalent to a ''staff'' of 3 million people working full time, year round, just on taxes; and

Whereas, Taxes are too high, but any steps to lower taxes by modifying the existing tax code would make it even longer and more confusing; and

Whereas, A proposal to abolish the Internal Revenue Code by December 31, 2001, embodies a prudent method and provides adequate time for developing a new tax code; now, therefore, be it

Resolved by the Senate, That we memorialize the Congress of the United States to enact legislation to abolish the Internal Revenue Code by December 31, 2001, and replace it with a new method of taxation. The new tax code must:

—Lower taxes—to create job opportunities;

—Foster growth—by encouraging work and savings;

—Be fair—for all taxpayers;

—Be simple enough for all taxpayers to understand;

—Be neutral—allowing people, not government to make choices;

—Be visible, so people know the cost of government;

—Be stable, so people can plan for the future; and be it further

Resolved, That we request the other states to urge Congress to enact this proposal; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate the Speaker of the United States House of Representatives, to members of the Michigan congressional delegation, and to the legislatures of the other states.

POM–455. A joint resolution adopted by the Legislature of the State of California; to the Committee on Finance.

ASSEMBLY JOINT RESOLUTION NO. 65

Whereas, The California Legislature and the Governor, on a bipartisan basis, enacted Assembly Bill 1126 and other conforming legislation to establish the Healthy Families Program; and

Whereas, The Healthy Families Program embodies the Governor's vision of providing private insurance to the children of working parents whose employers do not provide dependent health insurance coverage and whose family income is insufficient to purchase private health care coverage for their children; and

Whereas, It was the Legislature's intent, in enacting the Healthy Families Program, that children of low-income parents who work receive the same beneficial treatment, with regard to income disregards, as families applying for Medi-Cal; and

Whereas, The state government expressly requested the use of income disregards to establish eligibility for the Healthy Families program, similar to the disregards applied to low-income persons applying for Medi-Cal coverage for their children; and

Whereas, The federal government accepted the plan developed by the administration, including the provisions of the plan which protect against crowd out; and

Whereas, The delay and potential elimination of families who want and need to participate in the program, since they do not have the means to purchase insurance without financial assistance, would place a great hardship on these families and their children; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California memorializes the federal Health Care Financing Administration, and the Congress and the President of the United States to preserve the state plan to implement the Healthy Families Program in its current approved form; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Secretary of Health and Human Services, and to each Senator and Representative from California in the Congress of the United States.

POM–456. A joint resolution adopted by the Legislature of the State of Colorado; to the Committee on Commerce, Science, and Transportation.

HOUSE JOINT RESOLUTION 98–1036

Whereas, The Aircraft Repair Station Safety Act of 1997 pending in the federal congress would require all aircraft maintenance facilities, whether domestic or abroad, to adhere to the same safety and operating procedures; and

Whereas, The Aircraft Repair Station Safety Act of 1997 would provide for more stringent standards for certification of foreign aircraft repair stations by the Federal Aviation Administration and would revoke the certification of any repair facility that knowingly uses defective parts; and

Whereas, There are over five hundred fifty persons with a combined annual income of over twenty-nine million dollars employed in the aircraft repair industry in Colorado whose jobs are at risk of being moved out of the United States unless foreign aircraft repair stations are required to adhere to our safety and operating procedures; and

Whereas, On January 9, 1997, House Resolution No. 145 was introduced in the House of Representatives of the United States by Representative Robert Borski; and

Whereas, On July 30, 1997, a companion bill, S. 1089, was introduced in the Senate of the United States by Senator Arlen Specter; and

Whereas, H.R. 145 and S. 1089 both propose to enact the Aircraft Repair Station Safety Act of 1997: Now, therefore, be it

Resolved by the House of Representatives of the Sixty-first General Assembly of the State of Colorado, the Senate concurring herein: That the General Assembly requests the United States Congress to enact and the President to sign the Aircraft Repair Station Safety Act of 1997, be it further

Resolved, That copies of this Joint Resolution be sent to the President and Vice-President of the United States, the President of the Senate and the Speaker of the House of Representatives of the United States Congress, and to each member of the Congressional delegation from Colorado.

POM–457. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Foreign Relations.

HOUSE CONCURRENT RESOLUTION NO. 13

Whereas, the Republic of Poland is a free, democratic, and independent nation with a long and proud history, being the first nation in Central Europe to stand up for democratic values and to undergo a systematic transformation; and

Whereas, the North Atlantic Treaty Organization is dedicated to the preservation of freedom and security of its member nations; and

Whereas, Poland and its Central European neighbors the Republic of Hungary and the Czech Republic recognize their responsibilities as democratic nations and wish to exercise such responsibilities in concert with members of NATO; and

Whereas, Poland will bring to the alliance its defense potential, its stabilizing role in the region, and its good relations with its neighbors; and

Whereas, Hungary and the Czech Republic have also shown their commitment to democracy and its preservation throughout the world; and

Whereas, the Republic of Poland, Hungary, and the Czech Republic desire to become a part of NATO's efforts to prevent the extremes of nationalism and to spread democracy and stability; and

Whereas, the security of the United States is dependent upon the stability of Central Europe. Therefore, be it

Resolved, That the Legislature of Louisiana does respectfully urge the United States Senate to support the establishment of a timetable for the admission of the Republic of Poland, Hungary, and the Czech Republic to the North Atlantic Treaty Organization. Be it

Further Resolved, That a copy of this Resolution be transmitted to the president of the United States Senate, to each member of the Louisiana congressional delegation, and to the ambassadors of the Republic of Poland, the Republic of Hungary, and the Czech Republic to the United States.

POM–458. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Foreign Relations.

HOUSE CONCURRENT RESOLUTION NO. 33

Whereas, the Republic of Poland is a free, democratic, and independent nation with a long and proud history, being the first nation in Central Europe to stand up for democratic values and to undergo a systematic transformation; and

Whereas, the North Atlantic Treaty Organization is dedicated to the preservation of freedom and security of its member nations; and

Whereas, Poland and its Central European neighbors, the Republic of Hungary and the Czech Republic, recognize their responsibilities as democratic nations and wish to exercise such responsibilities in concert with members of NATO; and

Whereas, Poland will bring to the alliance its defense potential, its stabilizing role in the region, and its good relations with its neighbors; and

Whereas, Hungary and the Czech Republic have also shown their commitment to democracy and its preservation throughout the world; and

Whereas, the Republic of Poland, Hungary, and the Czech Republic desire to become a part of NATO's efforts to prevent the extremes of nationalism and to spread democracy and stability; and

Whereas, the security of the United States is dependent upon the stability of Central Europe. Therefore, be it

Resolved, that the Legislature of Louisiana does respectfully urge the United States Senate to support the establishment of a timetable for the admission of the Republic of Poland, Hungary, and the Czech Republic to the North Atlantic Treaty Organization. Be it

Further Resolved, That a copy of this Resolution be transmitted to the President of the United States Senate, to each member of the Louisiana congressional delegation, and to the ambassadors of the Republic of Poland, the Republic of Hungary, and the Czech Republic to the United States.

POM–459. A concurrent resolution adopted by the Legislature of the State of Louisiana;

to the Committee on Agriculture, Nutrition, and Forestry.

HOUSE CONCURRENT RESOLUTION NO. 41

Whereas, congress, through the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act), mandated that the Secretary of the United States Department of Agriculture consolidate the then existing thirty-two federal milk marketing orders into not less than ten nor more than fourteen orders by April 4, 1999; and

Whereas, the FAIR Act also authorized the Secretary of the United States Department of Agriculture to review and reform the pricing and other provisions of the consolidated orders; and

Whereas, on January 23, 1998, the Secretary of the United States Department of Agriculture issued proposed rules for federal milk order consolidations and reforms; and

Whereas, these proposed rules included two options for pricing milk used in Class I (fluid milk products), which are noted and referred to as Option 1A and Option 1B; and

Whereas, Option 1A is similar to the present geographic price structures; however, Option 1B would reduce the minimum federal order prices in Louisiana by more than one dollar per hundredweight; and

Whereas, while demand has been rising due to increasing population, milk production in Louisiana and the entire Southeast has declined during each of the past seven years; and as a result, larger quantities of milk are imported from other regions at higher cost than local milk; and

Whereas, implementation of Option 1B, even with the highest transition option, would aggravate the loss of dairy farms and local milk production; and

Whereas, such loss will be devastating to the dairy farmer, the rural communities, and the consumers. Therefore, be it

Resolved, That the Legislature of Louisiana memorializes the Congress of the United Stated to support, and urges and requests the United States Secretary of Agriculture to incorporate, Option 1A as the pricing procedure in all federal milk marketing orders in his final decision on consolidation and reform of these orders. Be it

Further Resolved, That a copy of this Resolution shall be transmitted to the presiding officers of the Senate and the House of Representatives of the Congress of the United States of America, each member of the Louisiana congressional delegation, and the Secretary of the United States Department of Agriculture.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JEFFORDS, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute:

H.R. 2614. A bill to improve the reading and literacy skills of children and families by improving in-service instructional practices for teachers who teach reading, to stimulate the development of more high-quality family literacy programs, to support extended learning-time opportunities for children, to ensure that children can read well and independently not later than third grade, and for other purposes (Rept. No. 105–208).

By Mr. MCCAIN, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute and an amended preamble:

H. Con. Res. 131. A concurrent resolution expressing the sense of Congress regarding the ocean (Rept. No. 105–209).

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, without amendment and with a preamble:

S.J. Res. 41. A joint resolution approving the location of a Martin Luther King, Jr., Memorial in the Nation's Capital (Rept. No. 105–210).

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 1683. A bill to transfer administrative jurisdiction over part of the Lake Chelan National Recreation Area from the Secretary of the Interior to the Secretary of Agriculture for inclusion in the Wenatchee National Forest.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. DURBIN (for himself, Ms. SNOWE, Mr. GORTON, Mr. WELLSTONE, Ms. MIKULSKI, Mrs. FEINSTEIN, Mr. CHAFEE, Mrs. BOXER, Mrs. MURRAY, Mr. GRASSLEY, Mr. WYDEN, Mr. BINGAMAN, Mr. KERRY, Mr. ROBB, Mr. INOUYE, Mr. TORRICELLI, Mr. LEVIN, Mr. BUMPERS, Mr. JOHNSON, Mr. DEWINE, Mr. KOHL, Ms. COLLINS, Mr. CLELAND, and Mr. MOYNIHAN):

S. 2152. A bill to establish a program to provide credit and other assistance for encouraging microenterprises in developing countries, and for other purposes; to the Committee on Foreign Relations.

By Mr. DORGAN (for himself and Mr. REID):

S. 2153. A bill to require certain expenditures by the Federal Reserve System to be made subject to congressional appropriations, to prohibit the maintenance of surplus accounts by Federal reserve banks, to provide for annual independent audits of Federal reserve banks, to apply Federal procurement regulations to the Federal Reserve System, to reform the pricing practices of the Federal Reserve System for services provided to the domestic banking system, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mrs. BOXER:

S. 2154. A bill to promote research to identify and evaluate the health effects of silicone breast implants, and to ensure that women and their doctors receive accurate information about such implants; to the Committee on Labor and Human Resources.

By Mr. BINGAMAN:

S. 2155. A bill to provide restitution of the economic potential lost to communities dependent on Spanish and Mexican Land Grants in New Mexico due to inadequate implementation of the 1848 Treaty of Guadalupe Hidalgo; to the Committee on Energy and Natural Resources.

By Mr. BOND (for himself, Mr. GRASSLEY, Mr. LOTT, Mr. BREAUX, Mr. BURNS, Mr. MACK, Mr. BINGAMAN, Mr. FRIST, Mr. MURKOWSKI, Mrs. MURRAY, Mr. ROBERTS, Mr. HOLLINGS, Mr. DODD, Mr. FAIRCLOTH, Ms. COLLINS, Mr. JEFFORDS, Mr. THOMAS, Mr. D'AMATO, Mr. HATCH, Mr. SHELBY, Mr. ASHCROFT, Mr. KEMPTHORNE, Mr. ROBB, Mr. CLELAND, Mr. CRAIG, Mr. SANTORUM, and Mr. LEAHY):

S.J. Res. 50. A joint resolution to disapprove the rule submitted by the Health Care Financing Administration, Department of Health and Human Services on June 1, 1998, relating to surety bond requirements for home health agencies under the medicare and medicaid programs; to the Committee on Finance.

By Mr. SARBANES (for himself, Mr. BYRD, Mr. ROCKEFELLER, and Ms. MIKULSKI):

S.J. Res. 51. A joint resolution granting the consent of Congress to the Potomac Highlands Airport Authority Compact entered into between the States of Maryland and West Virginia; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LOTT (for himself and Mr. DASCHLE):

S. Res. 246. A resolution authorizing the taking of a photograph in the Chamber of the United States Senate; considered and agreed to.

By Mr. MOYNIHAN (for himself, Mr. HELMS, Mr. LEAHY, Mr. MACK, Mr. WELLSTONE, and Mr. FEINGOLD):

S. Con. Res. 103. A concurrent resolution expressing the sense of the Congress in support of the recommendations of the International Commission of Jurists on Tibet and on United States policy with regard to Tibet; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DURBIN (for himself, Ms. SNOWE, Mr. GORTON, Mr. WELLSTONE, Ms. MIKULSKI, Mrs. FEINSTEIN, Mr. CHAFEE, Mrs. BOXER, Mrs. MURRAY, Mr. GRASSLEY, Mr. WYDEN, Mr. BINGAMAN, Mr. KERRY, Mr. ROBB, Mr. INOUYE, Mr. TORRICELLI, Mr. LEVIN, Mr. BUMPERS, Mr. JOHNSON, Mr. DEWINE, Mr. KOHL, Ms. COLLINS, Mr. CLELAND, and Mr. MOYNIHAN):

S. 2152. A bill to establish a program to provide credit and other assistance for encouraging microenterprises in developing countries, and for other purposes; to the Committee on Foreign Relations.

MICROCREDIT FOR SELF-SUFFICIENCY ACT OF 1998

Mr. DURBIN. Mr. President, I rise to introduce a bill today which is cosponsored by at least 20 of my colleagues in the Senate, a bipartisan offering on an issue which I came to be familiar with over 10 years ago. I traveled to the country of Bangladesh. It is not exactly on the itinerary of favorite congressional trips because it is a country which, although it is large and very interesting, has had its share of misfortune. It seems whenever any natural disaster would strike in the world it would stop in Bangladesh. We, of course, conjure an image in our mind of people who have suffered through typhoons and tornadoes and flooding and all sorts of deprivation. It is a very poor country.

Then Congressman, the late Mike Synar, and I went to Bangladesh. One of the reasons we went was to explore an issue which we had heard a lot about. There is an institution created in Bangladesh known as the Grameen Bank. Grameen means ''people's bank.'' It is an extraordinary institution because it is an unusual bank; it is

a bank designed to provide very small loans to very poor people. So Congressman Synar and I joined with people from the American Embassy and got in our four-wheel drive vehicle and drove out from Dakar into the countryside until the road ended, and then our four-wheel vehicle could go no further and we got out and started hiking a few miles into the brush and came upon a tiny little village. In this village we were invited to a bank meeting, a meeting of the board of directors of the Grameen Bank, in this tiny, obscure, almost nameless Bangladesh village. The bank meeting was unlike any meeting of any board of directors one would ever imagine.

Seated in a little shelter were about 30 or 40 women, all dressed in brightly colored saris, with a third eye in their foreheads, many of them holding babies in a typical Asian squatting position and looking up at these visitors who had come to see them.

Our host, a professor from a university in Bangladesh who was familiar with the program, Dr. Huk, introduced us to the women in the audience. He said at one point, ''Is there anyone here who has ever heard of the United States of America?'' Not one of them had. And here we were, these two Congressmen standing before them, looking like creatures from some other planet I am sure, wanting to know more about this little bank.

This bank has grown in size and scope in an effort to provide microcredit, small loans, to some of the poorest people in the world. What does $100 mean to an American? For us, it might be a nice trip shopping or a trip to a restaurant. But for a woman living in Bangladesh, $100 might mean that she can buy some tools and develop a skill and a craft to feed her family; $100 might mean that she can buy a milking cow that she can then use, not only to feed her family, but to sell the products and to make some money for her future.

How does this work, that people who are so poor, with literally no earthly possessions, can be debtors, can borrow money from a bank? It works because the concept is that when they undertake this debt, several other villagers will sign up with them, cosign the note, if you will, in a guarantee that the payment will be made because, you see, the cosigners cannot get a debt of their own until the original debt is paid off. So they look very carefully to make sure that the debt is repaid on a monthly basis. The payback rate on Grameen Bank is over 95 percent.

Why in the world would I raise this question here on the floor of the U.S. Senate in the great country that we live in, with all of our wealth and opportunity? Because I, frankly, think that this is a model that we should encourage and follow around the world. We do not spend an extraordinarily great amount of money on foreign aid compared to other nations, but we do spend billions of dollars. The bill that I introduce suggests that we should take a portion of that money each year and dedicate it to microcredit projects, projects like the Grameen Bank around the world.

Many Americans might say, ''Well, Senator, it sounds like a great idea, but why should we worry about a woman in Bangladesh?'' One of the women in this meeting I attended came up to me afterwards and, with an interpreter—she had a baby in her arms—she told me her life story.

She was 18 years old. The baby she was holding was her third child. She told me, quite proudly, that she was not going to have any more children. She was practicing birth control. She said, ''My other two children are alive.'' Now, that is an amazing statement in the United States. You think, ''Well, of course, why would you bring that up?'' But in a developing country, it is a very serious concern: Will my baby survive? Do I need to have another baby? That is why many of the developing countries have such high birth rates.

She had decided that because of good health techniques, which the United States and United Nations had encouraged, that her babies had a chance to live, and with the Grameen Bank, she had a chance to improve their livelihood. She said, quite proudly, ''I'm going to have a family of three and that is all we need and Grameen Bank has really helped to make this possible.''

A tiny loan of $100, a family planning program, some public health techniques and this woman is going to limit her family to three. Is that important to us in the United States? It is, because in Asia, in Africa and around the world, the problem of overpopulation is one that is not local or regional, it is a global problem.

Overpopulation leads to many problems—economic instability, political instability, environmental degradation. Look at the nation of India today. India is in the headlines because of its recent nuclear test, its fears of China and Pakistan. Yet, India is going to be in the headlines in a few years because it will be the most populated nation in the world. It will pass China. As that teeming population grows and creates political pressures, it becomes a concern in the United States.

I hope we will make modest investments in those foreign aid programs that really can improve the quality of life in developing countries and can really cope with some of the problems such as overpopulation. Microcredit enjoys broad bipartisan support.

An organization known as RESULTS, which is nationwide but has a very significant chapter in Chicago, has encouraged me to introduce this legislation, which I am happy to do. There are many people who are strong supporters of this. One of them is well known to many of us who grew up watching ''The Mary Tyler Moore Show.'' Her name is Valerie Harper, also known as Rhoda.

For some reason, this has become a passion for her, a commitment to helping women around the world receive basic credit so that they can lift their lives and improve their families. I salute Valerie Harper for her leadership on this. Microcredit encourages entrepreneurship and free market economic development.

The repayment rates on these loans are over 95 percent, and it is found that $1 million put into microcredit can generate $15 million in small loans over 5 years as people get better off and start building their own livelihoods. It gives poor people, and especially women, the means to meet the needs of their family in areas of health, education, and nutrition.

Our First Lady Hillary Rodham Clinton spoke in Chicago a few years ago, and I thought she made a very important observation. She said, if you will look at the underdeveloped nations and wonder if they have a chance to move toward democracy or toward a free market economy, the first place you should look is how they treat women. Are women given an opportunity to be educated? Are they given an opportunity to work outside the home and develop their skills? How are they treated? I think we are finding in countries where microcredit is becoming an important part of the program that women are given that chance.

This bill in particular requires the U.S. Agency for International Development to spend $160 million for fiscal year 1999 on its Microenterprise Assistance Program, with at least 50 percent of that amount dedicated to serving the poorest in the world with microcredit loans under $300. We know that these loans are repaid, and we know that they are recycled, so we are creating a stock, a basic pool of money that can be reinvested in nations around the world to bring them up to higher living standards.

One-fifth of the world's population lives in extreme poverty. Microcredit is one of the most effective antipoverty tools in existence. I talked to one of my colleagues and asked him to cosponsor this bill the other day and he said, ''You know, I like this bill. There are so many things we do in foreign aid that end up creating more bureaucracies and agencies and studies; this is real, this gives to people who need a helping hand the kind of help that they really need.''

Unfortunately, AID has had this program, even though it has not been specifically authorized, and they have not funded it at levels that I think are adequate. So this legislation will set a standard for how much we invest in this program each and every year. Many of my colleagues have joined me on this legislation. I hope that others who have not will take a look at it. I think they will find that this is a reasonable approach, a successful approach, and one where the investment in America's foreign aid dollars will not only be in our best interest, but in

the best interest of people around the world who just need a helping hand and opportunity. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2152

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Microcredit for Self-Sufficiency Act of 1998''.

SEC. 2. FINDINGS AND PURPOSES.

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

(1) More than 1,000,000,000 people in the developing world are living in severe poverty.

(2) According to the United Nations Children's Fund, the mortality for children under the age of 5 is 10 percent in all developing countries and nearly 20 percent in the poorest countries.

(3) Nearly 33,000 children die each day from malnutrition and disease which is largely preventable.

(4)(A) Women in poverty generally have larger work loads and less access to educational and economic opportunities than their male counterparts.

(B) Directly aiding the poorest of the poor, especially women, in the developing world has a positive effect not only on family incomes, but also on child nutrition, health, and education, since women tend to reinvest income in their families.

(5)(A) The poor in the developing world, particularly women, generally lack stable employment and social safety nets.

(B) Many women turn to self-employment to generate a substantial portion of their livelihood.

(C) These poor entrepreneurs are often trapped in poverty because they cannot obtain credit at reasonable rates to build their asset base or expand their otherwise viable self-employment activities.

(D) Many of the poor are forced to pay interest rates as high as 10 percent per day to money lenders.

(6)(A) On February 2–4, 1997, an international Microcredit Summit was held in Washington, D.C., to launch a plan to expand access to credit for self-employment and other financial and business services to 100,000,000 of the world's poorest families, especially the women of those families, by 2005.

(B) With an average of 5 people to a family, achieving this goal will mean that the benefits of microcredit will reach nearly half of the world's more than 1,000,000,000 absolute poor.

(7)(A) The poor are able to expand their incomes and their businesses dramatically when they have access to loans at reasonable interest rates.

(B) Through the development of self-sustaining microcredit programs, poor people themselves can lead the fight against hunger and poverty.

(8)(A) Nongovernmental organizations such as the Grameen Bank, Accion International, and the Foundation for International Community Assistance (FINCA) have been successful in lending directly to the very poor.

(B) These institutions generate repayment rates averaging 95 percent or higher.

(9)(A) Microcredit institutions not only reduce poverty, but also reduce the dependency on foreign assistance.

(B) Interest income on a credit portfolio can be used to pay recurring institutional costs, assuring that the long-term development is sustained.

(10) Microcredit institutions leverage foreign assistance resources because loans are recycled, generating new benefits to program participants.

(11) The development of sustainable microcredit institutions that provide credit and training, and mobilize domestic savings, are critical to a global strategy of poverty reduction and broad-based economic development.

(12)(A) In 1994, AID launched a Microenterprise Initiative in consultation with Congress.

(B) The Initiative was committed to expanding funding for AID's microenterprise programs, provided funding of $137,000,000 for fiscal year 1994, and set a goal that, by the end of fiscal year 1996, half of all microenterprise resources would support programs and institutions providing credit to the poorest with loans under $300.

(C) In fiscal year 1996, total funding for microenterprise activities fell to $111,000,000 of which only 39 percent was used for programs benefiting the poorest with loans under $300.

(D) Increased investment in microcredit institutions serving the poorest is critical to achieving the Microcredit Summit's goal.

(E) AID's funding for microenterprise activities in the developing world should be expanded to $160,000,000 for fiscal year 1999 to parallel the growing capacity of microcredit institutions in the developing world.

(13) Providing the United States share of the global investment needed to achieve the goal of the Microcredit Summit will require only a modest increase in United States funding for international microcredit programs, with an increased focus on institutions serving the poorest.

(14)(A) In order to reach tens of millions of the poorest with microcredit, it is crucial to expand and replicate successful microcredit institutions.

(B) Microcredit institutions need assistance in developing their institutional capacity to expand their services and tap commercial sources of capital.

(15) PVOs and other nongovernmental organizations have demonstrated competence in developing networks of local microcredit institutions that can reach large numbers of the very poor, and help the very poor achieve financial sustainability.

(16) Since AID has developed very effective partnerships with PVOs and other nongovernmental organizations, AID should place a priority on investing in PVOs and other nongovernmental organizations through AID's central funding mechanisms.

(17) By expanding and replicating successful microcredit institutions, AID should be able to assure the creation of a global infrastructure to provide financial services to the world's poorest families.

(18)(A) AID can provide leadership among bilateral and multilateral development aid agencies as such agencies expand their support of microenterprise for the poorest.

(B) AID should seek to improve the coordination of efforts at the operational level to promote the best practices for providing financial services to the poor and to ensure that adequate institutional capacity is developed.

(b) PURPOSES.—The purposes of this Act are—

(1) to provide for the continuation and expansion of AID's commitment to develop microcredit institutions;

(2) to make microenterprise development the centerpiece of the overall economic growth strategy of AID;

(3) to support and develop the capacity of United States PVOs, and other international nongovernmental organizations to provide credit, savings, and training services to microentrepreneurs; and

(4) to increase the amount of assistance devoted to providing access to credit for the poorest sector in developing countries, particularly women.

SEC. 3. DEFINITIONS.

In this Act:

(1) AID.—The term ''AID'' means the United States Agency for International Development.

(2) MICROCREDIT, MICROENTERPRISE, POVERTY LENDING; POVERTY LENDING PORTION OF MIXED PROGRAMS; MIXED PROGRAMS.—The terms ''microcredit'', ''microenterprise'', ''poverty lending portion of mixed programs'', and ''mixed programs'' have the meaning given such terms under the 1994 Microenterprise Initiative of AID.

(3) PVOs AND OTHER NONGOVERNMENTAL ORGANIZATIONS.—The term ''PVOs and other nongovernmental organizations'' means—

(A) private voluntary organizations (including cooperative organizations), and

(B) international, regional, or national nongovernmental organizations,

that are active in the region or country where the project is located and that have the capacity to develop and implement microenterprise programs that are oriented toward working directly with the poor, especially the poorest and women.

SEC. 4. MICROENTERPRISE ASSISTANCE.

(a) AUTHORIZATION.—

(1) IN GENERAL.—The President, acting through the Administrator of AID, is authorized to establish programs to provide credit and other assistance for microenterprises in developing countries.

(2) USE OF PVOs AND OTHER NONGOVERNMENTAL ORGANIZATIONS.—Programs to provide credit for microenterprises and related activities under this section shall be carried out primarily by United States PVOs and other United States and indigenous nongovernmental organizations, including credit unions, cooperative organizations, and other private financial intermediaries.

(b) ELIGIBILITY CRITERIA.—The Administrator of AID shall establish criteria for determining which entities described in subsection (a)(2) are eligible to carry out the purposes described in section 2(b). Such criteria shall include the following:

(1) The extent to which the recipients of credit from the entity lack access to the local formal financial sector.

(2) The extent to which the recipients of credit from the entity are among the poorest people in the country.

(3) The extent to which the entity is oriented toward working directly with poor women.

(4) The extent to which the entity is implementing a plan to become financially self-reliant by charging realistic interest rates to its borrowers.

(c) FUNDING LEVELS FOR FISCAL YEAR 1999.—

(1) IN GENERAL.—Of the amounts made available to carry out chapter 1 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.), not less than $160,000,000 of the funds made available for fiscal year 1999 shall be used to provide assistance under this Act. The funds authorized under the preceding sentence shall be in addition to any funds made available in fiscal year 1999 for microenterprise activities in the former Soviet Union and Eastern Europe pursuant to the FREEDOM Support Act and any funds for special assistance initiatives within Europe, the newly independent states of the Former Soviet Union, Asia, and the Near East.

(2) ADDITIONAL REQUIREMENTS.—

(A) POVERTY LENDING.—Of the funds made available under paragraph (1), not less than

$80,000,000 shall be used to support poverty lending.

(B) SUPPORT OF PVOS AND OTHER NON-GOVERNMENTAL ORGANIZATIONS.—Of the funds made available under paragraph (1), not less than $35,000,000 shall be provided through the central funding mechanisms of AID for support of United States PVOs and United States and indigenous nongovernmental organizations.

(C) MATCHING GRANT PROGRAM.—Of the funds made available under paragraph (1), not less than $10,000,000 shall be used for the private voluntary organizations matching grant program of AID for support of United States PVOs.

(3) DEFINITIONS.—For purposes of this subsection—

(A) TO SUPPORT POVERTY LENDING.—The term ''to support poverty lending'' means—

(i) funds lent to members of the poverty target population (as defined in subparagraph (B)) in low-income countries in amounts equivalent to $300 or less in 1997 United States dollars; and

(ii) funds used for institutional development of an entity described in subsection (a)(2), that is engaged in—

(I) making loans of $300 or less in 1997 United States dollars to members of the poverty target population; or

(II) the poverty lending portion of a mixed program.

(B) POVERTY TARGET POPULATION.—The term ''poverty target population'' means the poorest 50 percent of those individuals living below the poverty line, defined by the national government of the foreign country to which funds are being provided.

SEC. 5. PROGRAM PERFORMANCE CRITERIA.

(a) STRENGTHENING OF APPROPRIATE MECHANISMS.—The Administrator of AID shall—

(1) strengthen appropriate mechanisms, including mechanisms for central microenterprise programs, for the purpose of strengthening the institutional development of the entities described in section 4(a)(2); and

(2) develop and strengthen appropriate mechanisms for the purpose of gathering and disseminating the best practice for targeting microcredit to the poorest segment of the population.

(b) MONITORING SYSTEM.—In order to sustain the impact of the assistance authorized under section 4, the Administrator of AID shall establish a monitoring system that—

(1) establishes performance goals for such assistance and expresses such goals in an objective and quantifiable form;

(2) establishes performance systems or indicators to measure the extent to which projects are achieving such goals; and

(3) provides a basis for recommendations for adjustments to such assistance to enhance the benefit of such assistance for the very poor, particularly women.

(c) ADDITIONAL MONITORING REQUIREMENTS.—As a part of the monitoring system established under subsection (b), the Administrator of AID—

(1) using data provided by lending institutions, shall monitor the actual amount of microenterprise credit and the number of loans made available to the poverty target population as a result of each project or program carried out pursuant to this Act;

(2) using data provided by lending institutions, shall monitor the amount of funding provided pursuant to this Act which is allocated to organizations engaged in making loans of under $300 to the poverty target population, or to the poverty lending portion of mixed programs;

(3) shall report to Congress annually on the progress in implementing AID's institutional plan of action to achieve the Microcredit Summit goal of expanding access to credit and other financial and business services to 100,000,000 of the world's poorest families, especially the women in those families, by 2005; and

(4) shall include a summary of the information collected under paragraphs (1) and (2) in AID's annual presentation to Congress.

Ms. SNOWE. Mr. President, I am pleased to be the lead cosponsor of the Microcredit for Self-Sufficiency Act of 1998. This bipartisan measure is an excellent means of fighting poverty and allowing the world's enterprising poor to escape it.

Microcredit programs extend small loans to very poor people for self-employment projects that generate income to allow them to care for themselves and their families. These loans are provided without collateral to poor people so they can start or expand small businesses. Microcredit encourages entrepreneurship and productivity among the poorest people in the world and allows them and their families to escape from poverty with dignity.

I have always believed that the foreign assistance expenditures made by the United States should provide the maximum benefit in a cost-efficient manner. Microcredit meets this most important test. Microcredit loans are repaid by borrowers at commercial interest rates or higher, and repayment rates reach 95% and above. The money invested in microcredit programs is continually recycled, allowing lenders to reach more people over time.

This assessment is borne out by the Foundation for International Community Assistance (FINCA) which is a non-governmental organization working in Latin America, Africa, Asia and the United States. It estimates that, over 5 years, $1 million invested in one of their microcredit programs generates $15 million in new loans.

The microcredit concept has been a great success. Around the world, small investments have allowed an estimated 10 million poor people to begin self-employment ventures as opposed to relying on government handouts. Far more families could benefit from microcredit, but do not yet have access to such opportunities as this type of lending is not typically done by most financial institutions. It is microcredit institutions that will undertake such opportunities to provide a poor woman in Bangladesh, for example, with the funds to buy an extra cow or goat to increase her modest farming output.

Indeed, one real-life illustration of the success of this program has been the Grameen Bank in Bangladesh. In 1976, a man named Muhammad Yunus conducted an innovative research endeavor to examine the possibility of designing a credit delivery system to provide banking services to help the rural poor. These are individuals who want to escape poverty but find that conventional sources of lending are unavailable to them because they lack the collateral to get a loan.

The Grameen Bank Project began with the goals of extending banking facilities to poor men and women, and creating opportunities for self-employment. It also aimed to reverse the vicious cycle of low income, low savings, and low investment by providing these individuals with credit that would yield greater investment and income.

Today, the Grameen Bank is the largest rural credit institution in Bangladesh. It has over two million borrowers—94 percent of whom are women. The Grameen Bank covers more than half of all villages in Bangladesh and the repayment of its loans, which average $160 in United States dollars, is over 95%. The Bank has also helped train approximately 4,000 individuals from about 100 nations over the last 10 years. There have been 223 Grameen style programs replicated in some 58 nations in the last decade. This success story demonstrates what an individual is capable of when given the opportunity to help himself or herself escape poverty.

Take the instance of Amena Begum, who in 1993, lived in poverty with her family in a village in Bangladesh. She and her family survived by living as squatters and earning money as day laborers or by operating micro-businesses in constant debt to loansharks. That same year, she convinced her husband to move the family to another village and joined the Grameen Bank. A neighbor told her ''We're all poor—or at least we all were when we joined. I'll stick up for you because I know you'll succeed in business.''

Well, she was elected secretary of her Grameen Bank group and repaid a loan she received to start a chicken and duck raising business. Grameen then gave her a second loan and, today, her business is growing and providing for her family's basic needs.

A continent away in Ethiopia another woman, Alemnesh Geressu, her landless husband, and their seven children were also struggling. For several years, she bought grain from a trader and sold it in the local market. However, most of her profit went back to the lender who charged more than 10 percent interest per month. With loans from a Catholic Relief Services Program, she was able to buy grain at a lower price from nearby farmers and make higher profits. Her business grew dramatically and she now sells a local beverage, grows vegetables and even raised a cow—all in addition to her grain marketing activities.

Alemnesh now pays back her loan at a commercial rate that is ten times less than she used to pay to the local money lenders. She has enough to feed her family well and to send two of her children to school. Alemnesh says she now has ''more confidence and skills in myself and I wish the program could accommodate more women to improve their lives.''

More families need to be touched by such programs. Just last year, at the 1997 Global Microcredit Summit, donor nations and international institutions established the goal of reaching 100 million of the world's poorest families,

especially the women in those families with microcredit loans by the year 2005. I believe that this bill, the Microcredit for Self-Sufficiency Act of 1998, puts the United States on track to provide its share of funding to help achieve this worthwhile goal.

This bill authorizes not less than $160 million in Fiscal Year 1999 for the United States Agency for International Development's microenterprise program. To ensure that microcredit assistance goes to those most in need of assistance, the bill targets at least half of these resources to institutions serving the world's poorest families, with loans under $300. Further, the bill channels a larger proportion of microcredit assistance through effective nongovernmental organizations that promote the development and expansion of microcredit programs worldwide.

Mr. President, microcredit programs enjoy broad bipartisan support not only because they help millions to work their way out of poverty but because they also recycle foreign aid dollars through loan repayments. Microcredit programs are self-sustainable, can be replicated, and are powerful vehicles for social development.

This bill would increase the number of families that have access to such programs. Microcedit programs would be raised to a higher priority among our nation's foreign aid initiatives. And the investments called for in this bill will help bring the possibility of financial independence to millions of potential entrepreneurs who struggle to survive on less than $1 a day.

By Mr. DORGAN (for himself and Mr. REID):

S. 2153. A bill to require certain expenditures by the Federal Reserve System to be made subject to congressional appropriations, to prohibit the maintenance of surplus accounts by Federal reserve banks, to provide for annual independent audits of Federal reserve banks, to apply Federal procurement regulations to the Federal Reserve System, to reform the pricing practices of the Federal Reserve System for services provided to the domestic banking system, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

THE FEDERAL RESERVE FISCAL ACCOUNTABILITY ACT OF 1998

Mr. DORGAN. Mr. President, today Senator REID and I are introducing legislation to help address a number of budgetary excesses and accountability lapses at the Federal Reserve Board.

When the General Accounting Office (GAO) released its comprehensive and historic report about the management of the Federal Reserve system—which took over two years to assemble —we learned about disturbing financial practices and management failures within the Federal Reserve system. The report is packed with examples of where the Fed could substantially trim costs, and it makes specific recommendations for changes in Fed operations. Unfortunately, the Federal Reserve dismissed most of the GAO's recommendations as irrelevant or unnecessary.

The GAO report shows that during the late 1980s and early 1990s, Federal Reserve expenditures jumped by twice the rate of inflation, while the rest of the federal government has been downsizing. This runaway spending is remarkable given Chairman Greenspan's advice about the need for belt-tightening in the rest of government.

The gold-plated hood ornament of the Federal Reserve System's questionable practices is, in my judgment, its huge cash surplus account that's funded with billions of dollars in taxpayer money to protect against losses, despite the fact that the Fed hasn't suffered a loss for more than 80 consecutive years. When the GAO's report was released a couple of years ago, the Fed had squirreled away some $3.7 billion into the surplus account, which was up some 79% from its level in the late 1980s. Now the Fed has increased the surplus account by another 40% to about $5.2 billion—even though the GAO concluded that ''it is unlikely that the Federal Reserve will ever incur sufficient annual losses such that it would be required to use any funds in the surplus account.''

Our bill, the ''Federal Reserve Fiscal Accountability Act of 1998,'' includes many of the changes recommended by the GAO. It would do the following:

First, the Federal Reserve is required to immediately return to the general fund of the federal Treasury the $5.2 billion of taxpayer's money that has unnecessarily accumulated in the Fed's surplus fund. In addition, the bill asks the GAO to determine the extent to which the Fed's future net earnings should be transferred to the federal Treasury each year.

Second, the GAO, in consultation with the Federal Reserve, will identify and report to Congress a list of the Federal Reserve System activities that are not related to the making of monetary policy. After the report is completed, all non-monetary policy expenditures, as identified by the GAO, would be subject to the congressional appropriations process.

We do not intend to inject politics into monetary policy with this provision. However, over 90 percent of the Fed's operations have nothing to do with interest rate policy according to the GAO. And there is simply no good reason why the Fed's non-monetary expenditures are immune from the same kind of oversight and review required of other federal agencies.

Third, the regional Federal Reserve banks and the Board of Governors will be subjected to annual independent audits. This provision merely codifies what the Federal Reserve has been doing for the most part in recent practice. The detection of any possible illegal acts must be reported to the Comptroller General.

Fourth, the Federal Reserve will be required to follow the same procurement and contracting rules that apply to other federal agencies. These rules should help to prevent the examples of favoritism highlighted in the GAO report and increase competition among contract bidders with the Fed. This requirement ought to substantially reduce procurement costs on a system-wide basis.

Finally, we've made some changes to require the Fed to compete more fairly with the private sector in providing a variety of payment system services, such as check clearing and transportation to banks and other financial institutions.

I invite my colleagues to join us as cosponsors of this much-needed legislation.

Mr. REID. Mr. President, I rise today with the Senator from North Dakota to introduce legislation which we believe will improve fiscal management within the Federal Reserve System and will allow private-sector competitors to compete fairly in ''priced services.'' We assure you that nothing in this bill affects monetary policy of the Federal Reserve.

Back in September 1993, Senator DORGAN and I requested a GAO investigation of the operations and management of the Federal Reserve System. We were concerned because no close examination of the Fed's operations had ever been conducted before. The GAO report that was issued in 1996 raised serious questions about management within the Fed which this bill will address.

One of the most astonishing findings in the 1996 report was the Fed had squirreled-away $3.7 billion in taxpayer money in a slush fund. As of January 1998, this amount has now grown to $5.2 billion. This money could be used for deficit reduction. The Fed claims the slush fund is needed to cover system losses. Since it was created in 1913, however, the Fed has never operated at a loss. This bill prohibits maintenance of surplus accounts and the surplus funds must be sent to Treasury.

The bill requires the Comptroller General of U.S. and the Fed Board of Governors to identify the functions and activities of the Board and each Fed bank which relate to U.S. monetary policy. After six months after enactment, all non-monetary policy expenses of Federal Reserve System, will be subject to congressional appropriations. The Fed will now have to justify its use of operating expenses.

Because of the Fed's self-financing nature, its operating costs have escaped public investigation. In order to be fiscally responsible, all activities regarding government finances need to be scrutinized. Surprisingly, the GAO study was the very first look into the internal operations of the Fed. We think that oversight is needed on the workings of this large and influential public entity. While the rest of Federal government has tightened its belt and

down-sized, the Fed enjoyed enormous growth in its operating costs and questionable growth in its staffing.

Clearly, the Fed could do much more to increase its fiscal responsibility, particularly as it urges frugal practices for other agencies. The picture the GAO report painted of the internal management of the Fed is one of conflicting policies, questionable spending, erratic personnel treatment, and favoritism in procurement and contracting policies.

To date, there has never been an annual, independent audit of the nation's central banking system. This bill provides for annual independent audits of the banks, the Board of Governors and the Federal Reserve System. The detection of any possible illegal acts must be reported to the Comptroller General. The bill requires an annual audit of each Federal reserve bank, the Federal reserve board of governors and in turn, an audit of the Federal reserve system. This Auditor must be a certified public accountant who is totally independent of the Fed. An annual audit is fiscally sound policy which would instill greater public confidence in our banking system.

This bill would also would reform the pricing practices of Federal Reserve System so that fair competition with private businesses would exist. It will eliminate the possibility of accusations of favoritism and conflict of interest in procurement and contracting. This examination will ensure that the Federal Reserve is competing fairly with its private-sector competitors. This matter of fairness becomes very important when the agency both competes with the private sector and also regulates their competitors.

The Federal Reserve operates several lines of business, which compete with the private sector. These businesses are referred to as ''priced services.'' This legislation will ensure that the Federal Reserve is accountable for the manner in which these businesses are run and how the prices for these services are calculated. The Federal Reserve is required by the Monetary Control Act of 1980 to match its revenues with its costs so that the prices for services it sells are not subsidized.

We want to make sure that no accounting or pricing policy hides any subsidy. This legislation will benefit anyone who cashes a check in this country because it promotes a fair and competitive market place for those who provide the many services necessary to process the collection of checks. Costs should be fully recovered in the Federal Reserve's pricing. These annual audits will ensure that they are recovered and will level the playing field for those who can offer competitive services

We usually think of the Federal Reserve in the terms of monetary policy, of setting interest rates. I want to make it very clear, I'm not attempting to interfere with, or impugn, the monetary policy of the Fed. I am simply seeking greater accountability in the operating expenses and internal management of one of our most influential institutions. I believe that the Federal Reserve could do more to increase its cost consciousness and to operate as efficiently as possible. This bill will ensure that this happens and I look forward to greater discussion of this issue by Congress. I encourage the committee to give favorable consideration to our legislation.

By Mrs. BOXER:

S. 2154. A bill to promote research to identify and evaluate the health effects of silicone breast implants, and to ensure that women and their doctors receive accurate information about such implants; to the Committee on Labor and Human Resources.

SILICONE BREAST IMPLANT RESEARCH AND INFORMATION ACT

● Mrs. BOXER. Mr. President, today I am introducing a bill that will make a significant difference in the lives of millions of American women—the Silicone Breast Implant Research and Information Act. There is one basic reason for this bill: to make sure women have accurate and complete information so they can make informed decisions about their health.

Each year, nearly 180,000 women are diagnosed with breast cancer in the United States. In total, approximately 2.6 million Americans live with breast cancer. When a women undergoes a mastectomy, she faces the decision of whether to have reconstructive surgery, and one important option she has is to have a silicone breast implant.

Between 1 and 2 million women in the United States have received silicone breast implants over the last 35 years, as part of reconstructive surgery after mastectomy, or for cosmetic purposes.

Many women with silicone implants have come forward with a variety of symptoms and atypical illnesses. Although research over the years has attempted to get to the bottom of this, we still don't have the answers women need and deserve.

In 1992, the Food and Drug Administration restricted the availability of silicone breast implants because it had not received enough evidence to prove that these implants are safe. Currently, silicone breast implants are only available to women who have had breast cancer surgery or who have other special medical needs, such as a severe injury or birth defect. Women who need to have an implant replaced for medical reasons, such as rupture of the implant, are also eligible.

These women should have access to the broadest possible treatment options—including breast implants. But it is just as essential that women can count on sound scientific research regarding the safety of implants. It is essential that the Federal Government coordinate its efforts on this issue to maximize the use of limited resources.

This bill contains three components women need to make informed decisions about silicone breast implants—research, information, and coordination. It gives women not only options, but information and peace of mind.

I am proud to introduce this bill in the Senate, and to be joined by Congressman Gene Green, who is introducing this bill in the House of Representatives. I ask unanimous consent that the full text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2154

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Silicone Breast Implant Research and Information Act''.

SEC. 2. FINDINGS AND PURPOSE.

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

(1) According to the Institute of Medicine, it is estimated that 1,000,000 to 2,000,000 American women have received silicone breast implants over the last 35 years.

(2) Silicone breast implants have been used primarily for breast augmentation, but also as an important part of reconstruction surgery for breast cancer or other conditions.

(3) Women with breast cancer or other medical conditions seek access to the broadest possible treatment options, including silicone breast implants.

(4) Women need complete and accurate information about the potential health risks and advantages of silicone breast implants so that women can make informed decisions.

(5) Although the rate of implant rupture and silicone leakage has not been definitively established, estimates are as high as 70 percent.

(6) According to a 1997 Mayo Clinic study, 1 in 4 women required additional surgery because of their implants within 5 years of receiving them.

(7) In addition to potential systemic complications, local changes in breast tissue such as hardening, contraction of scar tissue surrounding implants, blood clots, severe pain, burning rashes, serious inflammation, or other complications requiring surgical intervention following implantation have been reported.

(8) According to the Institute of Medicine, concern remains that exposure to silicone or other components in silicone breast implants may result in currently undefined connective tissue or autoimmune diseases.

(9) A group of independent scientists and clinicians convened by the National Institute of Arthritis and Musculoskeletal and Skin Diseases in April of 1997 addressed concerns that an association may exist between atypical connective tissue disease and silicone breast implants, and called for additional basic research on the components of silicone as well as biological responses to silicone.

(10) According to many reports, including a study published in the Journal of the National Cancer Institute, the presence of silicone breast implants may create difficulties in obtaining complete mammograms.

(11) According to a 1995 Food and Drug Administration publication, although silicone breast implants usually do not interfere with a woman's ability to nurse, if the implants leak, there is some concern that the silicone may harm the baby. Some studies suggest a link between breast feeding with implants and problems with the child's esophagus.

(b) PURPOSE.—It is the purpose of this Act to promote research to identify and evaluate the health effects of silicone breast implants, and to ensure that women and their doctors receive accurate information about such implants.

(c) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to affect any rule or regulation promulgated under the authority of the Food, Drug and Cosmetic Act that is in effect on the date of enactment of this Act relating to the availability of silicone breast implants for reconstruction after mastectomy, correction of congenital deformities, or replacement for ruptured silicone implants for augmentation.

SEC. 3. EXPANSION AND INTENSIFICATION OF ACTIVITIES REGARDING SILICONE BREAST IMPLANTS AT THE NATIONAL INSTITUTES OF HEALTH.

Part H of title IV of the Public Health Service Act (42 U.S.C. 289 et seq.) is amended by adding at the end the following:

"SEC. 498C. SILICONE BREAST IMPLANT RESEARCH.

''(a) INSTITUTE-WIDE COORDINATOR.—The Director of NIH shall appoint an appropriate official of the Department of Health and Human Services to serve as the National Institutes of Health coordinator regarding silicone breast implant research. Such coordinator shall encourage and coordinate the participation of all appropriate Institutes in research on silicone breast implants, including—

''(1) the National Institute of Allergy and Infectious Diseases;

''(2) the National Institute of Arthritis and Musculoskeletal and Skin Diseases;

''(3) the National Institute of Child Health and Human Development;

''(4) the National Institute of Environmental Health Sciences;

''(5) the National Institute of Neurological Disorders and Stroke; and

''(6) the National Cancer Institute.

''(b) STUDY SECTIONS.—The Director of NIH shall establish a study section or special emphasis panel if determined to be appropriate, for the National Institutes of Health to review extramural research grant applications regarding silicone breast implants to ensure the appropriate design and high quality of such research and shall take appropriate action to ensure the quality of intramural research activities.

''(c) CLINICAL STUDY.—

''(1) IN GENERAL.—The Director of NIH shall conduct or support research to expand the understanding of the health implications of silicone breast implants. Such research should, if determined to be scientifically appropriate, include a multidisciplinary, clinical, case-controlled study of women with silicone breast implants. Such a study should involve women who have had such implants in place for at least 8 years, focus on atypical disease presentation, neurological dysfunction, and immune system irregularities, and evaluate to what extent if any, their health differs from that of suitable controls, including women with saline implants as a subset.

''(2) ANNUAL REPORT.—The Director of NIH shall annually prepare and submit to the appropriate Committees of Congress a report concerning the results of the study conducted under paragraph (1).''.

SEC. 4. EXPANSION AND INTENSIFICATION OF ACTIVITIES REGARDING SILICONE BREAST IMPLANTS AT THE FOOD AND DRUG ADMINISTRATION.

To assist women and doctors in receiving accurate and complete information about the risks of silicone breast implants, the Commissioner on Food and Drugs shall—

(1) ensure that the toll-free Consumer Information Line and materials concerning breast implants provided by the Food and Drug Administration are available, up to date, and responsive to reports of problems with silicone breast implants, and that timely aggregate data concerning such reports shall be made available to the public upon request and consistent with existing confidentiality standards;

(2) revise the Administration's breast implant information update to clarify the procedure for reporting problems with silicone implants or with the conduct of adjunct studies, and specifically regarding the use of the Medwatch reporting program;

(3) require that manufacturers of silicone breast implants update implant package inserts and informed consent documents regularly to reflect accurate information about such implants, particularly the rupture rate of such implants; and

(4) require that any manufacturer of such implants that is conducting an adjunct study on silicone breast implants—

(A) amend such study protocol and informed consent document to reflect that patients must be provided with a copy of informed consent documents at the initial, or earliest possible, consultation regarding breast prosthesis;

(B) amend the informed consent to inform women about how to obtain a Medwatch form and encourage any woman who withdraws from the study, or who would like to report a problem, to submit a Medwatch form to report such problem or concerns with the study and reasons for withdrawing; and

(C) amend the informed consent document to provide potential participants with the inclusion criteria for the clinical trial and the toll-free Consumer Information number.

SEC. 5. PRESIDENT'S INTERAGENCY COMMITTEE ON SILICONE BREAST IMPLANTS.

(a) ESTABLISHMENT.—There is established an interagency committee, to be known as the President's Interagency Committee on Silicone Breast Implants (referred to in this Act as the ''Committee''), to ensure the strategic management, communication, and oversight of the policy formation, research, and activities of the Federal Government regarding silicone breast implants.

(b) COMPOSITION.—The Committee shall be composed of—

(1) an individual to be appointed by the President who represents the White House domestic policy staff;

(2) a representative, to be appointed by the Secretary of Health and Human Services, from—

(A) the Office of Women's Health at the Department of Health and Human Services;

(B) the National Institutes of Health;

(C) the Food and Drug Administration; and

(D) the Centers for Disease Control and Prevention;

(3) a representative of the Department of Defense with experience in the Department's breast cancer research program;

(4) representatives of any other agencies deemed necessary to accomplish the mission of the Committee, including the Social Security Administration if appropriate;

(5) up to 4 individuals to be appointed by the President from scientists with established credentials and publications in the area of silicone breast implants; and

(6) 2 women who have or have had silicone breast implants to be appointed by the President.

(c) CHAIRPERSON.—

(1) IN GENERAL.—The individual appointed under subsection (b)(2)(A), or other official if the President determines that such other official is more appropriate, shall service as the chairperson of the Committee.

(2) DUTIES.—The chairperson of the Committee shall—

(A) not less than twice each year, convene meetings of the Committee; and

(B) compile information for the consideration of the full Committee at such meetings.

(d) MEETINGS.—The meetings of the Committee shall be open to the public and public witnesses shall be given the opportunity to speak and make presentations at such meetings. Each member of the Committee shall make a presentation to the full Committee at each such meeting concerning the activities conducted by such member or by the entity that such member is representing related to silicone breast implants.

(e) ADMINISTRATIVE PROVISIONS.—

(1) TERMS AND VACANCIES.—A member of the Committee shall serve for a term of 2 or 4 years (rotating terms). A member may be reappointed 2 times, but shall not exceed 8 years of service. Any vacancy in the membership of the Committee shall be filled in the manner in which the original appointment was made and shall not affect the power of the remaining members to carry out the duties of the Committee.

(2) COMPENSATION; REIMBURSEMENT OF EXPENSES.—Members of the Committee may not receive compensation for service on the Committee. Such members may, in accordance with chapter 57 of title 5, United States Code, be reimbursed for travel, subsistence, and other necessary expenses incurred in carrying out the duties of the Committee.

(3) STAFF; ADMINISTRATIVE SUPPORT.—The Secretary of Health and Human Services shall, on a reimbursable basis, provide to the Committee such staff, administrative support, and other assistance as may be necessary for the Committee to effectively carry out the duties under this section.

(4) CONFLICT OF INTEREST.—The members of the Committee shall not be in violation of any Federal conflict of interest laws.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.●

By Mr. BINGAMAN:

S. 2155. A bill to provide restitution of the economic potential lost to communities dependent on Spanish and Mexican Land Grants in New Mexico due to inadequate implementation of the 1848 Treaty of Guadalupe Hidalgo; to the Committee on Energy and Natural Resources.

FAIR DEAL FOR NORTHERN NEW MEXICO ACT OF 1998

● Mr. BINGAMAN. Mr. President, today, I introduce a bill to resolve a long standing controversy between many citizens of my State of New Mexico, and their government.

In 1848, the United States entered into a treaty with Mexico to end the Mexican/American War called the Treaty of Guadalupe-Hidalgo. In that treaty, Mexico ceded an enormous tract of land that was to become the American Southwest including the State of New Mexico. In return the Treaty stipulated that the property rights of the Mexican citizens who lived in the area, and who were to become new citizens of the United States, would be protected.

We must recall that these new citizens had had a long, and sometimes ancient, connection to the land. The Native American tribal peoples who had lived there for thousands of years, had

become citizens of Spain and then Mexico. Also many of those new citizens of Spanish descent had a family heritage of living on the this land dating back 250 years to 1598, when the Spanish colonial capital in New Mexico was established at San Juan Pueblo. They had built towns and cities, churches, and vast irrigation systems for their farms.

Unfortunately, the treaty provisions protecting title to land were not well and evenly implemented. It has been fairly well documented by scholars such as Professor Malcolm Ebright at the University of New Mexico, and Professor Emeritus Michael Meyer from the University of Northern Arizona, that many people lost title to their land who should have been protected by the treaty. In some cases this was due to faulty surveying by the Surveyor General, in some cases it was due to a lack of knowledge by American Territorial Courts about how title was acquired under Spanish and Mexican law, and most egregiously people sometimes lost their land through outright fraud by government officials and land speculators.

As I said earlier, the implementation of the treaty was not uniform. In some areas property rights were fairly well adhered to, but in others legitimate titles were wiped out wholesale. A group of people that were particularly hurt in this process were the relatively poor subsistence farmers and ranchers living in northern New Mexico. These new American citizens were easy prey for land speculators. Not only were they learning a new language and legal system, but usually they did not have the financial resources to defend their property rights in the courts. In some cases, people were told that if they signed a given document that they would be assured the continued use of their land forever. However in reality, what they were signing were quit claim deeds, giving title to their land to some nefarious speculator.

The ramifications of this history have caused bitter disputes and economic hardship in northern New Mexico for generations. The issue is still relevant for many New Mexicans feel their government has an obligation to compensate them for their loss of land. In many cases they may be right.

Mr. President, after 150 years it may not be possible or practicable to revisit the thousands of title claims originally made in 1848. So much time has passed, and so many title transfers have taken place since then that the legal review could be a never ending legal maze. However, Spanish and Mexican law recognized community as well as individual land titles. Under a grant from the King of Spain or the Mexican government, whole communities had a claim on certain lands. These community land grants form a distinct, and often better documented, subset of the claims made under the Treaty of Guadalupe-Hidalgo. Given that this is a smaller, more defined group of claims, and because of they affect whole communities, it may be possible to settle these long standing claims and provide a sense of justice to people in northern New Mexico.

Last year former Representative Richardson introduced a bill, H.R. 260, to create a commission to study and recommend settlement of these claims. His successor in office, Representative Redmond has carried on this issue in his own bill, H.R. 2538. These bills have been useful in bringing the issue to national attention and I commend both of my colleagues for introducing them.

Mr. President, my bill, which I call the Fair Deal for Northern New Mexico Act, builds upon the efforts in the other body. For example, the House bill is focused on an exhaustive legal review of the various community land grant claims and whether land should be transferred back to the claimants. My bill also has a review of these claims, but acknowledges that after 150 years, that we may never be able to reach legal certainty in some cases. We may find that a claim is colorable, that it has a legal basis, but not exactly what is owed. Also, we may find that the other people in the community currently either own the land in question, or if it's federal land, they may have long standing leases on which they depend. For that reason, my bill creates a package of options for settlement of these claims with the involvement and support of the whole community that would be affected.

I won't dwell on the differences between this bill and the one in the House because I see this bill as a broadening and strengthening of that effort. Let me just run briefly what my bill would do, and my hope is that as this works its way through committee and on the floor that we'll reach an agreement with the House sponsors on legislation that will resolve this long standing legal dispute in New Mexico.

My bill has three key components: the creation of county-wide settlement committees, the reasonable but expedited time-frame, and a broad range of settlement options. First, it would create seven member settlement committees, one for each county in New Mexico in which their are these community land grant claims. To get the federal agencies actively involved in a solution to the issue, the Secretaries of Agriculture and Interior would each have a representative on these committees. The State Lands Commissioner would represent the interests of the State's educational trust fund. Finally, each county commission would appoint four representatives, at least one of which must be a Tribal member if there is an Indian Pueblo within that county, and at least one of which is a non-Indian heir to a Spanish or Mexican Land Grant.

Second, the bill tries to keep the issue on the front burner by limiting the settlement committees to a set schedule. The settlement committees would have ninety days to publish a set of guidelines on to how to document a land claim, and then people would have one year to file their claims. These committees would then have three years in which to review the claims and develop a proposed settlement to be submitted to Congress.

The whole process from creation of these committees to proposals to Congress would take about five years. I think this very important. It should be long enough to develop some solid settlement proposals, but it is a short enough time-frame that the people in New Mexico will see action before they just become frustrated.

Finally, the settlement committees would have a number of options to choose from to create a settlement that will satisfy the claims and the communities in which they are made. As with the House bill, one options would be to transfer land directly back to a particular community land grant. However, the committee might propose that federal lands be set aside for under special designations for community use, or that lands should be transferred to local municipalities to benefit everyone in the community. Further, a settlement committee could recommend that a package of economic develop grants or tuition scholarships would better meet the current needs of claimants and the community than a transfer of whatever land might be available. All of these options would be tools available to a county settlement committee to use in crafting a settlement that the people of that county would find to be fair and just.

Mr. President, it is time for the United States to respond to its citizens on this issue, to bring this controversy to closure, and to give the citizens of northern New Mexico a sense that justice has been done so that they can move forward both socially and economically without this cloud from the past hanging over them. I think this bill will move us forward towards those goals. I would like to call on the Committee on Energy and Natural Resources to hold hearings on this bill at the earliest possible time. I hope to work with the rest of the New Mexico delegation and the other members of Congress to pass good legislation regarding the issue.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2155

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fair Deal for Northern New Mexico Act of 1998.''

SEC. 2. PURPOSE, DEFINITIONS AND FINDINGS.

(a) PURPOSE.—

The purpose of this Act is to create a mechanism for the settlement of Spanish and Mexican land grant claims in New Mexico as claimed under the Treaty of Guadalupe-Hildalgo.

(b) DEFINITIONS.—For Purposes of this Act:

(1) TREATY OF GUADALUPE-HIDALGO.—The term ''Treaty of Guadalupe-Hidalgo'' means the Treaty of Peace, Friendship, Limits, and Settlement (Treaty of Guadalupe Hidalgo), between the United States and the Republic of Mexico, signed February 2, 1848 (TS 207; 9 Bevans 791);

(2) COMMUNITY LAND GRANT.—The term ''community land grant'' means a village, town, settlement, or pueblo consisting of land held in common (accompanied by lesser private allotments) by three or more families under a grant from the King of Spain (or his representative) before the effective date of the Treaty of Cordova, August 24, 1821, or from the authorities of the Republic of Mexico before May 30, 1848, in what became the State of New Mexico, regardless of the original character of the grant.

(3) LAND GRANT CLAIM.—The term ''land grant claim'' means a claim of title to land by a community land grant under the terms of the Treaty of Guadalupe-Hidalgo.

(4) ELIGIBLE DESCENDANT.—The term ''eligible descendant'' means a descendant of a person who—

(A) was a Mexican citizen before the Treaty of Guadalupe-Hildalgo;

(B) was a member of a community land grant; and

(C) became a United States citizen within ten years after the effective date of the Treaty of Guadalupe-Hidalgo, May 30, 1848, pursuant to the terms of the Treaty.

(5) SETTLEMENT COMMITTEE.—The term ''settlement committee'' refers to committee, or one of the county specific subcommittees as appropriate, authorized in Section 3 of this Act.

(6) RECONSTITUTED.—The term ''reconstituted,'' with regard to a valid community land grant, means restoration to full status as a municipality with rights properly belonging to a municipality under State law, including the nontaxability of municipal property (common lands) and the right of local self-government.

(c) FINDINGS.—Congress Finds the Following:

(1) New Mexico has a unique and complex history regarding land ownership due to the substantial number of Spanish and Mexican land grants that were an integral part of the colonization of New Mexico before the United States acquired the area in the Treaty of Guadalupe-Hidalgo.

(2) Under the terms of the Treaty of Guadalupe-Hidalgo, these land grant claims were recognized as valid property claims under United States' law.

(3) Several studies, including the New Mexico Land Grant Series published by the University of New Mexico, have documented that the Treaty of Guadalupe-Hidalgo in regards to these land grant claims in New Mexico was never well implemented. Whether because of a lack of knowledge of Spanish land law on the part of the judicial system in the then new Territory of New Mexico, whether because of inadequate or conflicting documentation of these claims, or whether it was due to sharp legal practices, many of the former citizens of Mexico, and then new citizens of the United States, lost title to lands that had been guaranteed to them by treaty.

(4) Following the United States' war with Mexico, the economy of the Territory of New Mexico was dependent on the use of land resources, and that held true for much of this century as well. When the land grant claimants lost title to their land, the predominantly Hispanic communities in northern New Mexico lost a keystone to their economy. The effects of this loss have had long lasting economic consequences and are in part the cause that these communities remain some of the poorest in the United States.

(5) The history of the implementation of the Treaty of Guadalupe-Hidalgo has been a source of continuing controversy for generations and has left a lingering sense of injustice in the communities in northern New Mexico, which has periodically lead to armed conflicts.

(6) The government of the United States has an obligation to try to find an equitable remedy for the inadequate implementation of the Treaty of Guadalupe-Hidalgo and the consequences that has had on the communities and people of New Mexico. This should be done as expeditiously as possible. However, reconstructing the one hundred and fifty year history of land title claims and transfers in these communities is likely to prove lengthy and costly. In some cases it may never be possible to adequately reconstruct the title history.

(7) The Secretary of the Interior has had a experience in administratively developing settlement packages to resolve large and complex Tribal water rights claims as an alternative to lengthy and expensive litigation. This experience may be invaluable in resolving the large, complex, and sometimes conflicting Spanish and Mexican land grant claims in northern New Mexico.

(8) The history of colonial Spanish America, the system of land distribution under Spanish and Mexican law, and the subsequent impacts to that system following the transfer of territory from Mexico to the United States under the Treaty of Guadalupe-Hidalgo is a requisite body of knowledge in determining an appropriate settlement of land grant claims. It is also an integral part of the national history and culture of the United States of America and, as such, deserves formal recognition and interpretation by our institutions of historical preservation.

SEC. 3. CREATION OF SETTLEMENT COMMITTEES.

(A) Within one hundred and eighty (180) days of enactment of this Act, the Secretary of the Interior working through the Bureau of Land Management and the Bureau of Indian Affairs, and the and the Secretary of Agriculture working through the Forest Service are hereby authorized and directed to establish a ''Settlement Committee'' to develop comprehensive settlements for land grant claims on a county by county basis.

(b) The Settlement Committee will be comprised of separate subcommittees for each county in which there are land grant claims in New Mexico.

(c) Each county subcommittee shall be comprised of seven members including: (1) a representative of the Secretary of the Interior; (2) a representative of the Secretary of Agriculture; (3) a representative of the State Commissioner of Public Lands; and (4) four residents of the particular county in question. The four county representatives are to be appointed their county commissions: *Provided,* That in counties with Federally recognized Native American Indian Tribes that at least one county representative shall be an enrolled member of a tribe whose reservation pueblo boundaries come within that county: *Provided further,* That at least one county representative shall be an eligible descendent who is not an enrolled member of a Native American Indian Tribe.

(d) Each member shall be appointed for the life of the Settlement Committee. A vacancy in the Settlement Committee shall be filled in the manner in which the original appointment was made.

SEC. 4. SUBMISSION OF LAND GRANT CLAIMS.

(a) Within ninety (90) days of the creation of the settlement committee it shall establish a set of guidelines for the submission of land grant claims, and publish these guidelines within papers of general circulation in each of the counties in New Mexico.

(b) Land grant claims must be submitted to the appropriate county settlement committee within one year of the publication of the guidelines.

SEC. 5 REVIEW AND SETTLEMENT PACKAGE.

(a) The settlement committee for each county shall review all of the submitted claims in the county and, based on the documentation at its disposal, make an initial determination concerning their potential validity including: possible past conveyances, the accuracy of the boundaries of the land claimed, and the number of eligible heirs affected.

(b) Upon completing this review, the settlement committee shall develop a proposed settlement package in satisfaction of land grant claims within that county. In creating the settlement package, the settlement committee shall take into account: the degree of certainty with which it has determined that various claims are valid, the impacts, including economic and social impacts, that any unfulfilled land grant claims may have had on the communities within that county, the relative benefits of various settlement options on those communities, and whether there is a legal entity that can accept settlement. The elements of a proposed settlement package may include, but are not limited to:

(1) Restoration of lands to a given land grant community or communities;

(2) Reconstitution of a given land grant community or communities;

(3) The setting aside of certain lands for communal use for fuel wood, building materials, hunting, recreation, etc. These lands could be set aside as special managerial units within existing federal land management agencies or transferred to local county, tribal, or municipal, governments;

(4) Trust funds for scholarships or home and business loans; or

(5) Land for commercial use with the proceeds to be deposited into the trust funds.

(c) The settlement committee shall complete its review and proposed settlement package within three years of the deadline for submission of land grant claims under this Act, and submit them in a report to the Senate Committee on Energy and Natural Resources and the Senate Committee on Indian Affairs, and to the House Resources Committee. Any proposal that require action by the government of the State of New Mexico shall be submitted to the Governor, to the Speaker of the State House of Representatives, and to the President Pro Tem of the State Senate for New Mexico.

SEC. 6. ADMINISTRATION OF THE SETTLEMENT COMMITTEE.

(a) To complete its tasks the settlement committee may use a variety of methods to gather information and to build community consensus on the form of a proposed settlement package, including: the use of town meetings, holding formal hearings, the solicitation of written comments, and the use of mediators trained in alternative dispute resolution methods. The settlement committee is also authorized to hire consultants as it may choose for historical, economic, and legal analysis. In its efforts to develop a consensus on a settlement package, the Settlement Committee is not subject to the Federal Advisory Committee Act (Pub. L. 92–462; 5 U.S.C. Ap. 2 §1).

(b) GIFTS, BEQUESTS, AND DEVISES.—The Settlement Committee may accept, use, and dispose of gifts, bequests, or devises of services or property, both real and personal, for the purpose of aiding or facilitating the work of the Settlement Committee. Gifts, bequests, or devises of money and proceeds from sales of other property received as

gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement upon order of the Settlement Committee. For purposes of the Federal income, estates, and gift taxes, property accepted under this subsection shall be considered as a gift, bequest, or devise to the United States.

(c) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Settlement Committee, the Administrator of General Services shall provide to the Settlement Committee, on a reimbursable basis, the administrative support services necessary for the Settlement Committee to carry out its responsibilities under this Act.

(d) IMMUNITY.—The Settlement Committee is an agency of the United States for the purpose of part V of title 18, United States Code (relating to the immunity of witnesses).

(e) COMPENSATION.—Members of the Settlement Committee shall each be entitled to receive the daily equivalent of level V of the Executive Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Settlement Committee.

SEC. 7. SPANISH LAND GRANT STUDY PROGRAM.

(a) The Secretary of the Smithsonian Institution and the Settlement Committee working in conjunction with the University of New Mexico, and Highlands University shall establish a Spanish Land Grant Study program with a research archive at the Oñate Center in Alcalde, New Mexico. This program shall be designed to meet the requirements of the Smithsonian Institution's Affiliated Institutions Program.

(b) The purposes of the Spanish Land Grant Study Program are to assist the Settlement Committee in the performance of its activities under section 5, and to archive and interpret the history of land distribution in the southwestern United States under Spanish and Mexican law, and the changes to this land distribution system following the transfer of territory from Mexico to the United States under the terms of the Treaty of Guadalupe-Hidalgo in 1848.

SEC. 8. TERMINATION.

The Settlement Committee shall terminate on 180 days after submitting its final report to Congress under section 5.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $1,500,000 for each of the fiscal years 1999 through 2003 for the purpose of carrying out the activities of the Settlement Committee created in section 3, and the Spanish Land Grant Study Program created section 7.●

By Mr. BOND (for himself, Mr. GRASSLEY, Mr. LOTT, Mr. BREAUX, Mr. BURNS, Mr. MACK, Mr. BINGAMAN, Mr. FRIST, Mr. MURKOWSKI, Mrs. MURRAY, Mr. ROBERTS, Mr. HOLLINGS, Mr. DODD, Mr. FAIRCLOTH, Ms. COLLINS, Mr. JEFFORDS, Mr. THOMAS, Mr. D'AMATO, Mr. HATCH, Mr. SHELBY, Mr. ASHCROFT, Mr. KEMPTHORNE, Mr. ROBB, Mr. BAUCUS, Mr. CLELAND, Mr. CRAIG, and Mr. SANTORUM):

S.J. Res. 50. A joint resolution to disapprove the rule submitted by the Health Care Financing Administration, Department of Health and Human Services on June 1, 1998, relating to surety bond requirements for home health agencies under the Medicare and Medicaid programs; to the Committee on Finance.

RESOLUTION DISAPPROVING OF HCFA'S SURETY BOND RULE

Mr. BOND. Mr. President, today I introduce a measure on behalf of myself, Mr. BAUCUS, Mr. GRASSLEY, and others which sends a strong message to the Health Care Financing Administration (HCFA) that the United States Senate disapproves of the agency's recent rule regarding surety bond requirements for home health agencies.

The surety bond regulation, coupled with HCFA's implementation of the Interim Payment System (IPS) for home health, are crippling the ability of our Nation's home health agencies to provide high quality care to our Nation's seniors and disabled.

Over this past month alone, in St. Louis, Missouri, the two largest home health providers decided to get out of the home health business—leaving hundreds of elderly and disabled patients searching for a new provider. The invaluable, dedicated services provided by the largest independent provider in St. Louis , the Visiting Nurses Association (VNA), will no longer be realized by the approximately 600 home care patients the agency has served.

It is regrettable that a government bureaucracy is forcing a home health agency, that has served the St. Louis area for 87 years, out of the home health care business.

The Balanced Budget Act of 1997 requires that all Medicare-participating home care agencies hold surety bonds in an amount that is not less than $50,000. This provision was modeled after a successful Florida Medicaid statute which imposes surety bonds on home care providers as a way of ensuring that only reputable businesses entered Florida's Medicaid program.

This needed and modest idea, however, has been severely distorted by HCFA. HCFA's surety bond rule deviates from Florida's program in two major ways:

First, the Florida program requires a $50,000 bond. HCFA's rule requires the bond amount to be the greater of $50,000 or 15 percent of the home care agency's previous year's Medicare revenues.

Since HCFA issued its initial rule back in January of 1998, constituents in my home State have reported numerous problems in securing these bonds. These reputable individuals inform me that most bond companies are refusing to sell home care bonds under the regulation's requirements. Those few companies that are selling bonds are requiring backup collateral equal to the full face value of the bond, or personal guarantees of two or even three times the value of the bond.

Second, the Florida program requires only new home care agencies to secure these bonds. Agencies with at least one year in the program and with no history of payment problems were exempted from the bond requirement. HCFA's rule, however, requires all Medicare-participating home care agencies to hold bonds, regardless of how long an agency has been in Medicare and regardless of the agency's good Medicare history. Further, HCFA's rule requires every home care agency to purchase new surety bonds every year.

HCFA's rule is outrageous. These requirements and costs are unaffordable, especially for the smaller, freestanding home health agencies. HCFA's surety bond regulations threaten the existence of many small business home health providers and the essential services they provide to the most vulnerable and most frail of our society.

The surety bond requirement reflects HCFA's attitude that all Medicare providers are suspect. Rather than keeping unscrupulous providers out of the home health business, HCFA's rule will penalize and put many decent home health agencies out of business.

In promulgating this rule, HCFA did not consider the long-standing reputation of most home health agencies, their years of compliance with Medicare's regulations, or their history of managing and avoiding overpayments from the government. These providers have worked long and hard within the convoluted Medicare program, have abided by the rules and regulations, and have been subjected to numerous audits by fiscal intermediaries.

HCFA's careless disregard, which has already put many conscientious law-abiding companies out of business, must be dealt with immediately. It is especially incomprehensible when the small businesses at risk provide a service so valued by the disabled and older Americans who receive it.

On Tuesday, June 8, the Regulatory Fairness Board for Region VII held a public meeting in Frontenac, Missouri, a suburb of St. Louis. My Red Tape Reduction Act of 1996 created ten Regional Fairness Boards to be the eyes and ears of small business, collecting comments from small businesses on their experience with Federal regulatory agencies. The Ombudsman, created under the same law, is to use these comments to evaluate the small business responsiveness of agency enforcement actions.

According to Scott George, a small business owner from Mt. Vernon, Missouri who serves on the Region VII Fairness Board, this particular meeting of the Fairness Board was dominated by testimony from smaller, freestanding home health care agencies that will be driven out of business by the HCFA regulations. They testified that more than 1,100 home health care providers nationwide have already closed their doors this year. Mr. George noted that every company that testified before the Region VII Fairness Board said they would be driven out of business by year-end. One couple traveled from Michigan to Missouri to testify that they will be out of business by the time of the Regional Fairness Board for their area holds a hearing absent relief from the HCFA regulations.

Mr. President, concerns similar to those expressed in Missouri this Tuesday were raised with HCFA during its rulemaking. Regrettably, HCFA reacted like a quarter horse down the home stretch with blinders on, ignoring the comments submitted by small business as well as the agency's statutory obligations under the Administrative Procedures Act (APA) and the Regulatory Flexibility Act of 1980 as amended by my Red Tape Reduction Act in 1996.

In April, at the urging of myself and other Senators, the Small Business Administration's Office of Advocacy sent a letter to HCFA to advise the agency of the significant NEGATIVE impact this rule would have on small home health care providers. SBA's letter documents the deficiencies in the HCFA efforts to implement the bonding requirement. As set forth by the Chief Counsel of Advocacy, HFCA appears to have: exceeded the Congressional mandate in the Balanced Budget Act of 1997, inappropriately waived the APA's requirement for a general notice of proposed rulemaking with the opportunity for comment, and bypassed the procedural and analytical safeguards provided by the Regulatory Flexibility Act as amended by my Red Tape Reduction Act in 1996.

The SBA Office of Advocacy petitioned HCFA to exclude the provisions requiring the 15 percent bond requirement and the capitalization requirement pending a ''proper and adequate analysis'' of the impacts on small businesses. HCFA did not exclude these requirements. Not only does this exceed the scope of the 1997 Congressional directive, but it also imposes an undue financial burden on reputable home health agencies. Furthermore, in its June final rule, HCFA did not conduct a Regulatory Flexibility analysis of the rules impact on small home health care agencies. Instead, HCFA certified that the rule would not have a significant economic impact on a substantial number of small entities. HCFA's certification is in direct conflict with the comments submitted by the Office of Advocacy and the home health care industry regarding the small business impacts of the rule.

In 1996, Congress voted to enhance its ability to put a stop to excessive regulations and sloppy agency rulemakings. Enacted as Subtitle E of my Red Tape Reduction Act, the Congressional Review Act enhances the ability of Congress to serve as such a backstop. Senators NICKLES and REID sponsored the bipartisan, Congressional Review portion of the Red Tape Reduction Act to provide a new process for Congress to review and disapprove new regulations and to make sure regulators are not exceeding or ignoring the Congressional intent of statutory law.

The simple fact is that HCFA has ignored everyone—Congress, the SBA, the home health industry, and most importantly the beneficiaries of home health services. Congress must therefore move expeditiously and exercise its authority under the Congressional Review Act to pass a resolution of disapproval to strike the June 1 HCFA rule because HFCA exceeded the Congressional mandate and issued this rule in total disregard of its statutory obligations under the APA, Regulatory Flexibility Act and the Red Tape Reduction Act. Although Congress did direct the agency to develop surety bonding requirements and provide a deadline for such a rule to be issued, this does not relieve the agency of its responsibility to conduct such a rulemaking in accordance with existing laws intended to ensure procedural fairness in the rulemaking process.

The practical implication of Congress expressing its disapproval of the June rule is to require HCFA to go back and to conduct rulemaking in accordance with the intent of Congress as expressed in the Balanced Budget Act of 1997 and in keeping with the APA and the Regulatory Flexibility Act. As part of the rulemaking, HCFA should conduct an appropriate initial and final Regulatory Flexibility analysis in accordance with Sections 603 and 604 of the Regulatory Flexibility Act. Congress enacted these procedural safeguards to require agencies to assess the impact of rules such as HCFA's on small entities and to ensure that agencies choose regulatory approaches that are consistent with the underlying statute while minimizing the impacts on small entities to the extent possible. We should pass the resolution we are introducing today to ensure HCFA implements its statutory responsibilities in accordance with the law.

While I strongly support the vigorous routing of fraud and abuse whenever and wherever it is found, Congress and HCFA must ensure the highest access to appropriate, high quality home care—because in-home care is the key to fulfilling the desire of virtually all seniors to remain independent and in their own homes. Home health provides a safety net for our Nation's elderly and disabled, and Congress must ensure that these protections continue long into the future.

Many of the elderly and disabled being cared for at home would not be able to remain there if it were not for the services provided by this vital industry. We should clean up the fraud and abuse, not shut the industry or cut off these critical services.

It is clear that HCFA must be held accountable, and I look forward to working with my colleagues in beginning this process today. Mr. President, I ask unanimous consent that a SBA Office of Advocacy letter be included in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SMALL BUSINESS ADMINISTRATION,
Washington, DC, April 15, 1998.

HEALTH CARE FINANCING ADMINISTRATION,
DEPARTMENT OF HEALTH AND HUMAN SERVICES,
Attn: HCFA–1152–FC, Baltimore, MD.

DEAR DOCKETS MANAGEMENT CLERK: On January 5, 1998, the Heath Care Financing Administration (HCFA) published a final rule with comment period concerning surety bond and capitalization requirements for home health care agencies (HHAs). This regulation implements the surety bond requirement for such agencies established in the Balanced Budget Act of 1997 (BBA). The regulation also imposes additional minimum capitalization requirements on the agencies and includes an additional 15 percent surety bond requirements not contained in the BBA. The goal of the BBA and this final rule is to reduce Medicare/Medicaid fraud by regulating HHAs that do not or cannot reimburse Medicare/Medicaid for overpayments.

To address complaints by the surety bond industry and the HHA industry regarding the compliance deadline for obtaining surety bonds, HCFA published a final rule on March 4, 1998 deleting the February 27, 1998 effective date for all HHAs to furnish a surety bond. The new compliance date is on or about April 28, 1998, or 60 days after publication of the final rule.

In addition, to address complaints by the surety bond industry and members of the Senate Finance Committee regarding the potentially unlimited liability of sureties under the final rule, HCFA published a Notice of Intent to Amend Regulations on March 4, 1998 (concurrently with the final rule to extend the compliance date). The notice announces HCFA's intent to amend the final rule so as to limit the surety's liability under certain circumstances. It also establishes that a surety will only remain liable on a bond for an additional two years after the date an HHA leaves the Medicare/Medicaid program; and gives a surety the right to appeal an overpayment, civil money penalty or an assessment if the HHA fails to pursue its rights of appeal. HCFA claims that the changes will help smaller, reputable HHAs, like non-profit visiting nurse associations, to obtain surety bonds.

The Office of the Chief Counsel for Advocacy of the U.S. Small Business Administration was created in 1976 to represent the views and interests of small business in federal policy making activities.[1] The Chief Counsel participates in rulemakings when he deems it necessary to ensure proper representation of small business interests. In addition to these responsibilities, the Chief Counsel monitors compliance with the Regulatory Flexibility Act (RFA), and works with federal agencies to ensure that their rulemakings demonstrate an analysis of the impact that their decisions will have on small businesses.

The Chief Counsel has reviewed the final rules in the instant case and has determined that HCFA has not adequately analyzed the impact on small entities. This determination does not mean that regulating the problem of fraud and abuse is not an important public policy objective. Nor does it mean that small business interests supersede legitimate public policy objectives. Rather, the determination is based on the principle that public policy objectives must be achieved by utilizing recognized administrative procedures. The purpose of the procedures is not to place an unnecessary burden on federal regulatory agencies, but to ensure the promulgation of common sense regulations that do not unduly discourage or destroy competition in the marketplace.

Footnotes at end of letter.

The final rule is troubling for a number of reasons: 1) The proposal, although probably within HCFA's regulatory and statutory authority, goes far beyond the requirements contemplated by Congress when they enacted the BBA; 2) HCFA's good cause exception and waiver of the proposed rulemaking may be arbitrary and capricious under the Administrative Procedure Act (APA); and 3) Nearly all of the significant procedural and analytical requirements of the RFA were overlooked.

Action requested: Inasmuch as the rule is now final and in effect, the Chief Counsel of the Office of Advocacy herewith petitions the agency, pursuant to 5 U.S.C. §553(e), to amend the final rule to exclude the provisions concerning the 15 percent bond requirement and the capitalization requirement until such time as a proper and adequate analysis can be prepared to determine the impact on small entities.

I. LEGISLATIVE HISTORY AND INTENT

Prior to August 5, 1997, there were no provisions in the law pertaining to a surety bond requirement for home health agencies. Under the House bill (The Balanced Budget Act of 1997, H.R. 2015), there remained no provisions for the surety bond requirement. Under the Senate bill (as amended) (S. 947), a requirement was introduced to provide state Medicaid agencies with surety bonds in amounts not less than $50,000. Finally, in the conference agreement, the final bill was modified to require a surety bond of not less than $50,000, or such comparable surety bond as the Secretary may permit (applicable to home health care services furnished on or after January 1, 1998).[2] Congress, therefore, intended there to be a $50,000 or ''comparable'' bond, but did not intend the bond to be higher.

The surety bond issue had not been the subject of public hearings, and some members of Congress expressed concern about the potential impact of the fraud and abuse provisions.

According to a floor statement by Senator HATCH, the fraud and abuse provisions found in the amended Senate version were actually based on provisions contained in the Administrations fraud and abuse legislation introduced earlier in 1997, and on which no hearings were held in the Senate. Senator HATCH was concerned that the fraud and abuse provisions might have ''unintended consequences or implications that would penalize innocent parties who are following the letter of the law.''[3] He further stated that, ''As a general rule, we in the Congress should not act without the full and open benefit of hearings so that all parties have an opportunity to comment, and so that legislation can be modified as appropriate.''[4] With regard to the surety bond requirement, it seems that the affected business community had no real opportunity to provide meaningful input or comment.

After the legislation was enacted, HCFA had little choice but to implement the surety bond requirement. However, the agency created additional bonding and capitalization requirements and incorporated them into the instant final rule.[5] Not only were law abiding home health agencies denied an opportunity to comment during the legislative process, they are now faced with additional burdensome requirements effective almost immediately—with no true recourse (since the agency waived the notice of proposed rulemaking and the 30-day interim effective date).

Congress clearly intended to eliminate or reduce waste and fraud in the Medicare/Medicaid system and to preserve quality patient care. The presumably unintended effects of the legislation and HCFA's final rule are that legitimate, law abiding home health agencies will be forced to file bankruptcy, go out of business or curtail their business operations significantly. Patient care will likely suffer when there are not enough home health agencies to meet increasing public demand in an aging population. Moreover, the resulting lack of market competition and bloating of the large, hospital-based and government-based home health agencies may lead to increased prices.

II. WAIVER OF ADMINISTRATIVE PROCEDURE

An agency is subject to the notice and comment requirements contained in 5 U.S.C. 553 unless the agency rule is exempt from coverage of the APA, or the agency establishes ''good cause'' for not complying with the APA and waives notice and comment. When an agency waives the notice and comment procedures required by the APA, however, there should be compelling reasons therefor. In fact, courts have held that exceptions to APA procedures are to be ''narrowly construed and only reluctantly countenanced.'' *New Jersey* v. *EPA*, 26 F.2d 1038, 1045 (D.C.Cir. 1980).

In the instant case, the agency waived both the notice and comment requirement and the requirement to allow a 30-day interim period prior to a rules effective date. The agency based its ''good cause'' waiver on three factors: 1) Issuing a proposed rule would be impracticable because Congress mandated that the effective date for the surety bond requirement be January 1, 1998 five months after Congress passed the BBA of 1997; 2) Issuing a proposed rule is unnecessary with respect to Medicare regulations because there is a statutory exception when the implementation deadline is less than 150 days after enactment of the statute in which the deadline is contained; and 3) A delay in issuing the regulations would be contrary to the public interest.

First, with regard to the impracticability of issuing a proposed rule, as a general matter, ''strict congressionally imposed deadlines, without more, by no means warrant invocation of the good cause exception.'' *Petry* v. *Block*, 737 F.2d 1193, 1203 (D.C.Cir. 1984). In addition, there is no good cause exception where an agency unwilling to provide notice or an opportunity to comment could simply wait until the eve of a statutory . . . deadline, then raise up the ''good cause'' banner and promulgate rules without following APA procedures. *Council of Southern Mountains, Inc.* v. *Donovan*, 653 F.2d 573, 581 (D.C.Cir. 1981).

By way of example, in *Petry* v. *Block*, the court concluded that the passage of a complex and extraordinary statute concerning changes in administrative reimbursements under the Child Care Food Program that imposed a 60-day deadline for the promulgation of interim rules justified the agency's invocation of the good cause exception. Also, in *Methodist Hospital of Sacramento* v. *Shalala*, 38 F.3d 1225 1236, (D.C. Cir. 1994), the court stated that the agency had good cause to waive notice and comment because Congress imposed a statutory deadline of about 4½ months ''to implement a complete and radical overhaul of the Medicare reimbursement system.'' (Emphasis added). Moreover, ''[o]nce published, the interim rules took up 133 pages in the Federal Register: 55 pages of explanatory text; 37 pages of revised regulations, and 41 pages of new data tables.'' Id.

In the instant case, HCFA had five months to implement a relatively simple provision to require a $50,000 or comparable surety bond from home health agencies. After HCFA added additional bond requirements and capitalization requirements (never requested or contemplated by Congress), the regulation took up 63 pages in the Federal Register: 18 pages of explanatory text, 6 pages of revised regulations, and 39 pages of application documents. The final rule appeared in the Federal Register on January 5, 1998—four days after the mandatory effective date.

The Office of Advocacy opines that if HCFA had not included the additional requirements, which were not intended by Congress, and therefore not intended to be implemented within the five month window, there would have been ample time to follow proper notice and comment procedures. Based on the circumstances of this rulemaking and pointed case law, HCFA cannot rely on the impracticability argument to demonstrate that it had good cause to waive notice and comment.

Second, HCFA also based its good cause exception to notice and comment on the fact that they have the statutory authority to do so with regard to this particular type of rule. The agency states: ''Issuing a proposed rule prior to issuing a final rule is also unnecessary with respect to the Medicare surety bond regulation because the Congress has provided that a Medicare rule need not be issued as a proposed rule before issuing a final rule if, as here, a statute establishes a specific deadline for the implementation of a provision and the deadline is less than 150 days after the enactment of the statute in which the deadline is contained.''[6]

HCFA cannot rely on this statutory provision because the agency has gone way beyond their statutory mandate in issuing this final rule. Again, Congress only intended there to be a $50,000 or comparable surety bond. Therefore, only those provisions contemplated by Congress should be subject to the statute that permits HCFA to waive notice and comment when the deadline is less than 150 days.

Third, HCFA claims that a delay in implementing the final rule would be contrary to public policy. Quite the contrary—implementing the final rule as written would be contrary to public policy. The final rule imposes serious economic burdens on an industry already under increased scrutiny and financial hardship including a recent moratorium on entrants to the Medicare program and repeated audits.[7] HCFA has also announced its intention to include home health agencies in the enormously complicated prospective payment system now used by hospitals and physicians. As such, availability of home healthcare for those communities not served by giant hospital-based providers will surely decrease. This result seems contrary to the stated public policy objective of Congress and HCFA.

Finally, it should be noted that HCFA did insert a post-effective date comment period in the final rule. However, the fact that HCFA attached a comment period to the final rule is not a valid substitute for the normal provisions of the APA. The third circuit stated that: ''[i]f a period for comments, after issuance of a rule, could cure a violation of the APA's requirements, an agency could negate at will the Congressional decision that notice and an opportunity for comment must precede promulgation. Provisions of prior notice and comment allows effective participation in the rulemaking process while the decision maker is still receptive to information and argument. After the final rule is issued, the petitioner must come hat-in-hand and run the risk that the decision maker is likely to resist change.'' *Sharon Steel Corp.* v. *EPA*, 597 F.2d 377, 381 (3rd Cir. 1979).

HCFA's waiver of administrative procedure would be less troubling if the rule were not so burdensome. By waiving notice and comment procedures, the agency conveniently removes itself from the obligation to carefully analyze and solicit input on the impact

of the rule. Such an analysis could have yielded other, less burdensome alternatives that would have accomplished the agency's public policy objectives.

Since HCFA improperly waived notice and comment, the agency must comply with the Regulatory Flexibility Act.

III. REGULATORY FLEXIBILITY ACT REQUIREMENTS

Even when a regulation is statutorily mandated, agencies are obligated by law to adhere to certain requirements prior to issuing the implementing regulations. Specifically, the RFA requires agencies to analyze the impact of proposed regulations on small entities and consider flexible regulatory alternatives that reduce the burden on small entities—without abandoning the agency's regulatory objectives. Agencies may forgo the analysis if they certify (either in the proposed or final rule) that the rule will not have a significant economic impact on a substantial number of small entities. Agency compliance with certain provisions of the RFA is judicially reviewable under section 611 of the RFA.

It is not clear from the instant rule whether HCFA has actually certified the rule pursuant to section 605(b) of the RFA or attempted a final regulatory flexibility analysis (FRFA) pursuant to section 604 of the RFA. In either case, the agency failed to comply with the requirements of the RFA.

HCFA expresses confusing ''certification-like'' statements throughout the text of the final rule.[8] However, the actual certification and statement of factual basis are not to be found in the final rule. If the agency was attempting to certify, then it did so erroneously for reasons discussed more fully below. On the other hand, perhaps HCFA did not intend to certify, but instead intended to prepare a FRFA. The agency did do some type of analysis: ''we have prepared the following analysis, which in conjunction with other material provided in this preamble, constitutes an analysis under the [RFA].'' 63 Fed. Reg. at 303. The problem with that declaration is that there is more than one type of analysis under the RFA. There is the preliminary assessment analysis which helps agencies determine whether to certify, and in the case of a final rule, there is a FRFA when an agency determines that certification is not appropriate. If HCFA was attempting a FRFA, then the FRFA was not adequate because it contained no analysis of alternatives to reduce the burden on small home health care providers. This, too, is more fully discussed below.

A. CERTIFICATION

When an agency determines and certifies that a rule will not have a significant economic impact on a substantial number of small entities, then it is logical to assume that the agency has already performed some basic level of analysis to make that determination. Will a substantial number of small entities be impacted? In the instant case, the agency admits that all home health agencies will be affected. According to SBA's regulations, a small home health care agency is one whose annual receipts do not exceed $5 million, or one which is a not-for-profit organization.[9] Although the Office of Advocacy does not have data based on annual receipts, data is available based on number of employees. 1993 data obtained from the U.S. Bureau of the Census by the Office of Advocacy indicates that about 7% of home health care services (489 out of 6,928) have 500 or more employees and earn 51.2% of all annual receipts for the industry, 93% of home health care services (6,439 out of 6,928) have fewer than 500 employees and earn about 49% of all annual receipts for the industry, and 52.5% of home health care services (3,637 out of 6,928) have fewer than 20 employees and earn 6.3% of all annual receipts for the industry. Although it may be difficult to reconcile employment-based and receipt-based size standards, it is still fairly clear from the available data that a substantial number of small entities will be impacted by this final rule.

Will there be a significant economic impact? To determine whether the final rule is likely to have a significant economic impact, further analysis is required. It is not enough to claim that elimination of fraud and abuse in the Medicare/Medicaid system outweighs the need for further analysis. It is not enough to assume that only those agencies with ''past aberrant billing activities'' will be impacted. It is not enough to say that reducing a surety's liability means that there will not be a significant economic impact on home health agencies. The Office of Advocacy opines that the agency's ''analysis'' was doomed from the outset because of the agency's flawed assumptions about the number and type of small entities likely to be impacted, and about the cost of compliance.

Which small entities will be impacted? The agency did not take the basic and necessary step of adequately explaining why other small entities (presumably those whose billing practices are not ''aberrant'') will not be affected or whether small home health providers are even the primary offenders. At the least, the agency must consider the impact the bonding requirement will have on all small home health providers and not just the ones with ''aberrant'' billing practices. After all, the majority of home health agencies apparently do not have aberrant billing practices. HCFA presents evidence that, in 1996, Medicare overpayments were 7 percent of all claims paid to HHAs, and of that 7 percent, 14 percent remained uncollected by Medicare. Fourteen percent of 7 percent is .0098.[10] In other words, Medicare fails to collect overpayments less than one percent of the time. Despite this extremely low occurrence of failure to collect overpayments, HCFA deemed it necessary to place extremely costly and burdensome requirements on the entire industry. However, HCFA did not identify what percentage of the industry is contributing to the fraud problem, whether certain offenders were recidivist, or whether those offenders are primarily large or small.

With regard to the capitalization requirement, HCFA states that, ''An organization that is earnest in its attempt to be a financially sound provider of home health services under the Medicare program will already be properly capitalized without the need for Medicare to require such capitalization.'' This statement is basically true. However, the issue of adequate capitalization is relative and fungible because it is based on a number of factors like varying overhead costs, location, profit margins, competition in the area, etc. Surely some home health agencies cannot meet the capitalization requirements set by HCFA, but desire to be ''earnest'' in their efforts to be ''sound providers.'' The capitalization requirement is a barrier to market entry for all new home health agencies and not just the ones who enter the market for purposes of defrauding Medicare. A careful look at the questions like the ones raised in this and the preceding paragraph would have yielded a conclusion that the rule would have a significant economic impact on a substantial number of small businesses.

Congress weighed in on the issue of impact after the final rule is published. Even members of Congress recognized that HCFA went beyond its mandate and imposed a significant economic burden on home health agencies. Specifically, a bi-partisan group of three senators from the Senate from the Senate Finance Committee, on January 26, 1998, asked HCFA to delay and modify the requirement that all home health agencies secure a surety bond. The Senators believed that home health agencies would not be able to obtain bonds by the original February 27 deadline. According to a recent news article, the senators reportedly wrote that:

''HCFA has imposed conditions that go beyond the standard in the surety bond industry. Some of the biggest problems include cumulative liability, a short period of time in which to pay claims, and bond values of 15 percent of the previous year's Medicare revenues with no maximum, the letter said.

'The cumulative effect is that many surety companies are opting not to offer bonds to Medicare [home health agencies] at all', the letter said. 'Those companies which are offering the bonds are doing so at a cost which is prohibitive, or with demands for collateral or personal guarantees that HHAs cannot provide.'

The letter said Congress enacted the surety bond requirement to keep risky agencies out of the Medicare program. However, HCFA's rule seems to use the bonds as security for overpayments to providers, the letter said.

'We simply doubt that it is realistic to expect bonding companies to embrace a role as guarantors for overpayments from HCFA,' the senators wrote.''[11]

It should be fairly obvious to HCFA, as it was to these members of Congress, that obtaining a $50,000/15 percent bond in addition to the 3-month reserve capitalization requirement (where there were no such requirements before) is likely to be prohibitively costly for small home health care providers—particularly new providers or providers operation only a few years that typically have few hard assets and relatively little credit.[12] Moreover, most home health patients are Medicare patients. If a home health agency is not Medicare certified, then it is very difficult to attract patients, and without patients, there is no opportunity to increase capital. There is already a requirement in many states (pursuant to ''Operation Restore Trust'') that home health agencies have a minimum number of patients prior to obtaining a Medicare license. How can these small home health agencies absorb losses on these ten patients (—possibly long term patients requiring multiple services several times per week—), never be reimbursed for services to these patients, and continue to raise capital? It's a vicious circle and there is a tremendous cumulative effect of all the various state and federal regulations. In any event, it seems that with only a cursory analysis and a little industry outreach, HCFA should have been able to determine that the final rule would have a significant economic impact on a substantial number of small entities. Therefore, under the RFA, HCFA should have prepared a final regulatory flexibility analysis with all the required elements for that analysis.

B. FINAL REGULATORY FLEXIBILITY ANALYSIS

The preparation of a FRFA may be delayed but not waived. Section 608(b) of the RFA reads: ''Except as provided in section 605(b) [where an agency certifies that there will be no significant economic impact on a substantial number of small entities], an agency head may delay the completion of the requirements of section 604 of this title [regarding the preparation of FRFAs] for a period of not more than one hundred and eighty days after the date of publication in the Federal Register of a final rule by publishing in the Federal Register, not later than such date of publication, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes timely compliance with

the provisions of section 604 of this title impracticable. If the agency has not prepared a final regulatory analysis pursuant to section 604 of this title within one hundred and eighty days from the date of publication of the final rule, such rule shall lapse and have no effect. Such rule shall not be repromulgated until a final regulatory flexibility analysis has been completed by the agency.''

FRFAs may not be waived because they serve a vital function in the regulatory process. The preparation of a FRFA allows an agency to carefully tailor its regulations and avoid unnecessary and costly requirements while maintaining important public policy objectives. Without a careful analysis—which should include things like data, public comments and a full description of costs—agencies would be operating in a vacuum without sufficient information to develop suitable alternatives.

Since the agency did not issue a proposed rule, the agency had an obligation to consider carefully all of the significant comments regarding the impact of the final rule. After all, the agency was apparently unsure of the impact.[13] The congressional letter should have been some indication that there would be a significant economic impact and that further analysis was required. HCFA did extend the deadline for obtaining a surety bond for 60 days, and in some ways limited the liability of sureties. However, the agency did not change the bond or capitalization requirements, or explain why such changes were not feasible. Inasmuch as the agency failed to heed any of the comments regarding impact—even those from Congress—the comment period served no real function here.

The dearth of information regarding less costly alternatives is possibly the most serious defect in the analysis presented. To begin with, HCFA never demonstrated why the $50,000 bond was insufficient or would not accomplish the objective of discouraging bad actors from entering the Medicare program. The agency did not demonstrate why the 15 percent rule would not cause a significant economic impact—particularly when the $50,000 bond amount changed from a maximum level to a maximum level. There is no evidence that HCFA attempted to find less costly alternatives. Before heaping on additional regulations, would it not be prudent to first determine whether the programs and policies recently put in place by the Administration, and the prospective payment rules yet to come will work?

IV. CONCLUSION

Not everyone in the home health industry is a bad actor. More importantly, home health providers that cannot afford to comply with HCFA's regulations are not necessarily bad actors either. HCFA has twisted Congress' intent and changed the rule into a vehicle for punishing legitimate home health agencies and for securing overpayments by Medicare rather than a vehicle to discourage bad actors from entering the Medicare program. There must be a middle ground—a place where legitimate home health providers can survive and compete in the marketplace, and where fraud and abuse can be controlled. This final rule is not that place.

Therefore, the Office of Advocacy petitions HCFA to amend its final rule to remove the 15% bonding requirement and the capitalization requirement until such time as proper notice and comment procedures can be completed. Thank you for your prompt attention to this urgent matter. Please contact our office if we may assist you in your efforts to comply with the RFA on this or any other rule effecting small entities, 202–205–6533.

Sincerely,

JERE W. GLOVER,
Chief Council for Advocacy.

SHAWNE CARTER MCGIBBON,
Asst. Chief Counsel for Advocacy.

FOOTNOTES

[1] Regulatory Flexibility Act. 5 U.S.C. §601, as amended by the Small Business Regulatory Enforcement Fairness Act, Pub. L. No. 104–121. 110 Stat. 866 (1996).

[2] *See* 143 CONG. REC. H6253–6254 (daily ed. July 29, 1997).

[3] 143 CONG. REC. S6159 (daily ed. July 24, 1997) (statement of Sen. Hatch).

[4] *Id.* at S6159–60.

[5] Those requirements include basing the amount of the bond on a flat rate in combination with the $50,000 minimum bond. The flat rate is designated as 15 percent of the annual amount paid to the HHA by Medicare as reflected in the HHA's most recently accepted cost report. The other major requirement for new the HHAs is for minimum capitalization. The amount of the reserve is to be determined by Medicare intermediaries based on the first year experience of other HHAs. First the intermediary determines an average cost per visit based on first-year cost report data for at least three HHAs that it serves that are comparable to the HHA seeking to enter the Medicare program. The average cost per visit is determined by dividing the sum of the total reported costs of care for all patients of the HHAs by the sum of their total visits. Then, the intermediary multiplies the average cost per visit by the projected number of visits for all patients (Medicare. Medicaid and all other patients) for the first three months of operation of the HHA asking to inter the program. HCFA also designates which funds count toward satisfying the capitalization requirement (—fifty percent of the funds required for capitalization must be non-borrowed funds) Medicare expects those funds to be available in cash or, in some cases short term highly liquid cash equivalents.

[6] 63 Fed. Reg. at 308.

[7] In September 1997. President Clinton announced that the Department of Health and Human Services was declaring the first ever moratorium to stop new home health providers from entering the Medicare program. The moratorium was lifted in January after the instant final rules were published in the Federal Register. The Office of Advocacy received at least one call form an anxious home health agency just starting their business. The agency had completed the reams of paperwork and all the other necessary requirements for entering the Medicare program, but had to put everything on hold because of the 4-month moratorium—announced just days before their Medicare application would have been approved. Where is this business going to get three months reserve to demonstrate that their business is adequately capitalized? Unable to enter the Medicare program, how have they survived thus far (when you consider that 95% of home health patients are Medicare eligible)?

Another business contacted the Office of Advocacy to complain that their home health agency had been audited three times in one year under the Administration's ''Operation Restore Trust.''

[8] Some of those statements include the following: ''Because of the scope of the rule, all HHAs will be affected, but we do not expect that effect to be significant.'' 63 Fed. Reg. at 303. ''We expect to have a 'significant impact' on an unknown number of such entities, effectively preventing some from repeating their past aberrant billing activities [but, t]he majority of HHAs will not be significantly affected by this rule.'' *Id.* ''[A]ny possible impact that this [capitalization] requirement may have on HHAs entering the Medicare program is more than offset by savings to the Trust Funds in situations in which HHAs go out of business due to undercapitalization . . .'' *Id.* at 308. ''We are not preparing a rural impact statement [pursuant to section 1102(b) of the Social Security Act] since we have determined, and certify, that this rule would not have a significant impact on the operations of a substantial number of small rural hospitals.'' *Id.* ''If a new HHA for some reason cannot raise the capital necessary to meet Medicare's [capitalization] requirement and, therefore, is not permitted to enter the Medicare program, that clearly has an impact on the HHA.'' *Id.*

[9] *See* 13 C.F.R. §121.201. Based on Standard Industrial Classification code 8082. Home Health Care Services include home health care agencies and visiting nurse associations (establishments primarily engaged in providing skilled nursing or medical care in the home, under supervision of a physician. Establishments of registered or practical nurses engaged in the independent practice of their professions and nurses' registries and classified in another category. Similarly, establishments primarily engaged in selling, renting or leasing health care products for personal or household use are classified in another category).

[10] In 1996. $14,357,504,894 was paid to HHAs, $1,061,157,961 was overpaid, and $153,628,056 was uncollected.

[11] *Senators Ask HCFA to Delay Final Rule Requiring Surety Bonds of All Agencies.* BNA DAILY REPORT FOR EXECUTIVES. Jan 27, 1998, at A–24.

[12] Small firms in service industries find it more difficult to obtain credit—where judgments in terms of character, markets, and cash flow are more likely to dominate—than in manufacturing industries, which typically have hard assets such as real property, equipment, and inventory. OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION. THE STATE OF SMALL BUSINESS: A REPORT OF THE PRESIDENT (1995) at 86.

[13] Unsure of the actual impact, the agency specifically solicited comments on its assertions and assumptions. *See* 63 Fed. Reg. at 304.

Mr. BAUCUS. Mr. President, I would like to say a few words about the Bond-Baucus-Grassley Joint Resolution introduced today that nullifies a regulation which threatens to put many of my state's home health agencies, or HHAs, out of business. Our resolution officially disapproves the regulation issued by the Health Care Financing Administration on June 1 of this year. The rule requires each home health agency that receives Medicare reimbursement to buy a costly surety bond. This expensive bond is out of reach for many of the agencies that provide in-home service to Montana's elderly and low income residents.

Let me say from the outset that I support the provision in the Balanced Budget Act of 1997 requiring HHAs to post a surety bond for Medicare and Medicaid. Perhaps we need to make some changes to the statute, but the underlying idea—to protect the Medicare program by requiring home health agencies to post a bond—is a good one. Unfortunately, the regulation HCFA plans to implement requires a much higher bond amount.

One Montana home health agency based in Butte would have to post a bond of more than $600,000 under the HCFA regulation. That's an outrage. And it will put that company, and many others across the country, out of business.

I am also concerned that HCFA has incorrectly interpreted Congressional intent by using the bonds to collect on Medicare overpayments, not just fraud. As a result, many HHA owners are being asked to put up personal assets, such as their house, as collateral for the bond. These agencies tend to be non-hospital based and not tied to a larger corporate structure. All have far less than $600,000 in personal and business assets. We shouldn't expect anyone to sign over those assets just to do business in the Medicare program.

Also, many HHAs are family-owned small businesses. We cannot let any federal regulation force small businesses to close their door. This not only affects businesses, but also their customers—our bed-ridden elderly.

That is why we have acted here today. The Bond-Baucus-Grassley resolution will invoke the Congressional

Review Act to disapprove HCFA's regulation. And I urge quick action in the Senate on this important matter.

By Mr. SARBANES (for himself, Mr. BYRD, Mr. ROCKEFELLER, and Ms. MIKULSKI):

S.J. Res. 51. A joint resolution granting the consent of Congress to the Potomac Highlands Airport Authority Compact entered into between the Stats of Maryland and West Virginia; to the Committee on the Judiciary.

POTOMAC HIGHLANDS AIRPORT AUTHORITY COMPACT

Mr. SARBANES. Mr. President, today I am introducing legislation together with my colleagues Senators BYRD, ROCKEFELLER, and MIKULSKI to grant Congressional consent to a Compact entered into between the States of West Virginia and Maryland that established the Potomac Highlands Airport Authority. The purpose of this legislation is to help facilitate a regional approach to the operations, use, management and future development of the Greater Cumberland Regional Airport.

Greater Cumberland Regional Airport is an important transportation hub serving the commercial, general aviation and corporate communities in the tri-state area of Maryland, Pennsylvania, and West Virginia. It is not only an essential link in the region's transportation network, but a critical part of the strategy to attract new business and tourism to the area.

The airport was established in 1944, when the City of Cumberland, Maryland purchased property in Wiley Ford, WV—three miles south of Cumberland—and began construction of airport facilities. Unfortunately, this unusual situation—a commercial service airport located in one state while owned by a local unit of government in a contiguous state—has greatly complicated the operation, financing and development of the airport over the years. With two states, two counties and two municipalities having jurisdiction over different aspects of the airport and enforcing different laws, taxing authorities and regulations, it was difficult, at best, to transcend the political and boundary lines and achieve a consensus on the future of the airport.

In order to address this situation, in 1976, the General Assemblies of the State of Maryland and the State of West Virginia enacted a bi-state compact authorizing creation of a public agency known as the Potomac Highlands Airport Authority (PHAA) to govern and operate the airport. However, no action was taken to implement that Compact until 1990, when the two states, the Board of County Commissioners of Allegany County, Maryland and Mineral County, West Virginia and the Mayor and City Council of Cumberland, Maryland signed an intergovernmental agreement to transfer airport management and control to the Authority and changed the name to the Greater Cumberland Regional Airport.

Since that time, the Potomac Highlands Airport Authority has actively maintained and operated the airport, and has been working to develop and implement a 20-year, $10 million airport modernization and expansion program designed to facilitate current operations and anticipated growth in utilization of the facility. In the process of seeking investment capital, loans and airport development grants, questions have been raised by the Federal Aviation Administration, USDA Rural Development, and others about the Authority's eligibility to function as legal sponsor for the airport and borrow money and give security, absent Congressional Consent to the Interstate Compact which established the Authority.

Article I, Section 10 of the Constitution requires Congressional approval of compacts between States and Bond Counsel for the airport has recommended that the Compact creating the Airport Authority receive the consent of Congress in order to provide some certainty as to the legal status of the airport and to permit the Authority to borrow funds.

The legislation I am introducing today would ratify the Interstate Compact enacted by Maryland and West Virginia in 1976 and reaffirmed in the 1990 Intergovernmental Agreement. It will allow the Potomac Highlands Airport Authority to fully exercise the powers and authority set forth by the Compact and to provide a truly regional approach to the operation, use and future development of the airport. It will help advance the public interest by ensuring the future viability of Greater Cumberland Regional Airport to serve the transportation needs of the tri-state area.

I urge the swift enactment of this legislation and ask unanimous consent that the legislation be printed in the RECORD.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S. J. RES. 51

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONGRESSIONAL CONSENT.

Congress hereby consents to the Potomac Highlands Airport Authority Compact entered into between the States of Maryland and West Virginia. The compact reads substantially as follows:

"Potomac Highlands Airport Authority Compact

"SECTION 1. COUNTY COMMISSIONS EMPOWERED TO ENTER INTO INTERGOVERNMENTAL AGREEMENTS RELATING TO CUMBERLAND MUNICIPAL AIRPORT.

''The county commissions of Mineral County, West Virginia, and of other West Virginia counties contiguous to Mineral County, and the governing bodies of municipal corporations situated in those counties, may enter into intergovernmental agreements with this State, Allegany County, Maryland, other Maryland counties contiguous to Allegany County and Cumberland, Maryland, and other municipal corporations situated in those Maryland counties, and with the Potomac Highlands Airport Authority regarding the operation and use of the Cumberland Municipal Airport situated in Mineral County, West Virginia. The agreements shall be reciprocal in nature and may include, but are not limited to, conditions governing the operation, use, and maintenance of airport facilities, taxation of aircraft owned by Maryland residents and others, and user fees.

"SEC. 2. POTOMAC HIGHLANDS AIRPORT AUTHORITY AUTHORIZED.

''The county commissions of Mineral County, West Virginia, and of other West Virginia counties contiguous to Mineral County, and the governing bodies of municipal corporations situated in those counties, or any one or more of them, jointly and severally, may create and establish, with proper governmental units of this State, Allegany County, Maryland, other Maryland counties contiguous to Allegany County, and Cumberland, Maryland, and other municipal corporations situated in those Maryland counties, or any one or more of them, a public agency to be known as the 'Potomac Highlands Airport Authority' in the manner and for the purposes set forth in this Compact.

"SEC. 3. AUTHORITY A CORPORATION.

''When created, the Authority and the members of the Authority shall constitute a public corporation and, as such, shall have perpetual succession, may contract and be contracted with, sue and be sued, and have and use a common seal.

"SEC. 4. PURPOSES.

''The Authority may acquire, equip, maintain, and operate an airport or landing field and appurtenant facilities in Mineral County, on the Potomac River near Ridgeley, West Virginia, to serve the area in which it is located.

"SEC. 5. MEMBERS OF AUTHORITY.

''(a) IN GENERAL.—The management and control of the Potomac Highlands Airport Authority, its property, operations, business, and affairs, shall be lodged in a board of seven or more persons who shall be known as members of the Authority and who shall be appointed for terms of three years each by those counties, municipal corporations, or other governmental units situated in West Virginia and Maryland as contribute to the funds of the Authority, in such proportion between those States and counties, municipal corporations, and units, and in whatever manner, as may from time to time be provided in the bylaws adopted by the Authority.

''(b) FIRST BOARD.—The first board shall be appointed as follows:

''(1) The County Commission of Mineral County shall appoint two members for terms of two and three years, respectively.

''(2) The governing official or body of the municipal corporation of Cumberland, Maryland, shall appoint three members for terms of one, two, and three years, respectively.

''(3) The governing official or body of Allegany County, Maryland, shall appoint two members for terms of one and two years, respectively.

"SEC. 6. POWERS.

''The Potomac Highlands Airport Authority has power and authority as follows:

''(1) To make and adopt all necessary bylaws, rules, and regulations for its organization and operations not inconsistent with law.

''(2) To take all legal actions necessary or desirable in relation to the general operation, governance, capital expansion, management, and protection of the Cumberland Municipal Airport.

''(3) To increase the number of members of the Authority, and to set the terms of office and appointment procedures for those additional members.

''(4) To elect its own officers, to appoint committees, and to employ and fix the compensation for personnel necessary for its operation.

''(5) To enter into contracts with any person, firm, or corporation, and generally to do anything necessary for the purpose of acquiring, equipping, expanding, maintaining, and operating an airport.

''(6) To delegate any authority given to it by law to any of its officers, committees, agents, or employees.

''(7) To apply for, receive, and use grants in aid, donations, and contributions from any sources.

''(8) To take or acquire lands by purchase, holding title to it in its own name.

''(9) To purchase, own, hold, sell, and dispose of personal property and to sell and dispose of any real estate which it may have acquired and may determine not to be needed for its purposes.

''(10) To borrow money.

''(11) To extend its funds in the execution of the powers and authority hereby given.

''(12) To take all necessary steps to provide for proper police protection at the airport.

''(13) To inventory airplanes and other personal property at the airport and provide the assessor of Mineral County and other proper governmental officials with full particulars in regard to the inventory.

''SEC. 7. PARTICIPATION BY WEST VIRGINIA.

''(a) APPOINTMENT OF MEMBERS; CONTRIBUTION TO COSTS.—The county commissions of Mineral County and of counties contiguous to Mineral County, and the governing bodies of municipal corporations situated in those counties, or any one or more of them, jointly and severally, may appoint members of the Authority and contribute to the cost of acquiring, equipping, maintaining, and operating the airport and appurtenant facilities.

''(b) TRANSFER OF PROPERTY.—Any of the foregoing county commissions or municipal corporations may transfer and convey to the Authority property of any kind acquired previously by the county commission or municipal corporation for airport purposes.

''SEC. 8. FUNDS AND ACCOUNTS.

''(a) CONTRIBUTION AND DEPOSIT OF FUNDS.—Contributions may be made to the Authority from time to time by the various bodies contributing to its funds and shall be deposited in whatever bank or banks a majority of the members of the Authority direct and may be withdrawn from them in whatever manner the Authority directs.

''(b) ACCOUNTS AND REPORTS.—The Authority shall keep strict account of all of its receipts and expenditures and shall make quarterly reports to the public and private bodies contributing to its funds, containing an itemized account of its operations in the preceding quarter. The accounts of the Authority shall be regularly examined by the State Tax Commissioner in the manner required by Article nine, Chapter six of the Code of West Virginia.

''SEC. 9. PROPERTY AND OBLIGATIONS OF AUTHORITY EXEMPT FROM TAXATION.

''The Authority is exempt from the payment of any taxes or fees to the State of West Virginia or any subdivisions of that State or to any officer or employee of the State or other subdivision of it. The property of the Authority is exempt from all local and municipal taxes. Notes, debentures, and other evidence of indebtedness of the Authority are declared to be issued for a public purpose and to be public instrumentalities, and, together with interest on them, are exempt from taxes.

''SEC. 10. SALE OR LEASE OF PROPERTY.

''In the event all of the public corporations contributing to the funds of the Authority so determine, the Authority shall make sale of all of its properties and assets and distribute the proceeds of the sale among those contributing to its funds. In the alternative, if such of the supporting corporations contributing a majority of the funds of the Authority so determine, the Authority may lease all of its property and equipment upon whatever terms and conditions the Authority may fix and determine.

''SEC. 11. EMPLOYEES TO BE COVERED BY WORKMEN'S COMPENSATION.

''All eligible employees of the Authority are considered to be within the Workmen's Compensation Act of West Virginia, and premiums on their compensation shall be paid by the Authority as required by law.

''SEC. 12. LIBERAL CONSTRUCTION OF COMPACT.

''It is the purpose of this Compact to provide for the maintenance and operation of an airport in a prudent and economical manner, and this Compact shall be liberally construed as giving to the Authority full and complete power reasonably required to give effect to the purposes hereof. The provisions of this Compact are in addition to and not in derogation of any power existing in the county commissions and municipal corporations herein named under any constitutional, statutory, or charter provisions which they or any of them may now have or may hereafter acquire or adopt.''.

SEC. 2. RIGHT TO ALTER, AMEND, OR REPEAL.

The right to alter, amend, or repeal this joint resolution is hereby expressly reserved. The consent granted by this joint resolution shall not be construed as impairing or in any manner affecting any right or jurisdiction of the United States in and over the region which forms the subject of the compact.

ADDITIONAL COSPONSORS

S. 361

At the request of Mr. JEFFORDS, the name of the Senator from New Hampshire (Mr. SMITH) was added as a cosponsor of S. 361, a bill to amend the Endangered Species Act of 1973 to prohibit the sale, import, and export of products labeled as containing endangered species, and for other purposes.

S. 597

At the request of Mr. BINGAMAN, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 597, a bill to amend title XVIII of the Social Security Act to provide for coverage under part B of the medicare program of medical nutrition therapy services furnished by registered dietitians and nutrition professionals.

S. 831

At the request of Mr. SHELBY, the name of the Senator from Minnesota (Mr. GRAMS) was added as a cosponsor of S. 831, a bill to amend chapter 8 of title 5, United States Code, to provide for congressional review of any rule promulgated by the Internal Revenue Service that increases Federal revenue, and for other purposes.

S. 887

At the request of Ms. MOSELEY-BRAUN, the names of the Senator from Vermont (Mr. LEAHY) and the Senator from Ohio (Mr. GLENN) were added as cosponsors of S. 887, a bill to establish in the National Service the National Underground Railroad Network to Freedom program, and for other purposes.

S. 1413

At the request of Mr. LUGAR, the names of the Senator from Montana (Mr. BURNS) and the Senator from Oregon (Mr. SMITH) were added as cosponsors of S. 1413, a bill to provide a framework for consideration by the legislative and executive branches of unilateral economic sanctions.

S. 1423

At the request of Mr. HAGEL, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 1423, a bill to modernize and improve the Federal Home Loan Bank System.

S. 1868

At the request of Mr. NICKLES, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of S. 1868, a bill to express United States foreign policy with respect to, and to strengthen United States advocacy on behalf of, individuals persecuted for their faith worldwide; to authorize United States actions in response to religious persecution worldwide; to establish an Ambassador at Large on International Religious Freedom within the Department of State, a Commission on International Religious Persecution, and a Special Adviser on International Religious Freedom within the National Security Council; and for other purposes.

S. 1981

At the request of Mr. HUTCHINSON, the name of the Senator from North Carolina (Mr. FAIRCLOTH) was added as a cosponsor of S. 1981, a bill to preserve the balance of rights between employers, employees, and labor organizations which is fundamental to our system of collective bargaining while preserving the rights of workers to organize, or otherwise engage in concerted activities protected under the National Labor Relations Act.

S. 2007

At the request of Mr. COCHRAN, the name of the Senator from Minnesota (Mr. GRAMS) was added as a cosponsor of S. 2007, a bill to amend the false claims provisions of chapter 37 of title 31, United States Code.

S. 2017

At the request of Mr. D'AMATO, the names of the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Nevada (Mr. REID), the Senator from Illinois (Mr. DURBIN), and the Senator from Georgia (Mr. CLELAND) were added as cosponsors of S. 2017, a bill to amend title XIX of the Social Security Act to provide medical assistance for breast and cervical cancer-related treatment services to certain women screened and found to have breast or cervical cancer under a Federally funded screening program.

S. 2022

At the request of Mr. DEWINE, the name of the Senator from Arizona (Mr.

KYL) was added as a cosponsor of S. 2022, a bill to provide for the improvement of interstate criminal justice identification, information, communications, and forensics.

S. 2031

At the request of Mr. GRASSLEY, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 2031, a bill to combat waste, fraud, and abuse in payments for home health services provided under the medicare program, and to improve the quality of those home health services.

S. 2040

At the request of Mr. BAUCUS, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 2040, a bill to amend title XIX of the Social Security Act to extend the authority of State medicaid fraud control units to investigate and prosecute fraud in connection with Federal health care programs and abuse of residents of board and care facilities.

S. 2082

At the request of Mr. COCHRAN, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of S. 2082, a bill to amend chapter 36 of title 39, United States Code, to provide authority to fix rates and fees for domestic and international postal services, and for other purposes.

S. 2151

At the request of Mr. NICKLES, the name of the Senator from New Hampshire (Mr. SMITH) was added as a cosponsor of S. 2151, a bill to clarify Federal law to prohibit the dispensing or distribution of a controlled substance for the purpose of causing, or assisting in causing, the suicide, euthanasia, or mercy killing of any individual.

SENATE CONCURRENT RESOLUTION 94

At the request of Mr. LIEBERMAN, the names of the Senator from Maryland (Mr. SARBANES) and the Senator from Wisconsin (Mr. KOHL) were added as cosponsors of Senate Concurrent Resolution 94, a concurrent resolution supporting the religious tolerance toward Muslims.

SENATE RESOLUTION 235

At the request of Mr. AKAKA, the names of the Senator from Connecticut (Mr. DODD), the Senator from Ohio (Mr. GLENN), the Senator from Texas (Mrs. HUTCHISON), the Senator from Arizona (Mr. MCCAIN), the Senator from Nevada (Mr. REID), the Senator from Maryland (Mr. SARBANES), the Senator from Oregon (Mr. SMITH), and the Senator from Virginia (Mr. WARNER) were added as cosponsors of Senate Resolution 235, a resolution commemorating 100 years of relations between the people of the United States and the people of the Philippines.

SENATE RESOLUTION 237

At the request of Mr. FEINGOLD, the names of the Senator from Illinois (Mr. DURBIN), the Senator from New Jersey (Mr. LAUTENBERG), and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of Senate Resolution 237, a resolution expressing the sense of the Senate regarding the situation in Indonesia and East Timor.

SENATE CONCURRENT RESOLUTION 103—EXPRESSING THE SENSE OF THE CONGRESS IN SUPPORT OF THE INTERNATIONAL COMMISSION OF JURISTS ON TIBET AND ON UNITED STATES POLICY WITH REGARD TO TIBET

Mr. MOYNIHAN (for himself, Mr. HELMS, Mr. LEAHY, Mr. MACK, Mr. WELLSTONE, and Mr. FEINGOLD) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 103

Whereas the International Commission of Jurists is a non-governmental organization founded in 1952 to defend the Rule of Law throughout the world and to work towards the full observance of the provisions in the Universal Declaration of Human Rights;

Whereas in 1959, 1960, and 1964 the International Commission of Jurists examined Chinese policy in Tibet, violations of human rights in Tibet, and the position of Tibet in international law;

Whereas in 1960, the International Commission of Jurists found ''that acts of genocide had been committed in Tibet in an attempt to destroy the Tibetans as a religious group,...'' and concluded that Tibet was at least ''a de facto independent State'' prior to 1951 and that Tibet was a ''legitimate concern of the United Nations even on the restrictive interpretation of matters 'essentially within the domestic jurisdiction' of a State.'',

Whereas these findings were presented to the United Nations General Assembly, which adopted three resolutions (1959, 1961, and 1965) calling on the People's Republic of China to ensure respect for the fundamental human rights of the Tibetan people and for their distinctive cultural and religious life, and to cease practices which deprive the Tibetan people of their fundamental human rights and freedoms including their right to self-determination;

Whereas in December 1997, the International Commission of Jurists issued a fourth report on Tibet, examining human rights and the rule of law, including self-determination;

Whereas the President has repeatedly indicated his support for substantive dialogue between the Government of the People's Republic of China and the Dalai Lama or his representatives;

Whereas on October 31, 1997, the Secretary of State appointed a Special Coordinator for Tibetan Issues to oversee United States policy regarding Tibet: Now, therefore, be it

Resolved by the Senate (the House of Representative concurring), That Congress—

(1) expresses grave concern regarding the findings of the December 1997 International Commission of Jurists report on Tibet that——

(a) repression in Tibet has increased steadily since 1994, resulting in heightened control on religious activity; a denunciation campaign against the Dalai Lama unprecedented since the Cultural Revolution; an increase in political arrests; suppression of peaceful protests; and an accelerated movement of Chinese to Tibet; and

(b) in 1997, the People's Republic of China labeled the Tibetan Buddhist culture, which has flourished in Tibet since the seventh century, as a ''foreign culture'' in order to facilitate indoctrination of Tibetans in Chinese socialist ideology and the process of national and cultural extermination;

(2) support the recommendations contained in the report referred to in paragraph (1) that——

(a) call on the People's Republic of China——

(i) to enter into discussions with the Dalai Lama or his representatives on a solution to the question of Tibet based on the will of the Tibetan people;

(ii) to ensure respect for the fundamental human rights of the Tibetan people; and

(iii) to end those practices which threaten to erode the distinct cultural, religious and national identity of the Tibetan people and, in particular, to cease policies which result in the movement of Chinese people to Tibetan territory;

(b) call on the United Nations General Assembly to resume its debate on the question of Tibet based on its resolutions of 1959, 1961, and 1965, and to hold a referendum in Tibet; and

(c) calls on the Dalai Lama or his representatives to enter into discussions with the Government of the People's Republic of China on a solution to the question of Tibet based on the will of the Tibetan people;

(3) commends the appointment by the Secretary of State of a United States Special Coordinator for Tibetan Issues——

(a) to promote substantive dialogue between the Government of the People's Republic of China and the Dalai Lama or his representatives;

(b) to coordinate United States Government policies, programs, and projects concerning Tibet;

(c) to consult with the Congress on policies relevant to Tibet and the future and welfare of all Tibetan people, and to report to Congress in partial fulfillment of the requirements of Sec. 536(a) of Public Law 103–236; and

(d) to advance United States policy which seeks to protect the unique religious, cultural, and linguistic heritage of Tibet, and to encourage improved respect for Tibetan human rights;

(4) calls on the People's Republic of China to release from detention the 9-year old Panchen Lama, Gedhun Choekyi Nyima, to his home in Tibet from which he was taken on May 17, 1995, and to allow him to pursue his religious studies without interference and according to tradition; and

(5) call on the President, as a central objective of the 1998 presidential submit meeting with Jiang Zemin in Beijing, to secure an agreement to begin substantive negotiations between the Government of the People's Republic of China and the Dalai Lama or his representatives.

Mr. MOYNIHAN. Mr. President, I offer a resolution which speaks to many of the issues now facing the Tibetan people in their long struggle. This has been threatened for a half-century now, but there are efforts underway to resolve these issues. This resolution puts the Congress on record in support of these goals.

Begin with the International Commission of Jurists (ICJ), which has closely followed the situation in Tibet since the Dalai Lama was forced to flee into exile. In 1959, 1960, and 1964, the ICJ examined Chinese policies in Tibet and reported its findings to the Secretary-General of the United Nations. The 1960 report made the important international legal determination that ''acts of genocide had been committed

in Tibet in an attempt to destroy the Tibetans as a religious group . . .'' and concluded that Tibet was at least ''a de facto independent State'' prior to 1951.

Now the ICJ has returned to the issue of Tibet and produced another important report. It finds that repression in Tibet has increased since 1994. This is an assessment which my daughter Maura shares after having visited Tibet and having worked closely for many years with Tibetan refugees who continue to make the dangerous journey over the Himalayan mountains to flee persecution in their homeland.

In 1996 she returned from Tibet to report,

> . . . in recent months Beijing's leaders have renewed their assault on Tibetan culture, especially Buddhism, with and alarming vehemence. The rhetoric and the methods of the Cultural Revolution of the 1960s have been resurrected—reincarnated, what you will—to shape an aggressive campaign to vilify the Dalai Lama.

The Dalai Lama, of course, remains unstained, but it is time for the Chinese to consider a policy of ''constructive engagement'' of their own—with the Tibetans. The recent ICJ report calls on the People's Republic of China to enter into discussions with the Dalai Lama or his representatives on a solution to the question of Tibet. Mr. President, for many years now, the United States Congress has been calling for exactly this. I hope that while the President is in China, he will be able to convey the importance of this issue to secure a commitment from the Government of the People's Republic of China to begin such discussions with the Tibetans.

In 1979, Deng Xiaoping stated that ''except for the independence of Tibet, all other questions can be negotiated.'' The Dalai Lama has repeatedly stated his unambiguous willingness to begin substantive negotiations with the Chinese without preconditions, and that the issue of independence need not be on the agenda. This is not a concession easily made by the leader of the Tibetan people who, as the ICJ concluded in 1960, enjoyed de facto independence before the Chinese take-over. Nonetheless, he has made the offer sincerely, and repeatedly, and deserves a sincere response.

The United States can help elicit such a response. In addition to the opportunity posed by the upcoming visit by the President, we now have a Special Coordinator for Tibetan Issues, Gregory B. Craig, whom Secretary Albright appointed to achieve just such a result. A special coordinator is something that our beloved Claiborne Pell proposed in the 103d Congress and I am glad we have been able to achieve another one of his aspirations. Having a Special Coordinator for Tibetan Issues will better enable the Administration to facilitate a dialogue between the Dalai Lama and the Chinese Government.

Finally, Mr. President, atheists are rarely involved in choosing divine leaders, but the Chinese Communist Party has not only involved itself in the selection of the eleventh Panchen Lama, but Chinese officials have asserted that it is the party's sole right to make the selection, and they have detained the boy the Dalai Lama recognized as the next Panchen Lama. This resolution calls attention to this odious infringement on religious freedom.

The Tibetans—I think I am correct in saying—above all value their ability to practice religion. Religion infuse every aspect of Tibetan culture. We cannot begin to comprehend the affront to Tibetans of having an important religious figure detained and declared illegitimate by the Communist Party. Add to that affront that another boy is produced by the Party and proclaimed as the religious leader.

This resolution calls for the release of 9-year old Gedhun Choekyi Nyima, the boy selected by the Dalai Lama as the next Panchen Lama, who has been under detention for 3 years.

The Senate has always maintained strong support for the Tibetan cause. This resolution continues that tradition. I especially wish to thank my colleague, the Chairman of the Foreign Relations Committee, Senator HELMS, for his outstanding leadership on this issue. We are also joined in this effort by Senators LEAHY, MACK, WELLSTONE, and FEINGOLD. I thank them for their support.

SENATE RESOLUTION 246—AUTHORIZING THE TAKING OF A PHOTOGRAPH IN THE CHAMBER OF THE UNITED STATES SENATE

(Mr. LOTT (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 246

Resolved, That paragraph 1 of Rule IV of the Rules for the Regulation of the Senate Wing of the United States Capitol (prohibiting the taking of pictures in the Senate Chamber) be temporarily suspended for the sole and specific purpose of permitting an official photograph to be taken of the United States Senate in actual session on a date and time to be announced by the Majority Leader after consultation with the Democratic Leader.

SEC. 2. The Sergeant at Arms of the Senate is authorized and directed to make the necessary arrangements therefor, which arrangements shall provide for a minimum of disruption to Senate proceedings.

AMENDMENTS SUBMITTED

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

KOHL AMENDMENT NO. 2635

(Ordered to lie on the table.)

Mr. KOHL submitted an amendment intended to be proposed by him to the bill (S. 1415) to reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes; as follows:

At the appropriate place insert the following new section:

SEC. ___. PROTECTIVE ORDERS AND SEALING OF CASES AND SETTLEMENTS RELATING TO PUBLIC HEALTH OR SAFETY.

(a) SHORT TITLE.—This section may be cited as the ''Sunshine in Litigation Act of 1998''.

(b) PROTECTIVE ORDERS AND SEALING OF CASES.—Chapter 111 of title 28, United States Code, is amended by adding at the end the following new section:

''§ 1660. Protective orders and sealing of cases and settlements relating to public health or safety

''(a)(1) A court shall enter an order under rule 26(c) of the Federal Rules of Civil Procedure restricting the disclosure of information obtained through discovery, an order approving a settlement agreement that would restrict the disclosure of such information, or an order restricting access to court records in a civil case only after making particularized findings of fact that—

''(A) such order would not restrict the disclosure of information which is relevant to the protection of public health or safety; or

''(B)(i) the public interest in disclosure of potential health or safety hazards is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and

''(ii) the requested protective order is no broader than necessary to protect the privacy interest asserted.

''(2) No order entered in accordance with paragraph (1) (other than an order approving a settlement agreement) shall continue in effect after the entry of final judgment, unless at or after such entry the court makes a separate particularized finding of fact that the requirements of paragraph (1) (A) or (B) have been met.

''(b) The party who is the proponent for the entry of an order, as provided under this section, shall have the burden of proof in obtaining such an order.

''(c)(1) No court of the United States may approve or enforce any provision of an agreement between or among parties to a civil action, or approve or enforce an order subject to subsection (a)(1), that prohibits or otherwise restricts a party from disclosing any information relevant to such civil action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information.

''(2) Any such information disclosed to a Federal or State agency shall be confidential to the extent provided by law.''.

(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 111 of title 28, United States Code, is amended by adding after the item relating to section 1659 the following:

''1660. Protective orders and sealing of cases and settlements relating to public health or safety.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 30 days after the date of enactment of this Act and shall apply only to orders entered in civil actions or agreements entered into on or after such date.

DURBIN AMENDMENT NO. 2636

(Ordered to lie on the table.)

Mr. DURBIN submitted an amendment intended to be proposed by him to the bill, S. 1415, supra; as follows:

In title II, strike subtitle A and insert the following:

Subtitle A—Underage Use

SEC. 201. FINDINGS.

The Congress finds the following:

(1) Reductions in the underage use of tobacco products are critically important to the public health.

(2) Achieving this critical public health goal can be substantially furthered by increasing the price of tobacco products to discourage underage use if reduction targets are not achieved and by creating financial incentives for manufacturers to discourage youth from using their tobacco products.

(3) When reduction targets in underage use are not achieved on an industry-wide basis, the price increases that will result from an industry-wide assessment will provide an additional deterrence to youth tobacco use.

(4) Manufacturer-specific incentives that will be imposed if reduction targets are not met by a manufacturer provide a strong incentive for each manufacturer to make all efforts to discourage youth use of its brands and ensure the effectiveness of the industry-wide assessments.

SEC. 202. PURPOSE.

This title is intended to ensure that, in the event that other measures contained in this Act prove to be inadequate to produce substantial reductions in tobacco use by minors, tobacco companies will pay additional assessments. These additional assessments are designed to lower youth tobacco consumption in a variety of ways: by triggering further increases in the price of tobacco products, by encouraging tobacco companies to work to meet statutory targets for reductions in youth tobacco consumption, and by providing support for further reduction efforts.

SEC. 203. GOALS FOR REDUCING UNDERAGE TOBACCO USE.

(a) GOALS.—As part of a comprehensive national tobacco control policy, the Secretary, working in cooperation with State, Tribal, and local governments and the private sector, shall take all actions under this Act necessary to ensure that the required percentage reductions in underage use of tobacco products set forth in this title are achieved.

(b) REQUIRED REDUCTIONS FOR CIGARETTES.—With respect to cigarettes, the required percentage reduction in underage use, as set forth in section 204, means—

Calendar Year After Date of Enactment	Required Percentage Reduction as a Percentage of Base Incidence Percentage in Underage Cigarette Use
Years 3 and 4	20 percent
Years 5 and 6	40 percent
Years 7, 8, and 9	55 percent
Year 10 and thereafter	67 percent

(c) REQUIRED REDUCTIONS FOR SMOKELESS TOBACCO.—With respect to smokeless tobacco products, the required percentage reduction in underage use, as set forth in section 204, means—

Calendar Year After Date of Enactment	Required Percentage Reduction as a Percentage of Base Incidence Percentage in Underage Smokeless Tobacco Use
Years 3 and 4	12.5 percent
Years 5 and 6	25 percent
Years 7, 8, and 9	35 percent
Year 10 and thereafter	45 percent

SEC. 204. LOOK-BACK ASSESSMENT.

(a) ANNUAL PERFORMANCE SURVEY.—Beginning no later than 1999 and annually thereafter the Secretary shall conduct a survey, in accordance with the methodology in subsection (d)(1), to determine—

(1) the percentage of all young individuals who used a type of tobacco product within the past 30 days; and

(2) the percentage of young individuals who identify each brand of each type of tobacco product as the usual brand of that type smoked or used within the past 30 days.

(b) ANNUAL DETERMINATION.—The Secretary shall make an annual determination, based on the annual performance survey conducted under subsection (a), of whether the required percentage reductions in underage use of tobacco products for a year have been achieved for the year involved. The determination shall be based on the annual percent prevalence of the use of tobacco products, for the industry as a whole and of particular manufacturers, by young individuals (as determined by the surveys conducted by the Secretary) for the year involved as compared to the base incidence percentages.

(c) CONFIDENTIALITY OF DATA.—The Secretary may conduct a survey relating to tobacco use involving minors. If the information collected in the course of conducting the annual performance survey results in the individual supplying the information or described in it to be identifiable, the information may not be used for any purpose other than the purpose for which it was supplied unless that individual (or that individual's guardian) consents to its use for such other purpose. The information may not be published or released in any other form if the individual supplying the information or described in it is identifiable unless that individual (or that individual's guardian) consents to its publication or release in other form.

(d) METHODOLOGY.—

(1) IN GENERAL.—The survey required by subsection (a) shall—

(A) be based on a nationally representative sample of young individuals;

(B) measure use of each type of tobacco product within the past 30 days;

(C) identify the usual brand of each type of tobacco product used within the past 30 days; and

(D) permit the calculation of the actual percentage reductions in underage use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a manufacturer) based on the point estimates of the percentage of young individuals reporting use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a manufacturer) from the annual performance survey.

(2) CRITERIA FOR DEEMING POINT ESTIMATES CORRECT.—Point estimates under paragraph (1)(D) are deemed conclusively to be correct and accurate for calculating actual percentage reductions in underage use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a particular manufacturer) for the purpose of measuring compliance with percent reduction targets and calculating surcharges provided that the precision of estimates (based on sampling error) of the percentage of young individuals reporting use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a manufacturer) is such that the 95-percent confidence interval around such point estimates is no more than plus or minus 1 percent.

(3) SURVEY DEEMED CORRECT, PROPER, AND ACCURATE.—A survey using the methodology required by this subsection is deemed conclusively to be proper, correct, and accurate for purposes of this Act.

(4) SECRETARY MAY ADOPT DIFFERENT METHODOLOGY.—The Secretary by notice and comment rulemaking may adopt a survey methodology that is different than the methodology described in paragraph (1) if the different methodology is at least as statistically precise as that methodology.

(e) INDUSTRY-WIDE NON-ATTAINMENT SURCHARGES.—

(1) SECRETARY TO DETERMINE INDUSTRY-WIDE NON-ATTAINMENT PERCENTAGE.—The Secretary shall determine the industry-wide non-attainment percentage for cigarettes and for smokeless tobacco for each calendar year.

(2) NON-ATTAINMENT SURCHARGE FOR CIGARETTES.—For each calendar year in which the percentage reduction in underage use required by section 203(b) is not attained, the Secretary shall assess a surcharge on cigarette manufacturers as follows:

If the non-attainment percentage is:	The surcharge is:
Not more than 5 percentage points	$40,000,000 multiplied by the non-attainment percentage
More than 5 but not more than 20 percentage points	$200,000,000, plus $120,000,000 multiplied by the non-attainment percentage in excess of 5 but not in excess of 20 percentage points
More than 20 percentage points	$2,000,000,000

(3) NON-ATTAINMENT SURCHARGE FOR SMOKELESS TOBACCO.—For each year in which the percentage reduction in underage use required by section 203c) is not attained, the Secretary shall assess a surcharge on smokeless tobacco product manufacturers as follows:

If the non-attainment percentage is:	The surcharge is:
Not more than 5 percentage points	$4,000,000 multiplied by the non-attainment percentage
More than 5 but not more than 20 percentage points	$20,000,000, plus $12,000,000 multiplied by the non-attainment percentage in excess of 5 but not in excess of 20 percentage points
More than 20 percentage points	$200,000,000

(4) STRICT LIABILITY; JOINT AND SEVERAL LIABILITY.—Liability for any surcharge imposed under subsection (e) shall be—

(A) strict liability; and

(B) joint and several liability—

(i) among all cigarette manufacturers for surcharges imposed under subsection (e)(2); and

(ii) among all smokeless tobacco manufacturers for surcharges imposed under subsection (e)(3).

(5) SURCHARGE LIABILITY AMONG MANUFACTURERS.—A tobacco product manufacturer shall be liable under this subsection to one or more other manufacturers if the plaintiff tobacco product manufacturer establishes by a preponderance of the evidence that the defendant tobacco product manufacturer, through its acts or omissions, was responsible for a disproportionate share of the non-attainment surcharge as compared to the responsibility of the plaintiff manufacturer.

(6) EXEMPTIONS FOR SMALL MANUFACTURERS.—

(A) ALLOCATION BY MARKET SHARE.—The Secretary shall make such allocations according to each manufacturer's share of the domestic cigarette or domestic smokeless tobacco market, as appropriate, in the year for which the surcharge is being assessed, based on actual Federal excise tax payments.

(B) EXEMPTION.—In any year in which a surcharge is being assessed, the Secretary shall exempt from payment any tobacco product manufacturer with less than 1 percent of the domestic market share for a specific category of tobacco product unless the Secretary finds that the manufacturer's products are used by underage individuals at a rate equal to or greater than the manufacturer's total market share for the type of tobacco product.

(f) MANUFACTURER-SPECIFIC SURCHARGES.—

(1) REQUIRED PERCENTAGE REDUCTIONS.—Each manufacturer which manufactured a brand or brands of tobacco product on or before the date of the enactment of this Act shall reduce the percentage of young individuals who use such manufacturer's brand or brands as their usual brand in accordance with the required percentage reductions described under subsections (b) (with respect to cigarettes) and (c) (with respect to smokeless tobacco).

(2) APPLICATION TO LESS POPULAR BRANDS.—Each manufacturer which manufactured a brand or brands of tobacco product on or before the date of the enactment of this Act for which the base incidence percentage is equal to or less than the *de minimis* level shall ensure that the percent prevalence of young individuals who use the manufacturer's tobacco products as their usual brand remains equal to or less than the *de minimis* level described in paragraph (4).

(3) NEW ENTRANTS.—Each manufacturer of a tobacco product which begins to manufacture a tobacco product after the date of the enactment of this Act shall ensure that the percent prevalence of young individuals who use the manufacturer's tobacco products as their usual brand is equal to or less than the *de minimis* level.

(4) DE MINIMIS LEVEL DEFINED.—The *de minimis* level is equal to 1 percent prevalence of the use of each manufacturer's brands of tobacco product by young individuals (as determined on the basis of the annual performance survey conducted by the Secretary) for a year.

(5) TARGET REDUCTION LEVELS.—

(A) EXISTING MANUFACTURERS.— For purposes of this section, the target reduction level for each type of tobacco product for a year for a manufacturer is the product of the required percentage reduction for a type of tobacco product for a year and the manufacturers base incidence percentage for such tobacco product.

(B) NEW MANUFACTURERS; MANUFACTURERS WITH LOW BASE INCIDENCE PERCENTAGES.—With respect to a manufacturer which begins to manufacture a tobacco product after the date of the enactment of this Act or a manufacturer for which the baseline level as measured by the annual performance survey is equal to or less than the *de minimis* level described in paragraph (4), the base incidence percentage is the *de minimis* level, and the required percentage reduction in underage use for a type of tobacco product with respect to a manufacturer for a year shall be deemed to be the percentage reduction necessary to reduce the actual percent prevalence of young individuals identifying a brand of such tobacco product of such manufacturer as the usual brand smoked or used for such year to the *de minimis* level.

(6) SURCHARGE AMOUNT.—

(A) IN GENERAL.—If the Secretary determines that the required percentage reduction in use of a type of tobacco product has not been achieved by such manufacturer for a year, the Secretary shall impose a surcharge on such manufacturer under this paragraph.

(B) CIGARETTES.—For a cigarette manufacturer, the amount of the manufacturer-specific surcharge shall be an amount equal to the manufacturer's share of youth incidence for cigarettes multiplied by the following surcharge level:

If the non-attainment percentage for the manufacturer is:	The surcharge level is:
Not more than 5 percentage points	$80,000,000 multiplied by the non-attainment percentage
More than 5 but not more than 24.1 percentage points	$400,000,000, plus $240,000,000 multiplied by the non-attainment percentage in excess of 5 but not in excess of 24.1 percentage points
More than 24.1 percentage points	$5,000,000,000

(C) SMOKELESS TOBACCO.—For a smokeless tobacco product manufacturer, the amount of the manufacturer-specific surcharge shall be an amount equal to the manufacturer's share of youth incidence for smokeless tobacco products multiplied by the following surcharge level:

If the non-attainment percentage for the manufacturer is:	The surcharge level is:
Not more than 5 percentage points	$8,000,000 multiplied by the non-attainment percentage
More than 5 but not more than 24.1 percentage points	$40,000,000, plus $24,000,000 multiplied by the non-attainment percentage in excess of 5 but not in excess of 24.1 percentage points
More than 24.1 percentage points	$500,000,000

(D) MANUFACTURER'S SHARE OF YOUTH INCIDENCE.—For purposes of this subsection, the term ''manufacturer's share of youth incidence'' means—

(i) for cigarettes, the percentage of all youth smokers determined to have used that manufacturer's cigarettes; and

(ii) for smokeless tobacco products, the percentage of all youth users of smokeless tobacco products determined to have used that manufacturer's smokeless tobacco products.

(E) DE MINIMIS LEVELS.—If a manufacturer begins to manufacturer a tobacco product after the date of enactment of this Act or the manufacturer's baseline level for a type of tobacco product is less than the de minimis level, the non-attainment percentage (for purposes of subparagraph (B) or (C)) shall be equal to the number of percentage points yielded from the percentage by which the percentage of children who used the manufacturer's tobacco products of the applicable type exceeds the de minimis level.

(g) SURCHARGES TO BE ADJUSTED FOR INFLATION.—

(1) IN GENERAL.—Beginning with the fourth calendar year after the date of enactment of this Act, each dollar amount in the tables in subsections (e)(2), (e)(3), (f)(6)(B), and (f)(6)(C) shall be increased by the inflation adjustment.

(2) INFLATION ADJUSTMENT.—For purposes of paragraph (1), the inflation adjustment for any calendar year is the percentage (if any) by which—

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

(B) the CPI for the calendar year 1998.

(3) CPI.—For purposes of paragraph (2), the CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor.

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

(h) METHOD OF SURCHARGE ASSESSMENT.—The Secretary shall assess a surcharge for a specific calendar year on or before May 1 of the subsequent calendar year. Surcharge payments shall be paid on or before July 1 of the year in which they are assessed. The Secretary may establish, by regulation, interest at a rate up to 3 times the prevailing prime rate at the time the surcharge is assessed, and additional charges in an amount up to 3 times the surcharge, for late payment of the surcharge.

(i) BUSINESS EXPENSE DEDUCTION.—Any surcharge paid by a tobacco product manufacturer under this section shall not be deductible as an ordinary and necessary business expense or otherwise under the Internal Revenue Code of 1986.

(j) APPEAL RIGHTS.—The amount of any surcharge is committed to the sound discretion of the Secretary and shall be subject to judicial review by the United States Court of Appeals for the District of Columbia Circuit, based on the arbitrary and capricious standard of section 706(2)(A) of title 5, United States Code. Notwithstanding any other provisions of law, no court shall have authority to stay any surcharge payments due the Secretary under this Act pending judicial review.

(k) RESPONSIBILITY FOR AGENTS.—In any action brought under this subsection, a tobacco product manufacturer shall be held responsible for any act or omission of its attorneys, advertising agencies, or other agents that contributed to that manufacturer's responsibility for the surcharge assessed under this section.

SEC. 205. DEFINITIONS.

In this subtitle:

(1) BASE INCIDENCE PERCENTAGE.—The term ''base incidence percentage'' means, with respect to each type of tobacco product, the percentage of young individuals determined to have used such tobacco product in the first annual performance survey for 1999.

(2) MANUFACTURERS BASE INCIDENCE PERCENTAGE.—The term ''manufacturers base incidence percentage'' is, with respect to each type of tobacco product, the percentage of young individuals determined to have identified a brand of such tobacco product of such manufacturer as the usual brand smoked or used in the first annual performance survey for 1999.

(3) YOUNG INDIVIDUALS.—The term ''young individuals'' means individuals who are over 11 years of age and under 18 years of age.

(4) CIGARETTE MANUFACTURERS.—The term ''cigarette manufacturers'' means manufacturers of cigarettes sold in the United States.

(5) NON-ATTAINMENT PERCENTAGE FOR CIGARETTES.—The term ''non-attainment percentage for cigarettes'' means the number of percentage points yielded—

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

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

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

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

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

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

(6) NON-ATTAINMENT PERCENTAGE FOR SMOKELESS TOBACCO PRODUCTS.—The term ''non-attainment percentage for smokeless tobacco products'' means the number of percentage points yielded—

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

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

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

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

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

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

(7) SMOKELESS TOBACCO PRODUCT MANUFACTURERS.—The term ''smokeless tobacco product manufacturers'' means manufacturers of smokeless tobacco products sold in the United States.

LEAHY (AND DEWINE) AMENDMENT NO. 2637

(Ordered to lie on the table.)

Mr. LEAHY (for himself and Mr. DEWINE) submitted an amendment intended to be proposed by them to the bill, S. 1415, supra; as follows:

On page 376, line 23, insert after ''fined'' the following: ''in an amount up to 3 times the dollar amount of the taxes avoided or attempted to be avoided through the action that constitutes such a violation, fined''.

On page 379, line 13, strike ''and''.

On page 380, line 12, strike the end quotation marks and the second period and insert ''; and''.

On page 380, between lines 12 and 13, insert the following:

''(8) the term 'structured transaction' means any shipment, transportation, receipt, possession, sale, distribution or purchase of fewer than 30,000 contraband cigarettes or contraband tobacco products in more than one such instance, or combination of such instances, by one person, or two or more persons acting in concert, with the intention of evading the requirements of this section, in which the cumulative amount of such contraband cigarettes or tobacco products equals or exceeds 30,000.''.

On page 380, line 16, strike ''and''.

On page 380, between lines 16 and 17, insert the following:

''(2) in subsection (b), by inserting before the period the following: ''or structured transaction''.

On page 380, line 17, strike ''(2)'' and insert ''(3)''.

On page 383, line 12, insert before the semicolon the following: ''in a single or structured transaction''.

On page 383, line 21, strike ''and''.

On page 383, line 25, strike the end quotation marks and the second period and insert ''; and''.

On page 383, after line 25, add the following:

'' '(e) The Secretary of the Treasury shall prescribe regulations to address structured transactions for purposes of section 2342. Such regulations shall permit the cumulation of closely related events in order that such events may be considered collectively.'

''(4) in subsection (a), by inserting after 'fined' the following: 'in an amount up to 3 times the dollar amount of the taxes avoided or attempted to be avoided through the action that constitutes such a violation, fined.'''.

On page 385, between lines 8 and 9, insert the following:

SEC. 1141. SENTENCING FOR ILLEGAL TRAFFICKING IN TOBACCO PRODUCTS.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend its guidelines and its policy statements, if appropriate, for all unlawful acts of trafficking in tobacco products. The Commission shall submit to Congress explanations therefore and any additional policy recommendations for combating tobacco offenses.

(b) IN GENERAL.—In carrying out this section, the United States Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements for offenders convicted of offenses described in subsection (a), and any recommendations submitted under such subsection, reflect the strong public policy against such offenses, recognize the health risks of tobacco products and the special risks to minors of tobacco addiction, reflect the pivotal potential role of tobacco manufacturers in large-scale smuggling schemes, and carry sufficient penalties to deter and punish any involvement by tobacco product manufacturers and others, including—

(A) sales of cigarettes to minors;

(B) trafficking in contraband tobacco products;

(C) failure to pay any tax on or mark any tobacco product, or participation in the repackaging of marked tobacco products;

(D) shipment of tobacco products outside the United States for unauthorized reshipment into the United States; and

(E) the use of force or violence in the course of trafficking in tobacco products;

(2) consider amending the sentencing guidelines and policy statements to provide enhanced sentences for any defendant, who, in the course of an offense described in subsection (a)—

(A) encourages, or acts in willful ignorance of encouragement of, sales of tobacco products to any person under age 18;

(B) is or acts in cooperation with an officer or managing or supervising official of any tobacco manufacturer;

(C) is an official of any government or recruits or makes any bribe or other illegal payment to any official of any government, including any tribal government or any foreign government;

(D) uses sophisticated means to impede discovery of the existence or extent of the offense;

(E) is a corporation engaged in manufacture of tobacco products;

(F) uses a firearm or other dangerous weapon; or

(G) recruits or cooperates with or acts in willful ignorance of the activities of a person who is known to have a significant prior criminal record;

(3) amend the sentencing guidelines to provide a separate and enhanced schedule of fines for tobacco offenses;

(4) assure reasonable consistency with other relevant directives and with other guidelines;

(5) avoid duplicative punishment for substantially the same offense or offender characteristic;

(6) account for any aggravating or mitigating circumstances that might justify exceptions;

(7) ensure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code; and

(8) take any other action the Commission considers necessary to carry out this section.

In section ___99E (as added by amendment number 2451)—

(1) strike ''and'' at the end of paragraph (4)(C);

(2) strike the period at the end of paragraph (5) and insert ''; and''; and

(3) add at the end the following:

''(6) making grants, to be administered by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of Health and Human Services, to States for State and local law enforcement of anti-smuggling provisions of this Act.

FORD AMENDMENTS NOS. 2638–2681

(Ordered to lie on the table.)

Mr. FORD submitted 44 amendments intended to be proposed by him to the bill, S. 1415, supra; as follows:

AMENDMENT NO. 2638

Strike all beginning with page 25, line 1, and insert the following:

AMENDMENT NO. 2639

In lieu of the matter proposed to be inserted, strike all beginning with page 25, line 1, and insert the following:

AMENDMENT NO. 2640

Strike page 107, line 5 through page 182, line 21, and insert the following: a surcharge on cigarette manufacturers as follows:

If the non-attainment percentage is	The surcharge is
Not more than 5 percent	$160,000,000 multiplied by the non-attainment percentage.
More than 5% but not more than 10%.	$800,000,000, plus $320,000,000 multiplied by the non-attainment percentage in excess of 5% but not in excess of 10%.
More than 10%	$2,400,000, plus $480,000,000 multiplied by the non-attainment percentage in excess of 10%.
More than 21.6%	$8,000,000,000.

AMENDMENT NO. 2641

In lieu of the matter proposed to be inserted, strike page 107, line 5 through page 182, line 21, and insert the following: a surcharge on cigarette manufacturers as follows:

If the non-attainment percentage is	The surcharge is
Not more than 5 percent	$160,000,000 multiplied by the non-attainment percentage.
More than 5% but not more than 10%.	$800,000,000, plus $320,000,000 multiplied by the non-attainment percentage in excess of 5% but not in excess of 10%.
More than 10%	$2,400,000, plus $480,000,000 multiplied by the non-attainment percentage in excess of 10%.
More than 21.6%	$8,000,000,000.

AMENDMENT NO. 2642

On page 24, line 6, after ''increasing'' insert ''materially''.

AMENDMENT NO. 2643

On page 19, after line 10, insert the following new subsection and renumber all subsequent sections accordingly:

''(1) BLACK MARKET TOBACCO PRODUCT.—The term ''black market tobacco product'' means any tobacco product sold or distributed in the United States without payment of all applicable State or Federal excise taxes.''

AMENDMENT NO. 2644

On page 44, on line 23 change ''60'' to ''90''.

AMENDMENT NO. 2645

On page 44, on line 24 change ''90'' to ''120''.

AMENDMENT NO. 2646

On page 47, beginning on line 15 insert the following new subparagraph (i) and renumber the subsequent subparagraphs accordingly:

''(i) before issuing any regulation under subparagraph (A), consult with the Secretary of Labor, the United States Trade Representative and the Secretary of Agriculture to determine what effect that any proposed regulation shall have upon domestic employment

within the United States and, in consultation with each of these other agencies, issue a joint finding that the regulation to be issued under subparagraph (A) shall not adversely affect agricultural employment or manufacturing employment in the United States.''

AMENDMENT NO. 2647

On page 47, at line 23, delete ''; '' and insert the following after ''hearing'': '', and all tobacco manufacturers shall have at least 120 days notice of such hearing and shall be extended an opportunity to appear at an oral hearing.''

AMENDMENT NO. 2648

On page 49, line 15 change ''may'' to ''shall''.

AMENDMENT NO. 2649

On page 55, after line 10 insert a new paragraph (5) as follows:

''(5) CONSULTATION WITH UNITED STATES TRADE REPRESENTATIVE AND SECRETARY OF AGRICULTURE.—Prior to issuing any regulations under this section, the Secretary shall consult with the United States Trade Representative and the Secretary of Agriculture. Before any regulation issued under this section may become final—

''(A) the Secretary shall issue a joint finding with the United States Trade Representative which certifies that the regulation does not violate any treaty or international obligation to which the United States is a party; and

''(B) the Secretary shall issue a joint finding with the Secretary of Agriculture which certifies that the proposed regulation shall not have an adverse effect on the domestic or international competitiveness of tobacco growers in the United States.''

AMENDMENT NO. 2650

On page 57, line 5 delete ''60'' and insert in lieu thereof ''180''.

AMENDMENT NO. 2651

On page 58, line 21 delete ''2'' and insert in lieu thereof ''5''.

AMENDMENT NO. 2652

On page 58, line 17 delete ''to zero'' and insert in lieu thereof ''by fifty percent or more''.

AMENDMENT NO. 2653

On page 59, strike lines 1 through 13 and insert in lieu thereof the following:

''By regulation promulgated after a period of notice and comment of at least 180 days, the Secretary may amend or revoke a performance standard. The Secretary shall be prohibited from issuing any regulation under this section that accelerates the effective date of a performance standard.''

AMENDMENT NO. 2654

On page 60, line 24 after ''substantial'' insert ''immediate''.

AMENDMENT NO. 2655

On page 62, line 3 before ''harm'' insert ''and immediate''.

AMENDMENT NO. 2656

On page 72, line 10, delete ''180''' and insert in lieu thereof ''90''.

AMENDMENT NO. 2657

On page 82, line 8 insert the following new subsection:

''(a) IMPLEMENTING REGULATIONS.—The Secretary shall not institute any requirements under this section unless and until the Secretary has issued final regulations, after proposing such regulations for a public comment period of at least 120 days. In no event shall the Secretary issue interim regulations within an effective date that precedes the expiration of the 120-day public comment period.''

AMENDMENT NO. 2658

On page 102, line 9 insert ''product'' immediately following ''tobacco''.

AMENDMENT NO. 2659

On page 102, line 11 immediately after ''private sector,'' insert the following: ''including representatives from tobacco manufacturers, distributors, retailers and growers,''.

AMENDMENT NO. 2660

On page 104 line 2 insert the following sentence after ''percentages.'': ''The Secretary shall also determine the percent incidence of underage use of black market tobacco products using the same calculations, the same categories, and the same years as used to determine the percentage incidence of underage use of cigarettes and smokeless tobacco products.''

AMENDMENT NO. 2661

On page 122 line 22 insert the following and renumber accordingly: ''(iii) the extent to which underage youth are using black market tobacco products within the State and the activity that the State has undertaken to reduce the teenage use of black market activities;''

AMENDMENT NO. 2662

On page 141 after line 12, insert the following new subsection:

''(f) INFORMATION RELATED TO BLACK MARKET TOBACCO PRODUCTS.—The Secretary shall require any grant recipient that administers a smoking cessation program under this section to survey all participants of such cessation programs. This purpose of this survey shall be to determine the attitudes among program participants concerning the general awareness of black market tobacco products, the frequency of use of black market tobacco products, and the demographic characteristics of users of black market tobacco products.''

AMENDMENT NO. 2663

On page 165, line 8, delete ''January 1, 2000'' and insert in lieu thereof ''January 1, 2002''.

AMENDMENT NO. 2664

On page 168 on line 20 insert the following at the end of paragraph (3); ''Any rulemaking conducted under this section shall be conducted to a notice and comment period which shall be at least 180 days and, in no event, shall the Secretary issue regulations which take effect sooner than 180 days after publication in the Federal Register.''

AMENDMENT NO. 2665

On page 175 on line 23 insert the following immediately after ''products.'': ''Any rulemaking conducted under this section shall be conducted under a notice and comment period which shall be at least 180 days and, in no event, shall the Secretary issue regulations which take effect sooner than 180 days after publication in the Federal Register.''

AMENDMENT NO. 2666

On page 177 after line 20 insert the following new subsection (D): ''(D) Any rulemaking conducted under this section shall be conducted under a notice and comment period which shall be at least 180 days and, in no event, shall the Secretary issue regulations which take effect sooner than 180 days after publication in the Federal Register.''

AMENDMENT NO. 2667

On page 178, on line 6, delete ''later than 24 months'' and insert in lieu thereof ''sooner than 36 months''.

AMENDMENT NO. 2668

On page 179 after line 4 insert the following new subsection (d):

''(d) Any rulemaking conducted under this section shall be conducted under a notice and comment period which shall be at least 180 days and, in no event, shall the Secretary issue regulations which take effect sooner than 180 days after publication in the Federal Register.''

AMENDMENT NO. 2669

On Page 188, after line 11, insert the following new subsection:

''(g) ADJUSTMENT FOR INCORRECT PAYMENTS.—The Secretary of the Treasury may order an adjustment for prior year payments, other than the first annual payment, upon a showing by a participating manufacturer that any payment in a previous year has been made on the basis of an incorrect annual apportionment. If the Secretary of the Treasury determines that prior payments must be adjusted, the Secretary of the Treasury shall then reapportion the annual payments for the previous year in dispute, and make adjustments as follows—

''(1) Any participating manufacturer found to have made an overpayment shall receive a credit toward future payments due under this section. The credit shall include the amount of the overpayment, together with interest computed as provided for in subsection (a). Interest shall accrue from the date of the overpayment until the date upon which the next payment is due under this section.

''(2) If the Secretary of the Treasury finds that a participating manufacturer must make additional payments because of an adjustment under this subsection, the payment shall include the amount of the underpayment, together with interest computed as provided for in subsection (a). The payments shall be due no later than 30 days after the Secretary of the Treasury notifies the participating manufacturers of the underpayment. Interest shall accrue from the date of the underpayment until the date on which the payment is received.''

AMENDEMENT NO. 2670

On page 214, on line 7, delete ''Citizen Actions'' and insert ''Enforcement and Penalties''.

AMENDMENT NO. 2671

On page 214, lines 9 and 10, delete ''any aggrieved person, or any State or local agency,'' and insert ''or any State or local agency''.

AMENDMENT NO. 2672

On page 211, on lines 7 and 8, delete ''10 or more individuals at least 1 day per week'' and insert in lieu thereof ''50 or more individuals at least 4 days per week''.

AMENDMENT NO. 2673

On page 211, on lines 7 and 8, delete ''10 or more individuals at least 1 day per week'' and insert in lieu thereof ''10 or more individuals at least 4 days per week''.

AMENDMENT NO. 2674

On page 214, line 22, delete ''60'' and insert ''180''.

AMENDMENT NO. 2675

On page 215 on line 2, delete ''60-day'' and insert ''120-day''.

AMENDMENT NO. 2676

On page 215, delete lines 3 through 7 and reletter the next subsection.

AMENDMENT NO. 2677

On page 216, on line 2, insert the following at the end of section 505:

''Any rulemaking conducted under this section shall provide a notice and comment period which shall be at least 180 days and, in no event, shall the Assistant Secretary issue any regulations which take effect sooner than 180 days after publication in the Federal Register.''

AMENDMENT NO. 2678

On page 216, delete lines 11 through 18 and insert in lieu thereof:

''This title shall not apply to any State, unless that State adopts a law that applies this title within its jurisdiction.''

AMENDMENT NO. 2679

On page 217, after line 13 insert a new paragraph and renumber subsequent paragraphs accordingly:

''(3) recognize the potential for this Act to create a black market for tobacco products on Indian lands and ensure that tribal governments, the Federal government and state and local governments cooperate to the maximum extent possible to reduce the potential for the manufacture, distribution, sale, and use of black market tobacco products on Indian lands;''

AMENDMENT NO. 2680

On page 227, after line 3, insert a new subsection (h) as follows:

''(h) REDUCTION OF BLACK MARKET.—Each Indian tribe shall establish a program to monitor the manufacture, distribution, sale and use of black market tobacco products on Indian lands and designate a government official to work with officials from the Federal, State and local governments to the fullest extent possible to minimize the manufacture, distribution, sale, and use of black market tobacco products on Indian lands. Within 60 days of the effective date of this Act, and no later than January 1 of each year thereafter, each Indian tribe shall submit the name, title and address of this responsible government official to the Secretary. The Secretary shall compile and update annually a list of these Tribal officials and make this list available to any Federal, State and local officials who request the information.''

AMENDMENT NO. 2681

On page 233, after line 25, insert the following new section:

''SEC. 703. IMMUNITY FOR TOBACCO GROWERS, COOPERATIVES OR WAREHOUSES.

''(a) GENERAL PURPOSE.—This section is intended to provide tobacco growers, tobacco cooperatives, and tobacco warehouses immunity from any Federal or State, civil or criminal actions arising out health-related claims concerning the use of tobacco products.

''(b) GENERAL PREEMPTION.—No civil action or criminal action in any court of the United States or in any State asserting a tobacco claim shall be brought against any tobacco grower, tobacco association or cooperative or owner or employee of such association or cooperative, or tobacco warehouse or owner or employee of such warehouse, if such claim arises out of actions or failures to act during the cultivation, harvesting, marketing, distribution or sale of tobacco leaf.

''(c) DEFINITIONS.—For purposes of this section—

''(1) CIVIL ACTION.—The term 'civil action' means any Federal or State action, lawsuit or proceeding that is not a criminal action.

''(2) TOBACCO CLAIM.—The term 'tobacco claim' means a claim directly or indirectly arising out of, based on, or related to the health-related effects of tobacco products, including without limitation a claim arising out of, based on, or related to allegations regarding any conduct, statement or omission respecting the health-related effects of such products. Tobacco claim also means any State or Federal action for relief which is predicated upon claims of addictions to, or dependence on, tobacco products, even if such claims are not based upon the manifestation of tobacco-related diseases.

''(3) TOBACCO GROWER.—The term 'tobacco grower' means any individual or entity that owns or has owned 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.), as well as any tobacco farmer that leases or has leased such a quota or allotment or produces or has produced tobacco under such quota or allotment pursuant to a lease, transfer, or tenant or sharecropping arrangement.

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

''(d) RELATIONSHIP TO OTHER LAWS.—This section shall supersede Federal and State laws only to the extent that Federal and State laws are inconsistent with this section.''

HOLLINGS (AND OTHERS) AMENDMENTS NOS. 2682–2683

(Ordered to lie on the table.)

Mr. HOLLINGS (for himself, Mr. ROBB, and Mr. FORD) submitted two amendments intended to be proposed by them to amendment No. 2492 proposed by Mr. LUGAR to the bill, S. 1415, supra; as follows:

AMENDMENT NO. 2682

In lieu of the matter proposed to be struck, insert the following:

SEC. 1024. FLUE-CURED TOBACCO PRODUCTION PERMITS.

The Agricultural Adjustment Act of 1938 is amended by inserting after section 317 (7 U.S.C. 1314c) the following:

''SEC. 317A. FLUE-CURED TOBACCO PRODUCTION PERMITS.

''(a) DEFINITIONS.—In this section:

''(1) INDIVIDUAL ACREAGE LIMITATION.—The term ''individual acreage limitation' means the number of acres of flue-cured tobacco that may be planted by the holder of a permit during a marketing year, calculated—

''(A) prior to—

''(i) any increase or decrease in the number due to undermarketings or overmarketing; and

''(ii) any reduction under subsection (i); and

''(B) in a manner that ensures that—

''(i) the total of all individual acreage limitations is equal to the national acreage allotment, less the reserve provided under subsection (h); and

''(ii) the individual acreage limitation for a marketing year bears the same ratio to the individual acreage limitation for the previous marketing year as the ratio that the national acreage allotment for the marketing year bears to the national acreage allotment for the previous marketing year, subject to adjustments by the Secretary to account for any reserve provided under subsection (h).

''(2) INDIVIDUAL MARKETING LIMITATION.—The term ''individual marketing limitation' means the number of pounds of flue-cured tobacco that may be marketed by the holder of a permit during a marketing year, calculated—

''(A) prior to—

''(i) any increase or decrease in the number due to undermarketings or overmarketing; and

''(ii) any reduction under subsection (i); and

''(B) in a manner that ensures that—

''(i) the total of all individual marketing limitations is equal to the national marketing quota, less the reserve provided under subsection (h); and

''(ii) the individual marketing limitation for a marketing year is obtained by multiplying the individual acreage limitation by the permit yield, prior to any adjustment for undermarketing or overmarketings.

''(3) INDIVIDUAL TOBACCO PRODUCTION PERMIT.—The term 'individual tobacco production permit' means a permit issued by the Secretary to a person authorizing the production of flue-cured tobacco for any marketing year during which this section is effective.

''(4) NATIONAL ACREAGE ALLOTMENT.—The term 'national acreage allotment' means the quantity determined by dividing—

''(A) the national marketing quota; by

''(B) the national average yield goal.

''(5) NATIONAL AVERAGE YIELD GOAL.—The term 'national average yield goal' means the national average yield for flue-cured tobacco during the 5 marketing years immediately preceding the marketing year for which the determination is being made.

''(6) NATIONAL MARKETING QUOTA.—For the 1999 and each subsequent crop of flue-cured tobacco, the term 'national marketing quota' for a marketing year means the quantity of flue-cured tobacco, as determined by the Secretary, that is not more than 103 percent nor less than 97 percent of the total of—

''(A) the aggregate of the quantities of flue-cured tobacco that domestic manufacturers of cigarettes estimate that the manufacturers intend to purchase on the United States auction markets or from producers during the marketing year, as complied and determined under section 320A;

''(B) the average annual quantity of flue-cured tobacco exported from the United States during the 3 marketing years immediately preceding the marketing year for which the determination is being made; and

''(C) the quantity, if any, of flue-cured tobacco that the Secretary, in the discretion of the Secretary, determines is necessary to increase or decrease the inventory of the producer-owned cooperative marketing association that has entered into a loan agreement with the Commodity Credit Corporation to make price support available to producers of flue-cured tobacco to establish or maintain the inventory at the reserve stock level for the flue-cured tobacco.

''(7) PERMIT YIELD.—The term 'permit yield' means the yield of tobacco per acre for an individual tobacco production permit holder that is—

''(A) based on a preliminary permit yield that is equal to the average yield during the 5 marketing years immediately preceding the marketing years for which the determination is made in the country where the holder of the permit is authorized to plant flue-cured tobacco, as determined by the Secretary, on the basis of actual yields of farms in the country; and

''(B) adjusted by a weighted national yield factor calculated by—

''(i) multiplying each preliminary permit yield by the individual acreage limitation, prior to adjustments for overmarketing, undermarketings, undermarketings, or reductions required under subsection (i); and

''(ii) dividing the sum of the products under clause (i) for all flue-cured individual tobacco production permit holders by the national acreage allotment.

''(b) INITIAL ISSUANCE OF PERMITS.—

''(1) TERMINATION OF FLUE-CURED MARKETING QUOTAS.—On the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act, farm marketing quotas as provided under section 317 shall no longer be in effect for flue-cured tobacco.

''(2) ISSUANCE OF PERMITS TO QUOTA HOLDERS THAT WERE PRINCIPAL PRODUCERS.—

''(A) IN GENERAL.—By January 15, 1999, each individual quota holder under section 317 that was a principal producer of flue-cured tobacco during the 1998 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

''(B) NOTIFICATION.—The Secretary shall notify the holder of each permit of the individual acreage limitation and the individual marketing limitation applicable to the holder for each marketing year.

''(C) INDIVIDUAL ACREAGE LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by the quota holder for the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

''(D) INDIVIDUAL MARKETING LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the farm marketing quota that was allotted to a farm owned by the quota holder for the 1997 marketing year shall be considered the individual marketing limitation for the previous marketing year.

''(3) QUOTA HOLDERS THAT WERE NOT PRINCIPAL PRODUCERS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), on approval through a referendum under subsection (c)—

''(i) each person that was a quota holder under section 317 but that was not a principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall not be eligible to own a permit; and

''(ii) the Secretary shall not issue any permit during the 25-year period beginning on the date of enactment of this Act to any person that was a quota holder and was not the principal producer of flue-cured tobacco during the 1997 marketing year.

''(B) MEDICAL HARDSHIPS AND CROP DISASTERS.—Subparagraph (A) shall not apply to a person that would have been the principal producer of flue-cured tobacco during the 1997 marketing year but for a medical hardship or crop disaster that occurred during the 1997 marketing year.

''(C) ADMINISTRATION.—The Secretary shall issue regulations—

''(i) defining the term 'person' for the purpose of this paragraph; and

''(ii) prescribing such rules as the Secretary determines are necessary to ensure a fair and reasonable application of the prohibition established under this paragraph.

''(4) ISSUANCE OF PERMITS TO PRINCIPAL PRODUCERS OF FLUE-CURED TOBACCO.—

''(A) IN GENERAL.—By January 15, 1999, each individual quota lessee or quota tenant (as defined in section 1002 of the LEAF Act) that was the principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

''(B) INDIVIDUAL ACREAGE LIMITATIONS.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by a quota holder for whom the quota lessee or quota tenant was the principal producer of flue-cured tobacco during the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

''(C) INDIVIDUAL MARKETING LIMITATIONS.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the individual marketing limitation for the previous year for an individual described in this paragraph shall be calculated by multiplying—

''(i) the farm marketing quota that was allotted to a farm owned by a quota holder for whom the quota lessee or quota holder was the principal producer of flue-cured tobacco during the 1997 marketing year, by

''(ii) the ratio that—

''(I) the sum of all flue-cured tobacco farm marketing quotas for the 1997 marketing year prior to adjusting for undermarketing and overmarketing; bears to

''(II) the sum of all flue-cured tobacco farm marketing quotas for the 1998 marketing year, after adjusting for undermarketing and overmarketing.

''(D) SPECIAL RULE FOR TENANT OF LEASED FLUE-CURED TOBACCO.—If the farm marketing quota or farm acreage allotment of a quota holder was produced pursuant to an agreement under which a quota lessee rented land from a quota holder and a quota tenant was the primary producer, as determined by the Secretary, of flue-cured tobacco pursuant to the farm marketing quota or farm acreage allotment, the farm marketing quota or farm acreage allotment shall be divided proportionately between the quota lessee and quota tenant for purposes of issuing individual tobacco production permits under this paragraph.

''(5) OPTION OF QUOTA LESSEE OR QUOTA TENANT TO RELINQUISH PERMIT.—

''(A) IN GENERAL.—Each quota lessee or quota tenant that is issued an individual tobacco production permit under paragraph (4) shall be given the option of relinquishing the permit in exchange for payments made under section 1021(e)(5) of the LEAF Act.

''(B) NOTIFICATION.—A quota lessee or quota tenant that is issued an individual tobacco production permit shall give notification of the intention to exercise the option at such time and in such manner as the Secretary may require, but not later than 45 days after the permit is issued.

''(C) REALLOCATION OF PERMIT.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit relinquished under this paragraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

''(6) ACTIVE PRODUCER REQUIREMENT.—

''(A) REQUIREMENT FOR SHARING RISK.—No individual tobacco production permit shall be issued to, or maintained by, a person that does not fully share in the risk of producing a crop of flue-cured tobacco.

''(B) CRITERIA FOR SHARING RISK.—For purposes of this paragraph, a person shall be considered to have fully shared in the risk of production of a crop if—

''(i) the investment of the person in the production of the crop is not less than 100 percent of the costs of production associated with the crop;

''(ii) the amount of the person's return on the investment is dependent solely on the sale price of the crop; and

''(iii) the person may not receive any of the return before the sale of the crop.

''(C) PERSONS NOT SHARING RISK.—

''(i) FORFEITURE.—Any person that fails to fully share in the risks of production under this paragraph shall forfeit an individual tobacco production permit if, after notice and opportunity for a hearing, the appropriate county committee determines that the conditions for forfeiture exist.

''(ii) REALLOCATION.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit forfeited under this subparagraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

''(D) NOTICE.—Notice of any determination made by a county committee under subparagraph (C) shall be mailed, as soon as practicable, to the person involved.

''(E) REVIEW.—If the person is dissatisfied with the determination, the person may request, not later than 15 days after notice of the determination is received, a review of the determination by a local review committee under the procedures established under section 363 for farm marketing quotas.

''(7) COUNTY OF ORIGIN REQUIREMENT.—For the 1999 and each subsequent crop of flue-cured tobacco, all tobacco produced pursuant to an individual tobacco production permit shall be produced in the same county in which was produced the tobacco produced during the 1997 marketing year pursuant to the farm marketing quota or farm acreage allotment on which the individual tobacco production permit is based.

''(8) COUNTY PRODUCTION POOL.—

''(A) IN GENERAL.—The authority to produce flue-cured tobacco under an individual tobacco production permit that is forfeited, relinquished, or surrendered within a county may be reallocated by the appropriate county committee to tobacco producers located in the same county that apply to the committee to produce flue-cured tobacco under the authority.

''(B) PRIORITY.—In reallocating individual tobacco production permits under this paragraph, a county committee shall provide a priority to—

''(i) an active tobacco producer that controls the authority to produce a quantity of flue-cured tobacco under an individual tobacco production permit that is equal to or less than the average number of pounds of flue-cured tobacco that was produced by the producer during each of the 1995 through 1997 marketing years, as determined by the Secretary; and

''(ii) a new tobacco producer.

''(C) CRITERIA.—Individual tobacco production permits shall be reallocated by the appropriate county committee under this paragraph in a fair and equitable manner after taking into consideration—

''(i) the experience of the producer;

''(ii) the availability of land, labor, and equipment for the production of tobacco;

''(iii) crop rotation practices; and

''(iv) the soil and other physical factors affecting the production of tobacco.

''(D) MEDICAL HARDSHIPS AND CROP DISASTERS.—Notwithstanding any other provision of this Act, the Secretary may issue an individual tobacco production permit under this paragraph to a producer that is otherwise ineligible for the permit due to a medical hardship or crop disaster that occurred during the 1997 marketing year.

''(c) REFERENDUM.—

''(1) ANNOUNCEMENT OF QUOTA AND ALLOTMENT.—Not later than December 15, 1998, the Secretary pursuant to subsection (b) shall determine and announce—

''(A) the quantity of the national marketing quota for flue-cured tobacco for the 1999 marketing year; and

''(B) the national acreage allotment and national average yield goal for the 1999 crop of flue-cured tobacco.

''(2) SPECIAL REFERENDUM.—Not later than 30 days after the announcement of the quantity of the national marketing quota in 2001, the Secretary shall conduct a special referendum of the tobacco production permit holders that were the principal producers of flue-cured tobacco of the 1997 crop to determine whether the producers approve or oppose the continuation of individual tobacco production permits on an acreage-poundage basis as provided in this section for the 2002 through 2004 marketing years.

''(3) APPROVAL OF PERMITS.—If the Secretary determines that more than 66⅔ percent of the producers voting in the special referendum approve the establishment of individual tobacco production permits on an acreage-poundage basis—

''(A) individual tobacco production permits on an acreage-poundage basis as provided in this section shall be in effect for the 2002 through 2004 maketing years; and

''(B) marketing quotas on an acreage-poundage basis shall cease to be in effect for the 2002 through 2004 marketing years.

''(4) DISAPPROVAL OF PERMITS.—If individual tobacco production permits on an acreage-poundage basis are not approved by more than 66⅔ percent of the producers voting in the referendum, no marketing quotas on an acreage-poundage basis shall continue in effect that were proclaimed under section 317 prior to the referendum.

''(5) APPLICABLE MARKETING YEARS.—If individual tobacco production permits have been made effective for flue-cured tobacco on an acreage-poundage basis pursuant to this subsection, the Secretary shall, not later than December 15 of any future marketing year, announce a national marketing quota for that type of tobacco for the next 3 succeeding marketing years if the marketing year is the last year of 3 consecutive years for which individual tobacco production permits previously proclaimed will be in effect.

''(d) ANNUAL ANNOUNCEMENT OF NATIONAL MARKETING QUOTA.—The Secretary shall determine and announce the national marketing quota, national acreage allotment, and national average yield goal for the second and third marketing years of any 3-year period for which individual tobacco production permits are in effect on or before the December 15 immediately preceding the beginning of the marketing year to which the quota, allotment, and goal apply.

''(e) ANNUAL ANNOUNCEMENT OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—If a national marketing quota, national acreage allotment, and national average yield goal are determined and announced, the Secretary shall provide for the determination of individual tobacco production permits, individual acreage limitations, and individual marketing limitations under this section for the crop and marketing year covered by the determinations.

''(f) ASSIGNMENT OF TOBACCO PRODUCTION PERMITS.—

''(1) LIMITATION TO SAME COUNTY.—Each individual tobacco production permit holder shall assign the individual acreage limitation and individual marketing limitation to 1 or more farms located within the county of origin of the individual tobacco production permit.

''(2) FILING WITH COUNTY COMMITTEE.—The assignment of an individual acreage limitations and individual marketing limitation shall not be effective until evidence of the assignment, in such form as required by the Secretary, is filed with and determined by the county committee for the county in which the farm involved is located.

''(3) LIMITATION ON TILLABLE CROPLAND.—The total acreage assigned to any farm under this subsection shall not exceed the acreage of cropland on the farm.

''(g) PROHIBITION ON SALE OR LEASING OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the Secretary shall not permit the sale and transfer, or lease and transfer, of an individual tobacco production permit issued under this section.

''(2) TRANSFER TO DESCENDANTS.—

''(A) DEATH.—In the case of the death of a person to whom an individual tobacco production permit has been issued under this section, the permit shall transfer to the surviving spouse of the person or, if there is no surviving spouse, to surviving direct descendants of the person.

''(B) TEMPORARY INABILITY TO FARM.—In the case of the death of a person to whom an individual tobacco production permit has been issued under this section and whose descendants are temporarily unable to produce a crop of tobacco, the Secretary may hold the license in the name of the descendants for a period of not more than 18 months.

''(3) VOLUNTARY TRANSFERS.—A person that is eligible to obtain an individual tobacco production permit under this section may at any time transfer all or part of the permit to the person's spouse or direct descendants that are actively engaged in the production of tobacco.

''(h) RESERVE.—

''(1) IN GENERAL.—For each marketing year for which individual tobacco production permits are in effect under this section, the Secretary may establish a reserve from the national marketing quota in a quantity equal to not more than 1 percent of the national marketing quota to be available for—

''(A) making corrections of errors in individual acreage limitations and individual marketing limitations;

''(B) adjusting inequities; and

''(C) establishing individual tobacco production permits for new tobacco producers (except that not less than two-thirds of the reserve shall be for establishing such permits for new tobacco producers).

''(2) ELIGIBLE PERSONS.—To be eligible for a new individual tobacco production permit, a producer must not have been the principal producer of tobacco during the immediately preceding 5 years.

''(3) APPORTIONMENT FOR NEW PRODUCERS.—The part of the reserve held for apportionment to new individual tobacco producers shall be allotted on the basis of—

''(A) land, labor, and equipment available for the production of tobacco;

''(B) crop rotation practices;

''(C) soil and other physical factors affecting the production of tobacco; and

''(D) the past tobacco-producing experience of the producer.

''(4) PERMIT YIELD.—The permit yield for any producer for which a new individual tobacco production permit is established shall be determined on the basis of available productivity data for the land involved and yields for similar farms in the same county.

''(i) PENALTIES.—

''(1) PRODUCTION ON OTHER FARMS.—If any quantity of tobacco is marketed as having been produced under an individual acreage limitation or individual marketing limitation assigned to a farm but was produced on a different farm, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

''(2) FALSE REPORT.—If a person to which an individual tobacco production permit is issued files, or aids or acquiesces in the filing of, a false report with respect to the assignment of an individual acreage limitation or individual marketing limitation for a quantity of tobacco, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

''(j) MARKETING PENALTIES.—

''(1) IN GENERAL.—When individual tobacco production permits under this section are in effect, provisions with respect to penalties for the marketing of excess tobacco and the other provisions contained in section 314 shall apply in the same manner and to the same extent as they would apply under section 317(g) if farm marketing quotas were in effect.

''(2) PRODUCTION ON OTHER FARMS.—If a producer falsely identifies tobacco as having been produced on or marketed from a farm to which an individual acreage limitation or individual marketing limitation has been assigned, future individual acreage limitations and individual marketing limitations shall be forfeited.''.

SEC. 1024A. RESOLUTION OF CONFLICT WITH TITLE XV.

Notwithstanding any other provision of this Act, title XV of this act shall have no force or effect.

AMENDMENT NO. 2683

In lieu of the matter proposed to be struck, insert the following:

SEC. 1024. FLUE-CURED TOBACCO PRODUCTION PERMITS.

The Agricultural Adjustment Act of 1938 is amended by inserting after section 317 (7 U.S.C. 1314c) the following:

''SEC. 317A. FLUE-CURED TOBACCO PRODUCTION PERMITS.

''(a) DEFINITIONS.—In this section:

''(1) INDIVIDUAL ACREAGE LIMITATION.—The term 'individual acreage limitation' means the number of acres of flue-cured tobacco that may be planted by the holder of a permit during a marketing year, calculated—

''(A) prior to—

''(i) any increase or decrease in the number due to undermarketings or overmarketings; and

''(ii) any reduction under subsection (i); and

''(B) in a manner that ensures that—

''(i) the total of all individual acreage limitations is equal to the national acreage allotment, less the reserve provided under subsection (h); and

''(ii) the individual acreage limitation for a marketing year bears the same ratio to the individual acreage limitation for the previous marketing year as the ratio that the national acreage allotment for the marketing year bears to the national acreage allotment for the previous marketing year, subject to adjustments by the Secretary to account for any reserve provided under subsection (h).

''(2) INDIVIDUAL MARKETING LIMITATION.—The term 'individual marketing limitation' means the number of pounds of flue-cured tobacco that may be marketed by the holder of a permit during a marketing year, calculated—

''(A) prior to—

''(i) any increase or decrease in the number due to undermarketings or overmarketings; and

''(ii) any reduction under subsection (i); and

''(B) in a manner that ensures that—

''(i) the total of all individual marketing limitations is equal to the national marketing quota, less the reserve provided under subsection (h); and

''(ii) the individual marketing limitation for a marketing year is obtained by multiplying the individual acreage limitation by the permit yield, prior to any adjustment for undermarketings or overmarketings.

''(3) INDIVIDUAL TOBACCO PRODUCTION PERMIT.—The term 'individual tobacco production permit' means a permit issued by the Secretary to a person authorizing the production of flue-cured tobacco for any marketing year during which this section is effective.

''(4) NATIONAL ACREAGE ALLOTMENT.—The term 'national acreage allotment' means the quantity determined by dividing—

''(A) the national marketing quota; by

''(B) the national average yield goal.

''(5) NATIONAL AVERAGE YIELD GOAL.—The term 'national average yield goal' means the national average yield for flue-cured tobacco during the 5 marketing years immediately preceding the marketing year for which the determination is being made.

''(6) NATIONAL MARKETING QUOTA.—For the 1999 and each subsequent crop of flue-cured tobacco, the term 'national marketing quota' for a marketing year means the quantity of flue-cured tobacco, as determined by the Secretary, that is not more than 103 percent nor less than 97 percent of the total of—

''(A) the aggregate of the quantities of flue-cured tobacco that domestic manufacturers of cigarettes estimate that the manufacturers intend to purchase on the United States auction markets or from producers during the marketing year, as compiled and determined under section 302A;

''(B) the average annual quantity of flue-cured tobacco exported from the United States during the 3 marketing years immediately preceding the marketing year for which the determination is being made; and

''(C) the quantity, if any, of flue-cured tobacco that the Secretary, in the discretion of the Secretary, determines is necessary to increase or decrease the inventory of the producer-owned cooperative marketing association that has entered into a loan agreement with the Commodity Credit Corporation to make price support available to producers of flue-cured tobacco to establish or maintain the inventory at the reserve stock level for flue-cured tobacco.

''(7) PERMIT YIELD.—The term 'permit yield' means the yield of tobacco per acre for an individual tobacco production permit holder that is—

''(A) based on a preliminary permit yield that is equal to the average yield during the 5 marketing years immediately preceding the marketing year for which the determination is made in the county where the holder of the permit is authorized to plant flue-cured tobacco, as determined by the Secretary, on the basis of actual yields of farms in the county; and

''(B) adjusted by a weighted national yield factor calculated by—

''(i) multiplying each preliminary permit yield by the individual acreage limitation, prior to adjustments for overmarketings, undermarketings, or reductions required under subsection (i); and

''(ii) dividing the sum of the products under clause (i) for all flue-cured individual tobacco production permit holders by the national acreage allotment.

''(b) INITIAL ISSUANCE OF PERMITS.—

''(1) TERMINATION OF FLUE-CURED MARKETING QUOTAS.—On the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act, farm marketing quotas as provided under section 317 shall no longer be in effect for flue-cured tobacco.

''(2) ISSUANCE OF PERMITS TO QUOTA HOLDERS THAT WERE PRINCIPAL PRODUCERS.—

''(A) IN GENERAL.—By January 15, 1999, each individual quota holder under section 317 that was a principal producer of flue-cured tobacco during the 1998 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

''(B) NOTIFICATION.—The Secretary shall notify the holder of each permit of the individual acreage limitation and the individual marketing limitation applicable to the holder for each marketing year.

''(C) INDIVIDUAL ACREAGE LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by the quota holder for the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

''(D) INDIVIDUAL MARKETING LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the farm marketing quota that was allotted to a farm owned by the quota holder for the 1997 marketing year shall be considered the individual marketing limitation for the previous marketing year.

''(3) QUOTA HOLDERS THAT WERE NOT PRINCIPAL PRODUCERS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), on approval through a referendum under subsection (c)—

''(i) each person that was a quota holder under section 317 but that was not a principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall not be eligible to own a permit; and

''(ii) the Secretary shall not issue any permit during the 25-year period beginning on the date of enactment of this Act to any person that was a quota holder and was not the principal producer of flue-cured tobacco during the 1997 marketing year.

''(B) MEDICAL HARDSHIPS AND CROP DISASTERS.—Subparagraph (A) shall not apply to a person that would have been the principal producer of flue-cured tobacco during the 1997 marketing year but for a medical hardship or crop disaster that occurred during the 1997 marketing year.

''(C) ADMINISTRATION.—The Secretary shall issue regulations—

''(i) defining the term 'person' for the purpose of this paragraph; and

''(ii) prescribing such rules as the Secretary determines are necessary to ensure a fair and reasonable application of the prohibition established under this paragraph.

''(4) ISSUANCE OF PERMITS TO PRINCIPAL PRODUCERS OF FLUE-CURED TOBACCO.—

''(A) IN GENERAL.—By January 15, 1999, each individual quota lessee or quota tenant (as defined in section 1002 of the LEAF Act) that was the principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

''(B) INDIVIDUAL ACREAGE LIMITATIONS.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by a quota holder for whom the quota lessee or quota tenant was the principal producer of flue-cured tobacco during the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

''(C) INDIVIDUAL MARKETING LIMITATIONS.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the individual marketing limitation for the previous year for an individual described in this paragraph shall be calculated by multiplying—

''(i) the farm marketing quota that was allotted to a farm owned by a quota holder for whom the quota lessee or quota holder was the principal producer of flue-cured tobacco during the 1997 marketing year, by

''(ii) the ratio that—

''(I) the sum of all flue-cured tobacco farm marketing quotas for the 1997 marketing year prior to adjusting for undermarketing and over-marketing; bears to

''(II) the sum of all flue-cured tobacco farm marketing quotas for the 1998 marketing year, after adjusting for undermarketing and overmarketing.

''(D) SPECIAL RULE FOR TENANT OF LEASED FLUE-CURED TOBACCO.—If the farm marketing quota or farm acreage allotment of a quota holder was produced pursuant to an agreement under which a quota lessee rented land from a quota holder and a quota tenant was the primary producer, as determined by the Secretary, of flue-cured tobacco pursuant to the farm marketing quota or farm acreage allotment, the farm marketing quota or farm acreage allotment shall be divided proportionately between the quota lessee and quota tenant for purposes of issuing individual tobacco production permits under this paragraph.

''(5) OPTION OF QUOTA LESSEE OR QUOTA TENANT TO RELINQUISH PERMIT.—

''(A) IN GENERAL.—Each quota lessee or quota tenant that is issued an individual tobacco production permit under paragraph (4) shall be given the option of relinquishing the permit in exchange for payments made under section 1021(e)(5) of the LEAF Act.

''(B) NOTIFICATION.—A quota lessee or quota tenant that is issued an individual tobacco production permit shall give notification of the intention to exercise the option at such time and in such manner as the Secretary may require, but not later than 45 days after the permit is issued.

''(C) REALLOCATION OF PERMIT.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit relinquished under this paragraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

''(6) ACTIVE PRODUCER REQUIREMENT.—

''(A) REQUIREMENT FOR SHARING RISK.—No individual tobacco production permit shall be issued to, or maintained by, a person that does not fully share in the risk of producing a crop of flue-cured tobacco.

''(B) CRITERIA FOR SHARING RISK.—For purposes of this paragraph, a person shall be considered to have fully shared in the risk of production of a crop if—

''(i) the investment of the person in the production of the crop is not less than 100 percent of the costs of production associated with the crop;

''(ii) the amount of the person's return on the investment is dependent solely on the sale price of the crop; and

''(iii) the person may not receive any of the return before the sale of the crop.

''(C) PERSONS NOT SHARING RISK.—

''(i) FORFEITURE.—Any person that fails to fully share in the risks of production under this paragraph shall forfeit an individual tobacco production permit if, after notice and opportunity for a hearing, the appropriate county committee determines that the conditions for forfeiture exist.

''(ii) REALLOCATION.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit forfeited under this subparagraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

''(D) NOTICE. —Notice of any determination made by a county committee under subparagraph (C) shall be mailed, as soon as practicable, to the person involved.

''(E) REVIEW.—If the person is dissatisfied with the determination, the person may request, not later than 15 days after notice of the determination is received, a review of the determination by a local review committee under the procedures established under section 363 for farm marketing quotas.

''(7) COUNTY OF ORIGIN REQUIREMENT.—For the 1999 and each subsequent crop of flue-cured tobacco, all tobacco produced pursuant to an individual tobacco production permit shall be produced in the same county in which was produced the tobacco produced

during the 1997 marketing year pursuant to the farm marketing quota or farm acreage allotment on which the individual tobacco production permit is based.

''(8) COUNTY PRODUCTION POOL.—

''(A) IN GENERAL.—The authority to produce flue-cured tobacco under an individual tobacco production permit that is forfeited, relinquished, or surrendered within a county may be reallocated by the appropriate county committee to tobacco producers located in the same county they apply to the committee to produce flue-cured tobacco under the authority.

''(B) PRIORITY.—In reallocating individual tobacco production permits under this paragraph, a county committee shall provide a priority to—

''(i) an active tobacco producer that controls the authority to produce a quantity of flue-cured tobacco under an individual tobacco production permit that is equal to or less than the average number of pounds of flue-cured tobacco that was produced by the producer during each of the 1995 through 1997 marketing years, as determined by the Secretary; and

''(ii) a new tobacco producer.

''(C) CRITERIA.—Individual tobacco production permits shall be reallocated by the appropriate county committee under this paragraph in a fair and equitable manner after taking into consideration—

''(i) the experience of the producer;

''(ii) the availability of land, labor, and equipment for the production of tobacco;

''(iii) crop rotation practices; and

''(iv) the soil and other physical factors affecting the production of tobacco.

''(D) MEDICAL HARDSHIPS AND CROP DISASTERS.—Notwithstanding any other provision of this Act, the Secretary may issue an individual tobacco production permit under this paragraph to a producer that is otherwise ineligible for the permit due to a medical hardship or crop disaster that occurred during the 1997 marketing year.

''(c) REFERENDUM.—

''(1) ANNOUNCEMENT OF QUOTA AND ALLOTMENT.—Not later than December 15, 1998, the Secretary, pursuant to subsection (b), shall determine and announce—

''(A) the quantity of the national marketing quota for flue-cured tobacco for the 1999 marketing year; and

''(B) the national acreage allotment and national average yield goal for the 1999 crop of flue-cured tobacco.

''(2) SPECIAL REFERENDUM.—Not later than 30 days after the announcement of the quantity of the national marketing quota in 2001, the Secretary shall conduct a special referendum of the tobacco production permit holders that were the principal producers of flue-cured tobacco of the 1997 crop to determine whether the producers approve or oppose the continuation of individual tobacco production permits on an acreage-poundage basis as provided in this section for the 2002 through 2004 marketing years.

''(3) APPROVAL OF PERMITS.—If the Secretary determines that more than 66⅔ percent of the producers voting in the special referendum approve the establishment of individual tobacco production permits on an acreage-poundage basis—

''(A) individual tobacco production permits on an acreage-poundage basis as provided in this section shall be in effect for the 2002 through 2004 marketing years; and

''(B) marketing quotas on an acreage-poundage basis shall cease to be in effect for the 2002 through 2004 marketing years.

''(4) DISAPPROVAL OF PERMITS.—If individual tobacco production permits on an acreage-poundage basis are not approved by more than 66⅔ percent of the producers voting in the referendum, no marketing quotas on an acreage-poundage basis shall continue in effect that were proclaimed under section 317 prior to the referendum.

''(5) APPLICABLE MARKETING YEARS.—If individual tobacco production permits have been made effective for flue-cured tobacco on an acreage-poundage basis pursuant to this subsection, the Secretary shall, not later than December 15 of any future marketing year, announce a national marketing quota for that type of tobacco for the next 3 succeeding marketing years if the marketing year is the last year of 3 consecutive years for which individual tobacco production permits previously proclaimed will be in effect.

''(d) ANNUAL ANNOUNCEMENT OF NATIONAL MARKETING QUOTA.—The Secretary shall determine and announce the national marketing quota, national acreage allotment, and national average yield goal for the second and third marketing years of any 3-year period for which individual tobacco production permits are in effect on or before the December 15 immediately preceding the beginning of the marketing year to which the quota, allotment, and goal apply.

''(e) ANNUAL ANNOUNCEMENT OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—If a national marketing quota, national acreage allotment, and national average yield goal are determined and announced, the Secretary shall provide for the determination of individual tobacco production permits, individual acreage limitations, and individual marketing limitations under this section for the crop and marketing year covered by the determinations.

''(f) ASSIGNMENT OF TOBACCO PRODUCTION PERMITS.—

''(1) LIMITATION TO SAME COUNTY.—Each individual tobacco production permit holder shall assign the individual acreage limitation and individual marketing limitation to 1 or more farms located within the county of origin of the individual tobacco production permit.

''(2) FILING WITH COUNTY COMMITTEE.—The assignment of an individual acreage limitation and individual marketing limitation shall not be effective until evidence of the assignment, in such form as required by the Secretary, is filed with an determined by the county committee for the county in which the farm involved is located.

''(3) LIMITATION ON TILLABLE CROPLAND.—The total acreage assigned to any farm under this subsection shall not exceed the acreage of cropland on the farm.

''(g) PROHIBITION ON SALE OR LEASING OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the Secretary shall not permit the sale and transfer, or lease and transfer, of an individual tobacco production permit issued under this section.

''(2) TRANSFER TO DESCENDANTS.—

''(A) DEATH.— In the case of the death of a person to whom an individual tobacco production permit has been issued under this section, the permit shall transfer to the surviving spouse of the person, if there is no surviving spouse, to surviving direct descendants of the person.

''(B) TEMPORARY INABILITY TO FARM.—In the case of the death of a person to whom an individual tobacco production permit has been issued under this section and whose descendants are temporarily unable to produce a crop of tobacco, the Secretary may hold the license in the name of the descendants for a period of not more than 18 months.

''(3) VOLUNTARY TRANSFERS.—A person that is eligible to obtain an individual tobacco production permit under this section may at any time transfer all or part of the permit to the person's spouse or direct descendants that are actively engaged in the production of tobacco.

''(h) RESERVE.—

''(1) IN GENERAL.—For each marketing year for which individual tobacco production permits are in effect under this section, the Secretary may establish a reserve from the national marketing quota in a quantity equal to not more than 1 percent of the national marketing quota to be available for—

''(A) making corrections of errors in individual acreage limitations and individual marketing limitations;

''(B) adjusting inequities; and

''(C) establishing individual tobacco production permits for new tobacco producers (except that not less than two-thirds of the reserve shall be for establishing such permits for new tobacco producers).

''(2) ELIGIBLE PERSONS.—To be eligible for a new individual tobacco production permit, a producer must not have been the principal producer of tobacco during the immediately preceding 5 years.

''(3) APPOINTMENT FOR NEW PRODUCERS.—The part of the reserve held for apportionment to new individual tobacco producers shall be allotted on the basis of—

''(A) land, labor, and equipment available for the production of tobacco;

''(B) crop rotation practices;

''(C) soil and other physical factors affecting the production of tobacco; and

''(D) the past tobacco-producing experience of the producer.

''(4) PERMIT YIELD.—The permit yield for any producer for which a new individual tobacco production permit is established shall be determined on the basis of available productivity data for the land involved and yields for similar farms in the same county.

''(i) PENALTIES.—

''(1) PRODUCTION ON OTHER FARMS.—If any quantity of tobacco is marketed as having been produced under an individual acreage limitation or individual marketing limitation assigned to a farm but was produced on a different farm, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

''(2) FALSE REPORT.—If a person to which an individual tobacco production permit is issued files, or aids or acquiesces in the filing of, a false report with respect to the assignment of an individual acreage limitation or individual marketing limitation for a quantity of tobacco, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

''(j) MARKETING PENALTIES.—

''(1) IN GENERAL.—When individual tobacco production permits under this section are in effect, provisions with respect to penalties for the marketing of excess tobacco and the other provisions contained in section 314 shall apply in the same manner and to the same extent as they would apply under section 317(g) if farm marketing quotas were in effect.

''(2) PRODUCTION ON OTHER FARMS.—If a producer falsely identifies tobacco as having been produced on or marketed from a farm to which an individual acreage limitation or individual marketing limitation has been assigned, future individual acreage limitations and individual marketing limitations shall be forfeited.''.

SEC. 1024A. RESOLUTION OF CONFLICT WITH TITLE XV.

Notwithstanding any other provision of this Act, title XV of this Act shall have no force or effect.

SEC. 1024B. ASSISTANCE FOR PRODUCERS EXPERIENCING LOSSES OF FARM INCOME.

(a) IN GENERAL.—Notwithstanding any other provision of this title, from amounts made available to carry out this title, the

Secretary of Agriculture shall use $250,000,000 for each of fiscal years 1999 through 2004 to establish a program to indemnify eligible producers that have experienced, or are experiencing, catastrophic losses in farm income, as determined by the Secretary.

(b) GROSS INCOME AND PAYMENT LIMITATIONS.—In carrying out this section, the Secretary shall, to the maximum extent practicable, use gross income and payment limitations established for the Disaster Reserve Assistance Program under section 813 of the Agricultural Act of 1970 (7 U.S.C. 1427a).

FORD AMENDMENT NO. 2684

(Ordered to lie on the table.)

Mr. FORD submitted an amendment intended to be proposed by him to the bill, S. 1415, supra; as follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''National Tobacco Policy and Youth Smoking Reduction Act''.

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

* * * * *

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The use of tobacco products by the Nation's children is a pediatric disease of epic and worsening proportions that results in new generations of tobacco-dependent children and adults.

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

(3) Nicotine is an addictive drug.

(4) Virtually all new users of tobacco products are under the minimum legal age to purchase such products.

(5) Tobacco advertising and marketing contribute significantly to the use of nicotine-containing tobacco products by adolescents.

(6) Because past efforts to restrict advertising and marketing of tobacco products have failed adequately to curb tobacco use by adolescents, comprehensive restrictions on the sale, promotion, and distribution of such products are needed.

(7) Federal and State governments have lacked the legal and regulatory authority and resources they need to address comprehensively the public health and societal problems caused by the use of tobacco products.

(8) Federal and State public health officials, the public health community, and the public at large recognize that the tobacco industry should be subject to ongoing oversight.

(9) Under Article I, Section 8 of the Constitution, the Congress is vested with the responsibility for regulating interstate commerce and commerce with Indian tribes.

(10) The sale, distribution, marketing, advertising, and use of tobacco products are activities in and substantially affecting interstate commerce because they are sold, marketed, advertised, and distributed in interstate commerce on a nationwide basis, and have a substantial effect on the Nation's economy.

(11) The sale, distribution, marketing, advertising, and use of such products substantially affect interstate commerce through the health care and other costs attributable to the use of tobacco products.

(12) The citizens of the several States are exposed to, and adversely affected by, environmental smoke in public buildings and other facilities which imposes a burden on interstate commerce.

(13) Civil actions against tobacco product manufacturers and others are pending in Federal and State courts arising from the use, marketing, and sale of tobacco products. Among these actions are cases brought by the attorneys general of more than 40 States, certain cities and counties, and the Commonwealth of Puerto Rico, and other parties, including Indian tribes, and class actions brought by private claimants (such as in the Castano Civil Actions), seeking to recover monies expended to treat tobacco-related diseases and for the protection of minors and consumers, as well as penalties and other relief for violations of antitrust, health, consumer protection, and other laws.

(14) Civil actions have been filed throughout the United States against tobacco product manufacturers and their distributors, trade associations, law firms, and consultants on behalf of individuals or classes of individuals claiming to be dependent upon and injured by tobacco products.

(15) These civil actions are complex, time-consuming, expensive, and burdensome for both the litigants and Federal and State courts. To date, these civil actions have not resulted in sufficient redress for smokers or non-governmental third-party payers. To the extent that governmental entities have been or may in the future be compensated for tobacco-related claims they have brought, it is not now possible to identify what portions of such past or future recoveries can be attributed to their various antitrust, health, consumer protection, or other causes of action.

(16) It is in the public interest for Congress to adopt comprehensive public health legislation because of tobacco's unique position in the Nation's history and economy; the need to prevent the sale, distribution, marketing and advertising of tobacco products to persons under the minimum legal age to purchase such products; and the need to educate the public, especially young people, regarding the health effects of using tobacco products.

(17) The public interest requires a timely, fair, equitable, and consistent result that will serve the public interest by (A) providing that a portion of the costs of treatment for diseases and adverse health effects associated with the use of tobacco products is borne by the manufacturers of these products, and (B) restricting throughout the Nation the sale, distribution, marketing, and advertising of tobacco products only to persons of legal age to purchase such products.

(18) Public health authorities estimate that the benefits to the Nation of enacting Federal legislation to accomplish these goals would be significant in human and economic terms.

(19) Reducing the use of tobacco by minors by 50 percent would prevent well over 60,000 early deaths each year and save up to $43 billion each year in reduced medical costs, improved productivity, and the avoidance of premature deaths.

(20) Advertising, marketing, and promotion of tobacco products have been especially directed to attract young persons to use tobacco products and these efforts have resulted in increased use of such products by youth. Past efforts to oversee these activities have not been successful in adequately preventing such increased use.

(21) In 1995, the tobacco industry spent close to $4,900,000,000 to attract new users, retain current users, increase current consumption, and generate favorable long-term attitudes toward smoking and tobacco use.

(22) Tobacco product advertising often misleadingly portrays the use of tobacco as socially acceptable and healthful to minors.

(23) Tobacco product advertising is regularly seen by persons under the age of 18, and persons under the age of 18 are regularly exposed to tobacco product promotional efforts.

(24) Through advertisements during and sponsorship of sporting events, tobacco has become strongly associated with sports and has become portrayed as an integral part of sports and the healthy lifestyle associated with rigorous sporting activity.

(25) Children are exposed to substantial and unavoidable tobacco advertising that leads to favorable beliefs about tobacco use, plays a role in leading young people to overestimate the prevalence of tobacco use, and increases the number of young people who begin to use tobacco.

(26) Tobacco advertising increases the size of the tobacco market by increasing consumption of tobacco products including increasing tobacco use by young people.

(27) Children are more influenced by tobacco advertising than adults, they smoke the most advertised brands, and children as young as 3 to 6 years old can recognize a character associated with smoking at the same rate as they recognize cartoons and fast food characters.

(28) Tobacco company documents indicate that young people are an important and often crucial segment of the tobacco market.

(29) Comprehensive advertising restrictions will have a positive effect on the smoking rates of young people.

(30) Restrictions on advertising are necessary to prevent unrestricted tobacco advertising from undermining legislation prohibiting access to young people and providing for education about tobacco use.

(31) International experience shows that advertising regulations that are stringent and comprehensive have a greater impact on overall tobacco use and young people's use than weaker or less comprehensive ones. Text-only requirements, while not as stringent as a ban, will help reduce underage use of tobacco products while preserving the informational function of advertising.

(32) It is in the public interest for Congress to adopt legislation to address the public health crisis created by actions of the tobacco industry.

(33) If, as a direct or indirect result of this Act, the consumption of tobacco products in the United States is reduced significantly, then tobacco farmers, their families, and their communities may suffer economic hardship and displacement, notwithstanding their lack of involvement in the manufacturing and marketing of tobacco products.

(34) The use of tobacco products in motion pictures and other mass media glamorizes its use for young people and encourages them to use tobacco products.

SEC. 3. PURPOSE.

The purposes of this Act are—

(1) to clarify the authority of the Food and Drug Administration to regulate tobacco products under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), by recognizing it as the primary Federal regulatory authority with respect to the manufacture, marketing, and distribution of tobacco products;

(2) to require the tobacco industry to fund both Federal and State oversight of the tobacco industry from on-going payments by tobacco product manufacturers;

(3) to require tobacco product manufacturers to provide ongoing funding to be used for an aggressive Federal, State, and local enforcement program and for a nationwide licensing system to prevent minors from obtaining tobacco products and to prevent the unlawful distribution of tobacco products, while expressly permitting the States to

adopt additional measures that further restrict or eliminate the products' use;

(4) to ensure that the Food and Drug Administration and the States may continue to address issues of particular concern to public health officials, especially the use of tobacco by young people and dependence on tobacco;

(5) to impose financial surcharges on tobacco product manufacturers if tobacco use by young people does not substantially decline;

(6) to authorize appropriate agencies of the Federal government to set national standards controlling the manufacture of tobacco products and the identity, public disclosure, and amount of ingredients used in such products;

(7) to provide new and flexible enforcement authority to ensure that the tobacco industry makes efforts to develop and introduce less harmful tobacco products;

(8) to confirm the Food and Drug Administration's authority to regulate the levels of tar, nicotine, and other harmful components of tobacco products;

(9) in order to ensure that adults are better informed, to require tobacco product manufacturers to disclose research which has not previously been made available, as well as research generated in the future, relating to the health and dependency effects or safety of tobacco products;

(10) to impose on tobacco product manufacturers the obligation to provide funding for a variety of public health initiatives;

(11) to establish a minimum Federal standard for stringent restrictions on smoking in public places, while also to permit State, Tribal, and local governments to enact additional and more stringent standards or elect not to be covered by the Federal standard if that State's standard is as protective, or more protective, of the public health;

(12) to authorize and fund from payments by tobacco product manufacturers a continuing national counter-advertising and tobacco control campaign which seeks to educate consumers and discourage children and adolescents from beginning to use tobacco products, and which encourages current users of tobacco products to discontinue using such products;

(13) to establish a mechanism to compensate the States in settlement of their various claims against tobacco product manufacturers;

(14) to authorize and to fund from payments by tobacco product manufacturers a nationwide program of smoking cessation administered through State and Tribal governments and the private sector;

(15) to establish and fund from payments by tobacco product manufacturers a National Tobacco Fund;

(16) to affirm the rights of individuals to access to the courts, to civil trial by jury, and to damages to compensate them for harm caused by tobacco products;

(17) to continue to permit the sale of tobacco products to adults in conjunction with measures to ensure that they are not sold or accessible to underage purchasers;

(18) to impose appropriate regulatory controls on the tobacco industry; and

(19) to protect tobacco farmers and their communities from the economic impact of this Act by providing full funding for and the continuation of the Federal tobacco program and by providing funds for farmers and communities to develop new opportunities in tobacco-dependent communities.

SEC. 4. SCOPE AND EFFECT.

(a) INTENDED EFFECT.—This Act is not intended to—

(1) establish a precedent with regard to any other industry, situation, circumstance, or legal action; or

(2) except as provided in this Act, affect any action pending in State, Tribal, or Federal court, or any agreement, consent decree, or contract of any kind.

(b) TAXATION.—Notwithstanding any other provision of law, this Act and the amendments made by this Act shall not affect any authority of the Secretary of the Treasury (including any authority assigned to the Bureau of Alcohol, Tobacco and Firearms) or of State or local governments with regard to taxation for tobacco or tobacco products.

(c) AGRICULTURAL ACTIVITIES.—The provisions of this Act which authorize the Secretary to take certain actions with regard to tobacco and tobacco products shall not be construed to affect any authority of the Secretary of Agriculture under existing law regarding the growing, cultivation, or curing of raw tobacco.

SEC. 5. RELATIONSHIP TO OTHER, RELATED FEDERAL, STATE, LOCAL, AND TRIBAL LAWS.

(a) AGE RESTRICTIONS.—Nothing in this Act or the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), as amended by this Act, shall prevent a Federal agency (including the Armed Forces), a State or its political subdivisions, or the government of an Indian tribe from adopting and enforcing additional measures that further restrict or prohibit tobacco product sale to, use by, and accessibility to persons under the legal age of purchase established by such agency, State, subdivision, or government of an Indian tribe.

(b) ADDITIONAL MEASURES.—Except as otherwise expressly provided in this Act, nothing in this Act, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), or rules promulgated under such Acts, shall limit the authority of a Federal agency (including the Armed Forces), a State or its political subdivisions, or the government of an Indian tribe to enact, adopt, promulgate, and enforce any law, rule, regulation, or other measure with respect to tobacco products, including laws, rules, regulations, or other measures relating to or prohibiting the sale, distribution, possession, exposure to, or use of tobacco products by persons of any age that are in addition to the provisions of this Act and the amendments made by this Act. No provision of this Act or amendment made by this Act shall limit or otherwise affect any State, Tribal, or local taxation of tobacco products.

(c) NO LESS STRINGENT.—Nothing in this Act or the amendments made by this Act is intended to supersede any State, local, or Tribal law that is not less stringent than this Act, or other Acts as amended by this Act.

(d) STATE LAW NOT AFFECTED.—Except as otherwise expressly provided in this Act, nothing in this Act, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), or rules promulgated under such Acts, shall supersede the authority of the States, pursuant to State law, to expend funds provided by this Act.

SEC. 6. DEFINITIONS.

In this Act:

(1) BRAND.—The term ''brand'' means a variety of tobacco product distinguished by the tobacco used, tar content, nicotine content, flavoring used, size, filtration, or packaging, logo, registered trademark or brand name, identifiable pattern of colors, or any combination of such attributes.

(2) CIGARETTE.—The term ''cigarette'' has the meaning given that term by section 3(1) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(1)), but also includes tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette or as roll-your-own tobacco.

(3) CIGARETTE TOBACCO.—The term ''cigarette tobacco'' means any product that consists of loose tobacco that is intended for use by consumers in a cigarette. Unless otherwise stated, the requirements for cigarettes shall also apply to cigarette tobacco.

(4) COMMERCE.—The term ''commerce'' has the meaning given that term by section 3(2) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(2)).

(5) DISTRIBUTOR.—The term ''distributor'' as regards a tobacco product means any person who furthers the distribution of cigarette or smokeless tobacco, whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption. Common carriers are not considered distributors for purposes of this Act.

(6) INDIAN COUNTRY; INDIAN LANDS.—The terms ''Indian country'' and ''Indian lands'' have the meaning given the term ''Indian country'' by section 1151 of title 18, United States Code, and includes lands owned by an Indian tribe or a member thereof over which the United States exercises jurisdiction on behalf of the tribe or tribal member.

(7) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given such term in section 4(e) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(8) LITTLE CIGAR.—The term ''little cigar'' has the meaning given that term by section 3(7) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(7)).

(9) 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.

(10) PACKAGE.—The term ''package'' means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane), in which cigarettes or smokeless tobacco are offered for sale, sold, or otherwise distributed to consumers.

(11) POINT-OF-SALE.—The term ''point-of-sale'' means any location at which a consumer can purchase or otherwise obtain cigarettes or smokeless tobacco for personal consumption.

(12) RETAILER.—The term ''retailer'' means any person who sells cigarettes or smokeless tobacco to individuals for personal consumption, or who operates a facility where self-service displays of tobacco products are permitted.

(13) ROLL-YOUR-OWN TOBACCO.—The term ''roll-your-own tobacco'' means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

(14) SECRETARY.—Except in title VII and where the context otherwise requires, the term ''Secretary'' means the Secretary of Health and Human Services.

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

(16) STATE.—The term ''State'' means any State of the United States and, for purposes of this Act, includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

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

(18) TOBACCO PRODUCT MANUFACTURER.—Except in titles VII, X, and XIV, the term ''tobacco product manufacturer'' means any person, including any repacker or relabeler, who—

(A) manufactures, fabricates, assembles, processes, or labels a finished cigarette or smokeless tobacco product; or

(B) imports a finished cigarette or smokeless tobacco product for sale or distribution in the United States.

(19) UNITED STATES.—The term ''United States'' means the 50 States of the United States of America and the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

SEC. 7. NOTIFICATION IF YOUTHFUL CIGARETTE SMOKING RESTRICTIONS INCREASE YOUTHFUL PIPE AND CIGAR SMOKING.

The Secretary shall notify the Congress if the Secretary determines that underage use of pipe tobacco and cigars is increasing.

SEC. 8. FTC JURISDICTION NOT AFFECTED.

(a) IN GENERAL.—Except where expressly provided in this Act, nothing in this Act shall be construed as limiting or diminishing the authority of the Federal Trade Commission to enforce the laws under its jurisdiction with respect to the advertising, sale, or distribution of tobacco products.

(b) ENFORCEMENT BY FTC.—Any advertising that violates this Act or part 897 of title 21, Code of Federal Regulations, is an unfair or deceptive act or practice under section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) and shall be considered a violation of a rule promulgated under section 18 of that Act (15 U.S.C. 57a).

SEC. 9. CONGRESSIONAL REVIEW PROVISIONS.

In accordance with section 801 of title 5, United States Code, the Congress shall review, and may disapprove, any rule under this Act that is subject to section 801. This section does not apply to the rule set forth in part 897 of title 21, Code of Federal Regulations.

TITLE I—REGULATION OF THE TOBACCO INDUSTRY

SEC. 101. AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT OF 1938.

(a) DEFINITION OF TOBACCO PRODUCTS.—Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

''(kk) The term 'tobacco product' means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product).''.

(b) FDA AUTHORITY OVER TOBACCO PRODUCTS.—The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) is amended—

(1) by redesignating chapter IX as chapter X;

(2) by redesignating sections 901 through 907 as sections 1001 through 1007; and

(3) by inserting after section 803 the following:

''CHAPTER IX—TOBACCO PRODUCTS

''SEC. 901. FDA AUTHORITY OVER TOBACCO PRODUCTS

''(a) IN GENERAL.—Tobacco products shall be regulated by the Secretary under this chapter and shall not be subject to the provisions of chapter V, unless—

''(1) such products are intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease (within the meaning of section 201(g)(1)(B) or section 201(h)(2)); or

''(2) a health claim is made for such products under section 201(g)(1)(C) or 201(h)(3).

''(b) APPLICABILITY.—This chapter shall apply to all tobacco products subject to the provisions of part 897 of title 21, Code of Federal Regulations, and to any other tobacco products that the Secretary by regulation deems to be subject to this chapter.

''(c) SCOPE.—

''(1) Nothing in this chapter, any policy issued or regulation promulgated thereunder, or the National Tobacco Policy and Youth Smoking Reduction Act, shall be construed to affect the Secretary's authority over, or the regulation of, products under this Act that are not tobacco products under chapter V of the Federal Food, Drug and Cosmetic Act or any other chapter of that Act.

''(2) The provisions of this chapter shall not apply to tobacco leaf that is not in the possession of the manufacturer, or to the producers of tobacco leaf, including tobacco growers, tobacco warehouses, and tobacco grower cooperatives, nor shall any employee of the Food and Drug Administration have any authority whatsoever to enter onto a farm owned by a producer of tobacco leaf without the written consent of such producer. Notwithstanding any other provision of this subparagraph, if a producer of tobacco leaf is also a tobacco product manufacturer or controlled by a tobacco product manufacturer, the producer shall be subject to this chapter in the producer's capacity as a manufacturer. Nothing in this chapter shall be construed to grant the Secretary authority to promulgate regulations on any matter that involves the production of tobacco leaf or a producer thereof, other than activities by a manufacturer affecting production. For purposes of the preceding sentence, the term 'controlled by' means a member of the same controlled group of corporations as that term is used in section 52(a) of the Internal Revenue Code of 1986, or under common control within the meaning of the regulations promulgated under section 52(b) of such Code.

''SEC. 902. ADULTERATED TOBACCO PRODUCTS.

''A tobacco product shall be deemed to be adulterated if—

''(1) it consists in whole or in part of any filthy, putrid, or decomposed substance, or is otherwise contaminated by any poisonous or deleterious substance that may render the product injurious to health;

''(2) it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health;

''(3) its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

''(4) it is, or purports to be or is represented as, a tobacco product which is subject to a performance standard established under section 907 unless such tobacco product is in all respects in conformity with such standard;

''(5) it is required by section 910(a) to have premarket approval, is not exempt under section 906(f), and does not have an approved application in effect;

''(6) the methods used in, or the facilities or controls used for, its manufacture, packing or storage are not in conformity with applicable requirements under section 906(e)(1) or an applicable condition prescribed by an order under section 906(e)(2); or

''(7) it is a tobacco product for which an exemption has been granted under section 906(f) for investigational use and the person who was granted such exemption or any investigator who uses such tobacco product under such exemption fails to comply with a requirement prescribed by or under such section.

''SEC. 903. MISBRANDED TOBACCO PRODUCTS.

''(a) IN GENERAL.—A tobacco product shall be deemed to be misbranded—

''(1) if its labeling is false or misleading in any particular;

''(2) if in package form unless it bears a label containing—

''(A) the name and place of business of the tobacco product manufacturer, packer, or distributor; and

''(B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count,

except that under subparagraph (B) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary;

''(3) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements or designs in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

''(4) if it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name prominently printed in type as required by the Secretary by regulation;

''(5) if the Secretary has issued regulations requiring that its labeling bear adequate directions for use, or adequate warnings against use by children, that are necessary for the protection of users unless its labeling conforms in all respects to such regulations;

''(6) if it was manufactured, prepared, propagated, compounded, or processed in any State in an establishment not duly registered under section 905(b), if it was not included in a list required by section 905(i), if a notice or other information respecting it was not provided as required by such section or section 905(j), or if it does not bear such symbols from the uniform system for identification of tobacco products prescribed under section 905(e) as the Secretary by regulation requires;

''(7) if, in the case of any tobacco product distributed or offered for sale in any State—

''(A) its advertising is false or misleading in any particular; or

''(B) it is sold, distributed, or used in violation of regulations prescribed under section 906(d);

''(8) unless, in the case of any tobacco product distributed or offered for sale in any State, the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that tobacco product—

''(A) a true statement of the tobacco product's established name as defined in paragraph (4) of this subsection, printed prominently; and

''(B) a brief statement of—

''(i) the uses of the tobacco product and relevant warnings, precautions, side effects, and contraindications; and

''(ii) in the case of specific tobacco products made subject to a finding by the Secretary after notice and opportunity for comment that such action is necessary to protect the public health, a full description of the components of such tobacco product or the formula showing quantitatively each ingredient of such tobacco product to the extent required in regulations which shall be issued by the Secretary after an opportunity for a hearing;

''(9) if it is a tobacco product subject to a performance standard established under section 907, unless it bears such labeling as may be prescribed in such performance standard; or

''(10) if there was a failure or refusal—

''(A) to comply with any requirement prescribed under section 904 or 908;

''(B) to furnish any material or information required by or under section 909; or

''(C) to comply with a requirement under section 912.

''(b) PRIOR APPROVAL OF STATEMENTS ON LABEL.—The Secretary may, by regulation, require prior approval of statements made on the label of a tobacco product. No regulation issued under this subsection may require prior approval by the Secretary of the content of any advertisement and no advertisement of a tobacco product, published after the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act shall, with respect to the matters specified in this section or covered by regulations issued hereunder, be subject to the provisions of sections 12 through 15 of the Federal Trade Commission Act (15 U.S.C. 52 through 55). This subsection does not apply to any printed matter which the Secretary determines to be labeling as defined in section 201(m).

''SEC. 904. SUBMISSION OF HEALTH INFORMATION TO THE SECRETARY.

''(a) REQUIREMENT.—Not later than 6 months after the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act, each tobacco product manufacturer or importer of tobacco products, or agents thereof, shall submit to the Secretary the following information:

''(1) A listing of all tobacco ingredients, substances and compounds that are, on such date, added by the manufacturer to the tobacco, paper, filter, or other component of each tobacco product by brand and by quantity in each brand and subbrand.

''(2) A description of the content, delivery, and form of nicotine in each tobacco product measured in milligrams of nicotine.

''(3) All documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) on the health, behavioral, or physiologic effects of tobacco products, their constituents, ingredients, and components, and tobacco additives, described in paragraph (1).

''(4) All documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) that relate to the issue of whether a reduction in risk to health from tobacco products can occur upon the employment of technology available or known to the manufacturer.

''(5) All documents (including underlying scientific information) relating to marketing research involving the use of tobacco products.

An importer of a tobacco product not manufactured in the United States shall supply the information required of a tobacco product manufacturer under this subsection.

''(b) ANNUAL SUBMISSION.—A tobacco product manufacturer or importer that is required to submit information under subsection (a) shall update such information on an annual basis under a schedule determined by the Secretary.

''(c) TIME FOR SUBMISSION.—

''(1) NEW PRODUCTS.—At least 90 days prior to the delivery for introduction into interstate commerce of a tobacco product not on the market on the date of enactment of this chapter, the manufacturer of such product shall provide the information required under subsection (a) and such product shall be subject to the annual submission under subsection (b).

''(2) MODIFICATION OF EXISTING PRODUCTS.—If at any time a tobacco product manufacturer adds to its tobacco products a new tobacco additive, increases or decreases the quantity of an existing tobacco additive or the nicotine content, delivery, or form, or eliminates a tobacco additive from any tobacco product, the manufacturer shall within 60 days of such action so advise the Secretary in writing and reference such modification in submissions made under subsection (b).

''SEC. 905. ANNUAL REGISTRATION.

''(a) DEFINITIONS.—As used in this section—

''(1) the term 'manufacture, preparation, compounding, or processing' shall include repackaging or otherwise changing the container, wrapper, or labeling of any tobacco product package in furtherance of the distribution of the tobacco product from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user; and

''(2) the term 'name' shall include in the case of a partnership the name of each partner and, in the case of a corporation, the name of each corporate officer and director, and the State of incorporation.

''(b) REGISTRATION BY OWNERS AND OPERATORS.—On or before December 31 of each year every person who owns or operates any establishment in any State engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products shall register with the Secretary the name, places of business, and all such establishments of that person.

''(c) REGISTRATION OF NEW OWNERS AND OPERATORS.—Every person upon first engaging in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products in any establishment owned or operated in any State by that person shall immediately register with the Secretary that person's name, place of business, and such establishment.

''(d) REGISTRATION OF ADDED ESTABLISHMENTS.—Every person required to register under subsection (b) or (c) shall immediately register with the Secretary any additional establishment which that person owns or operates in any State and in which that person begins the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products.

''(e) UNIFORM PRODUCT IDENTIFICATION SYSTEM.—The Secretary may by regulation prescribe a uniform system for the identification of tobacco products and may require that persons who are required to list such tobacco products under subsection (i) of this section shall list such tobacco products in accordance with such system.

''(f) PUBLIC ACCESS TO REGISTRATION INFORMATION.—The Secretary shall make available for inspection, to any person so requesting, any registration filed under this section.

''(g) BIENNIAL INSPECTION OF REGISTERED ESTABLISHMENTS.—Every establishment in any State registered with the Secretary under this section shall be subject to inspection under section 704, and every such establishment engaged in the manufacture, compounding, or processing of a tobacco product or tobacco products shall be so inspected by one or more officers or employees duly designated by the Secretary at least once in the 2-year period beginning with the date of registration of such establishment under this section and at least once in every successive 2-year period thereafter.

''(h) FOREIGN ESTABLISHMENTS MAY REGISTER.—Any establishment within any foreign country engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products, may register under this section under regulations promulgated by the Secretary. Such regulations shall require such establishment to provide the information required by subsection (i) of this section and shall include provisions for registration of any such establishment upon condition that adequate and effective means are available, by arrangement with the government of such foreign country or otherwise, to enable the Secretary to determine from time to time whether tobacco products manufactured, prepared, compounded, or processed in such establishment, if imported or offered for import into the United States, shall be refused admission on any of the grounds set forth in section 801(a).

''(i) REGISTRATION INFORMATION.—

''(1) PRODUCT LIST.—Every person who registers with the Secretary under subsection (b), (c), or (d) of this section shall, at the time of registration under any such subsection, file with the Secretary a list of all tobacco products which are being manufactured, prepared, compounded, or processed by that person for commercial distribution and which has not been included in any list of tobacco products filed by that person with the Secretary under this paragraph or paragraph (2) before such time of registration. Such list shall be prepared in such form and manner as the Secretary may prescribe and shall be accompanied by—

''(A) in the case of a tobacco product contained in the applicable list with respect to which a performance standard has been established under section 907 or which is subject to section 910, a reference to the authority for the marketing of such tobacco product and a copy of all labeling for such tobacco product;

''(B) in the case of any other tobacco product contained in an applicable list, a copy of all consumer information and other labeling for such tobacco product, a representative sampling of advertisements for such tobacco product, and, upon request made by the Secretary for good cause, a copy of all advertisements for a particular tobacco product; and

''(C) if the registrant filing a list has determined that a tobacco product contained in such list is not subject to a performance standard established under section 907, a brief statement of the basis upon which the registrant made such determination if the Secretary requests such a statement with respect to that particular tobacco product.

''(2) BIANNUAL REPORT OF ANY CHANGE IN PRODUCT LIST.—Each person who registers with the Secretary under this section shall report to the Secretary once during the month of June of each year and once during the month of December of each year the following:

''(A) A list of each tobacco product introduced by the registrant for commercial distribution which has not been included in any list previously filed by that person with the Secretary under this subparagraph or paragraph (1) of this subsection. A list under this subparagraph shall list a tobacco product by its established name and shall be accompanied by the other information required by paragraph (1).

''(B) If since the date the registrant last made a report under this paragraph that person has discontinued the manufacture, preparation, compounding, or processing for commercial distribution of a tobacco product included in a list filed under subparagraph (A) or paragraph (1), notice of such discontinuance, the date of such discontinuance, and the identity of its established name.

''(C) If since the date the registrant reported under subparagraph (B) a notice of discontinuance that person has resumed the

manufacture, preparation, compounding, or processing for commercial distribution of the tobacco product with respect to which such notice of discontinuance was reported, notice of such resumption, the date of such resumption, the identity of such tobacco product by established name, and other information required by paragraph (1), unless the registrant has previously reported such resumption to the Secretary under this subparagraph.

''(D) Any material change in any information previously submitted under this paragraph or paragraph (1).

''(j) REPORT PRECEDING INTRODUCTION OF CERTAIN SUBSTANTIALLY-EQUIVALENT PRODUCTS INTO INTERSTATE COMMERCE.—

''(1) IN GENERAL.—Each person who is required to register under this section and who proposes to begin the introduction or delivery for introduction into interstate commerce for commercial distribution of a tobacco product intended for human use that was not commercially marketed (other than for test marketing) in the United States as of August 11, 1995, as defined by the Secretary by regulation shall, at least 90 days before making such introduction or delivery, report to the Secretary (in such form and manner as the Secretary shall by regulation prescribe)—

''(A) the basis for such person's determination that the tobacco product is substantially equivalent, within the meaning of section 910, to a tobacco product commercially marketed (other than for test marketing) in the United States as of August 11, 1995, that is in compliance with the requirements of this Act; and

''(B) action taken by such person to comply with the requirements under section 907 that are applicable to the tobacco product.

''(2) APPLICATION TO CERTAIN POST-AUGUST 11TH PRODUCTS.—A report under this subsection for a tobacco product that was first introduced or delivered for introduction into interstate commerce for commercial distribution in the United States after August 11, 1995, and before the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act shall be submitted to the Secretary within 6 months after the date of enactment of that Act.

"SEC. 906. GENERAL PROVISIONS RESPECTING CONTROL OF TOBACCO PRODUCTS.

''(a) IN GENERAL.—Any requirement established by or under section 902, 903, 905, or 909 applicable to a tobacco product shall apply to such tobacco product until the applicability of the requirement to the tobacco product has been changed by action taken under section 907, section 910, or subsection (d) of this section, and any requirement established by or under section 902, 903, 905, or 909 which is inconsistent with a requirement imposed on such tobacco product under section 907, section 910, or subsection (d) of this section shall not apply to such tobacco product.

''(b) INFORMATION ON PUBLIC ACCESS AND COMMENT.—Each notice of proposed rulemaking under section 907, 908, 909, or 910, or under this section, any other notice which is published in the Federal Register with respect to any other action taken under any such section and which states the reasons for such action, and each publication of findings required to be made in connection with rulemaking under any such section shall set forth—

''(1) the manner in which interested persons may examine data and other information on which the notice or findings is based; and

''(2) the period within which interested persons may present their comments on the notice or findings (including the need therefor) orally or in writing, which period shall be at least 60 days but may not exceed 90 days unless the time is extended by the Secretary by a notice published in the Federal Register stating good cause therefor.

''(c) LIMITED CONFIDENTIALITY OF INFORMATION.—Any information reported to or otherwise obtained by the Secretary or the Secretary's representative under section 904, 907, 908, 909, or 910 or 704, or under subsection (e) or (f) of this section, which is exempt from disclosure under subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) of that section shall be considered confidential and shall not be disclosed, except that the information may be disclosed to other officers or employees concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

''(d) RESTRICTIONS.—

''(1) The Secretary may by regulation require that a tobacco product be restricted to sale, distribution, or use upon such conditions, including restrictions on the access to, and the advertising and promotion of, the tobacco product, as the Secretary may prescribe in such regulation if, because of its potentiality for harmful effect or the collateral measures necessary to its use, the Secretary determines that such regulation would be appropriate for the protection of the public health. The finding as to whether such regulation would be appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

No such condition may require that the sale or distribution of a tobacco product be limited to the written or oral authorization of a practitioner licensed by law to prescribe medical products.

''(2) The label of a tobacco product shall bear such appropriate statements of the restrictions required by a regulation under subsection (a) as the Secretary may in such regulation prescribe.

''(3) No restriction under paragraph (1) may prohibit the sale of any tobacco product in face-to face transactions by a specific category of retail outlets.

''(e) GOOD MANUFACTURING PRACTICE REQUIREMENTS.—

''(1) METHODS, FACILITIES, AND CONTROLS TO CONFORM.—

''(A) The Secretary may, in accordance with subparagraph (B), prescribe regulations requiring that the methods used in, and the facilities and controls used for, the manufacture, 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 assure that the public health is protected and that the tobacco product is in compliance with this chapter.

''(B) The Secretary shall—

''(i) before promulgating any regulation under subparagraph (A), afford an advisory committee an opportunity to submit recommendations with respect to the regulation proposed to be promulgated;

''(ii) before promulgating any regulation under subparagraph (A), afford opportunity for an oral hearing;

''(iii) provide the advisory committee a reasonable time to make its recommendation with respect to proposed regulations under subparagraph (A); and

''(iv) in establishing the effective date of a regulation promulgated under this subsection, take into account the differences in the manner in which the different types of tobacco products have historically been produced, the financial resources of the different tobacco product manufacturers, and the state of their existing manufacturing facilities; and shall provide for a reasonable period of time for such manufacturers to conform to good manufacturing practices.

''(2) EXEMPTIONS; VARIANCES.—

''(A) Any person subject to any requirement prescribed under paragraph (1) may petition the Secretary for a permanent or temporary exemption or variance from such requirement. Such a petition shall be submitted to the Secretary in such form and manner as the Secretary shall prescribe and shall—

''(i) in the case of a petition for an exemption from a requirement, set forth the basis for the petitioner's determination that compliance with the requirement is not required to assure that the tobacco product will be in compliance with this chapter;

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

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

''(B) The Secretary may refer to an advisory committee any petition submitted under subparagraph (A). The advisory committee shall report its recommendations to the Secretary with respect to a petition referred to it within 60 days after the date of the petition's referral. Within 60 days after—

''(i) the date the petition was submitted to the Secretary under subparagraph (A); or

''(ii) the day after the petition was referred to an advisory committee,

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

''(C) The Secretary may approve—

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

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

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

''(E) After the issuance of an order under subparagraph (B) respecting a petition, the petitioner shall have an opportunity for an informal hearing on such order.

''(3) Compliance with requirements under this subsection shall not be required before the period ending 3 years after the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act.

''(f) EXEMPTION FOR INVESTIGATIONAL USE.—The Secretary may exempt tobacco products intended for investigational use from this chapter under such conditions as the Secretary may prescribe by regulation .

''(g) RESEARCH AND DEVELOPMENT.—The Secretary may enter into contracts for research, testing, and demonstrations respecting tobacco products and may obtain tobacco products for research, testing, and demonstration purposes without regard to section 3324(a) and (b) of title 31, United States Code, and section 5 of title 41, United States Code.

''SEC. 907. PERFORMANCE STANDARDS.

''(a) IN GENERAL.—

''(1) FINDING REQUIRED.—The Secretary may adopt performance standards for a tobacco product if the Secretary finds that a performance standard is appropriate for the protection of the public health. This finding shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

''(2) CONTENT OF PERFORMANCE STANDARDS.—A performance standard established under this section for a tobacco product—

''(A) shall include provisions to provide performance that is appropriate for the protection of the public health, including provisions, where appropriate—

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

''(ii) for the reduction or elimination of other constituents or harmful components of the product; or

''(iii) relating to any other requirement under (B);

''(B) shall, where necessary to be appropriate for the protection of the public health, include—

''(i) provisions respecting the construction, components, ingredients, and properties of the tobacco product;

''(ii) provisions for the testing (on a sample basis or, if necessary, on an individual basis) of the tobacco product;

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

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

''(v) a provision requiring that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d); and

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

''(3) PERIODIC RE-EVALUATION OF PERFORMANCE STANDARDS.—The Secretary shall provide for periodic evaluation of performance standards established under this section to determine whether such standards should be changed to reflect new medical, scientific, or other technological data. The Secretary may provide for testing under paragraph (2) by any person.

''(4) INVOLVEMENT OF OTHER AGENCIES; INFORMED PERSONS.—In carrying out duties under this section, the Secretary shall, to the maximum extent practicable—

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

''(B) consult with other Federal agencies concerned with standard-setting and other nationally or internationally recognized standard-setting entities; and

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

''(b) ESTABLISHMENT OF STANDARDS.—

''(1) NOTICE.—

(A) The Secretary shall publish in the Federal Register a notice of proposed rulemaking for the establishment, amendment, or revocation of any performance standard for a tobacco product.

''(B) A notice of proposed rulemaking for the establishment or amendment of a performance standard for a tobacco product shall—

''(i) set forth a finding with supporting justification that the performance standard is appropriate for the protection of the public health;

''(ii) set forth proposed findings with respect to the risk of illness or injury that the performance standard is intended to reduce or eliminate; and

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

''(C) A notice of proposed rulemaking for the revocation of a performance standard shall set forth a finding with supporting justification that the performance standard is no longer necessary to be appropriate for the protection of the public health.

''(D) The Secretary shall consider all information submitted in connection with a proposed standard, including information concerning the countervailing effects of the performance standard on the health of adolescent tobacco users, adult tobacco users, or non-tobacco users, such as the creation of a significant demand for contraband or other tobacco products that do not meet the requirements of this chapter and the significance of such demand, and shall issue the standard if the Secretary determines that the standard would be appropriate for the protection of the public health.

''(E) The Secretary shall provide for a comment period of not less than 60 days.

''(2) PROMULGATION.—

''(A) After the expiration of the period for comment on a notice of proposed rulemaking published under paragraph (1) respecting a performance standard and after consideration of such comments and any report from an advisory committee, the Secretary shall—

''(i) promulgate a regulation establishing a performance standard and publish in the Federal Register findings on the matters referred to in paragraph (1); or

''(ii) publish a notice terminating the proceeding for the development of the standard together with the reasons for such termination.

''(B) A regulation establishing a performance standard shall set forth the date or dates upon which the standard shall take effect, but no such regulation may take effect before one year after the date of its publication unless the Secretary determines that an earlier effective date is necessary for the protection of the public health. Such date or dates shall be established so as to minimize, consistent with the public health, economic loss to, and disruption or dislocation of, domestic and international trade.

''(3) SPECIAL RULE FOR STANDARD BANNING CLASS OF PRODUCT OR ELIMINATING NICOTINE CONTENT.—Because of the importance of a decision of the Secretary to issue a regulation establishing a performance standard—

''(A) eliminating all cigarettes, all smokeless tobacco products, or any similar class of tobacco products, or

''(B) requiring the reduction of nicotine yields of a tobacco product to zero,

it is appropriate for the Congress to have the opportunity to review such a decision. Therefore, any such standard may not take effect before a date that is 2 years after the President notifies the Congress that a final regulation imposing the restriction has been issued.

''(4) AMENDMENT; REVOCATION.—

''(A) The Secretary, upon the Secretary's own initiative or upon petition of an interested person may by a regulation, promulgated in accordance with the requirements of paragraphs (1) and (2)(B) of this subsection, amend or revoke a performance standard.

''(B) The Secretary may declare a proposed amendment of a performance standard to be effective on and after its publication in the Federal Register and until the effective date of any final action taken on such amendment if the Secretary determines that making it so effective is in the public interest.

''(5) REFERENCE TO ADVISORY COMMITTEE.—The Secretary—

''(A) may, on the Secretary's own initiative, refer a proposed regulation for the establishment, amendment, or revocation of a performance standard; or

''(B) shall, upon the request of an interested person which demonstrates good cause for referral and which is made before the expiration of the period for submission of comments on such proposed regulation,

refer such proposed regulation to an advisory committee, for a report and recommendation with respect to any matter involved in the proposed regulation which requires the exercise of scientific judgment. If a proposed regulation is referred under this subparagraph to the advisory committee, the Secretary shall provide the advisory committee with the data and information on which such proposed regulation is based. The advisory committee shall, within 60 days after the referral of a proposed regulation and after independent study of the data and information furnished to it by the Secretary and other data and information before it, submit to the Secretary a report and recommendation respecting such regulation, together with all underlying data and information and a statement of the reason or basis for the recommendation. A copy of such report and recommendation shall be made public by the Secretary.

''SEC. 908. NOTIFICATION AND OTHER REMEDIES

''(a) NOTIFICATION.—If the Secretary determines that—

''(1) a tobacco product which is introduced or delivered for introduction into interstate commerce for commercial distribution presents an unreasonable risk of substantial harm to the public health; and

''(2) notification under this subsection is necessary to eliminate the unreasonable risk of such harm and no more practicable means is available under the provisions of this chapter (other than this section) to eliminate such risk,

the Secretary may issue such order as may be necessary to assure that adequate notification is provided in an appropriate form, by the persons and means best suited under the circumstances involved, to all persons who should properly receive such notification in order to eliminate such risk. The Secretary may order notification by any appropriate means, including public service announcements. Before issuing an order under this subsection, the Secretary shall consult with the persons who are to give notice under the order.

''(b) NO EXEMPTION FROM OTHER LIABILITY.—Compliance with an order issued under

this section shall not relieve any person from liability under Federal or State law. In awarding damages for economic loss in an action brought for the enforcement of any such liability, the value to the plaintiff in such action of any remedy provided under such order shall be taken into account.

''(c) RECALL AUTHORITY.—

''(1) IN GENERAL.—If the Secretary finds that there is a reasonable probability that a tobacco product contains a manufacturing or other defect not ordinarily contained in tobacco products on the market that would cause serious, adverse health consequences or death, the Secretary shall issue an order requiring the appropriate person (including the manufacturers, importers, distributors, or retailers of the tobacco product) to immediately cease distribution of such tobacco product. The order shall provide the person subject to the order with an opportunity for an informal hearing, to be held not later than 10 days after the date of the issuance of the order, on the actions required by the order and on whether the order should be amended to require a recall of such tobacco product. If, after providing an opportunity for such a hearing, the Secretary determines that inadequate grounds exist to support the actions required by the order, the Secretary shall vacate the order.

''(2) AMENDMENT OF ORDER TO REQUIRE RECALL.—

''(A) If, after providing an opportunity for an informal hearing under paragraph (1), the Secretary determines that the order should be amended to include a recall of the tobacco product with respect to which the order was issued, the Secretary shall, except as provided in subparagraph (B), amend the order to require a recall. The Secretary shall specify a timetable in which the tobacco product recall will occur and shall require periodic reports to the Secretary describing the progress of the recall.

''(B) An amended order under subparagraph (A)—

''(i) shall not include recall of a tobacco product from individuals; and

''(ii) shall provide for notice to persons subject to the risks associated with the use of such tobacco product.

In providing the notice required by clause (ii), the Secretary may use the assistance of retailers and other persons who distributed such tobacco product. If a significant number of such persons cannot be identified, the Secretary shall notify such persons under section 705(b).

''(3) REMEDY NOT EXCLUSIVE.—The remedy provided by this subsection shall be in addition to remedies provided by subsection (a) of this section.

''SEC. 909. RECORDS AND REPORTS ON TOBACCO PRODUCTS.

''(a) IN GENERAL.—Every person who is a tobacco product manufacturer or importer of a tobacco product shall establish and maintain such records, make such reports, and provide such information, as the Secretary may by regulation reasonably require to assure that such tobacco product is not adulterated or misbranded and to otherwise protect public health. Regulations prescribed under the preceding sentence—

''(1) may require a tobacco product manufacturer or importer to report to the Secretary whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed tobacco products may have caused or contributed to a serious unexpected adverse experience associated with the use of the product or any significant increase in the frequency of a serious, expected adverse product experience;

''(2) shall require reporting of other significant adverse tobacco product experiences as determined by the Secretary to be necessary to be reported;

''(3) shall not impose requirements unduly burdensome to a tobacco product manufacturer or importer, taking into account the cost of complying with such requirements and the need for the protection of the public health and the implementation of this chapter;

''(4) when prescribing the procedure for making requests for reports or information, shall require that each request made under such regulations for submission of a report or information to the Secretary state the reason or purpose for such request and identify to the fullest extent practicable such report or information;

''(5) when requiring submission of a report or information to the Secretary, shall state the reason or purpose for the submission of such report or information and identify to the fullest extent practicable such report or information; and

''(6) may not require that the identity of any patient or user be disclosed in records, reports, or information required under this subsection unless required for the medical welfare of an individual, to determine risks to public health of a tobacco product, or to verify a record, report, or information submitted under this chapter.

In prescribing regulations under this subsection, the Secretary shall have due regard for the professional ethics of the medical profession and the interests of patients. The prohibitions of paragraph (6) of this subsection continue to apply to records, reports, and information concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

''(b) REPORTS OF REMOVALS AND CORRECTIONS.—

(1) Except as provided in paragraph (3), the Secretary shall by regulation require a tobacco product manufacturer or importer of a tobacco product to report promptly to the Secretary any corrective action taken or removal from the market of a tobacco product undertaken by such manufacturer or importer if the removal or correction was undertaken—

''(A) to reduce a risk to health posed by the tobacco product; or

''(B) to remedy a violation of this chapter caused by the tobacco product which may present a risk to health.

A tobacco product manufacturer or importer of a tobacco product who undertakes a corrective action or removal from the market of a tobacco product which is not required to be reported under this subsection shall keep a record of such correction or removal.

''(2) No report of the corrective action or removal of a tobacco product may be required under paragraph (1) if a report of the corrective action or removal is required and has been submitted under subsection (a) of this section.

''SEC. 910. PREMARKET REVIEW OF CERTAIN TOBACCO PRODUCTS.

''(a) IN GENERAL.—

''(1) PREMARKET APPROVAL REQUIRED.—

''(A) NEW PRODUCTS.—Approval under this section of an application for premarket approval for any tobacco product that is not commercially marketed (other than for test marketing) in the United States as of August 11, 1995, is required unless the manufacturer has submitted a report under section 905(j), and the Secretary has issued an order that the tobacco product is substantially equivalent to a tobacco product commercially marketed (other than for test marketing) in the United States as of August 11, 1995, that is in compliance with the requirements of this Act.

''(B) PRODUCTS INTRODUCED BETWEEN AUGUST 11, 1995, AND ENACTMENT OF THIS CHAPTER.—Subparagraph (A) does not apply to a tobacco product that—

''(i) was first introduced or delivered for introduction into interstate commerce for commerce for commercial distribution in the United States after August 11, 1995, and before the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act; and

''(ii) for which a report was submitted under section 905(j) within 6 months after such date,

until the Secretary issues an order that the tobacco product is substantially equivalent for purposes of this section or requires premarket approval.

''(2) SUBSTANTIALLY EQUIVALENT DEFINED.—

''(A) For purposes of this section and section 905(j), the term 'substantially equivalent' or 'substantial equivalence' mean, with respect to the tobacco product being compared to the predicate tobacco product, that the Secretary by order has found that the tobacco product—

''(i) has the same characteristics as the predicate tobacco product; or

''(ii) has different characteristics and the information submitted contains information, including clinical data if deemed necessary by the Secretary, that demonstrates that it is not appropriate to regulate the product under this section because the product does not raise different questions of public health.

''(B) For purposes of subparagraph (A), the term 'characteristics' means the materials, ingredients, design, composition, heating source, or other features of a tobacco product.

''(C) A tobacco product may not be found to be substantially equivalent to a predicate tobacco product that has been removed from the market at the initiative of the Secretary or that has been determined by a judicial order to be misbranded or adulterated.

''(3) HEALTH INFORMATION.—

''(A) As part of a submission under section 905(j) respecting a tobacco product, the person required to file a premarket notification under such section shall provide an adequate summary of any health information related to the tobacco product or state that such information will be made available upon request by any person.

''(B) Any summary under subparagraph (A) respecting a tobacco product shall contain detailed information regarding data concerning adverse health effects and shall be made available to the public by the Secretary within 30 days of the issuance of a determination that such tobacco product is substantially equivalent to another tobacco product.

''(b) APPLICATION.—

''(1) CONTENTS.—An application for premarket approval shall contain—

''(A) full reports of all information, published or known to or which should reasonably be known to the applicant, concerning investigations which have been made to show the health risks of such tobacco product and whether such tobacco product presents less risk than other tobacco products;

''(B) a full statement of the components, ingredients, and properties, and of the principle or principles of operation, of such tobacco product;

''(C) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of, such tobacco product;

''(D) an identifying reference to any performance standard under section 907 which would be applicable to any aspect of such tobacco product, and either adequate information to show that such aspect of such tobacco product fully meets such performance

standard or adequate information to justify any deviation from such standard;

''(E) such samples of such tobacco product and of components thereof as the Secretary may reasonably require;

''(F) specimens of the labeling proposed to be used for such tobacco product; and

''(G) such other information relevant to the subject matter of the application as the Secretary may require.

''(2) REFERENCE TO ADVISORY COMMITTEE.—Upon receipt of an application meeting the requirements set forth in paragraph (1), the Secretary—

''(A) may, on the Secretary's own initiative; or

''(B) shall, upon the request of an applicant,

refer such application to an advisory committee and for submission (within such period as the Secretary may establish) of a report and recommendation respecting approval of the application, together with all underlying data and the reasons or basis for the recommendation.

''(c) ACTION ON APPLICATION.—

''(1) DEADLINE.—

''(A) As promptly as possible, but in no event later than 180 days after the receipt of an application under subsection (b) of this section, the Secretary, after considering the report and recommendation submitted under paragraph (2) of such subsection, shall—

''(i) issue an order approving the application if the Secretary finds that none of the grounds for denying approval specified in paragraph (2) of this subsection applies; or

''(ii) deny approval of the application if the Secretary finds (and sets forth the basis for such finding as part of or accompanying such denial) that one or more grounds for denial specified in paragraph (2) of this subsection apply.

''(B) An order approving an application for a tobacco product may require as a condition to such approval that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d).

''(2) DENIAL OF APPROVAL.—The Secretary shall deny approval of an application for a tobacco product if, upon the basis of the information submitted to the Secretary as part of the application and any other information before the Secretary with respect to such tobacco product, the Secretary finds that—

''(A) there is a lack of a showing that permitting such tobacco product to be marketed would be appropriate for the protection of the public health;

''(B) the methods used in, or the facilities or controls used for, the manufacture, processing, or packing of such tobacco product do not conform to the requirements of section 906(e);

''(C) based on a fair evaluation of all material facts, the proposed labeling is false or misleading in any particular; or

''(D) such tobacco product is not shown to conform in all respects to a performance standard in effect under section 907, compliance with which is a condition to approval of the application, and there is a lack of adequate information to justify the deviation from such standard.

''(3) DENIAL INFORMATION.—Any denial of an application shall, insofar as the Secretary determines to be practicable, be accompanied by a statement informing the applicant of the measures required to place such application in approvable form (which measures may include further research by the applicant in accordance with one or more protocols prescribed by the Secretary).

''(4) BASIS FOR FINDING.—For purposes of this section, the finding as to whether approval of a tobacco product is appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

''(5) BASIS FOR ACTION.—

''(A) For purposes of paragraph (2)(A), whether permitting a tobacco product to be marketed would be appropriate for the protection of the public health shall, when appropriate, be determined on the basis of well-controlled investigations, which may include one or more clinical investigations by experts qualified by training and experience to evaluate the tobacco product.

''(B) If the Secretary determines that there exists valid scientific evidence (other than evidence derived from investigations described in subparagraph (A)) which is sufficient to evaluate the tobacco product the Secretary may authorize that the determination for purposes of paragraph (2)(A) be made on the basis of such evidence.

''(d) WITHDRAWAL AND TEMPORARY SUSPENSION.—

''(1) IN GENERAL.—The Secretary shall, upon obtaining, where appropriate, advice on scientific matters from an advisory committee, and after due notice and opportunity for informal hearing to the holder of an approved application for a tobacco product, issue an order withdrawing approval of the application if the Secretary finds—

''(A) that the continued marketing of such tobacco product no longer is appropriate for the protection of the public health;

''(B) that the application contained or was accompanied by an untrue statement of a material fact;

''(C) that the applicant—

''(i) has failed to establish a system for maintaining records, or has repeatedly or deliberately failed to maintain records or to make reports, required by an applicable regulation under section 909;

''(ii) has refused to permit access to, or copying or verification of, such records as required by section 704; or

''(iii) has not complied with the requirements of section 905;

''(D) on the basis of new information before the Secretary with respect to such tobacco product, evaluated together with the evidence before the Secretary when the application was approved, that the methods used in, or the facilities and controls used for, the manufacture, processing, packing, or installation of such tobacco product do not conform with the requirements of section 906(e) and were not brought into conformity with such requirements within a reasonable time after receipt of written notice from the Secretary of nonconformity;

''(E) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when the application was approved, that the labeling of such tobacco product, based on a fair evaluation of all material facts, is false or misleading in any particular and was not corrected within a reasonable time after receipt of written notice from the Secretary of such fact; or

''(F) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when the application was approved, that such tobacco product is not shown to conform in all respects to a performance standard which is in effect under section 907, compliance with which was a condition to approval of the application, and that there is a lack of adequate information to justify the deviation from such standard.

''(2) APPEAL.—The holder of an application subject to an order issued under paragraph (1) withdrawing approval of the application may, by petition filed on or before the thirtieth day after the date upon which he receives notice of such withdrawal, obtain review thereof in accordance with subsection (e) of this section.

''(3) TEMPORARY SUSPENSION.—If, after providing an opportunity for an informal hearing, the Secretary determines there is reasonable probability that the continuation of distribution of a tobacco product under an approved application would cause serious, adverse health consequences or death, that is greater than ordinarily caused by tobacco products on the market, the Secretary shall by order temporarily suspend the approval of the application approved under this section. If the Secretary issues such an order, the Secretary shall proceed expeditiously under paragraph (1) to withdraw such application.

''(e) SERVICE OF ORDER.—An order issued by the Secretary under this section shall be served—

''(1) in person by any officer or employee of the department designated by the Secretary; or

''(2) by mailing the order by registered mail or certified mail addressed to the applicant at the applicant's last known address in the records of the Secretary.

''SEC. 911. JUDICIAL REVIEW.

''(a) IN GENERAL.—Not later than 30 days after—

''(1) the promulgation of a regulation under section 907 establishing, amending, or revoking a performance standard for a tobacco product; or

''(2) a denial of an application for approval under section 910(c),

any person adversely affected by such regulation or order may file a petition with the United States Court of Appeals for the District of Columbia or for the circuit wherein such person resides or has his principal place of business for judicial review of such regulation or order. A copy of the petition shall be transmitted by the clerk of the court to the Secretary or other officer designated by the Secretary for that purpose. The Secretary shall file in the court the record of the proceedings on which the Secretary based the Secretary's regulation or order and each record or order shall contain a statement of the reasons for its issuance and the basis, on the record, for its issuance. For purposes of this section, the term 'record' means all notices and other matter published in the Federal Register with respect to the regulation or order reviewed, all information submitted to the Secretary with respect to such regulation or order, proceedings of any panel or advisory committee with respect to such regulation or order, any hearing held with respect to such regulation or order, and any other information identified by the Secretary, in the administrative proceeding held with respect to such regulation or order, as being relevant to such regulation or order.

''(b) COURT MAY ORDER SECRETARY TO MAKE ADDITIONAL FINDINGS.—If the petitioner applies to the court for leave to adduce additional data, views, or arguments respecting the regulation or order being reviewed and shows to the satisfaction of the court that such additional data, views, or arguments are material and that there were reasonable grounds for the petitioner's failure to adduce such data, views, or arguments in the proceedings before the Secretary, the court may order the Secretary to provide additional opportunity for the oral presentation of data, views, or arguments and for

written submissions. The Secretary may modify the Secretary's findings, or make new findings by reason of the additional data, views, or arguments so taken and shall file with the court such modified or new findings, and the Secretary's recommendation, if any, for the modification or setting aside of the regulation or order being reviewed, with the return of such additional data, views, or arguments.

''(c) STANDARD OF REVIEW.—Upon the filing of the petition under subsection (a) of this section for judicial review of a regulation or order, the court shall have jurisdiction to review the regulation or order in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief, including interim relief, as provided in such chapter. A regulation or order described in paragraph (1) or (2) of subsection (a) of this section shall not be affirmed if it is found to be unsupported by substantial evidence on the record taken as a whole.

''(d) FINALITY OF JUDGMENT.—The judgment of the court affirming or setting aside, in whole or in part, any regulation or order shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

''(e) OTHER REMEDIES.—The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by law.

''(f) REGULATIONS AND ORDERS MUST RECITE BASIS IN RECORD.—To facilitate judicial review under this section or under any other provision of law of a regulation or order issued under section 906, 907, 908, 909, 910, or 914, each such regulation or order shall contain a statement of the reasons for its issuance and the basis, in the record of the proceedings held in connection with its issuance, for its issuance.

''SEC. 912. POSTMARKET SURVEILLANCE

''(a) DISCRETIONARY SURVEILLANCE.—The Secretary may require a tobacco product manufacturer to conduct postmarket surveillance for a tobacco product of the manufacturer if the Secretary determines that postmarket surveillance of the tobacco product is necessary to protect the public health or is necessary to provide information regarding the health risks and other safety issues involving the tobacco product.

''(b) SURVEILLANCE APPROVAL.—Each tobacco product manufacturer required to conduct a surveillance of a tobacco product under subsection (a) of this section shall, within 30 days after receiving notice that the manufacturer is required to conduct such surveillance, submit, for the approval of the Secretary, a protocol for the required surveillance. The Secretary, within 60 days of the receipt of such protocol, shall determine if the principal investigator proposed to be used in the surveillance has sufficient qualifications and experience to conduct such surveillance and if such protocol will result in collection of useful data or other information necessary to protect the public health. The Secretary may not approve such a protocol until it has been reviewed by an appropriately qualified scientific and technical review committee established by the Secretary.

''SEC. 913. REDUCED RISK TOBACCO PRODUCTS.

''(a) REQUIREMENTS.—

''(1) IN GENERAL.—For purposes of this section, the term 'reduced risk tobacco product' means a tobacco product designated by the Secretary under paragraph (2).

''(2) DESIGNATION.—

''(A) IN GENERAL.—A product may be designated by the Secretary as a reduced risk tobacco product if the Secretary finds that the product will significantly reduce harm to individuals caused by a tobacco product and is otherwise appropriate to protect public health, based on an application submitted by the manufacturer of the product (or other responsible person) that—

''(i) demonstrates through testing on animals and short-term human testing that use of such product results in ingestion or inhalation of a substantially lower yield of toxic substances than use of conventional tobacco products in the same category as the proposed reduced risk product; and

''(ii) if required by the Secretary, includes studies of the long-term health effects of the product.

If such studies are required, the manufacturer may consult with the Secretary regarding protocols for conducting the studies.

''(B) BASIS FOR FINDING.—In making the finding under subparagraph (A), the Secretary shall take into account—

''(i) the risks and benefits to the population as a whole, including both users of tobacco products and non-users of tobacco products;

''(ii) the increased or decreased likelihood that existing users of tobacco products will stop using such products including reduced risk tobacco products;

''(iii) the increased or decreased likelihood that those who do not use tobacco products will start to use such products, including reduced risk tobacco products; and

''(iv) the risks and benefits to consumers from the use of a reduced risk tobacco product as compared to the use of products approved under chapter V to reduce exposure to tobacco.

''(3) MARKETING REQUIREMENTS.—A tobacco product may be marketed and labeled as a reduced risk tobacco product if it—

''(A) has been designated as a reduced risk tobacco product by the Secretary under paragraph (2);

''(B) bears a label prescribed by the Secretary concerning the product's contribution to reducing harm to health; and

''(C) complies with requirements prescribed by the Secretary relating to marketing and advertising of the product, and other provisions of this chapter as prescribed by the Secretary.

''(b) REVOCATION OF DESIGNATION.—At any time after the date on which a tobacco product is designated as a reduced risk tobacco product under this section the Secretary may, after providing an opportunity for an informal hearing, revoke such designation if the Secretary determines, based on information not available at the time of the designation, that—

''(1) the finding made under subsection (a)(2) is no longer valid; or

''(2) the product is being marketed in violation of subsection (a)(3).

''(c) LIMITATION.—A tobacco product that is designated as a reduced risk tobacco product that is in compliance with subsection (a) shall not be regulated as a drug or device.

''(d) DEVELOPMENT OF REDUCED RISK TOBACCO PRODUCT TECHNOLOGY.—A tobacco product manufacturer shall provide written notice to the Secretary upon the development or acquisition by the manufacturer of any technology that would reduce the risk of a tobacco product to the health of the user for which the manufacturer is not seeking designation as a 'reduced risk tobacco product' under subsection (a).

''SEC. 914. PRESERVATION OF STATE AND LOCAL AUTHORITY.

''(a) ADDITIONAL REQUIREMENTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), nothing in this Act shall be construed as prohibiting a State or political subdivision thereof from adopting or enforcing a requirement applicable to a tobacco product that is in addition to, or more stringent than, requirements established under this chapter.

''(2) PREEMPTION OF CERTAIN STATE AND LOCAL REQUIREMENTS.—

''(A) Except as provided in subparagraph (B), no State or political subdivision of a State may establish or continue in effect with respect to a tobacco product any requirement which is different from, or in addition to, any requirement applicable under the provisions of this chapter relating to performance standards, premarket approval, adulteration, misbranding, registration, reporting, good manufacturing standards, or reduced risk products.

''(B) Subparagraph (A) does not apply to requirements relating to the sale, use, or distribution of a tobacco product including requirements related to the access to, and the advertising and promotion of, a tobacco product.

''(b) RULE OF CONSTRUCTION REGARDING PRODUCT LIABILITY.—No provision of this chapter relating to a tobacco product shall be construed to modify or otherwise affect any action or the liability of any person under the product liability law of any State.

''(c) WAIVERS.—Upon the application of a State or political subdivision thereof, the Secretary may, by regulation promulgated after notice and an opportunity for an oral hearing, exempt from subsection (a), under such conditions as may be prescribed in such regulation, a requirement of such State or political subdivision applicable to a tobacco product if—

''(1) the requirement is more stringent than a requirement applicable under the provisions described in subsection (a)(3) which would be applicable to the tobacco product if an exemption were not in effect under this subsection; or

''(2) the requirement—

''(A) is required by compelling local conditions; and

''(B) compliance with the requirement would not cause the tobacco product to be in violation of any applicable requirement of this chapter.

''SEC. 915. EQUAL TREATMENT OF RETAIL OUTLETS.

–''The Secretary shall issue regulations to require that retail establishments for which the predominant business is the sale of tobacco products comply with any advertising restrictions applicable to retail establishments accessible to individuals under the age of 18.''.

SEC. 102. CONFORMING AND OTHER AMENDMENTS TO GENERAL PROVISIONS.

(a) AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.—Except as otherwise expressly provided, whenever in this section an amendment is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference is to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(b) SECTION 301.—Section 301 (21 U.S.C. 331) is amended—

(1) by inserting ''tobacco product,'' in subsection (a) after ''device,'';

(2) by inserting ''tobacco product,'' in subsection (b) after ''device,'';

(3) by inserting ''tobacco product,'' in subsection (c) after ''device,'';

(4) by striking ''515(f), or 519'' in subsection (e) and inserting ''515(f), 519, or 909'';

(5) by inserting ''tobacco product,'' in subsection (g) after ''device,'';

(6) by inserting ''tobacco product,'' in subsection (h) after ''device,'';

(7) by striking ''708, or 721'' in subsection (j) and inserting ''708, 721, 904, 905, 906, 907, 908, or 909'';

(8) by inserting ''tobacco product,'' in subsection (k) after ''device,'';

(9) by striking subsection (p) and inserting the following:

''(p) The failure to register in accordance with section 510 or 905, the failure to provide any information required by section 510(j), 510(k), 905(i), or 905(j), or the failure to provide a notice required by section 510(j)(2) or 905(J)(2).'';

(10) by striking subsection (q)(1) and inserting the following:

''(q)(1) The failure or refusal—

''(A) to comply with any requirement prescribed under section 518, 520(g), 906(f), or 908;

''(B) to furnish any notification or other material or information required by or under section 519, 520(g), 904, 906(f), or 909; or

''(C) to comply with a requirement under section 522 or 912.'';

(11) by striking ''device,'' in subsection (q)(2) and inserting ''device or tobacco product,'';

(12) by inserting ''or tobacco product'' in subsection (r) after ''device'' each time that it appears; and

(13) by adding at the end thereof the following:

''(aa) The sale of tobacco products in violation of a no-tobacco-sale order issued under section 303(f).''.

(c) SECTION 303.—Section 303(f) (21 U.S.C. 333(f)) is amended—

(1) by amending the caption to read as follows:

''(f) CIVIL PENALTIES; NO-TOBACCO-SALE ORDERS.—'';

(2) by inserting ''or tobacco products'' after ''devices'' in paragraph (1)(A);

(3) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), and inserting after paragraph (2) the following:

''(3) If the Secretary finds that a person has committed repeated violations of restrictions promulgated under section 906(d) at a particular retail outlet then the Secretary may impose a no-tobacco-sale order on that person prohibiting the sale of tobacco products in that outlet. A no-tobacco-sale order may be imposed with a civil penalty under paragraph (1).'';

(4) by striking ''assessed'' the first time it appears in subparagraph (A) of paragraph (4), as redesignated, and inserting ''assessed, or a no-tobacco-sale order may be imposed,'';

(5) by striking ''penalty'' in such subparagraph and inserting ''penalty, or upon whom a no-tobacco-order is to be imposed,'';

(6) by inserting after ''penalty,'' in subparagraph (B) of paragraph (4), as redesignated, the following: ''or the period to be covered by a no-tobacco-sale order,'';

(7) by adding at the end of such subparagraph the following: ''A no-tobacco-sale order permanently prohibiting an individual retail outlet from selling tobacco products shall include provisions that allow the outlet, after a specified period of time, to request that the Secretary compromise, modify, or terminate the order.'';

(8) by adding at the end of paragraph (4), as redesignated, the following:

''(D) The Secretary may compromise, modify, or terminate, with or without conditions, any no-tobacco-sale order.'';

(9) by striking ''(3)(A)'' in paragraph (5), as resdesignated, and inserting ''(4)(A)'';

(10) by inserting ''or the imposition of a no-tobacco-sale order'' after ''penalty'' the first 2 places it appears in such paragraph;

(11) by striking ''issued.'' in such paragraph and inserting ''issued, or on which the no-tobacco-sale order was imposed, as the case may be.''; and

(12) by striking ''paragraph (4)'' each place it appears in paragraph (6), as redesignated, and inserting ''paragraph (5)''.

(d) SECTION 304.—Section 304 (21 U.S.C. 334) is amended—

(1) by striking ''and'' before ''(D)'' in subsection (a)(2);

(2) by striking ''device.'' in subsection (a)(2) and inserting a comma and ''(E) Any adulterated or misbranded tobacco product.'';

(3) by inserting ''tobacco product,'' in subsection (d)(1) after ''device,'';

(4) by inserting ''or tobacco product'' in subsection (g)(1) after ''device'' each place it appears; and

(5) by inserting ''or tobacco product'' in subsection (g)(2)(A) after ''device'' each place it appears.

(e) SECTION 702.—Section 702(a) (21 U.S.C. 372(a)) is amended—

(1) by inserting ''(1)'' after ''(a)''; and

(2) by adding at the end thereof the following:

''(2) For a tobacco product, to the extent feasible, the Secretary shall contract with the States in accordance with paragraph (1) to carry out inspections of retailers in connection with the enforcement of this Act.''.

(f) SECTION 703.—Section 703 (21 U.S.C. 373) is amended—

(1) by inserting ''tobacco product,'' after ''device,'' each place it appears; and

(2) by inserting ''tobacco products,'' after ''devices,'' each place it appears.

(g) SECTION 704.—Section 704 (21 U.S.C. 374) is amended—

(1) by inserting ''tobacco products,'' in subsection (a)(1)(A) after ''devices,'' each place it appears;

(2) by inserting ''or tobacco products'' in subsection (a)(1)(B) after ''restricted devices'' each place it appears; and

(3) by inserting ''tobacco product,'' in subsection (b) after ''device,''.

(h) SECTION 705.—Section 705(b) (21 U.S.C. 375(b)) is amended by inserting ''tobacco products,'' after ''devices,''.

(i) SECTION 709.—Section 709 (21 U.S. C. 379) is amended by inserting ''or tobacco product'' after ''device''.

(j) SECTION 801.—Section 801 (21 U.S.C. 381) is amended—

(1) by inserting ''tobacco products,'' after ''devices,'' in subsection (a) the first time it appears;

(2) by inserting ''or subsection (j) of section 905'' in subsection (a) after ''section 510''; and

(3) by striking ''drugs or devices'' each time it appears in subsection (a) and inserting ''drugs, devices, or tobacco products'';

(4) by inserting ''tobacco product,'' in subsection (e)(1) after ''device,'';

(2) by redesignating paragraph (4) of subsection (e) as paragraph (5) and inserting after paragraph (3), the following:

''(4) Paragraph (1) does not apply to any tobacco product—

''(A) which does not comply with an applicable requirement of section 907 or 910; or

''(B) which under section 906(f) is exempt from either such section.

This paragraph does not apply if the Secretary has determined that the exportation of the tobacco product is not contrary to the public health and safety and has the approval of the country to which it is intended for export or the tobacco product is eligible for export under section 802.''.

(k) SECTION 802.—Section 802 (21 U.S.C. 382) is amended—

(1) by striking ''device—'' in subsection (a) and inserting ''device or tobacco product—'';

(2) by striking ''and'' after the semicolon in subsection (a)(1)(C);

(3) by striking subparagraph (C) of subsection (a)(2) and all that follows in that subsection and inserting the following:

''(C) is a banned device under section 516; or

''(3) which, in the case of a tobacco product—

''(A) does not comply with an applicable requirement of section 907 or 910; or

''(B) under section 906(f) is exempt from either such section,

is adulterated, misbranded, and in violation of such sections or Act unless the export of the drug, device, or tobacco product is, except as provided in subsection (f), authorized under subsection (b), (c), (d), or (e) of this section or section 801(e)(2) or 801(e)(4). If a drug, device, or tobacco product described in paragraph (1), (2), or (3) may be exported under subsection (b) and if an application for such drug or device under section 505, 515, or 910 of this Act or section 351 of the Public Health Service Act (42 U.S.C. 262) was disapproved, the Secretary shall notify the appropriate public health official of the country to which such drug, device, or tobacco product will be exported of such disapproval.'';

(4) by inserting ''or tobacco product'' in subsection (b)(1)(A) after ''device'' each time it appears;

(5) by inserting ''or tobacco product'' in subsection (c) after ''device'' and inserting ''or section 906(f)'' after ''520(g).'';

(6) by inserting ''or tobacco product'' in subsection (f) after ''device'' each time it appears; and

(7) by inserting ''or tobacco product'' in subsection (g) after ''device'' each time it appears.

(l) SECTION 1003.—Section 1003(d)(2)(C) (as redesignated by section 101(a)) is amended—

(1) by striking ''and'' after ''cosmetics,''; and

(2) inserting a comma and ''and tobacco products'' after ''devices''.

(m) EFFECTIVE DATE FOR NO-TOBACCO-SALE ORDER AMENDMENTS.—The amendments made by subsection (c), other than the amendment made by paragraph (2) thereof, shall take effect only upon the promulgation of final regulations by the Secretary—

(1) defining the term ''repeated violation'', as used in section 303(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333(f)) as amended by subsection (c), by identifying the number of violations of particular requirements over a specified period of time that constitute a repeated violation;

(2) providing for notice to the retailer of each violation at a particular retail outlet;

(3) providing that a person may not be charged with a violation at a particular retail outlet unless the Secretary has provided notice to the retailer of all previous violations at that outlet;

(4) establishing a period of time during which, if there are no violations by a particular retail outlet, that outlet will not considered to have been the site of repeated violations when the next violation occurs; and

(5) providing that good faith reliance on false identification does not constitute a violation of any minimum age requirement for the sale of tobacco products.

SEC. 103. CONSTRUCTION OF CURRENT REGULATIONS.

(a) IN GENERAL.—The final regulations promulgated by the Secretary in the August 28, 1996, issue of the Federal Register (62 Red. Reg. 44615-44618) and codified at part 897 of title 21, Code of Federal Regulations, are hereby deemed to be lawful and to have been lawfully promulgated by the Secretary under chapter IX and section 701 of the Federal Food, Drug, and Cosmetic Act, as amended by this Act, and not under chapter V of the Federal Food, Drug, and Cosmetic Act. The provisions of part 897 that are not in effect on the date of enactment of this Act shall take effect as in such part or upon such later date as determined by the Secretary by

order. The Secretary shall amend the designation of authority in such regulations in accordance with this subsection.

(b) LIMITATION ON ADVISORY OPINIONS.—As of the date of enactment of this Act, the following documents issued by the Food and Drug Administration shall not constitute advisory opinions under section 10.85(d)(1) of title 21, Code of Federal Regulations, except as they apply to tobacco products, and shall not be cited by the Secretary or the Food and Drug Administration as binding precedent.

(1) The preamble to the proposed rule in the document entitled ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents'' (60 Fed. Reg. 41314-41372 (August 11, 1995)).

(2) The document entitled ''Nicotine in Cigarettes and Smokeless Tobacco Products is a Drug and These Products Are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act;; (60 Fed. Reg. 41453-41787 (August 11, 1995)).

(3) The preamble to the final rule in the document entitled ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents'' (61 Fed. Reg. 44396-44615 (August 28, 1996)).

(4) The document entitled ''Nicotine in Cigarettes and Smokeless Tobacco is a Drug and These Products are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act; Jurisdictional Determination;; (61 Fed. Reg. 44619-45318 (August 28, 1996)).

TITLE II—REDUCTIONS IN UNDERAGE TOBACCO USE

Subtitle A—Underage Use

SEC. 201. FINDINGS.

The Congress finds the following:

(1) Reductions in the underage use of tobacco products are critically important to the public health.

(2) Achieving this critical public health goal can be substantially furthered by increasing the price of tobacco products to discourage underage use if reduction targets are not achieved and by creating financial incentives for manufacturers to discourage youth from using their tobacco products.

(3) When reduction targets in underage use are not achieved on an industry-wide basis, the price increases that will result from an industry-wide assessment will provide an additional deterrence to youth tobacco use.

(4) Manufacturer-specific incentives that will be imposed if reduction targets are not met by a manufacturer provide a strong incentive for each manufacturer to make all efforts to discourage youth use of its brands and ensure the effectiveness of the industry-wide assessments.

SEC. 202. PURPOSE.

This title is intended to ensure that, in the event that other measures contained in this Act prove to be inadequate to produce substantial reductions in tobacco use by minors, tobacco companies will pay additional assessments. These additional assessments are designed to lower youth tobacco consumption in a variety of ways: by triggering further increases in the price of tobacco products, by encouraging tobacco companies to work to meet statutory targets for reductions in youth tobacco consumption, and providing support for further reduction efforts.

SEC. 203. GOALS FOR REDUCING UNDERAGE TOBACCO USE.

(a) GOALS.—As part of a comprehensive national tobacco control policy, the Secretary, working in cooperation with State, Tribal, and local governments and the private sector, shall take all actions under this Act necessary to ensure that the required percentage reductions in underage use of tobacco products set forth in this title are achieved.

(b) REQUIRED REDUCTIONS FOR CIGARETTES.—With respect to cigarettes, the required percentage reduction in underage use, as set forth in section 204, means—

Calendar Year After Date of Enactment	Required Percentage Reduction as a Percentage of Base Incidence Percentage in Underage Cigarette Use
Years 3 and 4	15 percent
Years 5 and 6	30 percent
Years 7, 8, and 9	50 percent
Year 10 and thereafter	60 percent

(c) REQUIRED REDUCTIONS FOR SMOKELESS TOBACCO.—With respect to smokeless tobacco products, the required percentage reduction in underage use, as set forth in section 204, means—

Calendar Year After Date of Enactment	Required Percentage Reduction as a Percentage of Base Incidence Percentage in Underage Smokeless Tobacco Use
Years 3 and 4	12.5 percent
Years 5 and 6	25 percent
Years 7, 8, and 9	35 percent
Year 10 and thereafter	45 percent

SEC. 204. LOOK-BACK ASSESSMENT.

(a) ANNUAL PERFORMANCE SURVEY.—Beginning no later than 1999 and annually thereafter the Secretary shall conduct a survey, in accordance with the methodology in subsection (d)(1), to determine—

(1) the percentage of all young individuals who used a type of tobacco product within the past 30 days; and

(2) the percentage of young individuals who identify each brand of each type of tobacco product as the usual brand of that type smoked or used within the past 30 days.

(b) ANNUAL DETERMINATION.—The Secretary shall make an annual determination, based on the annual performance survey conducted under subsection (a), of whether the required percentage reductions in underage use of tobacco products for a year have been achieved for the year involved. The determination shall be based on the annual percent prevalence of the use of tobacco products, for the industry as a whole and of particular manufacturers, by young individuals (as determined by the surveys conducted by the Secretary) for the year involved as compared to the base incidence percentages.

(c) CONFIDENTIALITY OF DATA.—The Secretary may conduct a survey relating to tobacco use involving minors. If the information collected in the course of conducting the annual performance survey results in the individual supplying the information or described in it to be identifiable, the information may not be used for any purpose other than the purpose for which it was supplied unless that individual (or that individual's guardian) consents to its use for such other purpose. The information may not be published or released in any other form if the individual supplying the information or described in it is identifiable unless that individual (or that individual's guardian) consents to its publication or release in other form.

(d) METHODOLGY.—

(1) IN GENERAL.—The survey required by subsection (a) shall—

(A) be based on a nationally representative sample of young individuals;

(B) be a household-based, in person survey (which may include computer-assisted technology);

(C) measure use of each type of tobacco product within the past 30 days;

(D) identify the usual brand of each type of tobacco product used within the past 30 days; and

(E) permit the calculation of the actual percentage reductions in underage use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a manufacturer) based on the point estimates of the percentage of young individuals reporting use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a manufacturer) from the annual performance survey.

(2) CRITERIA FOR DEEMING POINT ESTIMATES CORRECT.—Point estimates under paragraph (1)(E) are deemed conclusively to be correct and accurate for calculating actual percentage reductions in underage use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a particular manufacturer) for the purpose of measuring compliance with percent reduction targets and calculating surcharges provided that the precision of estimates (based on sampling error) of the percentage of young individuals reporting use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a manufacturer) is such that the 95-percent confidence interval around such point estimates is no more than plus or minus 1 percent.

(3) SURVEY DEEMED CORRECT, PROPER, AND ACCURATE.—A survey using the methodology required by this subsection is deemed conclusively to be proper, correct, and accurate for purposes of this Act.

(4) SECRETARY MAY ADOPT DIFFERENT METHODOLOGY.—The Secretary by notice and comment rulemaking may adopt a survey methodology that is different than the methodology described in paragraph (1) if the different methodology is at least as statistically precise as that methodology.

(e) INDUSTRY-WIDE NON-ATTAINMENT SURCHARGES.—

(1) SECRETARY TO DETERMINE INDUSTRY-WIDE NON-ATTAINMENT PERCENTAGE.—The Secretary shall determine the industry-wide non-attainment percentage for cigarettes and for smokeless tobacco for each calendar year.

(2) NON-ATTAINMENT SURCHARGE FOR CIGARETTES.—For each calendar year in which the percentage reduction in underage use required by section 203b) is not attained, the Secretary shall assess a surcharge on cigarette manufacturers as follows:

If the non-attainment percentage is:	The surcharge is:
Not more than 5 percent	$80,000,000 multiplied by the non-attainment percentage
More than 5% but not more than 10%	$400,000,000, plus $160,000,000 multiplied by the non-attainment percentage in excess of 5% but not in excess of 10%
More than 10%	$1,200,000,000, plus $240,000,000 multiplied by the non-attainment percentage in excess of 10%
More than 21.6%	$4,000,000,000

(3) NON-ATTAINMENT SURCHARGE FOR SMOKELESS TOBACCO.—For each year in which the percentage reduction in underage use required by section 203c) is not attained, the Secretary shall assess a surcharge on smokeless tobacco product manufacturers as follows:

If the non-attainment percentage is:	The surcharge is:
Not more than 5 percent	$8,000,000 multiplied by the non-attainment percentage
More than 5% but not more than 10%	$40,000,000, plus $16,000,000 multiplied by the non-attainment percentage in excess of 5% but not in excess of 10%
More than 10%	$120,000,000, plus $24,000,000 multiplied by the non-attainment percentage in excess of 10%
More than 21.6%	$400,000,000

(4) STRICT LIABILITY; JOINT AND SEVERAL LIABILITY.—Liability for any surcharge imposed under subsection (e) shall be—

(A) strict liability; and

(B) joint and several liability—

(i) among all cigarette manufacturers for surcharges imposed under subsection (e)(2); and

(ii) among all smokeless tobacco manufacturers for surcharges imposed under subsection (e)(3).

(5) SURCHARGE LIABILITY AMONG MANUFACTURERS.—A tobacco product manufacturer shall be liable under this subsection to one or more other manufacturers if the plaintiff tobacco product manufacturer establishes by a preponderance of the evidence that the defendant tobacco product manufacturer, through its acts or omissions, was responsible for a disproportionate share of the nonattainment surcharge as compared to the responsibility of the plaintiff manufacturer.

(6) EXEMPTIONS FOR SMALL MANUFACTURERS.—

(A) ALLOCATION BY MARKET SHARE.—The Secretary shall make such allocations according to each manufacturer's share of the domestic cigarette or domestic smokeless tobacco market, as appropriate, in the year for which the surcharge is being assessed, based on actual Federal excise tax payments.

(B) EXEMPTION.—In any year in which a surcharge is being assessed, the Secretary shall exempt from payment any tobacco product manufacturer with less than 1 percent of the domestic market share for a specific category of tobacco product unless the Secretary finds that the manufacturer's products are used by underage individuals at a rate equal to or greater than the manufacturer's total market share for the type of tobacco product.

(f) MANUFACTURER-SPECIFIC SURCHARGES.—

(1) REQUIRED PERCENTAGE REDUCTIONS.—Each manufacturer which manufactured a brand or brands of tobacco product on or before the date of the enactment of this Act shall reduce the percentage of young individuals who use such manufacturer's brand or brands as their usual brand in accordance with the required percentage reductions described under subsections (b) (with respect to cigarettes) and (c) (with respect to smokeless tobacco).

(2) APPLICATION TO LESS POPULAR BRANDS.—Each manufacturer which manufactured a brand or brands of tobacco product on or before the date of the enactment of this Act for which the base incidence percentage is equal to or less than the *de minimis* level shall ensure that the percent prevalence of young individuals who use the manufacturer's tobacco products as their usual brand remains equal to or less than the *de minimis* level described in paragraph (4).

(3) NEW ENTRANTS.—Each manufacturer of a tobacco product which begins to manufacture a tobacco product after the date of the enactment of this Act shall ensure that the percent prevalence of young individuals who use the manufacturer's tobacco products as their usual brand is equal to or less than the *de minimis* level.

(4) DE MINIMIS LEVEL DEFINED.—The *de minimis* level is equal to 1 percent prevalence of the use of each manufacturer's brands of tobacco product by young individuals (as determined on the basis of the annual performance survey conducted by the Secretary) for a year.

(5) TARGET REDUCTION LEVELS.—

(A) EXISTING MANUFACTURERS.— For purposes of this section, the target reduction level for each type of tobacco product for a year for a manufacturer is the product of the required percentage reduction for a type of tobacco product for a year and the manufacturers base incidence percentage for such tobacco product.

(B) NEW MANUFACTURERS; MANUFACTURERS WITH LOW BASE INCIDENCE PERCENTAGES.—With respect to a manufacturer which begins to manufacture a tobacco product after the date of the enactment of this Act or a manufacturer for which the baseline level as measured by the annual performance survey is equal to or less than the *de minimis* level described in paragraph (4), the base incidence percentage is the *de minimis* level, and the required percentage reduction in underage use for a type of tobacco product with respect to a manufacturer for a year shall be deemed to be the number of percentage points necessary to reduce the actual percent prevalence of young individuals identifying a brand of such tobacco product of such manufacturer as the usual brand smoked or used for such year to the *de minimis* level.

(6) SURCHARGE AMOUNT.—

(A) IN GENERAL.—If the Secretary determines that the required percentage reduction in use of a type of tobacco product has not been achieved by such manufacturer for a year, the Secretary shall impose a surcharge on such manufacturer under this paragraph.

(B) AMOUNT.—The amount of the manufacturer-specific surcharge for a type of tobacco product for a year under this paragraph is $1,000, multiplied by the number of young individuals for which such firm is in noncompliance with respect to its target reduction level.

(C) DETERMINATION OF NUMBER OF YOUNG INDIVIDUALS.—For purposes of subparagraph (B) the number of young individuals for which a manufacturer is in noncompliance for a year shall be determined by the Secretary from the annual performance survey and shall be calculated based on the estimated total number of young individuals in such year and the actual percentage prevalence of young individuals identifying a brand of such tobacco product of such manufacturer as the usual brand smoked or used in such year as compared to such manufacturer's target reduction level for the year.

(7) DE MINIMIS RULE.—The Secretary may not impose a surcharge on a manufacturer for a type of tobacco product for a year if the Secretary determines that actual percent prevalence of young individuals identifying that manufacturer's brands of such tobacco product as the usual products smoked or used for such year is less than 1 percent.

(g) SURCHARGES TO BE ADJUSTED FOR INFLATION.—

(1) IN GENERAL.—Beginning with the fourth calendar year after the date of enactment of this Act, each dollar amount in the tables in subsections (e)(2), (e)(3), and (f)(6)(B) shall be increased by the inflation adjustment.

(2) INFLATION ADJUSTMENT.—For purposes of paragraph (1), the inflation adjustment for any calendar year is the percentage (if any) by which—

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

(B) the CPI for the calendar year 1998.

(3) CPI.—For purposes of paragraph (2), the CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor.

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

(h) METHOD OF SURCHARGE ASSESSMENT.—The Secretary shall assess a surcharge for a specific calendar year on or before May 1 of the subsequent calendar year. Surcharge payments shall be paid on or before July 1 of the year in which they are assessed. The Secretary may establish, by regulation, interest at a rate up to 3 times the prevailing prime rate at the time the surcharge is assessed, and additional charges in an amount up to 3 times the surcharge, for late payment of the surcharge.

(i) BUSINESS EXPENSE DEDUCTION.—Any surcharge paid by a tobacco product manufacturer under this section shall not be deductible as an ordinary and necessary business expense or otherwise under the Internal Revenue Code of 1986.

(j) APPEAL RIGHTS.—The amount of any surcharge is committed to the sound discretion of the Secretary and shall be subject to judicial review by the United States Court of Appeals for the District of Columbia Circuit, based on the arbitrary and capricious standard of section 706(2)(A) of title 5, United States Code. Notwithstanding any other provisions of law, no court shall have authority to stay any surcharge payments due the Secretary under this Act pending judicial review.

(k) RESPONSIBILITY FOR AGENTS.—In any action brought under this subsection, a tobacco product manufacturer shall be held responsible for any act or omission of its attorneys, advertising agencies, or other agents that contributed to that manufacturer's responsibility for the surcharge assessed under this section.

SEC. 205. DEFINITIONS.

In this subtitle:

(1) BASE INCIDENCE PERCENTAGE.—The term ''base incidence percentage'' means, with respect to each type of tobacco product, the percentage of young individuals determined to have used such tobacco product in the first annual performance survey for 1999.

(2) MANUFACTURERS BASE INCIDENCE PERCENTAGE.—The term ''manufacturers base incidence percentage'' is, with respect to each type of tobacco product, the percentage of young individuals determined to have identified a brand of such tobacco product of such manufacturer as the usual brand smoked or used in the first annual performance survey for 1999.

(3) YOUNG INDIVIDUALS.—The term ''young individuals'' means individuals who are over 11 years of age and under 18 years of age.

(4) CIGARETTE MANUFACTURERS.—The term ''cigarette manufacturers'' means manufacturers of cigarettes sold in the United States.

(5) NON-ATTAINMENT PERCENTAGE FOR CIGARETTES.—The term ''non-attainment percentage for cigarettes'' means the number of percentage points yielded—

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

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

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

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

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

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

(6) NON-ATTAINMENT PERCENTAGE FOR SMOKELESS TOBACCO PRODUCTS.—The term ''non-attainment percentage for smokeless tobacco products'' means the number of percentage points yielded—

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

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

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

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

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

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

(7) SMOKELESS TOBACCO PRODUCT MANUFACTURERS.—The term ''smokeless tobacco product manufacturers'' means manufacturers of smokeless tobacco products sold in the United States.

Subtitle B—State Retail Licensing and Enforcement Incentives

SEC. 231. STATE RETAIL LICENSING AND ENFORCEMENT BLOCK GRANTS.

(a) IN GENERAL.—The Secretary shall make State retail licensing and enforcement block grants in accordance with the provisions of this section. There are authorized to be appropriated to the Secretary from the National Tobacco Trust Fund $200,000,000 for each fiscal year to carry out the provisions of this section.

(b) REQUIREMENTS.—

(1) ESTABLISHMENT.—The Secretary shall provide a block grant, based on population, under this subtitle to each State that has in effect a law that—

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

(B) makes it illegal to sell or distribute tobacco products to individuals under 18 years of age; and

(C) meets the standards described in this section.

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

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

(B) shall prohibit retailers from selling or otherwise distributing tobacco products to individuals under 18 years of age in accordance with the Youth Access Restrictions regulations promulgated by the Secretary (21 C.F.R. 897.14(a) and (b));

(C) shall make available to appropriate Federal agencies designated by the Secretary requested information concerning retail establishments involved in the sale or distribution of tobacco products to consumers; and

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

(i) LICENSURE; SOURCES; AND NOTICE.—A requirement for a State license for each retail establishment involved in the sale or distribution of tobacco products to consumers. A requirement that a retail establishment may purchase tobacco products only from Federally-licensed manufacturers, importers, or wholesalers. A program under which notice is provided to such establishments and their employees of all licensing requirements and responsibilities under State and Federal law relating to the retail distribution of tobacco products.

(ii) PENALTIES.—

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

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

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

(iii) JUDICIAL REVIEW.—Judicial review procedures for an action of the State suspending, revoking, denying, or refusing to renew any license under its program.

(c) ENFORCEMENT.—

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

(2) ACTIVITIES AND REPORTS REGARDING ENFORCEMENT.—A State that receives a grant under this subtitle shall—

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

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

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

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

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

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

(3) MINIMUM INSPECTION STANDARDS.—Inspections conducted by the State shall be conducted by the State in such a way as to ensure a scientifically sound estimate (with a 95 percent confidence interval that such estimates are accurate to within plus or minus 3 percentage points), using an accurate list of retail establishments throughout the State. Such inspections shall cover a range of outlets (not preselected on the basis of prior violations) to measure overall levels of compliance as well as to identify violations. The sample must reflect the distribution of the population under the age of 18 years throughout the State and the distribution of the outlets throughout the State accessible to youth. Except as provided in this paragraph, any reports required by this paragraph shall be made public. As used in this paragraph, the term ''outlet'' refers to any location that sells at retail or otherwise distributes tobacco products to consumers, including to locations that sell such products over-the-counter.

(d) NONCOMPLIANCE.—

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

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

(A) at least the annual compliance targets that were negotiated with the Secretary under section 1926 of the Public Health Service Act (42 U.S.C. 300x—26) as such section was in effect before its repeal by this Act through the third fiscal year after the date of enactment of this Act;

(B) at least 80 percent in the fourth fiscal year after such date;

(C) at least 85 percent in the fifth and sixth fiscal years after such date; and

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

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

(e) RELEASE AND DISBURSEMENT.—

(1) Upon notice from the Secretary that an amount payable under this section has been ordered withheld under subsection (d), a State may petition the Secretary for a release and disbursement of up to 75 percent of the amount withheld, and shall give timely written notice of such petition to the attorney general of that State and to all tobacco product manufacturers.

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

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

(A) the State presents scientifically sound survey data showing that the State is making significant progress toward reducing the use of tobacco products by individuals who have not attained the age of 18 years;

(B) the State presents scientifically-based data showing that it has progressively decreased the availability of tobacco products to such individuals;

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

(D) the State provides evidence that it plans to improve enforcement of these laws in the next fiscal year; and

(E) any other relevant evidence.

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

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

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

(f) NON-PARTICIPATING STATES LICENSING REQUIREMENTS.—For retailers in States which have not established a licensing program under subsection (a), the Secretary shall promulgate regulations establishing Federal retail licensing for retailers engaged in tobacco sales to consumers in those States. The Secretary may enter into agreements with States for the enforcement of

those regulations. A State that enters into such an agreement shall receive a grant under this section to reimburse it for costs incurred in carrying out that agreement.

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

SEC. 232. BLOCK GRANTS FOR COMPLIANCE BONUSES.

(a) IN GENERAL.—The Secretary shall make block grants to States determined to be eligible under subsection (b) in accordance with the provisions of this section. There are authorized to be appropriated to the Secretary from the National Tobacco Trust Fund $100,000,000 for each fiscal year to carry out the provisions of this section.

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

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

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

(c) PAYOUT.—

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

(2) YEAR IN WHICH NO STATE RECEIVES GRANT.—If in any fiscal year no State is eligible to receive a grant under this section, then the Secretary may use not more than 25 percent of the amount appropriated to carry out this section for that fiscal year to support efforts to improve State and local enforcement of laws regulating the use, sale, and distribution of tobacco products to individuals under the age of 18 years.

(3) AMOUNTS AVAILABLE WITHOUT FISCAL YEAR LIMITATION.—Any amount appropriated under this section remaining unexpended and unobligated at the end of a fiscal year shall remain available for obligation and expenditure in the following fiscal year.

SEC. 233. CONFORMING CHANGE.

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

Subtitle C—Tobacco Use Prevention and Cessation Initiatives

SEC. 261. TOBACCO USE PREVENTION AND CESSATION INITIATIVES.

Title XIX of the Public Health Service Act (42 U.S.C. 300w et seq.) is amended by adding at the end the following:

''PART D—TOBACCO USE PREVENTION AND CESSATION INITIATIVES

''SUBPART I—CESSATION AND COMMUNITY-BASED PREVENTION BLOCK GRANTS

''SEC. 1981. FUNDING FROM TOBACCO SETTLEMENT TRUST FUND.

''(a) IN GENERAL.—From amounts contained in the Public Health Allocation Account under section 451(b)(2)(A) and (C) of the National Tobacco Policy and Youth Smoking Reduction Act for a fiscal year, there are authorized to be appropriated (under subsection (d) of such section) to carry out this subpart—

(1) for cessation activities, the amounts appropriated under section 451 (b)(2)(A); and

(2) for prevention and education activities, the amounts appropriated under section 451 (b)(2)(C).

''(b) NATIONAL ACTIVITIES.—

''(1)Not more than 10 percent of the amount made available for any fiscal year under subsection (a) shall be made available to the Secretary to carry out activities under section 1981B and 1981D(d).

''(2) Not more than 10 percent of the amount available for any fiscal year under subsection (a)(1) shall be available to the Secretary to carry out activities under section 1981D(d).

''SEC. 1981A. ALLOTMENTS.

''(a) AMOUNT.—

''(1) IN GENERAL.—From the amount made available under section 1981 for any fiscal year the Secretary, acting through the Director of the Centers for Disease Control and Prevention (referred to in this subpart as the 'Director'), shall allot to each State an amount based on a formula to be developed by the Secretary that is based on the tobacco prevention and cessation needs of each State including the needs of the State's minority populations.

''(2) MINIMUM AMOUNT.—In determining the amount of allotments under paragraph (1), the Secretary shall ensure that no State receives less than ½ of 1 percent of the amount available under section 1981(a) for the fiscal year involved.

''(b) REALLOTMENT.—To the extent that amounts made available under section 1981 for a fiscal year are not otherwise allotted to States because—

''(1) 1 or more States have not submitted an application or description of activities in accordance with section 1981D for the fiscal year;

''(2) 1 or more States have notified the Secretary that they do not intend to use the full amount of their allotment; or

''(3) the Secretary has determined that the State is not in compliance with this subpart, and therefore is subject to penalties under section 1981D(g);

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

''(c) PAYMENTS.—

''(1) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall utilize the funds made available under this section to make payments to States under allotments under this subpart as provided for under section 203 of the Intergovernmental Cooperation Act of 1968.

''(2) FEDERAL GRANTEES.—From amounts available under section 1981(b)(2), the Secretary may make grants, or supplement existing grants, to entities eligible for funds under the programs described in section 1981C(d)(1) and (10) to enable such entities to carry out smoking cessation activities under this subpart, except not less than 25 percent of this amount shall be used for the program described in 1981C(d)(6).

''(3) AVAILABILITY OF FUNDS.—Any amount paid to a State for a fiscal year under this subpart and remaining unobligated at the end of such year shall remain available to such State for the next fiscal year for the purposes for which such payment was made.

''(d) REGULATIONS.—Not later than 9 months after the date of enactment of this part, the Secretary shall promulgate regulations to implement this subpart. This subpart shall take effect regardless of the date on which such regulations are promulgated.

''SEC. 1981B. TECHNICAL ASSISTANCE AND PROVISION OF SUPPLIES AND SERVICES IN LIEU OF FUNDS.

''(a) TECHNICAL ASSISTANCE.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall, without charge to a State receiving an allotment under section 1981A, provide to such State (or to any public or nonprofit private entity within the State) technical assistance and training with respect to the planning, development, operation, and evaluation of any program or service carried out pursuant to the program involved. The Secretary may provide such technical assistance or training directly, through contract, or through grants.

''(b) PROVISION OF SUPPLIES AND SERVICE IN LIEU OF GRANT FUNDS.—The Secretary, at the request of a State, may reduce the amount of payments to the State under section 1981A(c) by—

''(1) the fair market value of any supplies or equipment furnished by the Secretary to the State; and

''(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Federal Government when detailed to the State and the amount of any other costs incurred in connection with the detail of such officer or employee;

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of the State and for the purpose of conducting activities described in section 1981C. The amount by which any payment is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment or in detailing the personnel, on which reduction of the payment is based, and the amount shall be deemed to be part of the payment and shall be deemed to have been paid to the State.

''SEC. 1981C. PERMITTED USERS OF CESSATION BLOCK GRANTS AND OF COMMUNITY-BASED PREVENTION BLOCK GRANTS.

''(a) TOBACCO USE CESSATION ACTIVITIES.—Except as provided in subsections (d) and (e), amounts described in subsection (a)(1) may be used for the following:

''(1) Evidence-based cessation activities described in the plan of the State, submitted in accordance with section 1981D, including—

''(A) evidence-based programs designed to assist individuals, especially young people and minorities who have been targeted by tobacco product manufacturers, to quit their use of tobacco products;

''(B) training in cessation intervention methods for health plans and health professionals, including physicians, nurses, dentists, health educators, public health professionals, and other health care providers;

''(C) programs to encourage health insurers and health plans to provide coverage for evidence-based tobacco use cessation interventions and therapies, except that the use of any funds under this clause to offset the cost of providing a smoking cessation benefit shall be on a temporary demonstration basis only;

''(D) culturally and linguistically appropriate programs targeted toward minority and low-income individuals, individuals residing in medically underserved areas, uninsured individuals, and pregnant women;

''(E) programs to encourage employer-based wellness programs to provide evidence-based tobacco use cessation intervention and therapies; and

''(F) programs that target populations whose smoking rate is disproportionately high in comparison to the smoking rate population-wide in the State.

''(2) Planning, administration, and educational activities related to the activities described in paragraph (1).

''(3) The monitoring and evaluation of activities carried out under paragraphs (1) and (2), and reporting and disseminating resulting information to health professionals and the public.

''(4) Targeted pilot programs with evaluation components to encourage innovation and experimentation with new methodologies.

''(b) STATE AND COMMUNITY ACTION ACTIVITIES.—Except as provided in subsections (d) and (e), amounts described in subsection (a)(2) may be used for the following:

''(1) Evidence-based activities for tobacco use prevention and control described in the plan of the State, submitted in accordance with section 1981D, including—

''(A) State and community initiatives;

''(B) community-based prevention programs, similar to programs currently funded by NIH;

''(C) programs focused on those populations within the community that are most at risk to use tobacco products or that have been targeted by tobacco advertising or marketing;

''(D) school programs to prevent and reduce tobacco use and addiction, including school programs focused in those regions of the State with high smoking rates and targeted at populations most at risk to start smoking;

''(E) culturally and linguistically appropriate initiatives targeted towards minority and low-income individuals, individuals residing in medically underserved areas, and women of child-bearing age;

''(F) the development and implementation of tobacco-related public health and health promotion campaigns and public policy initiatives;

''(G) assistance to local governmental entities within the State to conduct appropriate anti-tobacco activities.

''(H) strategies to ensure that the State's smoking prevention activities include minority, low-income, and other undeserved populations; and

''(I) programs that target populations whose smoking rate is disproportionately high in comparison to the smoking rate population-wide in the State.

''(2) Planning, administration, and educational activities related to the activities described in paragraph (1).

''(3) The monitoring and evaluation of activities carried out under paragraphs (1) and (2), and reporting and disseminating resulting information to health professionals and the public.

''(4) Targeted pilot programs with evaluation components to encourage innovation and experimentation with new methodologies.

''(c) COORDINATION.—Tobacco use cessation and community-based prevention activities permitted under subsections (b) and (c) may be conducted in conjunction with recipients of other Federally—funded programs within the State, including—

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

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

''(3) the State Children's Health Insurance Program of the State under title XXI of the Social Security Act (42 U.S.C. 13397aa et seq.);

''(4) the school lunch program under the National School Lunch Act (42 U.S.C. 1751 et seq.);

''(5) an Indian Health Service Program;

''(6) the community, migrant, and homeless health centers program under section 330 of the Public Health Service Act (42 U.S.C. 254b);

''(7) state-initiated smoking cessation programs that include provisions for reimbursing individuals for medications or therapeutic techniques;

''(8) the substance abuse and mental health services block grant program, and the preventive health services block grant program, under title XIX of the Public Health Service Act (42 U.S.C. 300w et seq.);

''(9) the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.); and

''(10) programs administered by the Department of Defense and the Department of Veterans Affairs.

''(d) LIMITATION.—A State may not use amounts paid to the State under section 1981A(c) to—

''(1) make cash payments except with appropriate documentation to intended recipients of tobacco use cessation services;

''(2) fund educational, recreational, or health activities not based on scientific evidence that the activity will prevent smoking or lead to success of cessation efforts

''(3) purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;

''(4) satisfy any requirement for the expenditure of non-Federal funds as a condition of the receipt of Federal funds; or

''(5) provide financial assistance to any entity other than a public or nonprofit private entity or a private entity consistent with subsection (b)(1)(C).

This subsection shall not apply to the support of targeted pilot programs that use innovative and experimental new methodologies and include an evaluation component.

''(e) ADMINISTRATION.—Not more than 5 percent of the allotment of a State for a fiscal year under this subpart may be used by the State to administer the funds paid to the State under section 1981A(c). The State shall pay from non-Federal sources the remaining costs of administering such funds.

''SEC. 1981D. ADMINISTRATIVE PROVISIONS.

''(a) APPLICATION.—The Secretary may make payments under section 1981A(c) to a State for a fiscal year only if—

''(1) the State submits to the Secretary an application, in such form and by such date as the Secretary may require, for such payments;

''(2) the application contains a State plan prepared in a manner consistent with section 1905(b) and in accordance with tobacco-related guidelines promulgated by the Secretary;

''(3) the application contains a certification that is consistent with the certification required under section 1905(c); and

''(4) the application contains such assurances as the Secretary may require regarding the compliance of the State with the requirements of this subpart (including assurances regarding compliance with the agreements described in subsection (c)).

''(b) STATE PLAN.—A State plan under subsection (a)(2) shall be developed in a manner consistent with the plan developed under section 1905(b) except that such plan—

''(1) with respect to activities described in section 1981C(b)—

''(A) shall provide for tobacco use cessation intervention and treatment consistent with the tobacco use cessation guidelines issued by the Agency for Health Care Policy and Research, or another evidence-based guideline approved by the Secretary, or treatments using drugs, human biological products, or medical devices approved by the Food and Drug Administration, or otherwise legally marketed under the Federal Food, Drug and Cosmetic Act for use as tobacco use cessation therapies or aids;

''(B) may, to encourage innovation and experimentation with new methodologies, provide for or may include a targeted pilot program with an evaluation component;

''(C) shall provide for training in tobacco use cessation intervention methods for health plans and health professionals, including physicians, nurses, dentists, health educators, public health professionals, and other health care providers;

''(D) shall ensure access to tobacco use cessation programs for rural and underserved populations;

''(E) shall recognize that some individuals may require more than one attempt for successful cessation; and

''(F) shall be tailored to the needs of specific populations, including minority populations; and

''(2) with respect to State and community-based prevention activities described in section 1981C(c), shall specify the activities authorized under such section that the State intends to carry out.

''(c) CERTIFICATION.—The certification referred to in subsection (a)(3) shall be consistent with the certification required under section 1905(c), except that

''(1) the State shall agree to expend payments under section 1981A(c) only for the activities authorized in section 1981C;

''(2) paragraphs (9) and (10) of such section shall not apply; and

''(3) the State is encouraged to establish an advisory committee in accordance with section 1981E.

''(d) REPORTS, DATA, AND AUDITS.—The provisions of section 1906 shall apply with respect to a State that receives payments under section 1981A(c) and be applied in a manner consistent with the manner in which such provisions are applied to a State under part, except that the data sets referred to in section 1905(a)(2) shall be developed for uniformly defining levels of youth and adult use of tobacco products, including uniform data for racial and ethnic groups, for use in the reports required under this subpart.

''(e) WITHHOLDING.—The provisions of 1907 shall apply with respect to a State that receives payments under section 1981A(c) and be applied in a manner consistent with the manner in which such provisions are applied to a State under part A.

''(f) NONDISCRIMINATION.—The provisions of 1908 shall apply with respect to a State that receives payments under section 1981A(c) and be applied in a manner consistent with the manner in which such provisions are applied to a State under part A.

''(g) CRIMINAL PENALTIES.—The provisions of 1909 shall apply with respect to a State that receives payments under section 1981A(c) and be applied in a manner consistent with the manner in which such provisions are applied to a State under part A.

''SEC. 1981E. STATE ADVISORY COMMITTEE.

''(a) IN GENERAL.—For purposes of sections 1981D(c)(3), an advisory committee is in accordance with this section if such committee meets the conditions described in this subsection.

''(b) DUTIES.—The recommended duties of the committee are—

''(1) to hold public hearings on the State plans required under sections 1981D; and

''(2) to make recommendations under this subpart regarding the development and implementation of such plans, including recommendations on—

''(A) the conduct of assessments under the plans;

''(B) which of the activities authorized in section 1981C should be carried out in the State;

''(C) the allocation of payments made to the State under section 1981A(c);

''(D) the coordination of activities carried out under such plans with relevant programs of other entities; and

''(E) the collection and reporting of data in accordance with section 1981D.

''(c) COMPOSITION.—

''(1) IN GENERAL.—The recommended composition of the advisory committee is members of the general public, such officials of the health departments of political subdivisions of the State, public health professionals, teenagers, minorities, and such experts in tobacco product research as may be necessary to provide adequate representation of the general public and of such health departments, and that members of the committee shall be subject to the provisions of sections 201, 202, and 203 of title 18, United States Code.

''(2) REPRESENTATIVES.—With respect to compliance with paragraph (1), the membership of the advisory committee may include representatives of community-based organizations (including minority community-based organizations), schools of public health, and entities to which the State involved awards grants or contracts to carry out activities authorized under section 1981C.

''SUBPART II—TOBACCO-FREE COUNTER-ADVERTISING PROGRAMS

''SEC. 1982. FEDERAL-STATE COUNTER-ADVERTISING PROGRAMS.

''(a) NATIONAL CAMPAIGN.—

''(1) IN GENERAL.—The Secretary shall conduct a national campaign 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, to encourage those who use such products to quit, and to educate the public about the hazards of exposure to environmental tobacco smoke.

''(2) REQUIREMENTS.—The national campaign under paragraph (1) shall—

''(A) target those populations that have been targeted by tobacco industry advertising using culturally and linguistically appropriate means;

''(B) include a research and evaluation component; and

''(C) be designed in a manner that permits the campaign to be modified for use at the State or local level.

''(b) ESTABLISHMENT OF AN ADVISORY BOARD.—

''(1) IN GENERAL.—The Secretary shall establish a board to be known as the 'National Tobacco Free Education Advisory Board' (referred to in this section as the 'Board') to evaluate and provide long range planning for the development and effective dissemination of public informational and educational campaigns and other activities that are part of the campaign under subsection (a).

''(2) COMPOSITION.—The Board shall be composed of—

''(A) 9 non-Federal members to be appointed by the President, after consultation and agreement with the Majority and Minority Leaders of the Senate and the Speaker and Minority Leader of the House of Representatives, of which—

''(i) at least 3 such members shall be individuals who are widely recognized by the general public for cultural, educational, behavioral science or medical achievement;

''(ii) at least 3 of whom shall be individuals who hold positions of leadership in major public health organizations, including minority public health organizations; and

''(iii) at least 3 of whom shall be individuals recognized as experts in the field of advertising and marketing, of which—

''(I) 1 member shall have specific expertise in advertising and marketing to children and teens; and

''(II) 1 member shall have expertise in marketing research and evaluation; and

''(B) the Surgeon General, the Director of the Centers for Disease Control and Prevention, or their designees, shall serve as an ex officio members of the Board.

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

''(4) 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.

''(5) AWARDS.—In carrying out subsection (a), the Secretary may—

''(A) enter into contracts with or award grants to eligible entities to develop messages and campaigns designed to prevent and reduce the use of tobacco products that are based on effective strategies to affect behavioral changes in children and other targeted populations, including minority populations;

''(B) enter into contracts with or award grants to eligible entities to carry out public informational and educational activities designed to reduce the use of tobacco products;

''(6) POWERS AND DUTIES.—The Board may—

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

''(B) secure directly from any Federal department or agency such information as the Board considers necessary to carry out the provisions of this section.

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

''(1) be a—

''(A) public entity or a State health department; or

''(B) private or nonprofit private entity that—

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

''(II) has a demonstrated record of working effectively to reduce tobacco product use; or

''(III) has expertise in conducting a multi-media communications campaign; and

''(ii) has expertise in developing strategies that affect behavioral changes in children and other targeted populations, including minority populations;

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

''(3) provide assurances that amounts received under this section will be used in accordance with subsection (c); and

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

''(d) USE OF FUNDS.—An entity that receives funds under this section shall use amounts provided under the grant or contract to conduct multi-media and non-media public educational, informational, marketing and promotional campaigns that are designed to discourage and de-glamorize the use of tobacco products, encourage those using such products to quit, and educate the public about the hazards of exposure to environmental tobacco smoke. Such amounts may be used to design and implement such activities and shall be used to conduct research concerning the effectiveness of such programs.

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

''(f) COORDINATION.—The Secretary shall ensure that programs and activities under this section are coordinated with programs and activities carried out under this title.

''(g) ALLOCATION OF FUNDS.—Not to exceed—

''(1) 25 percent of the amount made available under subsection (h) for each fiscal year shall be provided to States for State and local media-based and nonmedia-based education, prevention and cessation campaigns;

''(2) no more than 20 percent of the amount made available under subsection (h) for each fiscal year shall be used specifically for the development of new messages and campaigns;

''(3) the remainder shall be used specifically to place media messages and carry out other dissemination activities described in subsection (d); and

''(4) half of 1 percent for administrative costs and expenses.

''(h) TRIGGER.—No expenditures shall be made under this section during any fiscal year in which the annual amount appropriated for the Centers for Disease Control and Prevention is less than the amount so appropriated for the prior fiscal year.''.

''PART E—REDUCING YOUTH SMOKING AND TOBACCO-RELATED DISEASES THROUGH RESEARCH

''SEC. 1991. FUNDING FROM TOBACCO SETTLEMENT TRUST FUND.

No expenditures shall be made under sections 451(b) or (c)—

''(1) for the National Institutes of Health during any fiscal year in which the annual amount appropriated for such Institutes is less than the amount so appropriated for the prior fiscal year;

''(2) for the Centers for Disease Control and Prevention during any fiscal year in which the annual amount appropriated for such Centers is less than the amount so appropriated for the prior fiscal year; or

''(3) for the Agency for Health Care Policy and Research during any fiscal year in which the annual amount appropriated for such Agency is less than the amount so appropriated for the prior fiscal year.

''SEC. 1991A. STUDY BY THE INSTITUTE OF MEDICINE.

''(a) CONTRACT.—Not later than 60 days after the date of enactment of this title, the Secretary shall enter into a contract with the Institute of Medicine for the conduct of a study on the framework for a research agenda and research priorities to be used under this part.

''(b) CONSIDERATIONS.—

''(1) IN GENERAL.—In developing the framework for the research agenda and research priorities under subsection (a) the Institute of Medicine shall focus on increasing knowledge concerning the biological, social, behavioral, public health, and community factors involved in the prevention of tobacco use, reduction of tobacco use, and health consequences of tobacco use.

''(2) SPECIFIC CONSIDERATIONS.—In the study conducted under subsection (a), the Institute of Medicine shall specifically include research on—

''(A) public health and community research relating to tobacco use prevention methods, including public education, media, community strategies;

''(B) behavioral research relating to addiction, tobacco use, and patterns of smoking, including risk factors for tobacco use by children, women, and racial and ethnic minorities;

''(C) health services research relating to tobacco product prevention and cessation treatment methodologies;

''(D) surveillance and epidemiology research relating to tobacco;

''(E) biomedical, including clinical, research relating to prevention and treatment of tobacco-related diseases, including a focus on minorities, including racial and ethnic minorities;

''(F) the effects of tobacco products, ingredients of tobacco products, and tobacco smoke on the human body and methods of reducing any negative effects, including the development of non-addictive, reduced risk tobacco products;

''(G) differentials between brands of tobacco products with respect to health effects or addiction;

''(H) risks associated with environmental exposure to tobacco smoke, including a focus on children and infants;

''(I) effects of tobacco use by pregnant women; and

''(J) other matters determined appropriate by the Institute.

''(c) REPORT.—Not later than 10 months after the date on which the Secretary enters into the contract under subsection (a), the Institute of Medicine shall prepare and submit to the Secretary, the Committee on Labor and Human Resources, and the Committee on Appropriations of the Senate, and the Committee on Commerce of the House of Representatives, a report that shall contain the findings and recommendations of the Institute for the purposes described in subsection (b).

''SEC. 1991B. RESEARCH COORDINATION.

''(a) IN GENERAL.—The Secretary shall foster coordination among Federal research agencies, public health agencies, academic bodies, and community groups that conduct or support tobacco-related biomedical, clinical, behavioral, health services, public health and community, and surveillance and epidemiology research activities.

''(b) REPORT.—The Secretary shall prepare and submit a report on a biennial basis to the Committee on Labor and Human Resources, and the Committee on Appropriations of the Senate, and the Committee on Commerce of the House of Representatives on the current and planned tobacco-related research activities of participating Federal agencies.

''SEC. 1991C. RESEARCH ACTIVITIES OF THE CENTERS FOR DISEASE CONTROL AND PREVENTION.

''(a) DUTIES.—The Director of the Centers for Disease Control and Prevention shall, from amounts provided under section 451(c), and after review of the study of the Institute of Medicine, carry out tobacco-related surveillance and epidemiologic studies and develop tobacco control and prevention strategies; and

''(b) YOUTH SURVEILLANCE SYSTEMS.—From amounts provided under section 451(b), the Director of the Centers for Disease Control and Prevention shall provide for the use of youth surveillance systems to monitor the use of all tobacco products by individuals under the age of 18, including brands-used to enable determinations to be made of company-specific youth market share.

''SEC. 1991D. RESEARCH ACTIVITIES OF THE NATIONAL INSTITUTES OF HEALTH.

''(a) FUNDING.—There are authorized to be appropriated, from amounts in the National Tobacco Settlement Trust Fund established by section 401 of the National Tobacco Policy and Youth Smoking Reduction Act.

''(b) EXPENDITURE OF FUNDS.—The Director of the National Institutes of Health shall provide funds to conduct or support epidemiological, behavioral, biomedical, and social science research, including research related to the prevention and treatment of tobacco addiction, and the prevention and treatment of diseases associated with tobacco use.

''(c) GUARANTEED MINIMUM.—Of the funds made available to the National Institutes of Health under this section, such sums as may be necessary, may be used to support epidemiological, behavioral, and social science research related to the prevention and treatment of tobacco addiction.

''(d) NATURE OF RESEARCH.—Funds made available under subsection (d) may be used to conduct or support research with respect to one or more of the following—

''(1) the epidemiology of tobacco use;

''(2) the etiology of tobacco use;

''(3) risk factors for tobacco use by children;

''(4) prevention of tobacco use by children, including school and community-based programs, and alternative activities;

''(5) the relationship between tobacco use, alcohol abuse and illicit drug abuse;

''(6) behavioral and pharmacological smoking cessation methods and technologies, including relapse prevention;

''(7) the toxicity of tobacco products and their ingredients;

''(8) the relative harmfulness of different tobacco products;

''(9) environmental exposure to tobacco smoke;

''(10) the impact of tobacco use by pregnant women on their fetuses;

''(11) the redesign of tobacco products to reduce risks to public health and safety; and

''(12) other appropriate epidemiological, behavioral, and social science research.

''(e) COORDINATION.—In carrying out tobacco-related research under this section, the Director of the National Institutes of Health shall ensure appropriate coordination with the research of other agencies, and shall avoid duplicative efforts through all appropriate means.

''(h) ADMINISTRATION.—The director of the NIH Office of Behavioral and Social Sciences Research may—

''(1) identify tobacco-related research initiatives that should be conducted or supported by the research institutes, and develop such projects in cooperation with such institutes;

''(2) coordinate tobacco-related research that is conducted or supported by the National Institutes of Health;

''(3) annually recommend to Congress the allocation of anti-tobacco research funds among the national research institutes; and

''(4) establish a clearinghouse for information about tobacco-related research conducted by governmental and non-governmental bodies.

''(f) TRIGGER.—No expenditure shall be made under subsection (a) during any fiscal year in which the annual amount appropriated for the National Institutes of Health is less than the amount so appropriated for the prior fiscal year.

''(g) REPORT.—The Director of the NIH shall every 2 years prepare and submit to the Congress a report ——— research activities, including funding levels, for research made available under subsection (c).

(b) MEDICAID COVERAGE OF OUTPATIENT SMOKING CESSATION AGENTS.—Paragraph (2) of section 1927(d) of the Public Health Service Act (42 U.S.C. 1396r-8(d)) is amended—

(1) by striking subparagraph (E) and redesignating subparagraphs (F) through (J) as subparagraphs (E) through (I); and

(2) by striking ''drugs.'' in subparagraph (F), as redesignated, and inserting ''drugs, except agents, approved by the Food and Drug Administration, when used to promote smoking cessation.''.

''SEC. 1991E. RESEARCH ACTIVITIES OF THE AGENCY FOR HEALTH CARE POLICY AND RESEARCH.

''(a) IN GENERAL.—The Administrator of the Agency for Health Care Policy and Research shall carry out outcomes, effectiveness, cost-effectiveness, and other health services research related to effective interventions for the prevention and cessation of tobacco use and appropriate strategies for implementing those services, the outcomes and delivery of care for diseases related to tobacco use, and the development of quality measures for evaluating the provision of those services.

''(b) ANALYSES AND SPECIAL PROGRAMS.—The Secretary, acting through the Administrator of the Agency for Health Care Policy and Research, shall support—

''(1) and conduct periodic analyses and evaluations of the best scientific information in the area of smoking and other tobacco product use cessation; and

''(2) the development and dissemination of special programs in cessation intervention for health plans and national health professional societies.''.

TITLE III—TOBACCO PRODUCT WARNINGS AND SMOKE CONSTITUENT DISCLOSURE

Subtitle A—Product Warnings, Labeling and Packaging

SEC. 301. CIGARETTE LABEL AND ADVERTISING WARNINGS.

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

''SEC. 4. LABELING.

''(a) LABEL REQUIREMENTS.—

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

''WARNING: Cigarettes are addictive''

''WARNING: Tobacco smoke can harm your children''

''WARNING: Cigarettes cause fatal lung disease''

''WARNING: Cigarettes cause cancer''

''WARNING: Cigarettes cause strokes and heart disease''

''WARNING: Smoking during pregnancy can harm your baby''

''WARNING: Smoking can kill you''

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

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

''(2) PLACEMENT; TYPOGRAPHY; ETC..—

''(A) IN GENERAL.—Each label statement required by paragraph (1) shall be located in the upper portion of the front and rear panels of the package, directly on the package underneath the cellophane or other clear wrapping. Except as provided in subparagraph (B), each label statement shall comprise at least the top 25 percent of the front and rear panels of the package. The word ''WARNING'' shall appear in capital letters and all text shall be in conspicuous and legible 17-point type, unless the text of the label statement would occupy more than 70 percent of such area, in which case the text may be in a smaller conspicuous and legible type size, provided that at least 60 percent of such area is occupied by required text. The text shall be black on a white background, or white on a black background, in a manner that contrasts, by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(4).

''(B) FLIP-TOP BOXES.—For any cigarette brand package manufactured or distributed

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

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

''(b) ADVERTISING REQUIREMENTS.—

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

''(2) TYPOGRAPHY, ETC..—Each label statement required by subsection (a) of this section in cigarette advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent yield shall comprise at least 20 percent of the area of the advertisement and shall appear in a conspicuous and prominent format and location at the top of each advertisement within the trim area. The Secretary may revise the required type sizes in such area in such manner as the Secretary determines appropriate. The word ''WARNING'' shall appear in capital letters, and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black if the background is white and white if the background is black, under the plan submitted under paragraph (4) of this subsection. The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital ''W'' of the word ''WARNING'' in the label statements. The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement. The label statements shall be in English, except that in the case of—

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

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

''(3) ADJUSTMENT BY SECRETARY.—The Secretary may, through a rulemaking under section 553 of title 5, United States Code, adjust the format and type sizes for the label statements required by this section or the text, format, and type sizes of any required tar, nicotine yield, or other constituent disclosures, or to establish the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et. seq.). The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of cigarette advertisements provided by paragraph (2) of this subsection. The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

''(4) MARKETING REQUIREMENTS.—

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

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

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

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

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

(b) REPEAL OF PROHIBITION ON STATE RESTRICTION.—Section 5 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1334) is amended—

(1) by striking ''(a) ADDITIONAL STATEMENTS.—'' IN SUBSECTION (A); AND

(2) by striking subsection (b).

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

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

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

SEC. 303. SMOKELESS TOBACCO LABELS AND ADVERTISING WARNINGS.

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

''SEC. 3. SMOKELESS TOBACCO WARNING.

''(a) GENERAL RULE.—

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

''WARNING: This product can cause mouth cancer''

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

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

''WARNING: Smokeless tobacco is addictive''

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

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

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

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

''(4) The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of any smokeless tobacco product that does not manufacture, package, or import smokeless tobacco products for sale or distribution within the United States.

''(b) REQUIRED LABELS.—

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

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

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

''(B) the word ''WARNING'' shall appear in capital letters and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black on a white background, or white on a black background, in an alternating fashion under the plan submitted under paragraph (3).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subtitle B—Testing and Reporting of Tobacco Product Smoke Constituents

SEC. 311. REGULATION REQUIREMENT.

(a) TESTING, REPORTING, AND DISCLOSURE.—Not later than 24 months after the date of enactment of this Act, the Secretary, through the Commissioner of the Food and Drug Administration, shall promulgate regulations under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) that meet the requirements of subsection (b) of this section.

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

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

TITLE IV—NATIONAL TOBACCO TRUST FUND

SEC. 401. ESTABLISHMENT OF TRUST FUND.

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

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

(1) Amounts paid under section 402.

(2) Amounts equal to the fines or penalties paid under section 402, 403, or 405, including interest thereon.

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

(c) NET REVENUES.—For purposes of subsection (b), the term ''net revenues'' means the amount estimated by the Secretary of the Treasury based on the excess of—

(1) the amounts received in the Treasury under subsection (b), over

(2) the decrease in the taxes imposed by chapter 1 and chapter 52 of the Internal Revenue Code of 1986, and other offsets, resulting from the amounts received under subsection (b).

(d) EXPENDITURES FROM THE TRUST FUND.—Amounts in the Trust Fund shall be available in each fiscal year, as provided in appropriation Acts. The authority to allocate net revenues as provided in this title and to obligate any amounts so allocated is contingent upon actual receipt of net revenues.

(e) BUDGETARY TREATMENT.—The amount of net receipts in excess of that amount which is required to offset the direct spending in this Act under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902) shall be available exclusively to offset the appropriations required to fund the authorizations of appropriations in this Act (including the amendments made by this Act), and the amount of such appropriations shall not be included in the estimates required under section 251 of that Act (2 U.S.C. 901).

(f) ADMINISTRATIVE PROVISIONS.—Section 9602 of the Internal Revenue Code of 1986 shall apply to the trust fund to the same extent as if it were established by subchapter A of chapter 98 of such Code, except that, for purposes of section 9602(b)(3), any interest or proceeds shall be covered into the Treasury as miscellaneous receipts.

SEC. 402. PAYMENTS BY INDUSTRY.

(a) INITIAL PAYMENT.—

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

(A) Phillip Morris Incorporated—65.8 percent.

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

(C) Lorillard Tobacco Company—7.1 percent.

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

(E) United States Tobacco Company—3.2 percent.

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

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

(b) ANNUAL PAYMENTS.—Each calendar year beginning after the required payment date under subsection (a)(3) the tobacco product manufacturers shall make total payments into the Fund for each calendar year in the following applicable base amounts, subject to adjustment as provided in section 403:

(1) year 1—$14,400,000,000.

(2) year 2—$15,400,000,000.

(3) year 3—$17,700,000,000.

(4) year 4—$21,400,000,000.

(5) year 5—$23,600,000,000.

(6) year 6 and thereafter—the adjusted applicable base amount under section 403.

(c) PAYMENT SCHEDULE; RECONCILIATION.—

(1) ESTIMATED PAYMENTS.—Deposits toward the annual payment liability for each calendar year under subsection (d)(2) shall be made in 3 equal installments due on March 1st, on June 1st, and on August 1st of each year. Each installment shall be equal to one-third of the estimated annual payment liability for that calendar year. Deposits of installments paid after the due date shall accrue interest at the prime rate plus 10 percent per annum, as published in the Wall Street Journal on the latest publication date on or before the payment date.

(2) RECONCILIATION.—If the liability for a calendar year under subsection (d)(2) exceeds the deposits made during that calendar year, the manufacturer shall pay the unpaid liability on March 1st of the succeeding calendar year, along with the first deposit for that succeeding year. If the deposits during a calendar year exceed the liability for the calendar year under subsection (d)(2), the manufacturer shall subtract the amount of the excess deposits from its deposit on March 1st of the succeeding calendar year.

(d) APPORTIONMENT OF ANNUAL PAYMENT.—

(1) IN GENERAL.—Each tobacco product manufacturer is liable for its share of the applicable base amount payment due each year under subsection (b). The annual payment is

the obligation and responsibility of only those tobacco product manufacturers and their affiliates that directly sell tobacco products in the domestic market to wholesalers, retailers, or consumers, their successors and assigns, and any subsequent fraudulent transferee (but only to the extent of the interest or obligation fraudulently transferred).

(2) DETERMINATION OF AMOUNT OF PAYMENT DUE.—Each tobacco product manufacturer is liable for its share of each installment in proportion to its share of tobacco products sold in the domestic market for the calendar year. One month after the end of the calendar year, the Secretary shall make a final determination of each tobacco product manufacturer's applicable base amount payment obligation.

(3) CALCULATION OF TOBACCO PRODUCT MANUFACTURER'S SHARE OF ANNUAL PAYMENT.—The share of the annual payment apportioned to a tobacco product manufacturer shall be equal to that manufacturer's share of adjusted units, taking into account the manufacturer's total production of such units sold in the domestic market. A tobacco product manufacturer's share of adjusted units shall be determined as follows:

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

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

(ii) 1.2 ounces of moist snuff as 0.75 adjusted unit; and

(iii) 3 ounces of other smokeless tobacco product as 0.35 adjusted units.

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

For units:	Each unit shall be treated as:
Not exceeding 150 million	70% of a unit
Exceeding 150 million	100% of a unit

(C) ADJUSTED UNITS DETERMINED ON TOTAL DOMESTIC PRODUCTION.—For purposes of determining a manufacturer's number of adjusted units under subparagraph (B), a manufacturer's total production of units, whether intended for domestic consumption or export, shall be taken into account.

(D) SPECIAL RULE FOR LARGE MANUFACTURERS.—If a tobacco product manufacturer has more than 200 million units under subparagraph (A), then that manufacturer's number of adjusted units shall be equal to the total number of units, and not determined under subparagraph (B).

(E) SMOKELESS EQUIVALENCY STUDY.—Not later than January 1, 2003, the Secretary shall submit to the Congress a report detailing the extent to which youths are substituting smokeless tobacco products for cigarettes. If the Secretary determines that significant substitution is occurring, the Secretary shall include in the report recommendations to address substitution, including consideration of modification of the provisions of subparagraph (A).

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

(f) NONAPPLICATION TO CERTAIN MANUFACTURERS.—

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

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

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

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

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

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

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

SEC. 403. ADJUSTMENTS.

The applicable base amount under section 402(b) for a given calendar year shall be adjusted as follows in determining the annual payment for that year:

(1) INFLATION ADJUSTMENT.—

(A) IN GENERAL.—Beginning with the sixth calendar year after the date of enactment of this Act, the adjusted applicable base amount under section 402(b)(6) is the amount of the annual payment made for the preceding year increased by the greater of 3 percent or the annual increase in the CPI, adjusted (for calendar year 2002 and later years) by the volume adjustment under paragraph (2).

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

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

(2) VOLUME ADJUSTMENT.—Beginning with calendar year 2002, the applicable base amount (as adjusted for inflation under paragraph (1)) shall be adjusted for changes in volume of domestic sales by multiplying the applicable base amount by the ratio of the actual volume for the calendar year to the base volume. For purposes of this paragraph, the term ''base volume'' means 80 percent of the number of units of taxable domestic removals and taxed imports of cigarettes in calendar year 1997, as reported to the Secretary of the Treasury. For purposes of this subsection, the term ''actual volume'' means the number of adjusted unites as defined in section 402(d)(3)(A).

SEC. 404. PAYMENTS TO BE PASSED THROUGH TO CONSUMERS.

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

SEC. 405. TAX TREATMENT OF PAYMENTS.

All payments made under section 402 are ordinary and necessary business expenses for purposes of chapter 1 of the Internal Revenue Code of 1986 for the year in which such payments are made, and no part thereof is either in settlement of an actual or potential liability for a fine or penalty (civil or criminal) or the cost of a tangible or intangible asset or other future benefit.

SEC. 406. ENFORCEMENT FOR NONPAYMENT.

(a) PENALTY.—Any tobacco product manufacturer that fails to make any payment required under section 402 or 404 within 60 days after the date on which such fee is due is liable for a civil penalty computed on the unpaid balance at a rate of prime plus 10 percent per annum, as published in the Wall Street Journal on the latest publication date on or before the payment date, during the period the payment remains unmade.

(b) NONCOMPLIANCE PERIOD.—For purposes of this section, the term ''noncompliance period'' means, with respect to any failure to make a payment required under section 402 or 404, the period—

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

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

(c) LIMITATIONS.—

(1) IN GENERAL.—No penalty shall be imposed by subsection (a) on any failure to make a payment under section 402 during any period for which it is established to the satisfaction of the Secretary of the Treasury that none of the persons responsible for such failure knew or, exercising reasonable diligence, should have known, that such failure existed.

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

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

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

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

Subtitle B—General Spending Provisions

SEC. 451. ALLOCATION ACCOUNTS.

(a) STATE LITIGATION SETTLEMENT ACCOUNT.—

(1) IN GENERAL.—There is established within the Trust Fund a separate account, to be known as the State Litigation Settlement Account. Of the net revenues credited to the Trust Fund under section 401(b)(1) for each fiscal year, 40 percent of the amounts designated for allocation under the settlement payments shall be allocated to this account. Such amounts shall be reduced by the additional estimated Federal expenditures that will be incurred as a result of State expenditures under section 452, which amounts shall be transferred to the miscellaneous receipts of the Treasury. If, after 10 years, the estimated 25-year total amount projected to received in this account will be different than amount than $196,500,000,000, then beginning with the eleventh year the 40 percent share will be adjusted as necessary, to a percentage not in excees of 50 percent and not less than 30 percent, to achieve that 25-year total amount.

(2) APPROPRIATION.—Amounts so calculated are hereby appropriated and available until expended and shall be available to States for grants authorized under this Act.

(3) DISTRIBUTION FORMULA.—The Secretary of the Treasury shall consult with the National Governors Association, the National Association of Attorneys General, and the National Conference of State Legislators on a formula for the distribution of amounts in the State Litigation Settlement Account and report to the Congress within 90 days after the date of enactment of this Act with recommendations for implementing a distribution formula.

(4) USE OF FUNDS.—A State may use amounts received under this subsection as the State determines appropriate, consistent with the other provisions of this Act.

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

(b) PUBLIC HEALTH ALLOCATION ACCOUNT.—

(1) IN GENERAL.— There is established within the trust fund a separate account, to be known as the Public Health Account. Twenty-two percent of the net revenues credited to the trust fund under section 401(b)(1) and all the net revenues credited to the trust fund under section 401(b)(3) shall be allocated to this account.

(2) AUTHORIZATION OF APPROPRIATIONS.— Amounts in the Public Health Account shall be available to the extent and only in the amounts provided in advance in appropriations Acts, to remain available until expended, only for the purposes of:

(A) CESSATION AND OTHER TREATMENTS.—Of the total amounts allocated to this account, not less than 25 percent, but not more than 35 percent are to be used to carry out smoking cessation activities under part D of title XIX of the Public Health Service Act, as added by title II of this Act.

(B) INDIAN HEALTH SERVICE.—Of the total amounts allocated to this account, not less than 3 percent, but not more than 7 percent are to be used to carry out activities under section 453.

(C) EDUCATION AND PREVENTION.—Of the total amounts allocated to this account, not less than 50 percent, but not more than 65 percent are to be used to carry out—

(i) counter-advertising activities under section 1982 of the Public Health Service Act as amended by this Act;

(ii) smoking prevention activities under section 223;

(iii) surveys under section 1991C of the Public Health Service Act, as added by this Act (but, in no fiscal year may the amounts used to carry out such surveys be less than 10 percent of the amounts available under this subsection); and

(iv) international activities under section 1132.

(D) ENFORCEMENT.—Of the total amounts allocated to this account, not less than 17.5 percent nor more than 22.5 percent are to be used to carry out the following:

(i) Food and Drug Administration activities.

(I) The Food and Drug Administration shall receive not less than 15 percent of the funds provided in subparagraph (D) in the first fiscal year beginning after the date of enactment of this Act, 35 percent of such funds in the second year beginning after the date of enactment, and 50 percent of such funds for each fiscal year beginning after the date of enactment, as reimbursements for the costs incurred by the Food and Drug Administration in implementing and enforcing requirements relating to tobacco products.

(II) No expenditures shall be made under subparagraph (D) during any fiscal year in which the annual amount appropriated for the Food and Drug Administration is less than the amount so appropriated for the prior fiscal year.

(ii) State retail licensing activities under section 251.

(iii) Anti-Smuggling activities under section 1141.

(c) HEALTH AND HEALTH-RELATED RESEARCH ALLOCATION ACCOUNT.—

(1) IN GENERAL.— There is established within the trust fund a separate account, to be known as the Health and Health-Related Research Account. Of the net revenues credited to the trust fund under section 401(b)(1), 22 percent shall be allocated to this account.

(2) AUTHORIZATION OF APPROPRIATIONS.— Amounts in the Health and Health-Related Research Account shall be available to the extent and in the amounts provided in advance in appropriations acts, to remain available until expended, only for the following purposes:

(A) $750,000 shall be made vailable in fiscal year 1999 for the study to be conducted under section 1991 of the Public Health Service Act.

(B) National Institutes of Health Research under section 1991D of the Public Health Service Act, as added by this Act. Of the total amounts allocated to this account, not less than 75 percent, but not more than 87 percent shall be used for this purpose.

(C) Centers for Disease Control under section 1991C of the Public Health Service Act, as added by this Act, and Agency for Health Care Policy and Research under section 1991E of the Public Health Service Act, as added by this Act. authorized under sections 2803 of that Act, as so added. Of the total amounts allocated to this account, not less than 12 percent, but not more than 18 percent shall be used for this purpose.

(D) National Science Foundation Research under section 454. Of the total amounts allocated to this account, not less than 1 percent, but not more than 1 percent shall be used for this purpose.

(E) Cancer Clinical Trials under section 455. Of the total amounts allocated to this account, $750,000,000 shall be used for the first 3 fiscal years for this purpose.

(d) FARMERS ASSISTANCE ALLOCATION ACCOUNT.—

(1) IN GENERAL.— There is established within the trust fund a separate account, to be known as the Farmers Assistance Account. Of the net revenues credited to the trust fund under section 401(b)(1) in each fiscal year—

(A) 16 percent shall be allocated to this account for the first 10 years after the date of enactment of this Act; and

(B) 4 percent shall be allocated to this account for each subsequent year until the account has received a total of $28,500,000,000.

(2) APPROPRIATION.—Amounts allocated to this account are hereby appropriated and shall be available until expended for the purposes of section 1012.

(e) MEDICARE PRESERVATION ACCOUNT.— There is established within the trust fund a separate account, to be known as the Medicare Preservation Account. If, in any year, the net amounts credited to the trust fund for payments under section 402(b) are greater than the net revenues originally estimated under section 401(b), the amount of any such excess shall be credited to the Medicare Preservation Account. Beginning in the eleventh year beginning after the date of enactment of this Act, 12 percent of the net revenues credited to the trust fund under seciton 401(b)(1) shall be allocated to this account. Funds credited to this account shall be transferred to the Medicare Hospital Insurance Trust Fund.

SEC. 452. GRANTS TO STATES.

(a) AMOUNTS.—From the amount made available under section 402(a) for each fiscal year, each State shall receive a grant on a quarterly basis according to a formula.

(b) USE OF FUNDS.—

(1) UNRESTRICTED FUNDS.—A State may use funds, not to exceed 50 percent of the amount received under this section in a fiscal year, for any activities determined appropriate by the State.

(2) RESTRICTED FUNDS.—A State shall use not less than 50 percent of the amount received under this section in a fiscal year to carry out additional activities or provide additional services under—

(A) the State program under the maternal and child health services block grant under title V of the Social Security Act (42 U.S.C. 701 et seq.);

(B) funding for child care under section 418 of the Social Security Act, notwithstanding subsection (b)(2) of that section;

(C) federally funded child welfare and abuse programs under title IV-B of the Social Security Act;

(D) programs administered within the State under the authority of the Substance Abuse and Mental Health Services Administration under title XIX, part B of the Public Health Service Act;

(E) Safe and Drug-Free Schools Program under title IV, part A, of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7111 et seq.);

(F) the Department of Education's Dwight D. Eisenhower Professional Development program under title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6601 et seq.); and

(G) The State Children's Health Insurance Program authorized under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.), provided that the amount expended on this program does not exceed 6 percent of the total amount of restricted funds available to the State each fiscal year.

(c) NO SUBSTITUTION OF SPENDING.— Amounts referred to in subsection (b)(2) shall be used to supplement and not supplant other Federal, State, or local funds provided for any of the programs described in subparagraphs (A) through (G) of subsection (b)(2). Restricted funds, except as provided for in subsection (b)(2)(G), shall not be used as State matching funds. Amounts provided to the State under any of the provisions of law referred to in such subparagraph shall not be reduced solely as a result of the availability of funds under this section.

(d) FEDERAL-STATE MATCH RATES.—Current (1998) matching requirements apply to each program listed under subsection (b)(2), except for the program described under subsection (b)(2)(B). For the program described under subsection (b)(2)(B), after an individual State has expended resources sufficient to receive its full Federal amount under section 418(a)(2)(B) of the Social Security Act (subject to the matching requirements in section 418(a)(2)(C) of such Act), the Federal share of expenditures shall be 80 percent.

(e) MAINTENANCE OF EFFORT.—To receive funds under this subsection, States must demonstrate a maintenance of effort. This maintenance of effort is defined as the sum of—

(1) an amount equal to 95 percent of Federal fiscal year 1997 State spending on the programs under subsections (b)(2)(B), (c), and (d); and

(2) an amount equal to the product of the amount described in paragraph (1) and—

(A) for fiscal year 1999, the lower of—

(i) general inflation as measured by the consumer price index for the previous year; or

(ii) the annual growth in the Federal appropriation for the program in the previous fiscal year; and

(B) for subsequent fiscal years, the lower of—

(i) the cumulative general inflation as measured by the consumer price index for the period between 1997 and the previous year; or

(ii) the cumulative growth in the Federal appropriation for the program for the period between fiscal year 1997 and the previous fiscal year.

The 95-percent maintenance-of-effort requirement in paragraph (1), and the adjustments in paragraph (2), apply to each program identified in paragraph (1) on an individual basis.

(f) OPTIONS FOR CHILDREN'S HEALTH OUTREACH.—In addition to the options for the use of grants described in this section, the following are new options to be added to States' choices for conducting children's health outreach:

(1) EXPANSION OF PRESUMPTIVE ELIGIBILITY OPTION FOR CHILDREN.—

(A) IN GENERAL.—Section 1920A(b)(3)(A)(I) of the Social Security Act (42 U.S.C. 1396r-1a(b)(3)(A)(I)) is amended—

(i) by striking ''described in subsection (a) or (II) is authorized'' and inserting ''described in subsection (a), (II) is authorized''; and

(ii) by inserting before the semicolon '', eligibility for benefits under part A of title IV, eligibility of a child to receive benefits under the State plan under this title or title XXI, (III) is a staff member of a public school, child care resource and referral center, or agency administering a plan under part D of title IV, or (IV) is so designated by the State''.

(B) TECHNICAL AMENDMENTS.—Section 1920A of that Act (42 U.S.C. 1396r-1a) is amended—

(i) in subsection (b)(3)(A)(ii), by striking ''paragraph (1)(A)'' and inserting ''paragraph (2)(A)''; and

(ii) in subsection (c)(2), in the matter preceding subparagraph (A), by striking ''subsection (b)(1)(A)'' and inserting ''subsection (b)(2)(A)''.

(2) REMOVAL OF REQUIREMENT THAT CHILDREN'S HEALTH INSURANCE PROGRAM ALLOTMENTS BE REDUCED BY COSTS RELATED TO PRESUMPTIVE ELIGIBILITY DETERMINATIONS.—

(A) IN GENERAL.—Section 2104(d) of the Social Security Act (42 U.S.C. 1397dd(d)) is amended by striking ''the sum of—'' and all that follows through the paragraph designation ''(2)'' and merging all that remains of subsection (d) into a single sentence.

(B) EFFECTIVE DATE.—The amendment made by subsection (a) shall be deemed to have taken effect on August 5, 1997.

(3) INCREASED FUNDING FOR ADMINISTRATIVE COSTS RELATED TO OUTREACH AND ELIGIBILITY DETERMINATIONS FOR CHILDREN.—Section 1931(h) of the Social Security Act (42 U.S.C. 1396u-1(h)) is amended—

(A) by striking the subsection caption and inserting ''(h) INCREASED FEDERAL MATCHING RATE FOR ADMINISTRATIVE COSTS RELATED TO OUTREACH AND ELIGIBILITY DETERMINATIONS FOR CHILDREN.—'';

(B) in paragraph (2), by striking ''eligibility determinations'' and all that follows and inserting ''determinations of the eligibility of children for benefits under the State plan under this title or title XXI, outreach to children likely to be eligible for such benefits, and such other outreach- and eligibility-related activities as the Secretary may approve.'';

(C) in paragraph (3), by striking ''and ending with fiscal year 2000 shall not exceed $500,000,000'' and inserting ''shall not exceed $525,000,000''; and

(D) by striking paragraph (4).

(g) PERIODIC REASSESSMENT OF SPENDING OPTIONS.—Spending options under subsection (b)(2) will be reassessed jointly by the States and Federal government every 5 years and be reported to the Secretary.

SEC. 453. INDIAN HEALTH SERVICE.

Amounts available under section 451(b)(2)(B) shall be provided to the Indian Health Service to be used for anti-tobacco-related consumption and cessation activities including—

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

(2) provider services and equipment;

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

(4) other programs and service provided through the Indian Health Service or through tribal contracts, compacts, grants, or cooperative agreements with the Indian Health Service and which are deemed appropriate to raising the health status of Indians.

SEC. 454. RESEARCH AT THE NATIONAL SCIENCE FOUNDATION.

Amounts available under section 451(c)(2)(C) shall be made available for necessary expenses in carry out the National Science Foundation Act of 1950 (U.S.C. 1861-1875), and the Act to establish a National Medal of Science (42 U.S.C. 1880-1881).

SEC. 455. MEDICARE CANCER PATIENT DEMONSTRATION PROJECT; EVALUATION AND REPORT TO CONGRESS.

(a) ESTABLISHMENT.—The Secretary shall establish a 3-year demonstration project which provides for payment under the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) of routine patient care costs—

(1) which are provided to an individual diagnosed with cancer and enrolled in the Medicare program under such title as part of the individual's participation in an approved clinical trial program; and

(2) which are not otherwise eligible for payment under such title for individuals who are entitled to benefits under such title.

(b) APPLICATION.—The beneficiary cost sharing provisions under the Medicare program, such as deductibles, coinsurance, and copayment amounts, shall apply to any individual in a demonstration project conducted under this section.

(c) APPROVED CLINICAL TRIAL PROGRAM.—

(1) IN GENERAL.—For purposes of this section, the term ''approved clinical trial program'' means a clinical trial program which is approved by—

(A) the National Institutes of Health;

(B) a National Institutes of Health cooperative group or a National Institutes of Health center; and

(C) the National Cancer Institute,

with respect to programs that oversee and coordinate extramural clinical cancer research, trials sponsored by such Institute and conducted at designated cancer centers, clinical trials, and Institute grants that support clinical investigators.

(2) MODIFICATIONS IN APPROVED TRIALS.—Beginning 1 year after the date of enactment of this Act, the Secretary, in consultation with the Cancer Policy Board of the Institute of Medicine, may modify or add to the requirements of paragraph (1) with respect to an approved clinical trial program.

(d) ROUTINE PATIENT CARE COSTS.—

(1) IN GENERAL.—For purposes of this section, the term ''routine patient care costs'' include the costs associated with the provision of items and services that—

(A) would otherwise be covered under the Medicare program if such items and services were not provided in connection with an approved clinical trial program; and

(B) are furnished according to the design of an approved clinical trial program.

(2) EXCLUSION.—For purposes of this section, the term ''routine patient care costs'' does not include the costs associated with the provision of—

(A) an investigational drug or device, unless the Secretary has authorized the manufacturer of such drug or device to charge for such drug or device; or

(B) any item or service supplied without charge by the sponsor of the approved clinical trial program.

(e) STUDY.—The Secretary shall study the impact on the Medicare program under title XVIII of the Social Security Act of covering routine patient care costs for individuals with a diagnosis of cancer and other diagnoses, who are entitled to benefits under such title and who are enrolled in an approved clinical trial program.

(f) REPORT TO CONGRESS.—Not later than 30 months after the date of enactment of this Act, the Secretary shall submit a report to Congress that contains a detailed description of the results of the study conducted under subsection (e) including recommendations regarding the extension and expansion of the demonstration project conducted under this section.

TITLE V—STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE

SEC. 501. DEFINITIONS.

In this title:

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

(2) PUBLIC FACILITY.—

(A) IN GENERAL.—The term ''public facility'' means any building used for purposes that affect interstate or foreign commerce that is regularly entered by 10 or more individuals at least 1 day per week including any building owned by or leased to an agency, independent establishment, department, or the executive, legislative, or judicial branch of the United States Government.

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

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

(3) RESPONSIBLE ENTITY.—The term ''responsible entity'' means, with respect to any public facility, the owner of such facility except that, in the case of any such facility or portion thereof which is leased, such term means the lessee if the lessee is actively engaged in supervising day-to-day activity in the leased space.

SEC. 502. SMOKE-FREE ENVIRONMENT POLICY.

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

(b) ELEMENTS OF POLICY.—

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

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

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

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

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

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

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

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

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

SEC. 503. CITIZEN ACTIONS.

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

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

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

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

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

(f) APPLICATION WITH OSHA.—Nothing in this section affects enforcement of the Occupational Safety and Health Act of 1970.

SEC. 504. PREEMPTION.

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

SEC. 505. REGULATIONS.

The Assistant Secretary is authorized to promulgate such regulations, after consulting with the Administrator of the Environmental Protection Agency, as the Assistant Secretary deems necessary to carry out this title.

SEC. 506. EFFECTIVE DATE.

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

SEC. 507. STATE CHOICE.

Any State or local government may opt out of this title by promulgating a State or local law, subject to certification by the Assistant Secretary that the law is as or more protective of the public's health as this title, based on the best available science. Any State or local government may opt to enforce this title itself, subject to certification by the Assistant Secretary that the enforcement mechanism will effectively protect the public health.

TITLE VI—APPLICATION TO INDIAN TRIBES

SEC. 601. SHORT TITLE.

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

SEC. 602. FINDINGS AND PURPOSES.

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

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

(1) provide for the implementation of this Act with respect to the regulation of tobacco products, and other tobacco-related activities on Indian lands;

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

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

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

SEC. 603. APPLICATION OF TITLE TO INDIAN LANDS AND TO NATIVE AMERICANS.

(a) IN GENERAL.—The provisions of this Act shall apply to the manufacture, distribution, and sale of tobacco or tobacco products on Indian lands, including such activities of an Indian tribe or member of such tribe.

(b) TRADITIONAL USE EXCEPTION.—

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

(2) APPLICATION OF PROVISIONS.—Paragraph (1) shall apply only to those quantities of tobacco or tobacco products necessary to fulfill the religious, ceremonial, or traditional purposes of an Indian tribe or the members of such tribe, and shall not be construed to permit the general manufacture, distribution, sale or use of tobacco or tobacco products in a manner that is not in compliance with this Act or the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.)

(c) LIMITATION.—Nothing in this Act shall be construed to permit an Indian tribe or member of such a tribe to acquire, possess, use, or transfer any tobacco or tobacco product in violation of section 2341 of title 18, United States Code, with respect to the transportation of contraband cigarettes.

(d) APPLICATION ON INDIAN LANDS.—

(1) IN GENERAL.—The Secretary, in consultation with the Secretary of Interior, shall promulgate regulations to implement this section as necessary to apply this Act and the Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) with respect to tobacco products manufactured, distributed, or sold on Indian lands.

(2) SCOPE.—This Act and the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) shall apply to the manufacture, distribution and sale of tobacco products on Indian lands, including such activities by Indian tribes and members of such tribes.

(3) TRIBAL TOBACCO RETAILER LICENSING PROGRAM.—

(A) IN GENERAL.—The requirements of this Act with respect to the licensing of tobacco retailers shall apply to all retailers that sell tobacco or tobacco products on Indian lands, including Indian tribes, and members thereof.

(B) IMPLEMENTATION.—

(i) IN GENERAL.—An Indian tribe may implement and enforce a tobacco retailer licensing and enforcement program on its Indian lands consistent with the provisions of section 231 if the tribe is eligible under subparagraph (D). For purposes of this clause, section 231 shall be applied to an Indian tribe by substituting ''Indian tribe'' for ''State'' each place it appears, and an Indian tribe shall not be ineligible for grants under that section if the Secretary applies that section to the tribe by modifying it to address tribal population, land base, and jurisdictional factors.

(ii) COOPERATION.—An Indian tribe and State with tobacco retailer licensing programs within adjacent jurisdictions should consult and confer to ensure effective implementation of their respective programs.

(C) ENFORCEMENT.—The Secretary may vest the responsibility for implementation and enforcement of a tobacco retailer licensing program in—

(i) the Indian tribe involved;

(ii) the State within which the lands of the Indian tribe are located pursuant to a voluntary cooperative agreement entered into by the State and the Indian tribe; or

(iii) the Secretary pursuant to subparagraph (F).

(D) ELIGIBILITY.—To be eligible to implement and enforce a tobacco retailer licensing program under section 231, the Secretary, in consultation with the Secretary of Interior, must find that—

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

(ii) the functions to be exercised relate to activities conducted on its Indian lands; and

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

(E) DETERMINATIONS.—Not later than 90 days after the date on which an Indian tribe submits an application for authority under subparagraph (D), the Secretary shall make a determination concerning the eligibility of such tribe for such authority. Each tribe found eligible under subparagraph (D) shall be eligible to enter into agreements for block grants under section 231, to conduct a licensing and enforcement program pursuant to section 231, and for bonuses under section 232.

(F) IMPLEMENTATION BY THE SECRETARY.—If the Secretary determines that the Indian tribe is not willing or not qualified to administer a retail licensing and enforcement program, the Secretary, in consultation with the Secretary of Interior, shall promulgate regulations for a program for such tribes in the same manner as for States which have not established a tobacco retailer licensing program under section 231(f).

(G) DEFICIENT APPLICATIONS; OPPORTUNITY TO CURE.—

(i) If the Secretary determines under subparagraph (F) that a Indian tribe is not eligible to establish a tobacco retailer licensing program, the Secretary shall—

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

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

(ii) After an opportunity to review and cure such deficiencies, the tribe may reapply to the Secretary for assistance under this subsection.

(H) SECRETARIAL REVIEW.—The Secretary may periodically review the tribal tobacco retailer licensing program of a tribe approved pursuant to subparagraph (E), including the effectiveness of the program, the tribe's enforcement thereof, and the compatibility of the tribe's program with the program of the State in which the tribe is located. The program shall be subject to all applicable requirements of section 231.

(e) ELIGIBILITY FOR PUBLIC HEATH FUNDS.—

(1) ELIGIBILITY FOR GRANTS.—

(A) For each fiscal year the Secretary may award grants to Indian tribes from the federal Account or other federal funds, except a tribe that is not a participating tobacco product manufacturer (as defined in section 1402(a), for the same purposes as States and local governments are eligible to receive grants from the Federal Account as provided for in this Act. Indian tribes shall have the flexibility to utilize such grants to meet the unique health care needs of their service populations consistent with the goals and purposes of Federal Indian health care law and policy.

(B) In promulgating regulations for the approval and funding of smoking cessation programs under section 221 the Secretary shall ensure that adequate funding is available to address the high rate of smoking among Native Americans.

(2) HEALTH CARE FUNDING.—

(A) INDIAN HEALTH SERVICE.—Each fiscal year the Secretary shall disburse to the Indian Health Service from the National Tobacco Settlement Trust Fund an amount determined by the Secretary in consultation with the Secretary of the Interior equal to the product of—

(i) the ratio of the total Indian health care service population relative to the total population of the United States; and

(ii) the amount allocated to the States each year from the State Litigation Trust Account.

(B) FUNDING.—The trustees of the Trust Fund shall for each fiscal year transfer to the Secretary from the State Litigation Trust Account the amount determined pursuant to paragraph (A).

(C) USE OF HEALTH CARE TRUST FUNDS.—Amounts made available to the Indian Health Service under this paragraph shall be made available to Indian tribes pursuant to the provisions of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b et seq.), shall be used to reduce tobacco consumption, promote smoking cessation, and shall be used to fund health care activities including—

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

(ii) health care provider services and equipment;

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

(iv) inpatient and outpatient services; and

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

(f) PREEMPTION.—

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

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

(g) DISCLAIMER.—Nothing in this Act shall be construed to increase or diminish tribal or State jurisdiction on Indian lands with respect to tobacco-related activities.

TITLE VII—TOBACCO CLAIMS

SEC. 701. DEFINITIONS.

In this title:

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

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

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

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

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

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

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

(8) TOBACCO PRODUCT MANUFACTURER.—The term ''tobacco product manufacturer'' means a person who—

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

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

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

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

(E) is an entity to which any of the foregoing directly or indirectly makes, after the date of enactment of this Act, a fraudulent conveyance or a transfer that would otherwise be voidable under part 5 of title 11 of the United States Code, but only to the extent of the interest or obligation transferred; or

(F) is an affiliate of a tobacco product manufacturer.

(9) CASTANO CIVIL ACTIONS.—The term ''Castano Civil Actions'' means the following civil actions: Gloria Wilkinson Lyons et al. v. American Tobacco Co., et al. (USDC Alabama 96-0881-BH; Agnes McGinty, et al. v. American Tobacco Co., et al. (USDC Arkansas LR-C-96-881); Willard R. Brown, et al. v. R.J. Reynolds Co., et al. (San Diego, California-00711400); Gray Davis & James Ellis, et al. R.J. Reynolds Tobacco Co., et al. (San Diego, California-00706458); Chester Lyons, et al. v. Brown & Williamson Tobacco Corp., et al. (Fulton County, Georgia-E-59346); Rosalyn Peterson, et al. v. American Tobacco Co., et al. (USDC Hawaii-97-00233-HG); Jean Clay, et al. v. American Tobacco Co., et al. (USDC Illinois Benton Division-97-4167-JPG); William J. Norton, et al. v. RJR Nabisco Holdings Corp., et al. (Madison County, Indiana 48D01-9605-CP-0271); Alga Emig, et al. v. American Tobacco Co., et al. (USDC Kansas-97-1121-MLB); Gloria Scott, et al. v. American Tobacco Co., et al. (Orleans Parish, Louisiana-97-1178); Vern Masepohl, et al. v. American Tobacco Co., et al. (USDC Minnesota-3-96-CV-888); Matthew Tepper, et al. v. Philip Morris Incorporated, et al. (Bergen County, New Jersey-BER-L-4983-97-E); Carol A. Connor, et al. v. American Tobacco Co., et al. (Bernalillo County, New Mexico-CV96-8464); Edwin Paul Hoskins, et al. v. R.J. Reynolds Tobacco Co., et al.; Josephine Stewart-Lomantz v. Brown & Williamson Tobacco, et al.; Rose Frosina, et al. v. Philip Morris Incorporated, et al.; Catherine Zito, et al. v. American Tobacco Co., et al.; Kevin Mroczkowski, et al. v. Lorillard Tobacco Company, et al. (Supreme Court, New York County, New York-110949 thru 110953); Judith E. Chamberlain, et al. v. American Tobacco Co., et al. (USDC Ohio-1:96CV2005); Brian walls, et al. v. American Tobacco Co., et al. (USDC Oklahoma-97-CV-218-H); Steven R. Arch, et al. v. American Tobacco Co., et al. (USDC Pennsylvania-96-5903-CN); Barreras-Ruiz, et al. v. American Tobacco Co., et al. (USDC Puerto Rico-96-2300-JAF); Joanne Anderson, et al. v. American Tobacco Co., et al. (Know County, Tennessee); Carlis Cole, et al. v. The Tobacco institute, Inc., et al. (USDC Beaumont Texas Division-1:97CV0256); Carrol Jackson, et al. v. Philip Morris Incorporated, et al. (Salt Lake County, Utah-CV No. 98-0901634PI).

SEC. 702. APPLICATION; PREEMPTION.

(a) APPLICATION.—The provisions of this title govern any tobacco claim in any civil action brought in an State, Tribal, or Federal court, including any such claim that has not reached final judgment or final settlement as of the date of enactment of this Act.

(b) PREEMPTION.—This title supersedes State law only to the extent that State law applies to a matter covered by this title. Any matter that is not governed by this title, including any standard of liability applicable to a manufacturer, shall be governed by any applicable State, Tribal, or Federal law.

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

SEC. 703. RULES GOVERNING TOBACCO CLAIMS.

(a) GENERAL CAUSATION PRESUMPTION.—In any civil action to which this title applies brought involving a tobacco claim, there shall be an evidentiary presumption that nicotine is addictive and that the diseases

identified as being caused by use of tobacco products in the Center for Disease Control and Prevention Reducing the Health Consequences of Smoking: 25 Years of Progress: A Report of the Surgeon General (United States Public Health Service 1989), The Health Consequences of Smoking: Involuntary Smoking, (USPHS 1986); and The Health Consequences of Using Smokeless Tobacco, (USPHS 1986), are caused in whole or in part by the use of tobacco products, (hereinafter referred to as the ''general causation presumption''), and a jury empaneled to hear a tobacco claim shall be so instructed. In all other respects, the burden of proof as to the issue of whether a plaintiff's specific disease or injury was caused by smoking shall be governed by the law of the State or Tribe in which the tobacco claim was brought. This general causation presumption shall in no way affect the ability of the defendant to introduce evidence or argument which the defendant would otherwise be entitled to present under the law of the State or Tribe in which the tobacco claim was brought to rebut the general causation presumption, or with respect to general causation, specific causation, or alternative causation, or to introduce any other evidence or argument which the defendant would otherwise be entitled to make.

(b) ACTIONS AGAINST PARTICIPATING TOBACCO PRODUCT MANUFACTURERS.—In any civil action brought involving a tobacco claim against participating tobacco product manufacturers, as that term is defined in title XIV, the provisions of title XIV apply in conjunction with the provisions of this title.

TITLE VIII—TOBACCO INDUSTRY ACCOUNTABILITY REQUIREMENTS AND EMPLOYEE PROTECTION FROM REPRISALS

SEC. 801. ACCOUNTABILITY REQUIREMENTS AND OVERSIGHT OF THE TOBACCO INDUSTRY.

(a) ACCOUNTABILITY.—The Secretary, following regular consultation with the Commissioner of Food and Drugs, the Surgeon General, the Director of the Center for Disease Control or the Director's delegate, and the Director of the Health and Human Services Office of Minority Health shall annually issue a report as provided for in subsection (c).

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

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

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

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

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

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

SEC. 802. TOBACCO PRODUCT MANUFACTURER EMPLOYEE PROTECTION.

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

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

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

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

(4) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under such Acts, or a proceeding for the administration or enforcement of any requirement imposed under such Acts;

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

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

(b) EMPLOYEE COMPLAINT.—

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

(2)(A) Upon receipt of a complaint under paragraph (1) of this subsection, the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days after the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any such person acting in his or her behalf) and the person alleged to have committed such violation of the results of the investigation conducted under this paragraph. Within 90 days after the receipt of such complaint, the Secretary shall (unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation) issue an order either providing the relief prescribed in subparagraph (B) of this paragraph or denying the complaint. An order of the Secretary shall be made on the record after notice and the opportunity for a hearing in accordance with sections 554 and 556 of title 5, United States Code. Upon the conclusion of such a hearing and the issuance of a recommended decision that the complaint has merit, the Secretary shall issue a preliminary order providing the relief prescribed in subparagraph (B) of this paragraph, but may not order compensatory damages pending a final order. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

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

(3)(A) The Secretary shall dismiss a complaint filed under paragraph (1) of this subsection, and shall not conduct the investigation required under paragraph (2) of this subsection, unless the complainant has made a *prima facie* showing that any behavior described in subsection (a) of this section was a contributing factor in the unfavorable personnel action alleged in the complaint.

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

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

(c) JUDICIAL REVIEW.—

(1) Any person adversely affected or aggrieved by an order issued under subsection (a) of this section may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within 60 days after the issuance of the Secretary's order. Judicial review shall be available as provided in chapter 7 of title 5, United States Code. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the Secretary's order.

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

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

(e) ACTION TO ENSURE COMPLIANCE.—

(1) Any person on whose behalf an order was issued under subsection (b)(2) of this section may commence a civil action to require compliance with such order against the person to whom such order was issued. The appropriate United States district court shall have jurisdiction to enforce such order, without regard to the amount in controversy or the citizenship of the parties.

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

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

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

(h) EFFECT ON OTHER LAWS.—This section shall not be construed to expand, diminish, or otherwise affect any right otherwise available to an employee under Federal or State law to redress the employee's discharge or other discriminatory action taken by a tobacco product manufacturer against the employee.

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

TITLE IX—PUBLIC DISCLOSURE OF TOBACCO INDUSTRY DOCUMENTS

SEC. 901. FINDINGS.

The Congress finds that—

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

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

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

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

(B) further the purposes of this Act.

SEC. 902. APPLICABILITY.

This title applies to all tobacco product manufacturers.

SEC. 903. DOCUMENT DISCLOSURE.

(a) DISCLOSURE TO THE FOOD AND DRUG ADMINISTRATION.—

(1) Within 60 days after the date of enactment of this Act, each tobacco product manufacturer shall submit to the Food and Drug Administration the documents identified in subsection (c), including documents for which trade secret protection is claimed, with the exception of any document for which privilege is claimed, and identified in accordance with subsection (b). Each such manufacturer shall provide the Administration with the privilege and trade secret logs identified under subsection (b).

(2) With respect to documents that are claimed to contain trade secret material, unless and until it is finally determined under this title, either through judicial review or because time for judicial review has expired, that such a document does not constitute or contain trade secret material, the Administration shall treat the document as a trade secret in accordance with section 708 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379) and the regulations promulgated thereunder. Nothing herein shall limit the authority of the Administration to obtain and use, in accordance with any provision of the Federal Food, Drug, and Cosmetic Act and the regulations promulgated thereunder, any document constituting or containing trade secret material. Documents and materials received by the Administration under this provision shall not be obtainable by or releasable to the public through section 552 of title 5, United States Code, or any other provision of law, and the only recourse to obtain these documents shall be through the process established by section 905.

(3) If a document depository is not established under title XIV, the Secretary shall establish by regulation a procedure for making public all documents submitted under paragraph (1) except documents for which trade secret protection has been claimed and for which there has not been a final judicial determination that the document does not contain a trade secret.

(b) SEPARATE SUBMISSION OF DOCUMENTS.—

(1) (1) PRIVILEGED TRADE SECRET DOCUMENTS.—Any document required to be submitted under subsection (c) or (d) that is subject to a claim by a tobacco product manufacturer of attorney-client privilege, attorney work product, or trade secret protection shall be so marked and shall be submitted to the panel under section 904 within 30 days after its appointment. Compliance with this subsection shall not be deemed to be a waiver of any applicable claim of privilege or trade secret protection.

(2) PRIVILEGE AND TRADE SECRET LOGS.—

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

(B) ORGANIZATION OF LOG.—The log shall be organized in numerical order based upon the document identifier assigned to each document. For each document, the log shall contain—

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

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

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

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

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

(c) DOCUMENT CATEGORIES.—Each tobacco product manufacturer shall submit—

(1) every existing document (including any document subject to a claim of attorney-client privilege, attorney work product, or trade secret protection) in the manufacturer's possession, custody, or control relating, referring, or pertaining to—

(A) any studies, research, or analysis of any possible health or pharmacological effects in humans or animals, including addiction, associated with the use of tobacco products or components of tobacco products;

(B) the engineering, manipulation, or control of nicotine in tobacco products;

(C) the sale or marketing of tobacco products;

(D) any research involving safer or less hazardous tobacco products;

(E) tobacco use by minors; or

(F) the relationship between advertising or promotion and the use of tobacco products;

(2) all documents produced by any tobacco product manufacturer, the Center of Tobacco Research or Tobacco Institute to the Attorney General of any State during discovery in any action brought on behalf of any State and commenced after January 1, 1994;

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

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

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

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

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

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

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

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

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

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

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

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

(d) FUTURE DOCUMENTS.—With respect to documents created after the date of enactment of this Act, the tobacco product manufacturers and their trade associations shall—

(1) place the documents in the depository; and

(2) provide a copy of the documents to the Food and Drug Administration (with the exception of documents subject to a claim of attorney-client privilege or attorney work product).

(1) Every existing document (including any document subject to a claim of attorney-client privilege, attorney work product, or trade secret protection) in the manufacturer's possession, custody, or control relating, referring, or pertaining to—

(A) any studies, research, or analysis of any possible health or pharmacological effects in humans or animals, including addiction, associated with the use of tobacco products or components of tobacco products;

(B) the engineering, manipulation, or control of nicotine in tobacco products;

(C) the sale or marketing of tobacco products;

(D) any research involving safer or less hazardous tobacco products;

(E) tobacco use by minors; or

(F) the relationship between advertising or promotion and the use of tobacco products;

(2) Every existing document (including any document subject to a claim of attorney-client privilege, attorney work product, or trade secret protection) in the manufacturer's possession, custody, or control—

(A) produced, or ordered to be produced, by the tobacco product manufacturer in any health-related civil or criminal proceeding, judicial or administrative; and

(B) that the panel established under section 906 determines is appropriate for submission.

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

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

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

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

(e) DOCUMENT IDENTIFICATION AND INDEX.—Documents submitted under this section shall be sequentially numbered and marked to identify the tobacco product manufacturer. Within 15 days after submission of documents, each tobacco product manufacturer shall supply the panel with a comprehensive document index which references the applicable document categories contained in subsection (b).

SEC. 904. DOCUMENT REVIEW.

(a) AJUDICATION OF PRIVILEGE CLAIMS.—An claim of attorney-client privilege, trade secret protection, or other claim of privilege with respect to a document required to be submitted by this title shall be heard by a 3-judge panel of the United States District Court for the District of Columbia under section 2284 of title 28, United States Code. The panel may appoint special masters, employ such personnel, and establish such procedures as it deems necessary to carry out its functions under this title.

(b) PRIVILEGE.—The panel shall apply the attorney-client privilege, the attorney work-product doctrine, and the trade secret doctrine in a manner consistent with Federal law.

SEC. 905. RESOLUTION OF DISPUTED PRIVILEGE AND TRADE SECRET CLAIMS.

(a) IN GENERAL.—The panel shall determine whether to uphold or reject disputed claims of attorney client privilege, attorney work product, or trade secret protection with respect to documents submitted. Any person may petition the panel to resolve a claim that a document submitted may not be disclosed to the public. Such a determination shall be made by a majority of the panel, in writing, and shall be subject to judicial review as specified in this title. All such determinations shall be made solely on consideration of the subject document and written submissions from the person claiming that the document is privileged or protected by trade secrecy and from any person seeking disclosure of the document. The panel shall cause notice of the petition and the panel's decision to be published in the Federal Register.

(b) FINAL DECISION.—The panel may uphold a claim of privilege or protection in its entirety or, in its sole discretion, it may redact that portion of a document that it determines is protected from public disclosure under subsection (a). Any decision of the panel shall be final unless judicial review is sought under section 906. In the event that judicial review is so sought, the panel's decision shall be stayed pending a final judicial decision.

SEC. 906. APPEAL OF PANEL DECISION.

(a) PETITION; RIGHT OF APPEAL.—Any person may obtain judicial review of a final decision of the panel by filing a petition for review with the United States Court of Appeals for the Federal Circuit within 60 days after the publication of such decision in the Federal Register. A copy of the petition shall be transmitted by the Clerk of the Court to the panel. The panel shall file in the court the record of the proceedings on which the panel based its decision (including any documents reviewed by the panel in *camera*) as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the panel's decision, except that until the filing of the record the panel may modify or set aside its decision.

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

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

(d) PUBLIC DISCLOSURE AFTER FINAL DECISION.—Within 30 days after a final decision that a document, as redacted by the panel or in its entirety, is not protected from disclosure by a claim of attorney-client privilege, attorney work product, or trade secret protection, the panel shall direct that the document be made available to the Commissioner of Food and Drugs under section 903(a). No Federal, Tribal, or State court shall have jurisdiction to review a claim of attorney-client privilege, attorney work product, or trade secret protection for a document that has lawfully been made available to the public under this subsection.

(e) EFFECT OF NON-DISCLOSURE DECISION ON JUDICIAL PROCEEDINGS.—The panel's decision that a document is protected by attorney-client privilege, attorney work product, or trade secret protection is binding only for the purpose of protecting the document from disclosure by the Depository. The decision by the panel shall not be construed to prevent a document from being disclosed in a judicial proceeding or interfere with the authority of a court to determine whether a document is admissible or whether its production may be compelled.

SEC. 907. MISCELLANEOUS.

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

SEC. 908. PENALTIES.

(a) GOOD FAITH REQUIREMENT.—Each tobacco product manufacturer shall act in good faith in asserting claims of privilege or trade secret protection based on fact and law. If the panel determines that a tobacco product manufacturer has not acted in good faith with full knowledge of the truth of the facts asserted and with a reasonable basis under existing law, the manufacturer shall be assessed costs, which shall include the full administrative costs of handling the claim of privilege, and all attorneys' fees incurred by the panel and any party contesting the privilege. The panel may also impose civil penalties of up to $50,000 per violation if it determines that the manufacturer acted in bad faith in asserting a privilege, or knowingly acted with the intent to delay, frustrate, defraud, or obstruct the panel's determination of privilege, attorney work product, or trade secret protection claims.

(b) FAILURE TO PRODUCE DOCUMENT.—A failure by a tobacco product manufacturer to produce indexes and documents in compliance with the schedule set forth in this title, or with such extension as may be granted by the panel, shall be punished by a civil penalty of up to $50,000 per violation. A separate violation occurs for each document the manufacturer has failed to produce in a timely manner. The maximum penalty under this subsection for a related series of violations is $5,000,000. In determining the amount of any civil penalty, the panel shall consider the number of documents, length of delay, any history of prior violations, the ability to pay, and such other matters as justice requires. Nothing in this title shall replace or supersede any criminal sanction under title 18, United States Code, or any other provision of law.

SEC. 909. DEFINITIONS.

For the purposes of this title—

(1) DOCUMENT.—The term ''document'' includes originals and drafts of any kind of written or graphic matter, regardless of the manner of production or reproduction, of any kind or description, whether sent or received or neither, and all copies thereof that are different in any way from the original (whether by interlineation, receipt stamp, notation, indication of copies sent or received or otherwise) regardless of whether confidential, privileged, or otherwise, including any paper, book, account, photograph,

blueprint, drawing, agreement, contract, memorandum, advertising material, letter, telegram, object, report, record, transcript, study, note, notation, working paper, intra-office communication, intra-department communication, chart, minute, index sheet, routing sheet, computer software, computer data, delivery ticket, flow sheet, price list, quotation, bulletin, circular, manual, summary, recording of telephone or other conversation or of interviews, or of conferences, or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter, regardless of the manner produced or reproduced. Such term also includes any tape, recording, videotape, computerization, or other electronic recording, whether digital or analog or a combination thereof.

(2) TRADE SECRET.—The term ''trade secret'' means any commercially valuable plan, formula, process, or device that is used for making, compounding, processing, or preparing trade commodities and that can be said to be the end-product of either innovation or substantial effort, for which there is a direct relationship between the plan, formula, process, or device and the productive process.

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

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

TITLE X—LONG-TERM ECONOMIC ASSISTANCE FOR FARMERS

SEC. 1001. SHORT TITLE.

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

SEC. 1002. DEFINITIONS.

In this title:

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

(2) QUOTA HOLDER.—The term ''quota holder'' means an owner of a farm on January 1, 1998, 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.).

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

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

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

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

(A) is the principal producer, as determined by the Secretary, of tobacco on a farm where tobacco is produced pursuant to a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years; and

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

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

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

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

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

(7) TOBACCO PRODUCT MANUFACTURER.—

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

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

(8) TOBACCO WAREHOUSE OWNER.—The term ''tobacco warehouse owner'' means a warehouseman that participated in an auction market (as defined in the first section of the Tobacco Inspection Act (7 U.S.C. 511)) during the 1998 marketing year.

(9) FLUE-CURED TOBACCO.—The term ''flue-cured tobacco'' includes type 21 and type 37 tobacco.

Subtitle A—Tobacco Community Revitalization

SEC. 1011. AUTHORIZATION OF APPROPRIATIONS.

There are appropriated and transferred to the Secretary for each fiscal year such amounts from the National Tobacco Trust Fund established by section 401, other than from amounts in the State Litigation Settlement Account, as may be necessary to carry out the provisions of this title.

SEC. 1012. EXPENDITURES.

The Secretary is authorized, subject to appropriations, to make payments under—

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 1013. BUDGETARY TREATMENT.

This subtitle constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide payments to States and eligible persons in accordance with this title.

Subtitle B—Tobacco Market Transition Assistance

SEC. 1021. PAYMENTS FOR LOST TOBACCO QUOTA.

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

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

(1) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including information sufficient to make the demonstration required under paragraph (2); and

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

(A) the producer was a quota holder and realized income (or would have realized income, as determined by the Secretary, but for a medical hardship or crop disaster during the 1997 marketing year) from the production of tobacco through—

(i) the active production of tobacco;

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

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

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

(B) the producer was a quota lessee; or

(C) the producer was a quota tenant.

(c) BASE QUOTA LEVEL.—

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

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

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

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

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

(ii) that was rented to the quota lessee for the right to produce the tobacco; less

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

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

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

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

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

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

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

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

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

(5) MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—

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

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

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

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

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

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

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

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

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

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

(2) OPTION TO RELINQUISH QUOTA.—

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

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

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

(A) IN GENERAL.—Subject to subparagraph (E), for each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost tobacco quota to each quota holder that has relinquished the farm marketing quota or farm acreage allotment of the quota holder under paragraph (2).

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

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

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

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

(4) REISSUANCE OF QUOTA.—

(A) REALLOCATION TO LESSEE OR TENANT.—If a quota holder exercises an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), a quota lessee or quota tenant that was the primary producer during the 1997 marketing year of tobacco pursuant to the farm marketing quota or farm acreage allotment, as determined by the Secretary, shall be given the option of having an allotment of the farm marketing quota or farm acreage allotment reallocated to a farm owned by the quota lessee or quota tenant.

(B) CONDITIONS FOR REALLOCATION.—

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

(ii) LIMITATION ON ACREAGE ALLOTMENT.—In the case of a farm acreage allotment, the acreage allotment determined for any farm subsequent to any reallocation under subparagraph (A) shall not exceed 50 percent of the acreage of cropland of the farm owned by the quota lessee or quota tenant.

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) during the 1997 marketing year, the farm marketing quota or farm acreage allotment was leased and transferred to a farm owned by the quota lessee; and

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

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

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

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

(ii) $4 per pound.

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

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

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

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

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

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

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

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

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

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

(C) $4 per pound.

(7) LIFETIME LIMITATION ON PAYMENTS.—Except as otherwise provided in this subsection, the total amount of payments made under this subsection to a quota holder, quota lessee, or quota tenant during the lifetime of the quota holder, quota lessee, or quota tenant shall not exceed the product obtained by multiplying—

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

(B) $8 per pound.

(8) LIMITATIONS ON AGGREGATE ANNUAL PAYMENTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the total amount

payable under this subsection for any marketing year shall not exceed the amount made available under paragraph (1).

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

(C) REDUCTIONS.—If the sum of the amounts determined under paragraphs (3), (5), and (6) for a marketing year exceeds the amount made available under paragraph (1), the Secretary shall make a pro rata reduction in the amounts payable under paragraphs (5) and (6) to quota holders, quota lessees, and quota tenants under this subsection to ensure that the total amount of payments for lost tobacco quota does not exceed the amount made available under paragraph (1).

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

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

(9) SUBSEQUENT SALE AND TRANSFER OF QUOTA.—Effective beginning with the 1999 marketing year, on the sale and transfer of a farm marketing quota or farm acreage allotment under section 316(g) or 319(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b(g), 1314e(g))—

(A) the person that sold and transferred the quota or allotment shall have—

(i) the base quota level attributable to the person reduced by the base quota level attributable to the quota that is sold and transferred; and

(ii) the lifetime limitation on payments established under paragraph (7) attributable to the person reduced by the product obtained by multiplying—

(I) the base quota level attributable to the quota; and

(II) $8 per pound; and

(B) if the quota or allotment has never been relinquished by a previous quota holder under paragraph (2), the person that acquired the quota shall have—

(i) the base quota level attributable to the person increased by the base quota level attributable to the quota that is sold and transferred; and

(ii) the lifetime limitation on payments established under paragraph (7) attributable to the person—

(I) increased by the product obtained by multiplying—

(aa) the base quota level attributable to the quota; and

(bb) $8 per pound; but

(II) decreased by any payments under paragraph (5) for lost tobacco quota previously made that are attributable to the quota that is sold and transferred.

(10) SALE OR TRANSFER OF FARM.—On the sale or transfer of ownership of a farm that is owned by a quota holder, the base quota level established under subsection (c), the right to payments under paragraph (5), and the lifetime limitation on payments established under paragraph (7) shall transfer to the new owner of the farm to the same extent and in the same manner as those provisions applied to the previous quota holder.

(11) DEATH OF QUOTA LESSEE OR QUOTA TENANT.—If a quota lessee or quota tenant that is entitled to payments under this subsection dies and is survived by a spouse or 1 or more dependents, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the surviving dependents in equal shares.

(12) ACCELERATION OF PAYMENTS.—

(A) IN GENERAL.—On the occurrence of any of the events described in subparagraph (B), the Secretary shall make an accelerated lump sum payment for lost tobacco quota as established under paragraphs (5) and (6) to each quota holder, quota lessee, and quota tenant for any affected type of tobacco in accordance with subparagraph (C).

(B) TRIGGERING EVENTS.—The Secretary shall make accelerated payments under subparagraph (A) if after the date of enactment of this Act—

(i) subject to subparagraph (D), for 3 consecutive marketing years, the national marketing quota or national acreage allotment for a type of tobacco is less than 50 percent of the national marketing quota or national acreage allotment for the type of tobacco for the 1998 marketing year; or

(ii) Congress repeals or makes ineffective, directly or indirectly, any provision of—

(I) section 316 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b);

(II) section 319 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e);

(III) section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445);

(IV) section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1); or

(V) section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2).

(C) AMOUNT.—The amount of the accelerated payments made to each quota holder, quota lessee, and quota tenant under this subsection shall be equal to—

(i) the amount of the lifetime limitation established for the quota holder, quota lessee, or quota tenant under paragraph (7); less

(ii) any payments for lost tobacco quota received by the quota holder, quota lessee, or quota tenant before the occurrence of any of the events described in subparagraph (B).

(D) REFERENDUM VOTE NOT A TRIGGERING EVENT.—A referendum vote of producers for any type of tobacco that results in the national marketing quota or national acreage allotment not being in effect for the type of tobacco shall not be considered a triggering event under this paragraph.

(13) BAN ON SUBSEQUENT SALE OR LEASING OF FARM MARKETING QUOTA OR FARM ACREAGE ALLOTMENT TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTA.—No quota holder that exercises the option to relinquish a farm marketing quota or farm acreage allotment for any type of tobacco under paragraph (2) shall be eligible to acquire a farm marketing quota or farm acreage allotment for the type of tobacco, or to obtain the lease or transfer of a farm marketing quota or farm acreage allotment for the type of tobacco, for a period of 25 crop years after the date on which the quota or allotment was relinquished.

(e) PAYMENTS FOR LOST TOBACCO QUOTA FOR FLUE-CURED TOBACCO.—

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

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

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

(2) RELINQUISHMENT OF QUOTA.—

(A) IN GENERAL.—Each quota holder of flue-cured tobacco shall relinquish the farm marketing quota or farm acreage allotment in exchange for a payment made under paragraph (3) due to the transition from farm marketing quotas as provided under section 317 of the Agricultural Adjustment Act of 1938 for flue-cured tobacco to individual tobacco production permits as provided under section 317A of the Agricultural Adjustment Act of 1938 for flue-cured tobacco.

(B) NOTIFICATION.—The Secretary shall notify the quota holders of the relinquishment of their quota or allotment at such time and in such manner as the Secretary may require, but not later than November 15, 1998.

(3) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA HOLDERS THAT RELINQUISH QUOTA.—

(A) IN GENERAL.—For each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost flue-cured tobacco to each quota holder that has relinquished the farm marketing quota or farm acreage allotment of the quota holder under paragraph (2).

(B) AMOUNT.—The amount of a payment made to a quota holder described in subparagraph (A) for a marketing year shall equal 1/10 of the lifetime limitation established under paragraph (6).

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

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

(4) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS THAT HAVE NOT RELINQUISHED PERMITS.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for flue-cured tobacco is less than the average national marketing quota for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota lessee or quota tenant that—

(i) is eligible under subsection (b);

(ii) has been issued an individual tobacco production permit under section 317A(b) of the Agricultural Adjustment Act of 1938; and

(iii) has not exercised an option to relinquish the permit.

(B) AMOUNT.—The amount of a payment made to a quota lessee or quota tenant described in subparagraph (A) for a marketing year shall be equal to the product obtained by multiplying—

(i) the number of pounds by which the individual marketing limitation established for the permit is less than twice the base quota level for the quota lessee or quota tenant; and

(ii) $2 per pound.

(5) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS THAT HAVE RELINQUISHED PERMITS.—

(A) IN GENERAL.—For each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost flue-cured tobacco quota to each quota lessee and quota tenant that has relinquished an individual tobacco production permit under section 317A(b)(5) of the Agricultural Adjustment Act of 1938.

(B) AMOUNT.—The amount of a payment made to a quota lessee or quota tenant described in subparagraph (A) for a marketing

year shall be equal to 1/10 of the lifetime limitation established under paragraph (6).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the individual tobacco production permit is relinquished.

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

(E) PROHIBITION AGAINST PERMIT EXPANSION.—A quota lessee or quota tenant that receives a payment under this paragraph shall be ineligible to receive any new or increased tobacco production permit from the county production pool established under section 317A(b)(8) of the Agricultural Adjustment Act of 1938.

(6) LIFETIME LIMITATION ON PAYMENTS.—Except as otherwise provided in this subsection, the total amount of payments made under this subsection to a quota holder, quota lessee, or quota tenant during the lifetime of the quota holder, quota lessee, or quota tenant shall not exceed the product obtained by multiplying—

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

(B) $8 per pound.

(7) LIMITATIONS ON AGGREGATE ANNUAL PAYMENTS.—

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

(B) ACCELERATED PAYMENTS.—Paragraph (1) shall not apply if accelerated payments for lost flue-cured tobacco quota are made in accordance with paragraph (9).

(C) REDUCTIONS.—If the sum of the amounts determined under paragraphs (3), (4), and (5) for a marketing year exceeds the amount made available under paragraph (1), the Secretary shall make a pro rata reduction in the amounts payable under paragraph (4) to quota lessees and quota tenants under this subsection to ensure that the total amount of payments for lost flue-cured tobacco quota does not exceed the amount made available under paragraph (1).

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

(E) ADDITIONAL PAYMENTS TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTAS OR PERMITS, OR TO QUOTA LESSEES OR QUOTA TENANTS RELINQUISHING PERMITS.—If the amount made available under paragraph (1) exceeds the sum of the amounts determined under paragraphs (3), (4), and (5) for a marketing year, the Secretary shall distribute the amount of the excess pro rata to quota holders by increasing the amount payable to each such holder under paragraphs (3) and (5).

(8) DEATH OF QUOTA HOLDER, QUOTA LESSEE, OR QUOTA TENANT.—If a quota holder, quota lessee or quota tenant that is entitled to payments under paragraph (4) or (5) dies and is survived by a spouse or 1 or more descendants, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the surviving descendants in equal shares.

(9) ACCELERATION OF PAYMENTS.—

(A) IN GENERAL.—On the occurrence of any of the events described in subparagraph (B), the Secretary shall make an accelerated lump sum payment for lost flue-cured tobacco quota as established under paragraphs (3), (4), and (5) to each quota holder, quota lessee, and quota tenant for flue-cured tobacco in accordance with subparagraph (C).

(B) TRIGGERING EVENTS.—The Secretary shall make accelerated payments under subparagraph (A) if after the date of enactment of this Act—

(i) subject to subparagraph (D), for 3 consecutive marketing years, the national marketing quota or national acreage allotment for flue-cured tobacco is less than 50 percent of the national marketing quota or national acreage allotment for flue-cured tobacco for the 1998 marketing year; or

(ii) Congress repeals or makes ineffective, directly or indirectly, any provision of—

(I) section 316 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b);

(II) section 319 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e);

(III) section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445);

(IV) section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1);

(V) section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2); or

(VI) section 317A of the Agricultural Adjustment Act of 1938.

(C) AMOUNT.—The amount of the accelerated payments made to each quota holder, quota lessee, and quota tenant under this subsection shall be equal to—

(i) the amount of the lifetime limitation established for the quota holder, quota lessee, or quota tenant under paragraph (6); less

(ii) any payments for lost flue-cured tobacco quota received by the quota holder, quota lessee, or quota tenant before the occurrence of any of the events described in subparagraph (B).

(D) REFERENDUM VOTE NOT A TRIGGERING EVENT.—A referendum vote of producers for flue-cured tobacco that results in the national marketing quota or national acreage allotment not being in effect for flue-cured tobacco shall not be considered a triggering event under this paragraph.

SEC. 1022. INDUSTRY PAYMENTS FOR ALL DEPARTMENT COSTS ASSOCIATED WITH TOBACCO PRODUCTION.

(a) IN GENERAL.—The Secretary shall use such amounts remaining unspent and obligated at the end of each fiscal year to reimburse the Secretary for—

(1) costs associated with the administration of programs established under this title and amendments made by this title;

(2) costs associated with the administration of the tobacco quota and price support programs administered by the Secretary;

(3) costs to the Federal Government of carrying out crop insurance programs for tobacco;

(4) costs associated with all agricultural research, extension, or education activities associated with tobacco;

(5) costs associated with the administration of loan association and cooperative programs for tobacco producers, as approved by the Secretary; and

(6) any other costs incurred by the Department of Agriculture associated with the production of tobacco.

(b) LIMITATIONS.—Amounts made available under subsection (a) may not be used—

(1) to provide direct benefits to quota holders, quota lessees, or quota tenants; or

(2) in a manner that results in a decrease, or an increase relative to other crops, in the amount of the crop insurance premiums assessed to participating tobacco producers under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

(c) DETERMINATIONS.—Not later than September 30, 1998, and each fiscal year thereafter, the Secretary shall determine—

(1) the amount of costs described in subsection (a); and

(2) the amount that will be provided under this section as reimbursement for the costs.

SEC. 1023. TOBACCO COMMUNITY ECONOMIC DEVELOPMENT GRANTS.

(a) AUTHORITY.—The Secretary shall make grants to tobacco-growing States in accordance with this section to enable the States to carry out economic development initiatives in tobacco-growing communities.

(b) APPLICATION.—To be eligible to receive payments under this section, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including—

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

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

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

(c) AMOUNT OF GRANT.—

(1) IN GENERAL.—From the amounts available to carry out this section for a fiscal year, the Secretary shall allot to each State an amount that bears the same ratio to the amounts available as the total farm income of the State derived from the production of tobacco during the 1995 through 1997 marketing years (as determined under paragraph (2)) bears to the total farm income of all States derived from the production of tobacco during the 1995 through 1997 marketing years.

(2) TOBACCO INCOME.—For the 1995 through 1997 marketing years, the Secretary shall determine the amount of farm income derived from the production of tobacco in each State and in all States.

(d) PAYMENTS.—

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

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

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

(e) USE AND DISTRIBUTION OF FUNDS.—

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

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

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

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

(D) activities that expand existing infrastructure, facilities, and services to capitalize on opportunities to diversify economies

in tobacco communities and that support the development of new industries or commercial ventures;

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

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

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

(H) initiatives designed to partially compensate tobacco warehouse owners for lost revenues and assist the tobacco warehouse owners in establishing successful business enterprises.

(2) TOBACCO-GROWING COUNTIES.—Assistance may be provided by a State under this section only to assist a county in the State that has been determined by the Secretary to have in excess of $100,000 in income derived from the production of tobacco during 1 or more of the 1995 through 1997 marketing years. For purposes of this section, the term ''tobacco-growing county'' includes a political subdivision surrounded within a State by a county that has been determined by the Secretary to have in excess of $100,000 in income derived from the production of tobacco during 1 or more of the 1995 through 1997 marketing years.

(3) DISTRIBUTION.—

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

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

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

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

(C) TOBACCO WAREHOUSE OWNER INITIATIVES.—Not less than 6 percent of the amounts received by a State under this section during each of fiscal years 1999 through 2008 shall be used to carry out initiatives described in paragraph (1)(H).

(D) TOBACCO-GROWING COUNTIES.—To be eligible to receive payments under this section, a State shall demonstrate to the Secretary that funding will be provided, during each 5-year period for which funding is provided under this section, for activities in each county in the State that has been determined under paragraph (2) to have in excess of $100,000 in income derived from the production of tobacco, in amounts that are at least equal to the product obtained by multiplying—

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

(ii) 50 percent of the total amounts received by a State under this section during the 5-year period.

(f) PREFERENCES IN HIRING.—A State may require recipients of funds under this section to provide a preference in employment to—

(1) an individual who—

(A) during the 1998 calendar year, was employed in the manufacture, processing, or warehousing of tobacco or tobacco products, or resided, in a county described in subsection (e)(2); and

(B) is eligible for assistance under the tobacco worker transition program established under section 1031; or

(2) an individual who—

(A) during the 1998 marketing year, carried out tobacco quota or relevant tobacco production activities in a county described in subsection (e)(2);

(B) is eligible for a farmer opportunity grant under subpart 9 of part A of title IV of the Higher Education Act of 1965; and

(C) has successfully completed a course of study at an institution of higher education.

(g) MAINTENANCE OF EFFORT.—

(1) IN GENERAL.—Subject to paragraph (2), a State shall provide an assurance to the Secretary that the amount of funds expended by the State and all counties in the State described in subsection (e)(2) for any activities funded under this section for a fiscal year is not less than 90 percent of the amount of funds expended by the State and counties for the activities for the preceding fiscal year.

(2) REDUCTION OF GRANT AMOUNT.—If a State does not provide an assurance described in paragraph (1), the Secretary shall reduce the amount of the grant determined under subsection (c) by an amount equal to the amount by which the amount of funds expended by the State and counties for the activities is less than 90 percent of the amount of funds expended by the State and counties for the activities for the preceding fiscal year, as determined by the Secretary.

(3) FEDERAL FUNDS.—For purposes of this subsection, the amount of funds expended by a State or county shall not include any amounts made available by the Federal Government.

SEC. 1024. FLUE-CURED TOBACCO PRODUCTION PERMITS.

The Agricultural Adjustment Act of 1938 is amended by inserting after section 317 (7 U.S.C. 1314c) the following:

''SEC. 317A. FLUE-CURED TOBACCO PRODUCTION PERMITS.

''(a) DEFINITIONS.—In this section:

''(1) INDIVIDUAL ACREAGE LIMITATION.—The term 'individual acreage limitation' means the number of acres of flue-cured tobacco that may be planted by the holder of a permit during a marketing year, calculated—

''(A) prior to—

''(i) any increase or decrease in the number due to undermarketings or overmarketings; and

''(ii) any reduction under subsection (i); and

''(B) in a manner that ensures that—

''(i) the total of all individual acreage limitations is equal to the national acreage allotment, less the reserve provided under subsection (h); and

''(ii) the individual acreage limitation for a marketing year bears the same ratio to the individual acreage limitation for the previous marketing year as the ratio that the national acreage allotment for the marketing year bears to the national acreage allotment for the previous marketing year, subject to adjustments by the Secretary to account for any reserve provided under subsection (h).

''(2) INDIVIDUAL MARKETING LIMITATION.—The term 'individual marketing limitation' means the number of pounds of flue-cured tobacco that may be marketed by the holder of a permit during a marketing year, calculated—

''(A) prior to—

''(i) any increase or decrease in the number due to undermarketings or overmarketings; and

''(ii) any reduction under subsection (i); and

''(B) in a manner that ensures that—

''(i) the total of all individual marketing limitations is equal to the national marketing quota, less the reserve provided under subsection (h); and

''(ii) the individual marketing limitation for a marketing year is obtained by multiplying the individual acreage limitation by the permit yield, prior to any adjustment for undermarketings or overmarketings.

''(3) INDIVIDUAL TOBACCO PRODUCTION PERMIT.—The term 'individual tobacco production permit' means a permit issued by the Secretary to a person authorizing the production of flue-cured tobacco for any marketing year during which this section is effective.

''(4) NATIONAL ACREAGE ALLOTMENT.—The term 'national acreage allotment' means the quantity determined by dividing—

''(A) the national marketing quota; by

''(B) the national average yield goal.

''(5) NATIONAL AVERAGE YIELD GOAL.—The term 'national average yield goal' means the national average yield for flue-cured tobacco during the 5 marketing years immediately preceding the marketing year for which the determination is being made.

''(6) NATIONAL MARKETING QUOTA.—For the 1999 and each subsequent crop of flue-cured tobacco, the term 'national marketing quota' for a marketing year means the quantity of flue-cured tobacco, as determined by the Secretary, that is not more than 103 percent nor less than 97 percent of the total of—

''(A) the aggregate of the quantities of flue-cured tobacco that domestic manufacturers of cigarettes estimate that the manufacturers intend to purchase on the United States auction markets or from producers during the marketing year, as compiled and determined under section 320A;

''(B) the average annual quantity of flue-cured tobacco exported from the United States during the 3 marketing years immediately preceding the marketing year for which the determination is being made; and

''(C) the quantity, if any, of flue-cured tobacco that the Secretary, in the discretion of the Secretary, determines is necessary to increase or decrease the inventory of the producer-owned cooperative marketing association that has entered into a loan agreement with the Commodity Credit Corporation to make price support available to producers of flue-cured tobacco to establish or maintain the inventory at the reserve stock level for flue-cured tobacco.

''(7) PERMIT YIELD.—The term 'permit yield' means the yield of tobacco per acre for an individual tobacco production permit holder that is—

''(A) based on a preliminary permit yield that is equal to the average yield during the 5 marketing years immediately preceding the marketing year for which the determination is made in the county where the holder of the permit is authorized to plant flue-cured tobacco, as determined by the Secretary, on the basis of actual yields of farms in the county; and

''(B) adjusted by a weighted national yield factor calculated by—

''(i) multiplying each preliminary permit yield by the individual acreage limitation, prior to adjustments for overmarketings, undermarketings, or reductions required under subsection (i); and

''(ii) dividing the sum of the products under clause (i) for all flue-cured individual tobacco production permit holders by the national acreage allotment.

''(b) INITIAL ISSUANCE OF PERMITS.—

''(1) TERMINATION OF FLUE-CURED MARKETING QUOTAS.—On the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act, farm marketing quotas as provided under section 317 shall no longer be in effect for flue-cured tobacco.

''(2) ISSUANCE OF PERMITS TO QUOTA HOLDERS THAT WERE PRINCIPAL PRODUCERS.—

''(A) IN GENERAL.—By January 15, 1999, each individual quota holder under section 317 that was a principal producer of flue-cured tobacco during the 1998 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

''(B) NOTIFICATION.—The Secretary shall notify the holder of each permit of the individual acreage limitation and the individual marketing limitation applicable to the holder for each marketing year.

''(C) INDIVIDUAL ACREAGE LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by the quota holder for the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

''(D) INDIVIDUAL MARKETING LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the farm marketing quota that was allotted to a farm owned by the quota holder for the 1997 marketing year shall be considered the individual marketing limitation for the previous marketing year.

''(3) QUOTA HOLDERS THAT WERE NOT PRINCIPAL PRODUCERS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), on approval through a referendum under subsection (c)—

''(i) each person that was a quota holder under section 317 but that was not a principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall not be eligible to own a permit; and

''(ii) the Secretary shall not issue any permit during the 25-year period beginning on the date of enactment of this Act to any person that was a quota holder and was not the principal producer of flue-cured tobacco during the 1997 marketing year.

''(B) MEDICAL HARDSHIPS AND CROP DISASTERS.—Subparagraph (A) shall not apply to a person that would have been the principal producer of flue-cured tobacco during the 1997 marketing year but for a medical hardship or crop disaster that occurred during the 1997 marketing year.

''(C) ADMINISTRATION.—The Secretary shall issue regulations—

''(i) defining the term 'person' for the purpose of this paragraph; and

''(ii) prescribing such rules as the Secretary determines are necessary to ensure a fair and reasonable application of the prohibition established under this paragraph.

''(4) ISSUANCE OF PERMITS TO PRINCIPAL PRODUCERS OF FLUE-CURED TOBACCO.—

''(A) IN GENERAL.—By January 15, 1999, each individual quota lessee or quota tenant (as defined in section 1002 of the LEAF Act) that was the principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

''(B) INDIVIDUAL ACREAGE LIMITATIONS.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by a quota holder for whom the quota lessee or quota tenant was the principal producer of flue-cured tobacco during the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

''(C) INDIVIDUAL MARKETING LIMITATIONS.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the individual marketing limitation for the previous year for an individual described in this paragraph shall be calculated by multiplying—

''(i) the farm marketing quota that was allotted to a farm owned by a quota holder for whom the quota lessee or quota holder was the principal producer of flue-cured tobacco during the 1997 marketing year, by

''(ii) the ratio that—

''(I) the sum of all flue-cured tobacco farm marketing quotas for the 1997 marketing year prior to adjusting for undermarketing and overmarketing; bears to

''(II) the sum of all flue-cured tobacco farm marketing quotas for the 1998 marketing year, after adjusting for undermarketing and overmarketing.

''(D) SPECIAL RULE FOR TENANT OF LEASED FLUE-CURED TOBACCO.—If the farm marketing quota or farm acreage allotment of a quota holder was produced pursuant to an agreement under which a quota lessee rented land from a quota holder and a quota tenant was the primary producer, as determined by the Secretary, of flue-cured tobacco pursuant to the farm marketing quota or farm acreage allotment, the farm marketing quota or farm acreage allotment shall be divided proportionately between the quota lessee and quota tenant for purposes of issuing individual tobacco production permits under this paragraph.

''(5) OPTION OF QUOTA LESSEE OR QUOTA TENANT TO RELINQUISH PERMIT.—

''(A) IN GENERAL.—Each quota lessee or quota tenant that is issued an individual tobacco production permit under paragraph (4) shall be given the option of relinquishing the permit in exchange for payments made under section 1021(e)(5) of the LEAF Act.

''(B) NOTIFICATION.—A quota lessee or quota tenant that is issued an individual tobacco production permit shall give notification of the intention to exercise the option at such time and in such manner as the Secretary may require, but not later than 45 days after the permit is issued.

''(C) REALLOCATION OF PERMIT.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit relinquished under this paragraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

''(6) ACTIVE PRODUCER REQUIREMENT.—

''(A) REQUIREMENT FOR SHARING RISK.—No individual tobacco production permit shall be issued to, or maintained by, a person that does not fully share in the risk of producing a crop of flue-cured tobacco.

''(B) CRITERIA FOR SHARING RISK.—For purposes of this paragraph, a person shall be considered to have fully shared in the risk of production of a crop if—

''(i) the investment of the person in the production of the crop is not less than 100 percent of the costs of production associated with the crop;

''(ii) the amount of the person's return on the investment is dependent solely on the sale price of the crop; and

''(iii) the person may not receive any of the return before the sale of the crop.

''(C) PERSONS NOT SHARING RISK.—

''(i) FORFEITURE.—Any person that fails to fully share in the risks of production under this paragraph shall forfeit an individual tobacco production permit if, after notice and opportunity for a hearing, the appropriate county committee determines that the conditions for forfeiture exist.

''(ii) REALLOCATION.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit forfeited under this subparagraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

''(D) NOTICE.—Notice of any determination made by a county committee under subparagraph (C) shall be mailed, as soon as practicable, to the person involved.

''(E) REVIEW.—If the person is dissatisfied with the determination, the person may request, not later than 15 days after notice of the determination is received, a review of the determination by a local review committee under the procedures established under section 363 for farm marketing quotas.

''(7) COUNTY OF ORIGIN REQUIREMENT.—For the 1999 and each subsequent crop of flue-cured tobacco, all tobacco produced pursuant to an individual tobacco production permit shall be produced in the same county in which was produced the tobacco produced during the 1997 marketing year pursuant to the farm marketing quota or farm acreage allotment on which the individual tobacco production permit is based.

''(8) COUNTY PRODUCTION POOL.—

''(A) IN GENERAL.—The authority to produce flue-cured tobacco under an individual tobacco production permit that is forfeited, relinquished, or surrendered within a county may be reallocated by the appropriate county committee to tobacco producers located in the same county that apply to the committee to produce flue-cured tobacco under the authority.

''(B) PRIORITY.—In reallocating individual tobacco production permits under this paragraph, a county committee shall provide a priority to—

''(i) an active tobacco producer that controls the authority to produce a quantity of flue-cured tobacco under an individual tobacco production permit that is equal to or less than the average number of pounds of flue-cured tobacco that was produced by the producer during each of the 1995 through 1997 marketing years, as determined by the Secretary; and

''(ii) a new tobacco producer.

''(C) CRITERIA.—Individual tobacco production permits shall be reallocated by the appropriate county committee under this paragraph in a fair and equitable manner after taking into consideration—

''(i) the experience of the producer;

''(ii) the availability of land, labor, and equipment for the production of tobacco;

''(iii) crop rotation practices; and

''(iv) the soil and other physical factors affecting the production of tobacco.

''(D) MEDICAL HARDSHIPS AND CROP DISASTERS.—Notwithstanding any other provision of this Act, the Secretary may issue an individual tobacco production permit under this paragraph to a producer that is otherwise ineligible for the permit due to a medical hardship or crop disaster that occurred during the 1997 marketing year.

''(c) REFERENDUM.—

''(1) ANNOUNCEMENT OF QUOTA AND ALLOTMENT.—Not later than December 15, 1998, the Secretary pursuant to subsection (b) shall determine and announce—

''(A) the quantity of the national marketing quota for flue-cured tobacco for the 1999 marketing year; and

''(B) the national acreage allotment and national average yield goal for the 1999 crop of flue-cured tobacco.

''(2) SPECIAL REFERENDUM.—Not later than 30 days after the announcement of the quantity of the national marketing quota in 2001, the Secretary shall conduct a special referendum of the tobacco production permit holders that were the principal producers of flue-cured tobacco of the 1997 crop to determine whether the producers approve or oppose the continuation of individual tobacco production permits on an acreage-poundage basis as provided in this section for the 2002 through 2004 marketing years.

''(3) APPROVAL OF PERMITS.—If the Secretary determines that more than 66⅔ percent of the producers voting in the special referendum approve the establishment of individual tobacco production permits on an acreage-poundage basis—

''(A) individual tobacco production permits on an acreage-poundage basis as provided in this section shall be in effect for the 2002 through 2004 marketing years; and

''(B) marketing quotas on an acreage-poundage basis shall cease to be in effect for the 2002 through 2004 marketing years.

''(4) DISAPPROVAL OF PERMITS.—If individual tobacco production permits on an acreage-poundage basis are not approved by more than 66⅔ percent of the producers voting in the referendum, no marketing quotas on an acreage-poundage basis shall continue in effect that were proclaimed under section 317 prior to the referendum.

''(5) APPLICABLE MARKETING YEARS.—If individual tobacco production permits have been made effective for flue-cured tobacco on an acreage-poundage basis pursuant to this subsection, the Secretary shall, not later than December 15 of any future marketing year, announce a national marketing quota for that type of tobacco for the next 3 succeeding marketing years if the marketing year is the last year of 3 consecutive years for which individual tobacco production permits previously proclaimed will be in effect.

''(d) ANNUAL ANNOUNCEMENT OF NATIONAL MARKETING QUOTA.—The Secretary shall determine and announce the national marketing quota, national acreage allotment, and national average yield goal for the second and third marketing years of any 3-year period for which individual tobacco production permits are in effect on or before the December 15 immediately preceding the beginning of the marketing year to which the quota, allotment, and goal apply.

''(e) ANNUAL ANNOUNCEMENT OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—If a national marketing quota, national acreage allotment, and national average yield goal are determined and announced, the Secretary shall provide for the determination of individual tobacco production permits, individual acreage limitations, and individual marketing limitations under this section for the crop and marketing year covered by the determinations.

''(f) ASSIGNMENT OF TOBACCO PRODUCTION PERMITS.—

''(1) LIMITATION TO SAME COUNTY.—Each individual tobacco production permit holder shall assign the individual acreage limitation and individual marketing limitation to 1 or more farms located within the county of origin of the individual tobacco production permit.

''(2) FILING WITH COUNTY COMMITTEE.—The assignment of an individual acreage limitation and individual marketing limitation shall not be effective until evidence of the assignment, in such form as required by the Secretary, is filed with and determined by the county committee for the county in which the farm involved is located.

''(3) LIMITATION ON TILLABLE CROPLAND.—The total acreage assigned to any farm under this subsection shall not exceed the acreage of cropland on the farm.

''(g) PROHIBITION ON SALE OR LEASING OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the Secretary shall not permit the sale and transfer, or lease and transfer, of an individual tobacco production permit issued under this section.

''(2) TRANSFER TO DESCENDANTS.—

''(A) DEATH.—In the case of the death of a person to whom an individual tobacco production permit has been issued under this section, the permit shall transfer to the surviving spouse of the person or, if there is no surviving spouse, to surviving direct descendants of the person.

''(B) TEMPORARY INABILITY TO FARM.—In the case of the death of a person to whom an individual tobacco production permit has been issued under this section and whose descendants are temporarily unable to produce a crop of tobacco, the Secretary may hold the license in the name of the descendants for a period of not more than 18 months.

''(3) VOLUNTARY TRANSFERS.—A person that is eligible to obtain an individual tobacco production permit under this section may at any time transfer all or part of the permit to the person's spouse or direct descendants that are actively engaged in the production of tobacco.

''(h) RESERVE.—

''(1) IN GENERAL.—For each marketing year for which individual tobacco production permits are in effect under this section, the Secretary may establish a reserve from the national marketing quota in a quantity equal to not more than 1 percent of the national marketing quota to be available for—

''(A) making corrections of errors in individual acreage limitations and individual marketing limitations;

''(B) adjusting inequities; and

''(C) establishing individual tobacco production permits for new tobacco producers (except that not less than two-thirds of the reserve shall be for establishing such permits for new tobacco producers).

''(2) ELIGIBLE PERSONS.—To be eligible for a new individual tobacco production permit, a producer must not have been the principal producer of tobacco during the immediately preceding 5 years.

''(3) APPORTIONMENT FOR NEW PRODUCERS.—The part of the reserve held for apportionment to new individual tobacco producers shall be allotted on the basis of—

''(A) land, labor, and equipment available for the production of tobacco;

''(B) crop rotation practices;

''(C) soil and other physical factors affecting the production of tobacco; and

''(D) the past tobacco-producing experience of the producer.

''(4) PERMIT YIELD.—The permit yield for any producer for which a new individual tobacco production permit is established shall be determined on the basis of available productivity data for the land involved and yields for similar farms in the same county.

''(i) PENALTIES.—

''(1) PRODUCTION ON OTHER FARMS.—If any quantity of tobacco is marketed as having been produced under an individual acreage limitation or individual marketing limitation assigned to a farm but was produced on a different farm, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

''(2) FALSE REPORT.—If a person to which an individual tobacco production permit is issued files, or aids or acquiesces in the filing of, a false report with respect to the assignment of an individual acreage limitation or individual marketing limitation for a quantity of tobacco, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

''(j) MARKETING PENALTIES.—

''(1) IN GENERAL.—When individual tobacco production permits under this section are in effect, provisions with respect to penalties for the marketing of excess tobacco and the other provisions contained in section 314 shall apply in the same manner and to the same extent as they would apply under section 317(g) if farm marketing quotas were in effect.

''(2) PRODUCTION ON OTHER FARMS.—If a producer falsely identifies tobacco as having been produced on or marketed from a farm to which an individual acreage limitation or individual marketing limitation has been assigned, future individual acreage limitations and individual marketing limitations shall be forfeited.''.

SEC. 1025. MODIFICATIONS IN FEDERAL TOBACCO PROGRAMS.

(a) PROGRAM REFERENDA.—Section 312(c) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1312(c)) is amended—

(1) by striking ''(c) Within thirty'' and inserting the following:

''(c) REFERENDA ON QUOTAS.—

''(1) IN GENERAL.—Not later than 30''; and

(2) by adding at the end the following:

''(2) REFERENDA ON PROGRAM CHANGES.—

''(A) IN GENERAL.—In the case of any type of tobacco for which marketing quotas are in effect, on the receipt of a petition from more than 5 percent of the producers of that type of tobacco in a State, the Secretary shall conduct a statewide referendum on any proposal related to the lease and transfer of tobacco quota within a State requested by the petition that is authorized under this part.

''(B) APPROVAL OF PROPOSALS.—If a majority of producers of the type of tobacco in the State approve a proposal in a referendum conducted under subparagraph (A), the Secretary shall implement the proposal in a manner that applies to all producers and quota holders of that type of tobacco in the State.''.

(b) PURCHASE REQUIREMENTS.—Section 320B of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314h) is amended—

(1) in subsection (c)—

(A) by striking ''(c) The amount'' and inserting ''(c) AMOUNT OF PENALTY.—For the 1998 and subsequent marketing years, the amount''; and

(B) by striking paragraph (1) and inserting the following:

''(1) 105 percent of the average market price for the type of tobacco involved during the preceding marketing year; and''.

(c) ELIMINATION OF TOBACCO MARKETING ASSESSMENT.—

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

(2) CONFORMING AMENDMENT.—Section 422(c) of the Uruguay Round Agreements Act (Public Law 103–465; 7 U.S.C. 1445 note) is amended by striking ''section 106(g), 106A, or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445(g), 1445–1, or 1445–2)'' and inserting ''section 106A or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–1, 1445–2)''.

(d) ADJUSTMENT FOR LAND RENTAL COSTS.—Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended by adding at the end the following:

''(h) ADJUSTMENT FOR LAND RENTAL COSTS.—For each of the 1999 and 2000 marketing years for flue-cured tobacco, after consultation with producers, State farm organizations and cooperative associations, the Secretary shall make an adjustment in the price support level for flue-cured tobacco equal to the annual change in the average cost per pound to flue-cured producers, as determined by the Secretary, under agreements through which producers rent land to produce flue-cured tobacco.''.

(e) FIRE-CURED AND DARK AIR-CURED TOBACCO PROGRAMS.—

(1) LIMITATION ON TRANSFERS.—Section 318(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314d(g)) is amended—

(A) by striking ''ten'' and inserting ''30''; and

(B) by inserting ''during any crop year'' after ''transferred to any farm''.

(2) LOSS OF ALLOTMENT OR QUOTA THROUGH UNDERPLANTING.—Section 318 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314d) is amended by adding at the end the following:

''(k) LOSS OF ALLOTMENT OR QUOTA THROUGH UNDERPLANTING.—Effective for the 1999 and subsequent marketing years, no acreage allotment or acreage-poundage quota, other than a new marketing quota, shall be established for a farm on which no fire-cured or dark air-cured tobacco was planted or considered planted during at least 2 of the 3 crop years immediately preceding the crop year for which the acreage allotment or acreage-poundage quota would otherwise be established.''.

(f) EXPANSION OF TYPES OF TOBACCO SUBJECT TO NO NET COST ASSESSMENT.—

(1) NO NET COST TOBACCO FUND.—Section 106A(d)(1)(A) of the Agricultural Act of 1949 (7 U.S.C. 1445–1(d)(1)(A)) is amended—

(A) in clause (ii), by inserting after ''Burley quota tobacco'' the following: ''and fire-cured and dark air-cured quota tobacco''; and

(B) in clause (iii)—

(i) in the matter preceding subclause (I), by striking ''Flue-cured or Burley tobacco'' and inserting ''each kind of tobacco for which price support is made available under this Act, and each kind of like tobacco,''; and

(ii) by striking subclause (II) and inserting the following:

''(II) the sum of the amount of the per pound producer contribution and purchaser assessment (if any) for the kind of tobacco payable under clauses (i) and (ii); and''.

(2) NO NET COST TOBACCO ACCOUNT.—Section 106B(d)(1) of the Agricultural Act of 1949 (7 U.S.C. 1445–2(d)(1)) is amended—

(A) in subparagraph (B), by inserting after ''Burley quota tobacco'' the following: ''and fire-cured and dark air-cured tobacco''; and

(B) in subparagraph (C), by striking ''Flue-cured and Burley tobacco'' and inserting ''each kind of tobacco for which price support is made available under this Act, and each kind of like tobacco,''.

Subtitle C—Farmer and Worker Transition Assistance

SEC. 1031. TOBACCO WORKER TRANSITION PROGRAM.

(a) GROUP ELIGIBILITY REQUIREMENTS.—

(1) CRITERIA.—A group of workers (including workers in any firm or subdivision of a firm involved in the manufacture, processing, or warehousing of tobacco or tobacco products) shall be certified as eligible to apply for adjustment assistance under this section pursuant to a petition filed under subsection (b) if the Secretary of Labor determines that a significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated, and—

(A) the sales or production, or both, of the firm or subdivision have decreased absolutely; and

(B) the implementation of the national tobacco settlement contributed importantly to the workers' separation or threat of separation and to the decline in the sales or production of the firm or subdivision.

(2) DEFINITION OF CONTRIBUTED IMPORTANTLY.—In paragraph (1)(B), the term ''contributed importantly'' means a cause that is important but not necessarily more important than any other cause.

(3) REGULATIONS.—The Secretary shall issue regulations relating to the application of the criteria described in paragraph (1) in making preliminary findings under subsection (b) and determinations under subsection (c).

(b) PRELIMINARY FINDINGS AND BASIC ASSISTANCE.—

(1) FILING OF PETITIONS.—A petition for certification of eligibility to apply for adjustment assistance under this section may be filed by a group of workers (including workers in any firm or subdivision of a firm involved in the manufacture, processing, or warehousing of tobacco or tobacco products) or by their certified or recognized union or other duly authorized representative with the Governor of the State in which the workers' firm or subdivision thereof is located.

(2) FINDINGS AND ASSISTANCE.—On receipt of a petition under paragraph (1), the Governor shall—

(A) notify the Secretary that the Governor has received the petition;

(B) within 10 days after receiving the petition—

(i) make a preliminary finding as to whether the petition meets the criteria described in subsection (a)(1); and

(ii) transmit the petition, together with a statement of the finding under clause (i) and reasons for the finding, to the Secretary for action under subsection (c); and

(C) if the preliminary finding under subparagraph (B)(i) is affirmative, ensure that rapid response and basic readjustment services authorized under other Federal laws are made available to the workers.

(c) REVIEW OF PETITIONS BY SECRETARY; CERTIFICATIONS.—

(1) IN GENERAL.—The Secretary, within 30 days after receiving a petition under subsection (b)(2)(B)(ii), shall determine whether the petition meets the criteria described in subsection (a)(1). On a determination that the petition meets the criteria, the Secretary shall issue to workers covered by the petition a certification of eligibility to apply for the assistance described in subsection (d).

(2) DENIAL OF CERTIFICATION.—On the denial of a certification with respect to a petition under paragraph (1), the Secretary shall review the petition in accordance with the requirements of other applicable assistance programs to determine if the workers may be certified under the other programs.

(d) COMPREHENSIVE ASSISTANCE.—

(1) IN GENERAL.—Workers covered by a certification issued by the Secretary under subsection (c)(1) shall be provided with benefits and services described in paragraph (2) in the same manner and to the same extent as workers covered under a certification under subchapter A of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.), except that the total amount of payments under this section for any fiscal year shall not exceed $25,000,000.

(2) BENEFITS AND SERVICES.—The benefits and services described in this paragraph are the following:

(A) Employment services of the type described in section 235 of the Trade Act of 1974 (19 U.S.C. 2295).

(B) Training described in section 236 of the Trade Act of 1974 (19 U.S.C. 2296), except that notwithstanding the provisions of section 236(a)(2)(A) of that Act, the total amount of payments for training under this section for any fiscal year shall not exceed $12,500,000.

(C) Tobacco worker readjustment allowances, which shall be provided in the same manner as trade readjustment allowances are provided under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2291 et seq.), except that—

(i) the provisions of sections 231(a)(5)(C) and 231(c) of that Act (19 U.S.C. 2291(a)(5)(C), 2291(c)), authorizing the payment of trade readjustment allowances on a finding that it is not feasible or appropriate to approve a training program for a worker, shall not be applicable to payment of allowances under this section; and

(ii) notwithstanding the provisions of section 233(b) of that Act (19 U.S.C. 2293(b)), in order for a worker to qualify for tobacco readjustment allowances under this section, the worker shall be enrolled in a training program approved by the Secretary of the type described in section 236(a) of that Act (19 U.S.C. 2296(a)) by the later of—

(I) the last day of the 16th week of the worker's initial unemployment compensation benefit period; or

(II) the last day of the 6th week after the week in which the Secretary issues a certification covering the worker.

In cases of extenuating circumstances relating to enrollment of a worker in a training program under this section, the Secretary may extend the time for enrollment for a period of not to exceed 30 days.

(D) Job search allowances of the type described in section 237 of the Trade Act of 1974 (19 U.S.C. 2297).

(E) Relocation allowances of the type described in section 238 of the Trade Act of 1974 (19 U.S.C. 2298).

(e) INELIGIBILITY OF INDIVIDUALS RECEIVING PAYMENTS FOR LOST TOBACCO QUOTA.—No benefits or services may be provided under this section to any individual who has received payments for lost tobacco quota under section 1021.

(f) FUNDING.—Of the amounts appropriated to carry out this title, the Secretary may use not to exceed $25,000,000 for each of fiscal years 1999 through 2008 to provide assistance under this section.

(g) EFFECTIVE DATE.—This section shall take effect on the date that is the later of—

(1) October l, 1998; or

(2) the date of enactment of this Act.

(h) TERMINATION DATE.—No assistance, vouchers, allowances, or other payments may be provided under this section after the date that is the earlier of—

(1) the date that is 10 years after the effective date of this section under subsection (g); or

(2) the date on which legislation establishing a program providing dislocated workers with comprehensive assistance substantially similar to the assistance provided by this section becomes effective.

SEC. 1032. FARMER OPPORTUNITY GRANTS.

Part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) is amended by adding at the end the following:

''Subpart 9—Farmer Opportunity Grants

''SEC. 420D. STATEMENT OF PURPOSE.

''It is the purpose of this subpart to assist in making available the benefits of post-secondary education to eligible students (determined in accordance with section 420F) in institutions of higher education by providing farmer opportunity grants to all eligible students.

''SEC. 420E. PROGRAM AUTHORITY; AMOUNT AND DETERMINATIONS; APPLICATIONS.

''(a) PROGRAM AUTHORITY AND METHOD OF DISTRIBUTION.—

''(1) PROGRAM AUTHORITY.—From amounts made available under section 1011(d)(5) of the LEAF Act, the Secretary, during the period beginning July 1, 1999, and ending September 30, 2024, shall pay to each eligible institution such sums as may be necessary to pay to each eligible student (determined in accordance with section 420F) for each academic year during which that student is in attendance at an institution of higher education, as an undergraduate, a farmer opportunity grant in the amount for which that student is eligible, as determined pursuant to subsection (b). Not less than 85 percent of the sums shall be advanced to eligible institutions prior to the start of each payment period and shall be based on an amount requested by the institution as needed to pay

eligible students, except that this sentence shall not be construed to limit the authority of the Secretary to place an institution on a reimbursement system of payment.

''(2) CONSTRUCTION.—Nothing in this section shall be construed to prohibit the Secretary from paying directly to students, in advance of the beginning of the academic term, an amount for which the students are eligible, in cases where the eligible institution elects not to participate in the disbursement system required by paragraph (1).

''(3) DESIGNATION.—Grants made under this subpart shall be known as 'farmer opportunity grants'.

''(b) AMOUNT OF GRANTS.—

''(1) AMOUNTS.—

''(A) IN GENERAL.—The amount of the grant for a student eligible under this subpart shall be—

''(i) $1,700 for each of the academic years 1999–2000 through 2003–2004;

''(ii) $2,000 for each of the academic years 2004–2005 through 2008–2009;

''(iii) $2,300 for each of the academic years 2009–2010 through 2013–2014;

''(iv) $2,600 for each of the academic years 2014–2015 through 2018–2019; and

''(v) $2,900 for each of the academic years 2019–2020 through 2023–2024.

''(B) PART-TIME RULE.—In any case where a student attends an institution of higher education on less than a full-time basis (including a student who attends an institution of higher education on less than a half-time basis) during any academic year, the amount of the grant for which that student is eligible shall be reduced in proportion to the degree to which that student is not so attending on a full-time basis, in accordance with a schedule of reductions established by the Secretary for the purposes of this subparagraph, computed in accordance with this subpart. The schedule of reductions shall be established by regulation and published in the Federal Register.

''(2) MAXIMUM.—No grant under this subpart shall exceed the cost of attendance (as described in section 472) at the institution at which that student is in attendance. If, with respect to any student, it is determined that the amount of a grant exceeds the cost of attendance for that year, the amount of the grant shall be reduced to an amount equal to the cost of attendance at the institution.

''(3) PROHIBITION.—No grant shall be awarded under this subpart to any individual who is incarcerated in any Federal, State, or local penal institution.

''(c) PERIOD OF ELIGIBILITY FOR GRANTS.—

''(1) IN GENERAL.—The period during which a student may receive grants shall be the period required for the completion of the first undergraduate baccalaureate course of study being pursued by that student at the institution at which the student is in attendance, except that any period during which the student is enrolled in a noncredit or remedial course of study as described in paragraph (2) shall not be counted for the purpose of this paragraph.

''(2) CONSTRUCTION.—Nothing in this section shall be construed to—

''(A) exclude from eligibility courses of study that are noncredit or remedial in nature and that are determined by the institution to be necessary to help the student be prepared for the pursuit of a first undergraduate baccalaureate degree or certificate or, in the case of courses in English language instruction, to be necessary to enable the student to utilize already existing knowledge, training, or skills; and

''(B) exclude from eligibility programs of study abroad that are approved for credit by the home institution at which the student is enrolled.

''(3) PROHIBITION.—No student is entitled to receive farmer opportunity grant payments concurrently from more than 1 institution or from the Secretary and an institution.

''(d) APPLICATIONS FOR GRANTS.—

''(1) IN GENERAL.—The Secretary shall from time to time set dates by which students shall file applications for grants under this subpart. The filing of applications under this subpart shall be coordinated with the filing of applications under section 401(c).

''(2) INFORMATION AND ASSURANCES.—Each student desiring a grant for any year shall file with the Secretary an application for the grant containing such information and assurances as the Secretary may deem necessary to enable the Secretary to carry out the Secretary's functions and responsibilities under this subpart.

''(e) DISTRIBUTION OF GRANTS TO STUDENTS.—Payments under this section shall be made in accordance with regulations promulgated by the Secretary for such purpose, in such manner as will best accomplish the purpose of this section. Any disbursement allowed to be made by crediting the student's account shall be limited to tuition and fees and, in the case of institutionally owned housing, room and board. The student may elect to have the institution provide other such goods and services by crediting the student's account.

''(f) INSUFFICIENT FUNDING.—If, for any fiscal year, the funds made available to carry out this subpart are insufficient to satisfy fully all grants for students determined to be eligible under section 420F, the amount of the grant provided under subsection (b) shall be reduced on a pro rata basis among all eligible students.

''(g) TREATMENT OF INSTITUTIONS AND STUDENTS UNDER OTHER LAWS.—Any institution of higher education that enters into an agreement with the Secretary to disburse to students attending that institution the amounts those students are eligible to receive under this subpart shall not be deemed, by virtue of the agreement, to be a contractor maintaining a system of records to accomplish a function of the Secretary. Recipients of farmer opportunity grants shall not be considered to be individual grantees for purposes of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.).

''SEC. 420F. STUDENT ELIGIBILITY.

''(a) IN GENERAL.—In order to receive any grant under this subpart, a student shall—

''(1) be a member of a tobacco farm family in accordance with subsection (b);

''(2) be enrolled or accepted for enrollment in a degree, certificate, or other program (including a program of study abroad approved for credit by the eligible institution at which the student is enrolled) leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with section 487, and not be enrolled in an elementary or secondary school;

''(3) if the student is presently enrolled at an institution of higher education, be maintaining satisfactory progress in the course of study the student is pursuing in accordance with subsection (c);

''(4) not owe a refund on grants previously received at any institution of higher education under this title, or be in default on any loan from a student loan fund at any institution provided for in part D, or a loan made, insured, or guaranteed by the Secretary under this title for attendance at any institution;

''(5) file with the institution of higher education that the student intends to attend, or is attending, a document, that need not be notarized, but that shall include—

''(A) a statement of educational purpose stating that the money attributable to the grant will be used solely for expenses related to attendance or continued attendance at the institution; and

''(B) the student's social security number; and

''(6) be a citizen of the United States.

''(b) TOBACCO FARM FAMILIES.—

''(1) IN GENERAL.—For the purpose of subsection (a)(1), a student is a member of a tobacco farm family if during calendar year 1998 the student was—

''(A) an individual who—

''(i) is a participating tobacco producer (as defined in section 1002 of the LEAF Act); or

''(ii) is otherwise actively engaged in the production of tobacco;

''(B) a spouse, son, daughter, stepson, or stepdaughter of an individual described in subparagraph (A);

''(C) an individual—

''(i) who was a brother, sister, stepbrother, stepsister, son-in-law, or daughter-in-law of an individual described in subparagraph (A); and

''(ii) whose principal place of residence was the home of the individual described in subparagraph (A); or

''(D) an individual who was a dependent (within the meaning of section 152 of the Internal Revenue Code of 1986) of an individual described in subparagraph (A).

''(2) ADMINISTRATION.—On request, the Secretary of Agriculture shall provide to the Secretary such information as is necessary to carry out this subsection.

''(c) SATISFACTORY PROGRESS.—

''(1) IN GENERAL.—For the purpose of subsection (a)(3), a student is maintaining satisfactory progress if—

''(A) the institution at which the student is in attendance reviews the progress of the student at the end of each academic year, or its equivalent, as determined by the institution; and

''(B) the student has at least a cumulative C average or its equivalent, or academic standing consistent with the requirements for graduation, as determined by the institution, at the end of the second such academic year.

''(2) SPECIAL RULE.—Whenever a student fails to meet the eligibility requirements of subsection (a)(3) as a result of the application of this subsection and subsequent to that failure the student has academic standing consistent with the requirements for graduation, as determined by the institution, for any grading period, the student may, subject to this subsection, again be eligible under subsection (a)(3) for a grant under this subpart.

''(3) WAIVER.—Any institution of higher education at which the student is in attendance may waive paragraph (1) or (2) for undue hardship based on—

''(A) the death of a relative of the student;

''(B) the personal injury or illness of the student; or

''(C) special circumstances as determined by the institution.

''(d) STUDENTS WHO ARE NOT SECONDARY SCHOOL GRADUATES.—In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of the certificate, to be eligible for any assistance under this subpart, the student shall meet either 1 of the following standards:

''(1) EXAMINATION.—The student shall take an independently administered examination and shall achieve a score, specified by the Secretary, demonstrating that the student can benefit from the education or training being offered. The examination shall be approved by the Secretary on the basis of compliance with such standards for development, administration, and scoring as the Secretary may prescribe in regulations.

''(2) DETERMINATION.—The student shall be determined as having the ability to benefit from the education or training in accordance with such process as the State shall prescribe. Any such process described or approved by a State for the purposes of this section shall be effective 6 months after the date of submission to the Secretary unless the Secretary disapproves the process. In determining whether to approve or disapprove the process, the Secretary shall take into account the effectiveness of the process in enabling students without secondary school diplomas or the recognized equivalent to benefit from the instruction offered by institutions utilizing the process, and shall also take into account the cultural diversity, economic circumstances, and educational preparation of the populations served by the institutions.

''(e) SPECIAL RULE FOR CORRESPONDENCE COURSES.—A student shall not be eligible to receive a grant under this subpart for a correspondence course unless the course is part of a program leading to an associate, bachelor, or graduate degree.

''(f) COURSES OFFERED THROUGH TELECOMMUNICATIONS.—

''(1) RELATION TO CORRESPONDENCE COURSES.—A student enrolled in a course of instruction at an eligible institution of higher education (other than an institute or school that meets the definition in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)(C))) that is offered in whole or in part through telecommunications and leads to a recognized associate, bachelor, or graduate degree conferred by the institution shall not be considered to be enrolled in correspondence courses unless the total amount of telecommunications and correspondence courses at the institution equals or exceeds 50 percent of the courses.

''(2) RESTRICTION OR REDUCTIONS OF FINANCIAL AID.—A student's eligibility to receive a grant under this subpart may be reduced if a financial aid officer determines under the discretionary authority provided in section 479A that telecommunications instruction results in a substantially reduced cost of attendance to the student.

''(3) DEFINITION.—For the purposes of this subsection, the term 'telecommunications' means the use of television, audio, or computer transmission, including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, computer conferencing, or video cassettes or discs, except that the term does not include a course that is delivered using video cassette or disc recordings at the institution and that is not delivered in person to other students of that institution.

''(g) STUDY ABROAD.—Nothing in this subpart shall be construed to limit or otherwise prohibit access to study abroad programs approved by the home institution at which a student is enrolled. An otherwise eligible student who is engaged in a program of study abroad approved for academic credit by the home institution at which the student is enrolled shall be eligible to receive a grant under this subpart, without regard to whether the study abroad program is required as part of the student's degree program.

''(h) VERIFICATION OF SOCIAL SECURITY NUMBER.—The Secretary, in cooperation with the Commissioner of Social Security, shall verify any social security number provided by a student to an eligible institution under subsection (a)(5)(B) and shall enforce the following conditions:

''(1) PENDING VERIFICATION.—Except as provided in paragraphs (2) and (3), an institution shall not deny, reduce, delay, or terminate a student's eligibility for assistance under this subpart because social security number verification is pending.

''(2) DENIAL OR TERMINATION.—If there is a determination by the Secretary that the social security number provided to an eligible institution by a student is incorrect, the institution shall deny or terminate the student's eligibility for any grant under this subpart until such time as the student provides documented evidence of a social security number that is determined by the institution to be correct.

''(3) CONSTRUCTION.—Nothing in this subsection shall be construed to permit the Secretary to take any compliance, disallowance, penalty, or other regulatory action against—

''(A) any institution of higher education with respect to any error in a social security number, unless the error was a result of fraud on the part of the institution; or

''(B) any student with respect to any error in a social security number, unless the error was a result of fraud on the part of the student.''.

Subtitle D—Immunity

SEC. 1041. GENERAL IMMUNITY FOR TOBACCO PRODUCERS AND TOBACCO WAREHOUSE OWNERS.

Notwithstanding any other provision of this title, a participating tobacco producer, tobacco-related growers association, or tobacco warehouse owner or employee may not be subject to liability in any Federal or State court for any cause of action resulting from the failure of any tobacco product manufacturer, distributor, or retailer to comply with the National Tobacco Policy and Youth Smoking Reduction Act.

TITLE XI—MISCELLANEOUS PROVISIONS

Subtitle A—International Provisions

SEC. 1101. POLICY.

It shall be the policy of the United States government to pursue bilateral and multilateral agreements that include measures designed to—

(1) restrict or eliminate tobacco advertising and promotion aimed at children;

(2) require effective warning labels on packages and advertisements of tobacco products;

(3) require disclosure of tobacco ingredient information to the public;

(4) limit access to tobacco products by young people;

(5) reduce smuggling of tobacco and tobacco products;

(6) ensure public protection from environmental tobacco smoke; and

(7) promote tobacco product policy and program information sharing between or among the parties to those agreements.

SEC. 1102. TOBACCO CONTROL NEGOTIATIONS.

The President, in consultation with the Secretary of State, the Secretary of Health and Human Services, and the United States Trade Representative, shall—

(1) act as the lead negotiator for the United States in the area of international tobacco control;

(2) coordinate among U.S. foreign policy and trade negotiators in the area of effective international tobacco control policy;

(3) work closely with non-governmental groups, including public health groups; and

(4) report annually to the Congress on the progress of negotiations to achieve effective international tobacco control policy.

SEC. 1103. REPORT TO CONGRESS.

Not later than 150 days after the enactment of this Act and annually thereafter, the Secretary of Health and Human Services shall transmit to the Congress a report identifying the international fora wherein international tobacco control efforts may be negotiated.

SEC. 1104. FUNDING.

There are authorized such sums as are necessary to carry out the provisions of this subtitle.

SEC. 1105. PROHIBITION OF FUNDS TO FACILITATE THE EXPORTATION OR PROMOTION OF TOBACCO.

(a) IN GENERAL.—No officer, employee, department, or agency of the United States may promote the sale or export of tobacco or tobacco products, or seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, unless such restrictions are not applied equally to all tobacco and tobacco products. The United States Trade Representative shall consult with the Secretary regarding inquiries, negotiations, and representations with respect to tobacco and tobacco products, including whether proposed restrictions are reasonable protections of public health.

(b) NOTIFICATION.—Whenever such inquiries, negotiations, or representations are made, the United States Trade Representative shall notify the Congress within 10 days afterwards regarding the nature of the inquiry, negotiation, or representation.

SEC. 1106. HEALTH LABELING OF TOBACCO PRODUCTS FOR EXPORT.

(a) IN GENERAL.—

(1) EXPORTS MUST BE LABELED.—It shall be unlawful for any United States person, directly or through approval or facilitation of a transaction by a foreign person, to make use of the United States mail or of any instrument of interstate commerce to authorize or contribute to the export from the United States any tobacco product unless the tobacco product packaging contains a warning label that—

(A) complies with Federal requirements for labeling of similar tobacco products manufactured, imported, or packaged for sale or distribution in the United States; or

(B) complies with the specific health hazard warning labeling requirements of the foreign country to which the product is exported.

(2) U.S. REQUIREMENTS APPLY IF THE DESTINATION COUNTRY DOES NOT REQUIRE SPECIFIC HEALTH HAZARD WARNING LABELS.—Subparagraph (B) of paragraph (1) does not apply to exports to a foreign country that does not have any specific health hazard warning label requirements for the tobacco product being exported.

(b) UNITED STATES PERSON DEFINED.—For purposes of this section, the term ''United States person'' means—

(1) an individual who is a citizen, national, or resident of the United States; and

(2) a corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States.

(c) REPORT TO CONGRESS ON ENFORCEMENT; FEASIBILITY REGULATIONS.—

(1) THE PRESIDENT.—The President shall—

(A) report to the Congress within 90 days after the date of enactment of this Act—

(i) regarding methods to ensure compliance with subsection (a); and

(ii) listing countries whose health warnings related to tobacco products are substantially similar to those in the United States; and

(B) promulgate regulations within 1 year after the date of enactment of this Act that will ensure compliance with subsection (a).

(2) THE SECRETARY.—The Secretary shall determine through regulation the feasibility and practicability of requiring health warning labeling in the language of the country of destination weighing the health and other benefits and economic and other costs. To the greatest extent practicable, the Secretary should design a system that requires

the language of the country of destination while minimizing the dislocative effects of such a system.

SEC. 1107. INTERNATIONAL TOBACCO CONTROL AWARENESS.

(a) ESTABLISHMENT OF INTERNATIONAL TOBACCO CONTROL AWARENESS.—The Secretary is authorized to establish an international tobacco control awareness effort. The Secretary shall—

(1) promote efforts to share information and provide education internationally about the health, economic, social, and other costs of tobacco use, including scientific and epidemiological data related to tobacco and tobacco use and enhancing countries' capacity to collect, analyze, and disseminating such data;

(2) promote policies and support and coordinate international efforts, including international agreements or arrangements, that seek to enhance the awareness and understanding of the costs associated with tobacco use;

(3) support the development of appropriate governmental control activities in foreign countries, such as assisting countries to design, implement, and evaluate programs and policies used in the United States or other countries; including the training of United States diplomatic and commercial representatives outside the United States;

(4) undertake other activities as appropriate in foreign countries that help achieve a reduction of tobacco use;

(5) permit United States participation in annual meetings of government and non-government representatives concerning international tobacco use and efforts to reduce tobacco use;

(6) promote mass media campaigns, including paid counter-tobacco advertisements to reverse the image appeal of pro-tobacco messages, especially those that glamorize and ''Westernize'' tobacco use to young people; and

(7) create capacity and global commitment to reduce international tobacco use and prevent youth smoking, including the use of models of previous public health efforts to address global health problems.

(b) ACTIVITIES.—

(1) IN GENERAL.—The activities under subsection (a) shall include—

(A) public health and education programs;

(B) technical assistance;

(C) cooperative efforts and support for related activities of multilateral organization and international organizations;

(D) training; and

(E) such other activities that support the objectives of this section as may be appropriate.

(2) GRANTS AND CONTRACTS.—In carrying out this section, the Secretary shall make grants to, enter into and carry out agreements with, and enter into other transactions with any individual, corporation, or other entity, whether within or outside the United States, including governmental and nongovernmental organizations, international organizations, and multilateral organizations.

(3) TRANSFER OF FUNDS TO AGENCIES.—The Secretary may transfer to any agency of the United States any part of any funds appropriated for the purpose of carrying out this section. Funds authorized to be appropriated by this section shall be available for obligation and expenditure in accordance with the provisions of this section or in accordance with the authority governing the activities of the agency to which such funds are transferred.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, from the National Tobacco Trust Fund, to carry out the provisions of this section, including the administrative costs incurred by any agency of the United States in carrying out this section, $350,000,000 for each of the fiscal years 1999 through 2004, and such sums as may be necessary for each fiscal year thereafter. A substantial amount of such funds shall be granted to non-governmental organizations. Any amount appropriated pursuant to this authorization shall remain available without fiscal year limitation until expended.

Subtitle B—Anti-smuggling Provisions

SEC. 1131. DEFINITIONS.

(a) INCORPORATION OF CERTAIN DEFINITIONS.—In this subtitle, the terms ''cigar'', ''cigarette'', ''person'', ''pipe tobacco'', ''roll-your-own tobacco'', ''smokeless tobacco'', ''State'', ''tobacco product'', and ''United States '', shall have the meanings given such terms in sections 5702(a), 5702(b), 7701(a)(1), 5702(o), 5702(n)(1), 5702(p), 3306(j)(1), 5702(c), and 3306(j)(2) respectively of the Internal Revenue Code of 1986.

(b) OTHER DEFINITIONS.—In this subtitle:

(1) AFFILIATE.—The term ''affiliate'' means any one of 2 or more persons if 1 of such persons has actual or legal control, directly or indirectly, whether by stock ownership or otherwise, of other or others of such persons, and any 2 or more of such persons subject to common control, actual or legal, directly or indirectly, whether by stock ownership or otherwise.

(2) INTERSTATE OR FOREIGN COMMERCE.—The term ''interstate or foreign commerce'' means any commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

(4) PACKAGE.—The term ''package'' means the innermost sealed container irrespective of the material from which such container is made, in which a tobacco product is placed by the manufacturer and in which such tobacco product is offered for sale to a member of the general public.

(5) RETAILER.—The term ''retailer'' means any dealer who sells, or offers for sale, any tobacco product at retail. The term ''retailer'' includes any duty free store that sells, offers for sale, or otherwise distributes at retail in any single transaction 30 or less packages, or it equivalent for other tobacco products.

(6) EXPORTER.—The term ''exporter'' means any person engaged in the business of exporting tobacco products from the United States for purposes of sale or distribution; and the term ''licensed exporter'' means any such person licensed under the provisions of this subtitle. Any duty-free store that sells, offers for sale, or otherwise distributes to any person in any single transaction more than 30 packages of cigarettes, or its equivalent for other tobacco products as the Secretary shall by regulation prescribe, shall be deemed an ''exporter'' under this subtitle.

(7) IMPORTER.—The term ''importer'' means any person engaged in the business of importing tobacco products into the United States for purposes of sale or distribution; and the term ''licensed importer'' means any such person licensed under the provisions of this subtitle.

(8) INTENTIONALLY.—The term ''intentionally'' means doing an act, or omitting to do an act, deliberately, and not due to accident, inadvertence, or mistake. An intentional act does not require that a person knew that his act constituted an offense.

(9) MANUFACTURER.— The term ''manufacturer'' means any person engaged in the business of manufacturing a tobacco product for purposes of sale or distribution, except that such term shall not include a person who manufactures less than 30,000 cigarettes, or its equivalent as determined by regulations, in any twelve month period;; and the term ''licensed manufacturer'' means any such person licensed under the provisions of this subtitle, except that such term shall not include a person who produces cigars, cigarettes, smokeless tobacco, or pipe tobacco solely for his own personal consumption or use.

(10) WHOLESALER.—The term ''wholesaler'' means any person engaged in the business of purchasing tobacco products for resale at wholesale, or any person acting as an agent or broker for any person engaged in the business of purchasing tobacco products for resale at wholesale, and the term ''licensed wholesaler'' means any such person licensed under the provisions of this subtitle.

SEC. 1132. TOBACCO PRODUCT LABELING REQUIREMENTS.

(a) IN GENERAL.—It is unlawful for any person to sell, or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from Customs custody for use, any tobacco product unless such product is packaged and labeled in conformity with this section.

(b) LABELING.—

(1) IDENTIFICATION.—Not later than 1 year after the date of enactment of this Act, the Secretary shall promulgate regulations that require each manufacturer or importer of tobacco products to legibly print a unique serial number on all packages of tobacco products manufactured or imported for sale or distribution. The serial number shall be designed to enable the Secretary to identify the manufacturer or importer of the product, and the location and date of manufacture or importation. The Secretary shall determine the size and location of the serial number.

(2) MARKING REQUIREMENTS FOR EXPORTS.—Each package of a tobacco product that is exported shall be marked for export from the United States. The Secretary shall promulgate regulations to determine the size and location of the mark and under what circumstances a waiver of this paragraph shall be granted.

(c) PROHIBITION ON ALTERATION.—It is unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark or label required under this subtitle upon a tobacco product in or affecting commerce, except pursuant to regulations of the Secretary authorizing relabeling for purposes of compliance with the requirements of this section or of State law.

SEC. 1133. TOBACCO PRODUCT LICENSES.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall establish a program under which tobacco product licenses are issued to manufacturers, importers, exporters, and wholesalers of tobacco products.

(b)(1) ELIGIBILITY.—A person is entitled to a license unless the Secretary finds—

(A) that such person has been previously convicted of a Federal crime relating to tobacco, including the taxation thereof;

(B) that such person has, within 5 years prior to the date of application, been previously convicted of any felony under Federal or State law; or

(C) that such person is, by virtue of his business experience, financial standing, or trade connections, not likely to maintain such operations in conformity with Federal law.

(2) CONDITIONS.—The issuance of a license under this section shall be conditioned upon the compliance with the requirements of this subtitle, all Federal laws relating to the taxation of tobacco products, chapter 114 of title

18, United States Code, and any regulations issued pursuant to such statutes.

(c) REVOCATION, SUSPENSION, AND ANNULMENT.—The program established under subsection (a) shall permit the Secretary to revoke, suspend, or annul a license issued under this section if the Secretary determines that the terms or conditions of the license have not been complied with. Prior to any action under this subsection, the Secretary shall provide the licensee with due notice and the opportunity for a hearing.

(d) RECORDS AND AUDITS.—The Secretary shall, under the program established under subsection (a), require all license holders to keep records concerning the chain of custody of the tobacco products that are the subject of the license and make such records available to the Secretary for inspection and audit.

(e) RETAILERS.—This section does not apply to retailers of tobacco products, except that retailers shall maintain records of receipt, and such records shall be available to the Secretary for inspection and audit. An ordinary commercial record or invoice will satisfy this requirement provided such record shows the date of receipt, from whom such products were received and the quantity of tobacco products received.

SEC. 1134. PROHIBITIONS.

(a) IMPORTATION AND SALE.—It is unlawful, except pursuant to a license issued by the Secretary under this subtitle—

(1) to engage in the business of importing tobacco products into the United States; or

(2) for any person so engaged to sell, offer, or deliver for sale, contract to sell, or ship, in or affecting commerce, directly or indirectly or through an affiliate, tobacco products so imported.

(b) MANUFACTURE AND SALE.—It is unlawful, except pursuant to a license issued by the Secretary under this subtitle—

(1) to engage in the business of manufacturing, packaging or warehousing tobacco products; or

(2) for any person so engaged to sell, offer, or deliver for sale, contract to sell, or ship, in or affecting commerce, directly or indirectly or through an affiliate, tobacco products so manufactured, packaged, or warehoused.

(c) WHOLESALE.—It is unlawful, except pursuant to a license issued by the Secretary under this subtitle—

(1) to engage in the business of purchasing for resale at wholesale tobacco products, or, as a principal or agent, to sell, offer for sale, negotiate for, or hold out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, the purchase for resale at wholesale of tobacco products; or

(2) for any person so engaged to receive or sell, offer or deliver for sale, contract to sell, or ship, in or affecting commerce, directly or indirectly or through an affiliate, tobacco products so purchased.

(d) EXPORTATION.—

(1) IN GENERAL.—It is unlawful, except pursuant to a license issued by the Secretary under this subtitle—

(A) to engage in the business of exporting tobacco products from the United States; or

(B) for any person so engaged to sell, offer, or deliver for sale, contract to sell, or ship, in or affecting commerce, directly or indirectly or through an affiliate, tobacco products received for export.

(2) REPORT.—Prior to exportation of tobacco products from the United States, the exporter shall submit a report in such manner and form as the Secretary may by regulation prescribe to enable the Secretary to identify the shipment and assure that it reaches its intended destination.

(3) AGREEMENTS WITH FOREIGN GOVERNMENTS.—The Secretary is authorized to enter into agreements with foreign governments to exchange or share information contained in reports received from exporters of tobacco products if the Secretary believes that such an agreement will assist in—

(A) insuring compliance with any law or regulation enforced or administered by an agency of the United States; or

(B) preventing or detecting violation of the laws or regulations of a foreign government with which the Secretary has entered into an agreement.

Such information may be exchanged or shared with a foreign government only if the Secretary obtains assurances from such government that the information will be held in confidence and used only for the purpose of preventing or detecting violations of the laws or regulations of such government or the United States and, provided further that no information may be exchanged or shared with any government that has violated such assurances.

(e) UNLAWFUL ACTS.—

(1) UNLICENSED RECEIPT OR DELIVERY.—It is unlawful for any licensed importer, licensed manufacturer, or licensed wholesaler intentionally to ship, transport, deliver or receive any tobacco products from or to any person other than a person licensed under this chapter or a retailer licensed under the provisions of this Act, except a licensed importer may receive foreign tobacco products from a foreign manufacturer or a foreign distributor that have not previously entered the United States.

(2) RECEIPT OF RE-IMPORTED GOODS.—It is unlawful for any person, except a licensed manufacturer or a licensed exporter to receive any tobacco products that have previously been exported and returned to the United States.

(3) DELIVERY BY EXPORTER.—It is unlawful for any licensed exporter intentionally to ship, transport, sell or deliver for sale any tobacco products to any person other than a licensed manufacturer or foreign purchaser.

(4) SHIPMENT OF EXPORT-ONLY GOODS.—It is unlawful for any person other than a licensed exporter intentionally to ship, transport, receive or possess, for purposes of resale, any tobacco product in packages marked ''FOR EXPORT FROM THE UNITED STATES,'' other than for direct return to the manufacturer or exporter for re-packing or for re-exportation.

(5) FALSE STATEMENTS.—It is unlawful for any licensed manufacturer, licensed exporter, licensed importer, or licensed wholesaler to make intentionally any false entry in, to fail willfully to make appropriate entry in, or to fail willfully to maintain properly any record or report that he is required to keep as required by this chapter or the regulations promulgated thereunder.

(h) EFFECTIVE DATE.—The provisions of this section shall become effective on the date that is 365 days after the date of enactment of this Act.

SEC. 1135. LABELING OF PRODUCTS SOLD BY NATIVE AMERICANS.

The Secretary, in consultation with the Secretary of the Interior, shall promulgate regulations that require that each package of a tobacco product that is sold on an Indian reservation (as defined in section 403(9) of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3202(9)) be labeled as such. Such regulations shall include requirements for the size and location of the label.

SEC. 1136. LIMITATION ON ACTIVITIES INVOLVING TOBACCO PRODUCTS IN FOREIGN TRADE ZONES.

(a) MANUFACTURE OF TOBACCO PRODUCTS IN FOREIGN TRADE ZONES.—No person shall manufacture a tobacco product in any foreign trade zone, as defined for purposes of the Act of June 18, 1934 (19 U.S.C. 81a et seq.).

(b) EXPORTING OR IMPORTING FROM OR INTO A FOREIGN TRADE ZONE.—Any person exporting or importing tobacco products from or into a foreign trade zone, as defined for purposes of the Act of June 18, 1934 (19 U.S.C. 81a et seq.), shall comply with the requirements provided in this subtitle. In any case where the person operating in a foreign trade zone is acting on behalf of a person licensed under this subtitle, qualification as an importer or exporter will not be required, if such person complies with the requirements set forth in section 1134(d)(2) and (3) of this subtitle.

SEC. 1137. JURISDICTION; PENALTIES; COMPROMISE OF LIABILITY.

(a) JURISDICTION.—The District Courts of the United States, and the United States Court for any Territory, of the District where the offense is committed or of which the offender is an inhabitant or has its principal place of business, are vested with jurisdiction of any suit brought by the Attorney General in the name of the United States, to prevent and restrain violations of any of the provisions of this subtitle.

(b) PENALTIES.—Any person violating any of the provisions of this subtitle shall, upon conviction, be fined as provided in section 3571 of title 18, United States Code, imprisoned for not more than 5 years, or both.

(c) CIVIL PENALTIES.—The Secretary may, in lieu of referring violations of this subtitle for criminal prosecution, impose a civil penalty of not more than $10,000 for each offense.

(d) COMPROMISE OF LIABILITY.—The Secretary is authorized, with respect to any violation of this subtitle, to compromise the liability arising with respect to a violation of this subtitle—

(1) upon payment of a sum not in excess of $10,000 for each offense, to be collected by the Secretary and to be paid into the Treasury as miscellaneous receipts; and

(2) in the case of repetitious violations and in order to avoid multiplicity of criminal proceedings, upon agreement to a stipulation, that the United States may, on its own motion upon 5 days notice to the violator, cause a consent decree to be entered by any court of competent jurisdiction enjoining the repetition of such violation.

(e) FORFEITURE.—

(1) The Secretary may seize and forfeit any conveyance, tobacco products, or monetary instrument (as defined in section 5312 of title 31, United States Code) involved in a violation of this subtitle, or any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of this chapter. For purposes of this paragraph, the provisions of subsections (a)(2), (b)(2), and (c) through (j) of section 981 of title 18, United States Code, apply to seizures and forfeitures under this paragraph insofar as they are applicable and not inconsistent with the provisions of this subtitle.

(2) The court, in imposing sentence upon a person convicted of an offense under this subtitle, shall order that the person forfeit to the United States any property described in paragraph (1). The seizure and forfeiture of such property shall be governed by subsections (b), (c), and (e) through (p) of section 853 of title 21, United States Code, insofar as they are applicable and not inconsistent with the provisions of this subtitle.

SEC. 1138. AMENDMENTS TO THE CONTRABAND CIGARETTE TRAFFICKING ACT.

(a) DEFINITIONS.—Section 2341 of title 18, United States Code, is amended—

(1) by striking ''60,000'' and inserting ''30,000'' in paragraph (2);

(2) by inserting after ''payment of cigarette taxes,'' in paragraph (2) the following: ''or in the case of a State that does not require any such indication of tax payment, if

the person in possession of the cigarettes is unable to provide any evidence that the cigarettes are moving legally in interstate commerce,'';

(3) by striking ''and'' at the end of paragraph (4);

(4) by striking ''Treasury.'' in paragraph (5) and inserting ''Treasury;''; and

(5) by adding at the end thereof the following:

''(6) the term 'tobacco product' means cigars, cigarettes, smokeless tobacco, roll your own and pipe tobacco (as such terms are defined in section 5701 of the Internal Revenue Code of 1986); and

''(7) the term 'contraband tobacco product' means—

''(A) a quantity in excess of 30,000 of any tobacco product that is manufactured, sold, shipped, delivered, transferred, or possessed in violation of Federal laws relating to the distribution of tobacco products; and

''(B) a quantity of tobacco product that is equivalent to an excess of 30,000 cigarettes, as determined by regulation, which bears no evidence of the payment of applicable State tobacco taxes in the State where such tobacco products are found, if such State requires a stamp, impression, or other indication to be placed on packages or other containers of product to evidence payment of tobacco taxes, or in the case of a State that does not require any such indication of tax payment, if the person in possession of the tobacco product is unable to provide any evidence that the tobacco products are moving legally in interstate commerce and which are in the possession of any person other than a person defined in paragraph (2) of this section.''.

(b) UNLAWFUL ACTS.—Section 2342 of title 18, United States Code, is amended—

(1) by inserting ''or contraband tobacco products'' before the period in subsection (a); and

(2) by adding at the end thereof the following:

''(c) It is unlawful for any person—

''(1) knowingly to make any false statement or representation with respect to the information required by this chapter to be kept in the records or reports of any person who ships, sells, or distributes any quantity of cigarettes in excess of 30,000 in a single transaction, or tobacco products in such equivalent quantities as shall be determined by regulation; or

''(2) knowingly to fail or knowingly to fail to maintain distribution records or reports, alter or obliterate required markings, or interfere with any inspection as required with respect to such quantity of cigarettes or other tobacco products.

''(d) It shall be unlawful for any person knowingly to transport cigarettes or other tobacco products under a false bill of lading or without any bill of lading.''.

(d) RECORDKEEPING.—Section 2343 of title 18, United States Code, is amended—

(1) by striking ''60,000'' in subsection (a) and inserting ''30,000'';

(2) by inserting after ''transaction'' in subsection (a) the following: ''or, in the case of other tobacco products an equivalent quantity as determined by regulation,'' ;

(3) by striking the last sentence of subsection (a) and inserting the following:

''Except as provided in subsection (c) of this section, nothing contained herein shall authorize the Secretary to require reporting under this section.'';

(4) by striking ''60,000'' in subsection (b) and inserting ''30,000'';

(5) by inserting after ''transaction'' in subsection (b) the following: ''or, in the case of other tobacco products an equivalent quantity as determined by regulation,''; and

(6) by adding at the end thereof the following:

''(c)(1) Any person who ships, sells, or distributes for resale tobacco products in interstate commerce, whereby such tobacco products are shipped into a State taxing the sale or use of such tobacco products or who advertises or offers tobacco products for such sale or transfer and shipment shall—

''(A) first file with the tobacco tax administrator of the State into which such shipment is made or in which such advertisement or offer is disseminated, a statement setting for the persons name, and trade name (if any), and the address of the persons principal place of business and of any other place of business; and

''(B) not later than the 10th day of each month, file with the tobacco tax administrator of the State into which such shipment is made a memorandum or a copy of the invoice covering each and every shipment of tobacco products made during the previous month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

''(2) The fact that any person ships or delivers for shipment any tobacco products shall, if such shipment is into a State in which such person has filed a statement with the tobacco tax administrator under paragraph (1)(A) of this subsection, be presumptive evidence that such tobacco products were sold, shipped, or distributed for resale by such person.

''(3) For purposes of this subsection—

''(A) the term 'use' includes consumption, storage, handling, or disposal of tobacco products; and

''(B) the term 'tobacco tax administrator' means the State official authorized to administer tobacco tax laws of the State.''.

(e) PENALTIES.—Section 2344 of title 18, United States Code, is amended—

(1) by inserting ''or (c)'' in subsection (b) after ''section 2344(b)'';

(2) by inserting ''or contraband tobacco products'' after ''cigarettes'' in subsection (c); and

(3) by adding at the end thereof the following:

''(d) Any proceeds from the unlawful distribution of tobacco shall be subject to seizure and forfeiture under section 981(a)(1)(C).''.

(f) REPEAL OF FEDERAL LAW RELATING TO COLLECTION OF STATE CIGARETTE TAXES.—The Act of October 19, 1949, (63 Stat. 884; 15 U.S.C. 375-378) is hereby repealed.

SEC. 1139. FUNDING.

(a) LICENSE FEES.—The Secretary may, in the Secretary's sole discretion, set the fees for licenses required by this chapter, in such amounts as are necessary to recover the costs of administering the provisions of this chapter, including preventing trafficking in contraband tobacco products.

(b) DISPOSITION OF FEES.—Fees collected by the Secretary under this chapter shall be deposited in an account with the Treasury of the United States that is specially designated for paying the costs associated with the administration or enforcement of this chapter or any other Federal law relating to the unlawful trafficking of tobacco products. The Secretary is authorized and directed to pay out of any funds available in such account any expenses incurred by the Federal Government in administering and enforcing this chapter or any other Federal law relating to the unlawful trafficking in tobacco products (including expenses incurred for the salaries and expenses of individuals employed to provide such services). None of the funds deposited into such account shall be available for any purpose other than making payments authorized under the preceding sentence.

SEC. 1140. RULES AND REGULATIONS.

The Secretary shall prescribe all needful rules and regulations for the enforcement of this chapter, including all rules and regulations that are necessary to ensure the lawful distribution of tobacco products in interstate or foreign commerce.

Subtitle C—Other Provisions

SEC. 1161. IMPROVING CHILD CARE AND EARLY CHILDHOOD DEVELOPMENT.

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary from the National Tobacco Trust Fund such sums as may be necessary for each fiscal year to be used by the Secretary for the following purposes:

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

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

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

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

(b) SUPPLEMENT NOT SUPPLANT.—Amounts made available to a State under this section shall be used to supplement and not supplant other Federal, State, and local funds provided for programs that serve the health and developmental needs of children. Amounts provided to the State under any of the provisions of law referred to in this section shall not be reduced solely as a result of the availability of funds under this section.

SEC. 1162. BAN OF SALE OF TOBACCO PRODUCTS THROUGH THE USE OF VENDING MACHINES.

(a) BAN OF SALE OF TOBACCO PRODUCTS THROUGH THE USE OF VENDING MACHINES.—Effective 12 months after the date of enactment of this Act, it shall be unlawful to sell tobacco products through the use of a vending machine.

(b) COMPENSATION FOR BANNED VENDING MACHINES.—

(1) IN GENERAL.—The owners and operators of tobacco vending machines shall be reimbursed, subject to the availability of appropriations under subsection (d), for the fair market value of their tobacco vending machines.

(2) TOBACCO VENDING REIMBURMENT CORPORATION.—

(A) CORPORATION.—Reimbursment shall be directed through a private, nonprofit corporation established in the District of Columbia, known as the Tobacco Vending Reimburment Corporation (in this section referred to as the ''Corporation''). Except as otherwise provided in this section, the Corporation is subject to, and has all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code section 29-501 et seq.).

(B) DUTIES.—The Corporation shall—

(i) disburse compensation funds to vending companies under this section;

(ii) verify operational machines; and

(iii) maintain complete records of machine verification and accountings of disbursements and administration of the compensation fund established under paragraph (4).

(3) MANAGEMENT OF CORPORATION.—

(A) BOARD OF DIRECTORS.—The Corporation shall be managed by a Board of Directors that—

(i) consists of distinguished Americans with experience in finance, public policy, or fund management;

(ii) includes at least 1 member of the United States tobacco vending machine industry;

(iii) shall be paid an annual salary in an amount determined by the President of the Corporation not to exceed $40,000 individually, out of amounts transferred to the Corporation under paragraph (4)(A);

(iv) shall appoint a President to manage the day-to-day activities of the Corporation;

(v) shall develop guidelines by which the President shall direct the Corporation;

(vi) shall retain a national accounting firm to verify the distribution of funds and audit the compensation fund established under paragraph (4);

(vii) shall retain such legal, management, or consulting assistance as is necessary and reasonable; and

(viii) shall periodically report to Congress regarding the activities of the Corporation.

(B) DUTIES OF THE PRESIDENT OF THE CORPORATION.—The President of the Corporation shall—

(i) hire appropriate staff;

(ii) prepare the report of the Board of Directors of the Corporation required under subparagraph (A)(viii); and

(iii) oversee Corporation functions, including verification of machines, administration and disbursement of funds, maintenance of complete records, operation of appeals procedures, and other directed functions.

(4) COMPENSATION FUND.—

(A) RULES FOR DISBURSEMENT OF FUNDS.—

(i) PAYMENTS TO OWNERS AND OPERATORS.—The Corporation shall disburse funds to compensate the owners and operators of tobacco vending machines in accordance with the following:

(I) The fair market value of each tobacco vending machine verified by the Corporation President in accordance with subparagraph (C), and proven to have been in operation before August 10, 1995, shall be disbursed to the owner of the machine seeking compensation.

(II) No compensation shall be made for a spiral glass front vending machine.

(ii) OTHER PAYMENTS.—Funds appropriated to the Corporation under subsection (d) may be used to pay the administrative costs of the Corporation that are necessary and proper or required by law. The total amount paid by the Corporation for administrative and overhead costs, including accounting fees, legal fees, consultant fees, and associated administrative costs shall not exceed 1 percent of the total amount appropriated to the Corporation under subsection (d).

(B) VERIFICATION OF VENDING MACHINES.—Verification of vending machines shall be based on copies of official State vending licenses, company computerized or handwritten sales records, or physical inspection by the Corporation President or by an inspection agent designated by the President. The Corporation President and the Board of Directors of the Corporation shall work vigorously to prevent and prosecute any fraudulent claims submitted for compensation.

(C) RETURN OF ACCOUNT FUNDS NOT DISTRIBUTED TO VENDORS.—The Corporation shall be dissolved on the date that is 4 years after the date of enactment of this Act. Any funds not dispersed or allocated to claims pending as of that date shall be transferred to a public anti-smoking trust, or used for such other purposes as Congress may designate.

(c) SETTLEMENT OF LEGAL CLAIMS PENDING AGAINST THE UNITED STATES.—Acceptance of a compensation payment from the Corporation by a vending machine owner or operator shall settle all pending and future claims of the owner or operator against the United States that are based on, or related to, the ban of the use of tobacco vending machines imposed under this section and any other laws or regulations that limit the use of tobacco vending machines.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Corporation from funds not otherwise obligated in the Treasury or out of the National Tobacco Trust Fund, such sums as may be necessary to carry out this section.

SEC. 1163. AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185 et seq.) is amended by adding at the end the following new section:

"SEC. 713. REQUIRED COVERAGE FOR MINIMUM HOSPITAL STAY FOR MASTECTOMIES AND LYMPH NODE DISSECTIONS FOR THE TREATMENT OF BREAST CANCER AND COVERAGE FOR RECONSTRUCTIVE SURGERY FOLLOWING MASTECTOMIES.

''(a) INPATIENT CARE.—

''(1) IN GENERAL.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, that provides medical and surgical benefits shall ensure that inpatient coverage with respect to the surgical treatment of breast cancer (including a mastectomy, lumpectomy, or lymph node dissection for the treatment of breast cancer) is provided for a period of time as is determined by the attending physician, in his or her professional judgment consistent with generally accepted medical standards, in consultation with the patient, and subject to subsection (d), to be medically appropriate.

''(2) EXCEPTION.—Nothing in this section shall be construed as requiring the provision of inpatient coverage if the attending physician in consultation with the patient determine that a shorter period of hospital stay is medically appropriate.

''(b) RECONSTRUCTIVE SURGERY.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, that provides medical and surgical benefits with respect to a mastectomy shall ensure that, in a case in which a mastectomy patient elects breast reconstruction, coverage is provided for—

''(1) all stages of reconstruction of the breast on which the mastectomy has been performed;

''(2) surgery and reconstruction of the other breast to produce a symmetrical appearance; and

''(3) the costs of prostheses and complications of mastectomy including lymphedemas;

in the manner determined by the attending physician and the patient to be appropriate. Such coverage may be subject to annual deductibles and coinsurance provisions as may be deemed appropriate and as are consistent with those established for other benefits under the plan or coverage. Written notice of the availability of such coverage shall be delivered to the participant upon enrollment and annually thereafter.

''(c) NOTICE.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan shall provide notice to each participant and beneficiary under such plan regarding the coverage required by this section in accordance with regulations promulgated by the Secretary. Such notice shall be in writing and prominently positioned in any literature or correspondence made available or distributed by the plan or issuer and shall be transmitted—

''(1) in the next mailing made by the plan or issuer to the participant or beneficiary;

''(2) as part of any yearly informational packet sent to the participant or beneficiary; or

''(3) not later than January 1, 1998;

whichever is earlier.

''(d) NO AUTHORIZATION REQUIRED.—

''(1) IN GENERAL.—An attending physician shall not be required to obtain authorization from the plan or issuer for prescribing any length of stay in connection with a mastectomy, a lumpectomy, or a lymph node dissection for the treatment of breast cancer.

''(2) PRENOTIFICATION.—Nothing in this section shall be construed as preventing a group health plan from requiring prenotification of an inpatient stay referred to in this section if such requirement is consistent with terms and conditions applicable to other inpatient benefits under the plan, except that the provision of such inpatient stay benefits shall not be contingent upon such notification.

''(e) PROHIBITIONS.—A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, may not—

''(1) deny to a patient eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section;

''(2) provide monetary payments or rebates to individuals to encourage such individuals to accept less than the minimum protections available under this section;

''(3) penalize or otherwise reduce or limit the reimbursement of an attending provider because such provider provided care to an individual participant or beneficiary in accordance with this section;

''(4) provide incentives (monetary or otherwise) to an attending provider to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section; and

''(5) subject to subsection (f)(3), restrict benefits for any portion of a period within a hospital length of stay required under subsection (a) in a manner which is less favorable than the benefits provided for any preceding portion of such stay.

''(f) RULES OF CONSTRUCTION.—

''(1) IN GENERAL.—Nothing in this section shall be construed to require a patient who is a participant or beneficiary—

''(A) to undergo a mastectomy or lymph node dissection in a hospital; or

''(B) to stay in the hospital for a fixed period of time following a mastectomy or lymph node dissection.

''(2) LIMITATION.—This section shall not apply with respect to any group health plan, or any group health insurance coverage offered by a health insurance issuer, which does not provide benefits for hospital lengths of stay in connection with a mastectomy or lymph node dissection for the treatment of breast cancer.

''(3) COST SHARING.—Nothing in this section shall be construed as preventing a group health plan or issuer from imposing deductibles, coinsurance, or other cost-sharing in relation to benefits for hospital lengths of stay in connection with a mastectomy or lymph node dissection for the treatment of breast cancer under the plan (or under health insurance coverage offered in connection with a group health plan), except that such coinsurance or other cost-sharing

for any portion of a period within a hospital length of stay required under subsection (a) may not be greater than such coinsurance or cost-sharing for any preceding portion of such stay.

''(4) LEVEL AND TYPE OF REIMBURSEMENTS.—Nothing in this section shall be construed to prevent a group health plan or a health insurance issuer offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

''(g) PREEMPTION, RELATION TO STATE LAWS.—

''(1) IN GENERAL.—Nothing in this section shall be construed to preempt any State law in effect on the date of enactment of this section with respect to health insurance coverage that—

''(A) such State law requiressuch coverage to provide for at least a 48-hour hospital length of stay following a mastectomy performed for treatment of breast cancer and at least a 24-hour hospital length of stay following a lymph node dissection of breast cancer;

''(B) requires coverage of at least the coverage of reconstructive breast surgery otherwise required under this section; or

''(C) requires coverage for breast cancer treatments (including breast reconstruction) in accordance with scientific evidence-based practices or guidelines recommended by established medical associations.

''(2) APPLICATION OF SECTION.—With respect to a State law—

''(A) described in paragraph (1)(A), the provisions of this section relating to breast reconstruction shall apply in such State; and

''(B) described in paragraph (1)(B), the provisions of this section relating to length of stays for surgical breast treatment shall apply in such State.

''(3) ERISA.—Nothing in this section shall be construed to affect or modify the provisions of section 514 with respect to group health plans.''.

(b) CLERICAL AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 note) is amended by inserting after the item relating to section 712 the following new item:

''Sec. 713. Required coverage for minimum hospital stay for mastectomies and lymph node dissections for the treatment of breast cancer and coverage for reconstructive surgery following mastectomies.''.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to plan years beginning on or after the date of enactment of this Act.

(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

TITLE XII—ASBESTOS-RELATED TOBACCO CLAIMS

SEC. 1201. NATIONAL TOBACCO TRUST FUNDS AVAILABLE UNDER FUTURE LEGISLATION.

If the Congress enacts qualifying legislation after the date of enactment of this Act to provide for the payment of asbestos claims, then amounts in the National Tobacco Trust Fund established by title IV of this Act set aside for public health expenditures shall be available, as provided by appropriation Acts, to make those payments. For purposes of this section, the term ''qualifying legislation'' means a public law that amends this Act and changes the suballocations of funds set aside for public health expenditures under title IV of this Act to provide for the payment of those claims.

TITLE XIII—VETERANS' BENEFITS

SEC. 1301. RECOVERY BY SECRETARY OF VETERANS AFFAIRS.

Title 38, United States Code, is amended by adding after part VI the following:

''PART VII—RECOVERY OF COSTS FOR TOBACCO-RELATED DISABILITY OR DEATH

''CHAPTER 91—TORT LIABILITY FOR DISABILITY, INJURY, DISEASE, OR DEATH DUE TO TOBACCO USE

''Sec.
''9101. Recovery by Secretary of Veterans Affairs
''9102. Regulations
''9103. Limitation or repeal of other provisions for recovery of compensation
''9104. Exemption from annual limitation on damages

''§ 9101. Recovery by Secretary of Veterans Affairs

''(a) CONDITIONS; EXCEPTIONS; PERSONS LIABLE; AMOUNT OF RECOVERY; SUBROGATION.—In any case in which the Secretary is authorized or required by law to provide compensation and medical care services under this title for disability or death from injury or disease attributable in whole or in part to the use of tobacco products by a veteran during the veterans active military, naval, or air service under circumstances creating a tort liability upon a tobacco product manufacturer (other than or in addition to the United States) to pay damages therefor, the Secretary shall have a right to recover (independent of the rights of the injured or diseased veteran) from said tobacco product manufacturer the cost of the compensation paid or to be paid and the costs of medical care services provided, and shall, as to this right, be subrogated to any right or claim that the injured or diseased veteran, his or her guardian, personal representative, estate, dependents, or survivors has against such third person to the extent of the cost of the compensation paid or to be paid and the costs of medical services provided.

''(b) ENFORCEMENT PROCEDURE; INTERVENTION; JOINDER OF PARTIES; STATE OR FEDERAL COURT PROCEEDINGS.—The Secretary may, to enforce such right under subsection (a) of this section—

''(1) intervene or join in any action or proceeding brought by the injured or diseased veteran, his or her guardian, personal representative, estate, dependents, or survivors, against the tobacco product manufacturer who is liable for the injury or disease; or

''(2) if such action or proceeding is not commenced within 6 months after the first day on which compensation is paid, or the medical care services are provided, by the Secretary in connection with the injury or disease involved, institute and prosecute legal proceedings against the tobacco product manufacturer who is liable for the injury or disease, in a State or Federal court, either alone (in its own name or in the name of the injured veteran, his or her guardian, personal representative, estate, dependents, or survivors) or in conjunction with the injured or diseased veteran, his or her guardian, personal representative, estate, dependents, or survivors.

''(c) CREDITS TO APPROPRIATIONS.—Any amount recovered or collected under this section for compensation paid, and medical care services provided, by the Secretary shall be credited to a revolving fund established in the Treasury of the United States known as the Department of Veterans Affairs Tobacco Recovery Fund (hereafter called the Fund). The Fund shall be available to the Secretary without fiscal year limitation for purposes of veterans programs, including administrative costs. The Secretary may transfer such funds as deemed necessary to the various Department of Veterans Affairs appropriations, which shall remain available until expended.

''§ 9102. Regulations

''(a) DETERMINATION AND ESTABLISHMENT OF PRESENT VALUE OF COMPENSATION AND MEDICAL CARE SERVICES TO BE PAID.—The Secretary may prescribe regulations to carry out this chapter, including regulations with respect to the determination and establishment of the present value of compensation to be paid to an injured or diseased veteran or his or her surviving spouse, child, or parent, and medical care services provided to a veteran.

''(b) SETTLEMENT, RELEASE AND WAIVER OF CLAIMS.—To the extent prescribed by regulations under subsection (a) of this section, the Secretary may—

''(1) compromise, or settle and execute a release of, any claim which the Secretary has by virtue of the right established by section 9101 of this title; or

''(2) waive any such claim, in whole or in part, for the convenience of the Government, or if he or she determines that collection would result in undue hardship upon the veteran who suffered the injury or disease or his or her surviving spouse, child or parent resulting in payment of compensation, or receipt of medical care services.

''(c) DAMAGES RECOVERABLE FOR PERSONAL INJURY UNAFFECTED.—No action taken by the Secretary in connection with the rights afforded under this chapter shall operate to deny to the injured veteran or his or her surviving spouse, child or parent the recovery for that portion of his or her damage not covered hereunder.

''§ 9103. Limitation or repeal of other provisions for recovery of compensation and medical care services

''This chapter does not limit or repeal any other provision of law providing for recovery by the Secretary of the cost of compensation and medical care services described in section 9101 of this title.

''§ 9104. Exemption from annual limitation on damages

''Any amount recovered under section 9101 of this title for compensation paid or to be paid, and the cost of medical care services provided, by the Secretary for disability or death from injury or disease attributable in whole or in part to the use of tobacco products by a veteran during the veterans active military, naval, or air service shall not be subject to the limitation on the annual amount of damages for which the tobacco product manufacturers may be found liable as provided in the National Tobacco Policy and Youth Smoking Reduction Act and shall not be counted in computing the annual amount of damages for purposes of that section.''.

TITLE XIV—EXCHANGE OF BENEFITS FOR AGREEMENT TO TAKE ADDITIONAL MEASURES TO REDUCE YOUTH SMOKING

SEC. 1401. CONFERRAL OF BENEFITS ON PARTICIPATING TOBACCO PRODUCT MANUFACTURERS IN RETURN FOR THEIR ASSUMPTION OF SPECIFIC OBLIGATIONS.

Participating tobacco product manufacturers shall receive the benefits, and assume the obligations, set forth in this title.

SEC. 1402. PARTICIPATING TOBACCO PRODUCT MANUFACTURER.

(a) IN GENERAL.—Except as provided in subsection (b), a tobacco product manufacturer that—

(1) executes a protocol with the Secretary of Health and Human Services that meets the requirements of sections 1403, 1404, and 1405; and

(2) makes the payment required under section 402(a)(1),

is, for purposes of this title, a participating tobacco products manufacturer.

(b) DISQUALIFICATION.—

(1) INELIGIBILITY.—Notwithstanding subsection (a), a tobacco product manufacturer may not become a participating tobacco products manufacturer if—

(A) the tobacco product manufacturer or any of its principal officers (acting in that official's corporate capacity), is convicted of—

(i) manufacturing or distributing misbranded tobacco products in violation of the criminal prohibitions on such misbranding established under section 301 or 303 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331 or 333);

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

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

(iv) violating Federal prohibitions on mail fraud, wire fraud, or the making of false statements to Federal officials in the course of making reports or disclosures required by this Act; or

(B) the tobacco product manufacturer, at the end of the 1-year period beginning on the date on which such manufacturer fails to make a required assessment payment under title IV of this Act, has not fully made such payment.

(2) DISQUALIFICATION.—A tobacco product manufacturer that has become a participating tobacco product manufacturer shall cease to be treated as a participating tobacco product manufacturer if—

(A) it, or any of its principal officers (acting in that official's corporate capacity) is convicted of an offense described in paragraph (1)(A); or

(B) it fails to make such a payment within the time period described in paragraph (1)(B).

(c) NON-PARTICIPATING TOBACCO MANUFACTURERS.—Any tobacco product manufacturer that—

(1) does not execute a protocol in accordance with subsection (a);

(2) fails to make the payment required by section 402(a)(1) (if applicable to that manufacturer);

(3) is not eligible, under subsection (b)(1), to become a participating tobacco product manufacturer; or

(4) ceases to be treated as a participating tobacco product manufacturer under subsection (b)(2),

is, for purposes of this title, a non-participating tobacco product manufacturer.

SEC. 1403. GENERAL PROVISIONS OF PROTOCOL.

(a) IN GENERAL.—For purposes of section 1402, a protocol meets the requirements of this section if it—

(1) contains the provisions described in subsection (b); and

(2) is enforceable at law.

(b) REQUIRED PROVISIONS.—The protocol shall include the following provisions:

(1) The tobacco product manufacturer executing the protocol will not engage in any conduct that was, either on the date of enactment of this Act, or at any time after the date of enactment of this Act—

(A) prohibited by this Act;

(B) prohibited by any regulation promulgated by the Food and Drug Administration that applies to tobacco products; or

(C) prohibited by any other statute.

(2) The tobacco product manufacturer executing the protocol will contract with only such distributors and retailers who have operated in compliance with the applicable provisions of Federal, State, or local law regarding the marketing and sale of tobacco products and who agree to comply with advertising and marketing provisions in paragraph (3).

(3) The tobacco product manufacturer executing the protocol will be bound in marketing tobacco products by the following provisions, whether or not these provisions have legal force and effect against manufacturers who are not signatories to the protocol—

(A) the advertising and marketing provisions of part 897 of title 21, Code of Federal Regulations, that were published in the Federal Register on August 28, 1996, and which shall be adopted and incorporated as independent terms of the protocol;

(B) the requirements of section 1404; and

(C) the requirements of section 1405.

(4) The tobacco product manufacturer executing the protocol will make any payments to the National Tobacco Trust Fund in title IV that are required to be made under that title or in any other title of this Act.

(5) The tobacco product manufacturer executing the protocol will be bound by the provisions of title IV, and any other title of this Act with respect to payments required under title IV, without regard to whether those provisions have legal force and effect against manufacturers who have not become signatories.

(6) The tobacco product manufacturer executing the protocol will make the industry-wide and manufacturer-specific look-back assessment payments that may be required under title II.

(7) The tobacco product manufacturer executing the protocol will be bound by the provisions of title II that require a manufacturer to make look-back assessments, and any other title of this Act with respect to such assessments, without regard to whether such terms have legal force and effect against manufacturers who have not become signatories.

(8) The tobacco product manufacturer executing the protocol will, within 180 days after the date of enactment of this Act and in conjunction with other participating tobacco product manufacturers, establish a National Tobacco Document Depository in the Washington, D.C. area—

(A) that is not affiliated with, or controlled by, any tobacco product manufacturer;

(B) the establishment and operational costs of which are allocated among participating tobacco product manufacturers; and

(C) that will make any document submitted to it under title IX of this Act and finally determined not to be subject to attorney-client privilege, attorney work product, or trade secret exclusions, available to the public using the Internet or other means within 30 days after receiving the document.

(c) PROVISIONS APPLICABLE TO DOCUMENTS.—The provisions of section 2116(a) and (b) of title 44, United States Code, apply to records and documents submitted to the Depository (or, to the alternative depository, if any, established by the Secretary by regulation under title IX of this Act) in the same manner and to the same extent as if they were records submitted to the National Archives of the United States required by statute to be retained indefinitely.

SEC. 1404. TOBACCO PRODUCT LABELING AND ADVERTISING REQUIREMENTS OF PROTOCOL.

(a) IN GENERAL.—For purposes of section 1402, a protocol meets the requirements of this section if it requires that—

(1) no tobacco product will be sold or distributed in the United States unless its advertising and labeling (including the package)—

(A) contain no human image, animal image, or cartoon character;

(B) are not outdoor advertising, including advertising in enclosed stadia and on mass transit vehicles, and advertising from within a retail establishment that is directed toward or visible from the outside of the establishment;

(C) at the time the advertising or labeling is first used are submitted to the Secretary so that the Secretary may conduct regular review of the advertising and labeling;

(D) comply with any applicable requirement of the Federal Food, Drug, and Cosmetic Act, the Federal Cigarette Labeling and Advertising Act, and any regulation promulgated under either of those Acts;

(E) do not appear on the international computer network of both Federal and non-Federal interoperable packet switches data networks (the ''Internet''), unless such advertising is designed to be inaccessible in or from the United States to all individuals under the age of 18 years;

(F) use only black text on white background, other than—

(i) those locations other than retail stores where no person under the age of 18 is permitted or present at any time, if the advertising is not visible from outside the establishment and is affixed to a wall or fixture in the establishment; and

(ii) advertisements appearing in any publication which the tobacco product manufacturer, distributor, or retailer demonstrates to the Secretary is a newspaper, magazine, periodical, or other publication whose readers under the age of 18 years constitute 15 percent or less of the total readership as measured by competent and reliable survey evidence, and that is read by less than 2 million persons under the age of 18 years as measured by competent and reliable survey evidence;

(G) for video formats, use only static black text on a white background, and any accompanying audio uses only words without music or sound effects;

(8) for audio formats, use only words without music or sound effects;

(2) if a logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of brand-name product identification of the tobacco product is contained in a movie, program, or video game for which a direct or indirect payment has been made to ensure its placement;

(3) if a direct or indirect payment has been made by any tobacco product manufacturer, distributor, or retailer to any entity for the purpose of promoting use of the tobacco product through print or film media that appeals to individuals under the age of 18 years or through a live performance by an entertainment artist that appeals to such individuals;

(4) if a logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia or product identification identical to, similar to, or identifiable with the tobacco product is used for any item (other than a tobacco product) or service marketed, licensed, distributed or sold or caused to be marketed, licensed, distributed, or sold by the tobacco product manufacturer or distributor of the tobacco product; and

(5)(A) except as provided in subparagraph (B), if advertising or labeling for such product that is otherwise in accordance with the requirements of this section bears a tobacco product brand name (alone or in conjunction with any other word) or any other indicia of tobacco product identification and is disseminated in a medium other than newspapers, magazines, periodicals or other publications (whether periodic or limited distribution), nonpoint-of-sale promotional material (including direct mail), point-of-sale promotional material, or audio or video formats delivered at a point-of-sale; but

(B) notwithstanding subparagraph (A), advertising or labeling for cigarettes or smokeless tobacco may be disseminated in a medium that is not specified in paragraph (1) if the tobacco product manufacturer, distributor, or retailer notifies the Secretary not later than 30 days prior to the use of such medium, and the notice describes the medium and the extent to which the advertising or labeling may be seen by persons under the age of 18 years.

(b) COLOR PRINT ADS ON MAGAZINES.—The protocol shall also provide that no tobacco product may be sold or distributed in the United States if any advertising for that product on the outside back cover of a magazine appears in any color or combination of colors.

SEC. 1405. POINT-OF-SALE REQUIREMENTS.

(a) IN GENERAL.—For purposes of section 1402, a protocol meets the requirements of this section if it provides that, except as provided in subsection (b), point-of-sale advertising of any tobacco product in any retail establishment is prohibited.

(b) PERMITTED POS LOCATIONS.—

(1) PLACEMENT.—One point-of-sale advertisement may be placed in or at each retail establishment for its brand or the contracted house retailer or private label brand of its wholesaler.

(2) SIZE.—The display area of any such point-of-sale advertisement (either individually or in the aggregate) shall not be larger than 576 square inches and shall consist of black letters on white background or another recognized typography.

(3) PROXIMITY TO CANDY.—Any such point-of-sale advertisement shall not be attached to or located within 2 feet of any display fixture on which candy is displayed for sale.

(c) AUDIO OR VIDEO.—Any audio or video format permitted under regulations promulgated by the Secretary may be played or shown in, but not distributed, at any location where tobacco products are offered for sale.

(d) NO RESTRICTIVE COVENANTS.—No tobacco product manufacturer or distributor of tobacco products may enter into any arrangement with a retailer that limits the retailer's ability to display any form of advertising or promotional material originating with another supplier and permitted by law to be displayed in a retail establishment.

(e) DEFINITIONS.—As used in this section, the terms ''point-of-sale advertisement'' and ''point-of-sale advertising'' mean all printed or graphical materials (other than a pack, box, carton, or container of any kind in which cigarettes or smokeless tobacco is offered for sale, sold, or otherwise distributed to consumers) bearing the brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of cigarettes or smokeless tobacco, which, when used for its intended purpose, can reasonably be anticipated to be seen by customers at a location where tobacco products are offered for sale.

SEC. 1406. APPLICATION OF TITLE.

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

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

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

(A) that, after the date of enactment of this Act, does not import, distribute, or sell tobacco products made or sold by a non-participating tobacco manufacturer;

(B) whose business practices with respect to sales or operations occurring within the United States, conform to the applicable requirements of the protocol; and

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

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

(A) whose business practices with respect to sales or operations occurring within the United States, conform to the applicable requirements of the protocol; and

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

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

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

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

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

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

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

(4) brought by the United States;

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

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

(7) brought against a supplier of a component or constituent part of a tobacco product, if the component or constituent part was sold after the date of enactment of this Act, and the supplier knew that the tobacco product giving rise to the claim would be manufactured in the United States by a non-participating tobacco product manufacturer.

SEC. 1407. GOVERNMENTAL CLAIMS.

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

(b) EFFECT ON EXISTING STATE SUITS OF SETTLEMENT AGREEMENT OR CONSENT DECREE.—Within 30 days after the date of enactment of this Act, any State that has filed a civil action involving a tobacco claim against a participating tobacco product manufacturer may elect to settle such action against said tobacco product manufacturer. If a State makes such an election to enter into a settlement or a consent decree, it may maintain a civil action involving a tobacco claim only to the extent necessary to permit continuing court jurisdiction over the settlement or consent decree. Nothing herein shall preclude any State from bringing suit or seeking a court order to enforce the terms of such settlement or decree.

(c) STATE OPTION FOR ONE-TIME OPT OUT.—Any State that does not make the election described in subsection (b) may continue its lawsuit, notwithstanding subsection (a) of this section. A State that does not make such an election shall not be eligible to receive payments from the trust fund in title IV.

(d) 30-DAY DELAY.—No settlement or consent decree entered into under subsection (b) may take effect until 30 days after the date of enactment of this Act.

(f) PRESERVATION OF INSURANCE CLAIMS.—

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

(A) beginning on the first day of the next calendar year, subsection (a) does not apply to any insurance claim (including a direct action claim) that is a tobacco claim, regardless of when that claim arose;

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

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

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

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

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

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

SEC. 1408. ADDICTION AND DEPENDENCY CLAIMS; CASTANO CIVIL ACTIONS.

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

(b) CASTANO CIVIL ACTIONS.—

(1) The rights and benefits afforded in this Act, and the various research activities envisioned by this Act, are provided in settlement of, and shall constitute the exclusive remedy for the purpose of determining civil liability as to those claims asserted in the Castano Civil Actions, and all bases for any such claim under the laws of any State are preempted (including State substantive, procedural, remedial, and evidentiary provisions) and settled. The Castano Civil Actions shall be dismissed with full reservation of the rights of individual class members to pursue claims not based on addiction or dependency in civil actions, as defined in section 1417(2), in accordance with this Act. For purposes of determining application of statutes of limitation or repose, individual actions filed within one year after the effective date of this Act by those who were included within a Castano Civil Action shall be considered to have been filed as of the date of the Castano Civil Action applicable to said individual.

(2) For purposes of awarding attorneys fees and expenses for those actions subject to this subsection, the matter at issue shall be submitted to arbitration before one panel of arbitrators. In any such arbitration, the arbitration panel shall consist of 3 persons, one of whom shall be chosen by the attorneys of

the Castano Plaintiffs' Litigation Committee who were signatories to the Memorandum of Understanding dated June 20, 1997, by and between tobacco product manufacturers, the Attorneys General, and private attorneys, one of whom shall be chosen by the participating tobacco product manufacturers, and one of whom shall be chosen jointly by those 2 arbitrators.

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

SEC. 1409. SUBSTANTIAL NON-ATTAINMENT OF REQUIRED REDUCTIONS.

(a) ACTION BY SECRETARY.—If the Secretary determines under title II that the non-attainment percentage for any year is greater than 20 percentage points for cigarettes or smokeless tobacco, then the Secretary shall determine, on a brand-by-brand basis, using data that reflects a 1999 baseline, which tobacco product manufacturers are responsible within the 2 categories of tobacco products for the excess. The Secretary may commence an action under this section against the tobacco product manufacturer or manufacturers of the brand or brands of cigarettes or smokeless tobacco products for which the non-attainment percentage exceeded 20 percentage points.

(b) PROCEDURES.—Any action under this section shall be commenced by the Secretary in the United States District Court for the District of Columbia within 90 days after publication in the Federal Register of the determination that the non-attainment percentage for the tobacco product in question is greater than 20 percentage points. Any such action shall be heard and determined by a 3-judge court under section 2284 of title 28, United States Code.

(c) DETERMINATION BY COURT.—In any action under this section, the court shall determine whether a tobacco product manufacturer has shown, by a preponderance of the evidence that it—

(1) has complied substantially with the provisions of this Act regarding underage tobacco use, of any rules or regulations promulgated thereunder, or of any Federal or State laws regarding underage tobacco use;

(2) has not taken any material action to undermine the achievement of the required percentage reduction for the tobacco product in question; and

(3) has used its best efforts to reduce underage tobacco use to a degree at least equal to the required percentage reductions.

(d) REMOVAL OF ANNUAL AGGREGATE PAYMENT LIMITATION.—Except as provided in subsections (e) and (g), if the court determines that a tobacco product manufacturer has failed to make the showing described in subsection (c) then sections 1411 and 1412 of this Act do not apply to the enforcement against, or the payment by, such tobacco product manufacturer of any judgment or settlement that becomes final after that determination is made.

(e) DEFENSE.—An action under this section shall be dismissed, and subsection (d) shall not apply, if the court finds that the Secretary's determination under subsection (a) was unlawful under subparagraph (A), (B), (C), or (D) of section 706(2) of title 5, United States Code. Any judgments paid under section 1412 of this Act prior to a final judgment determining that the Secretary's determination was erroneous shall be fully credited, with interest, under section 1412 of this Act.

(f) REVIEW.—Decisions of the court under this section are reviewable only by the Supreme Court by writ of certiorari granted upon the petition of any party. The applicability of subsection (d) shall be stayed during the pendency of any such petition or review.

(g) CONTINUING EFFECT.—Subsection (d) shall cease to apply to a tobacco product manufacturer found to have engaged in conduct described in subsection (c) upon the later of—

(1) a determination by the Secretary under section 201 after the commencement of action under subsection (a) that the non-attainment percentage for the tobacco product in question is 20 or fewer percentage points; or

(2) a finding by the court in an action filed against the Secretary by the manufacturer, not earlier than 2 years after the determination described in subsection (c) becomes final, that the manufacturer has shown by a preponderance of the evidence that, in the period since that determination, the manufacturer—

(A) has complied with the provisions of this Act regarding underage tobacco use, of any rules or regulations promulgated thereunder, and of any other applicable Federal, State, or local laws, rules, or regulations;

(B) has not taken any action to undermine the achievement of the required percentage reduction for the tobacco product in question; and

(C) has used its best efforts to attain the required percentage reduction for the tobacco product in question.

A judgment or settlement against the tobacco product manufacturer that becomes final after a determination or finding described in paragraph (1) or (2) of this subsection is not subject to subsection (d). An action under paragraph (2) of this subsection shall be commenced in the United States District Court for the District of Columbia, and shall be heard and determined by a 3-judge court under section 2284 of title 28, United States Code. A decision by the court under paragraph (2) of this subsection is reviewable only by the Supreme Court by writ of certiorari granted upon the petition of any party, and the decision shall be stayed during the pendency of the petition or review. A determination or finding described in paragraph (1) or (2) of this subsection does not limit the Secretary's authority to bring a subsequent action under this section against any tobacco product manufacturer or the applicability of subsection (d) with respect to any such subsequent action.

SEC. 1410. PUBLIC HEALTH EMERGENCY.

If the Secretary, in consultation with the Commissioner of Food and Drugs, the Surgeon General, the Director of the Center for Disease Control or the Director's delegate, and the Director of the Health and Human Services Office of Minority Health determines at any time that a tobacco product manufacturer's actions or inactions with respect to its compliance with the Act are of such a nature as to create a clear and present danger that the manufacturer will not attain the targets for underage smoking reduction, the Secretary may bring an action under section 1409 seeking the immediate suspension of the tobacco product manufacturer's annual limitation cap on civil judgments. If the court determines that the Secretary has proved by clear and convincing evidence that the subject manufacturer's actions or inactions are of such a nature that they present a clear and present danger that the manufacturer will not attain the targets for underage smoking reduction, the court may suspend the subject manufacturer's annual limitation cap on civil judgments.

SEC. 1411. TOBACCO CLAIMS BROUGHT AGAINST PARTICIPATING TOBACCO PRODUCT MANUFACTURERS.

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

(1) a participating tobacco product manufacturer; or

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

(b) ACTIONS INVOLVING PARTICIPATING AND NON-PARTICIPATING MANUFACTURERS.—In any civil action involving both a tobacco claim against a participating tobacco product manufacturer based in whole or in part upon conduct occurring prior to the date of enactment of this Act and a claim against 1 or more non-participating tobacco product manufacturers, the court, upon application of a participating tobacco product manufacturer, shall require the jury to or shall itself apportion liability as between the participating tobacco product manufacturer and non-participating tobacco product manufacturers.

SEC. 1412. PAYMENT OF TOBACCO CLAIM SETTLEMENTS AND JUDGMENTS.

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

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

(2) is other than the manufacture, development, advertising, marketing, or sale of tobacco products in compliance with this Act and any agreement incident thereto.

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

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

(2) Any party claiming entitlement to a monetary payment under a final judgment or final settlement on a tobacco claim shall register such claim with the Secretary by filing a true and correct copy of the final judgment or final settlement agreement with the Secretary and providing a copy of such filing to all other parties to the judgment or settlement.

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

(c) LIABILITY CAP.—

(1) IN GENERAL.—The aggregate payments made by all participating tobacco product manufacturers in any calendar year may not exceed $8,000,000,000.

(2) IMPLEMENTATION.—The Secretary shall initiate a rulemaking within 30 days after the date of enactment of this Act to establish a mechanism for implementing this subsection in such a way to ensure the fair and equitable payment of final judgments or final settlements on tobacco claims under this title. Amounts not payable because of the application of this subsection, shall be carried forward and paid in the next year, subject to the provisions of this subsection.

(3) INFLATION ADJUSTMENT.—

(A) IN GENERAL.—The amount in paragraph (1) shall be increased annually, beginning with the second calendar year beginning after the date of enactment of this Act, by the greater of 3 percent or the annual increase in the CPI.

(B) CPI.—For purposes of subparagraph (A), the CPI for any calendar year is the average of the Consumer Price Index for all-

urban consumers published by the Department of Labor.

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

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

(e) JOINT AND SEVERAL LIABILITY.—All participating tobacco product manufacturers shall be jointly and severally liable for, and shall enter into an agreement to apportion among them, any amounts payable under judgments and settlements governed by this section arising in whole or in part from conduct occurring prior to the date of enactment of this Act.

(f) BANKRUPTCY OF PARTICIPATING MANUFACTURER.—No participating tobacco product manufacturer shall cease operations without establishing a surviving entity against which a tobacco claim may be brought. Any obligation , interest, or debt of a participating, tobacco product manufacturer arising under such liability apportionment agreement shall be given priority and shall not be rejected, avoided, discharged, or otherwise modified or diminished in a proceeding, under title 11, United States Code, or in any liquidation, reorganization, receivership, or other insolvency proceeding under State law. A trustee or receiver in any proceeding under title 11, United States Code, or in liquidation, reorganization, receivership, or other insolvency proceeding under State law, may avoid any transfer of an interest of the participating tobacco product manufacturer, or any obligation incurred by such manufacturer, that was made or incurred on or within 2 years before the date of the filing of a bankruptcy petition, if such manufacturer made such transfer or incurred such obligation to hinder or defeat in any fashion the payment of any obligation, interest, or debt of the manufacturer arising under the liability apportionment agreement. Any property vesting in the participating tobacco product manufacturer following such a proceeding shall be subject to all claims and interest of creditors arising under the liability apportionment agreement.

(f) LIMITATION ON STATE COURTS.—No court of any State, Tribe, or political subdivision of a State may take any action to inhibit the effective operation of subsection (c).

SEC. 1413. ATTORNEYS' FEES AND EXPENSES.

(a) ARBITRATION PANEL.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(G) The amount involved and the results obtained.

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

(I) The undesirability of the action.

(J) Such other factors as justice may require.

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

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

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

SEC. 1414. EFFECT OF COURT DECISIONS.

(a) SEVERABILITY.—If any provision of titles I through XIII, or the application thereof to any person, manufacturer or circumstance, is held invalid, the remainder of the provisions of those titles, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(b) NONSEVERABILITY.—If a court of competent jurisdiction enters a final decision substantially limiting or impairing the essential elements of title XIV, specifically the requirements of sections 1404 and 1405, then the provisions of section 1412 are null and void and of no effect.

SEC. 1415. CRIMINAL LAWS NOT AFFECTED.

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

SEC. 1416. CONGRESS RESERVES THE RIGHT TO ENACT LAWS IN THE FUTURE.

The right to alter, amend, or repeal any provision of this Act is hereby reserved to the Congress in accordance with the provisions of Article I of the Constitution of the United States and more than 200 years of history.

SEC. 1417. DEFINITIONS.

In this title:

(1) TERMS DEFINED IN TITLE VII.—Any term used in this title that is defined in title VII has the meaning given to it in title VII.

(2) ADDITIONAL DEFINITIONS.—

(A) ADDICTION CLAIM; DEPENDENCE CLAIM.—The term ''addiction claim'' or ''dependence claim'' refers only to any cause of action to the extent that the prayer for relief seeks a cessation program, or other public health program that is to be available to members of the general public and is designed to reduce or eliminate the users' addiction to, or dependence on, tobacco products, and as used herein is brought by those who claim the need for nicotine reduction assistance. Neither addiction or dependence claims include claims related to or involving manifestation of illness or tobacco-related diseases.

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

(C) PROTOCOL.—The term ''protocol'' means the agreement to be entered into by the Secretary of Health and Human Services with a participating tobacco product manufacturers under this title.

(D) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages in addition to compensatory damages having the character of punishment or penalty.

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

CRAIG AMENDMENT NO. 2685

(Ordered to lie on the table.)

Mr. CRAIG submitted an amendment intended to be proposed by him to the bill, S. 1415, supra; as follows:

Beginning on page 192, strike line 8 and all that follows through line 2 on page 193, and insert the following:

(1) AMOUNTS.—

(A) IN GENERAL.—There is established within the Trust Fund a separate account, to be known as the State Litigation Settlement Account. Of the net revenues credited to the Trust Fund under section 401(b)(1) for each fiscal year, at least 62 percent of the amounts designated for allocation under the settlement payments shall be allocated to this account. If, after 10 years, the estimated 25-year total amount projected to received in this account will be different than amount than $334,800,000,000, then beginning with the eleventh year the 62 percent share will be adjusted as necessary to achieve that 25-year total amount. Notwithstanding section 452(b) or any other provision of this Act, amounts received by a State under this subsection may be used as the State determines appropriate.

(B) STATE LOSS OF REVENUE ADJUSTMENTS.—

(i) IN GENERAL.—Amounts provided to a State under this subsection for a fiscal year shall take into account the decrease in the amount of revenue that the State received

during the previous fiscal year as a result of a decrease in the demand for tobacco products in the State based on the enactment of this Act.

(ii) DETERMINATIONS.—The Joint Committee on Taxation established under section 8001 of the Internal Revenue Code of 1986 shall make determinations under clause (i) relating to the amount by which the revenues of a State have decreased during a fiscal year as a result of the enactment of this Act.

GRAMM (AND OTHERS) AMENDMENT NO. 2686

Mr. GRAMM (for himself, Mr. DOMENICI, Mr. ROTH, Mr. FAIRCLOTH, and Mr. BOND) proposed an amendment to amendment No. 2437 proposed by Mr. DURBIN to the bill, S. 1415, supra; as follows:

At the end of the amendment, insert:

SEC. ___. ELIMINATION OF MARRIAGE PENALTY.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 222 as section 223 and by inserting after section 221 the following new section:

"SEC. 222. DEDUCTION FOR MARRIED COUPLES TO ELIMINATE THE MARRIAGE PENALTY.

''(a) IN GENERAL.—In the case of a joint return under section 6013 for the taxable year, there shall be allowed as a deduction an amount equal to the applicable percentage of the excess (if any) of—

''(1) the sum of the amounts determined under subparagraphs (B) and (C) of section 63(c)(2) for such taxable year (relating to the basic standard deduction for a head of a household and a single individual, respectively), over

''(2) the amount determined under section 63(c)(2)(A) for such taxable year (relating to the basic standard deduction for a joint return).

''(b) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

''(1) IN GENERAL.—No deduction shall be allowed under subsection (a) if the modified adjusted gross income of the taxpayer for the taxable year exceeds $50,000.

''(2) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this subsection, the term 'modified adjusted gross income' means adjusted gross income determined—

''(A) after application of sections 86, 219, and 469, and

''(B) without regard to sections 135, 137, and 911 or the deduction allowable under this section.

''(3) COST-OF-LIVING ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2007, the $50,000 amount under paragraph (1) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, except that subparagraph (B) thereof shall be applied by substituting 'calendar year 2008' for 'calendar year 1992'. If any amount as adjusted under this paragraph is not a multiple of $5,000, such amount shall be rounded to the next lowest multiple of $5,000.

''(c) APPLICABLE PERCENTAGE.—For purposes of this section, the applicable percentage shall be—

''(1) 25 percent in the case of taxable years beginning in 1999,

''(2) 30 percent in the case of taxable years beginning in 2000, 2001, and 2002,

''(3) 40 percent in the case of taxable years beginning in 2003, 2004, and 2005,

''(4) 50 percent in the case of taxable years beginning in 2006,

''(5) 60 percent in the case of taxable years beginning in 2007, and

''(6) 100 percent in the case of taxable years beginning in 2008 and thereafter.''

(b) DEDUCTION TO BE ABOVE-THE-LINE.—Section 62(a) of the Internal Revenue Code of 1986 (defining adjusted gross income) is amended by adding after paragraph (17) the following new paragraph:

''(18) DEDUCTION FOR MARRIED COUPLES.—The deduction allowed by section 222.''

(c) EARNED INCOME CREDIT PHASEOUT TO REFLECT DEDUCTION.—Section 32(c)(2) of the Internal Revenue Code of 1986 (defining earned income) is amended by adding at the end the following new subparagraph:

''(C) MARRIAGE PENALTY REDUCTION.—Solely for purposes of applying subsection (a)(2)(B), earned income for any taxable year shall be reduced by an amount equal to the amount of the deduction allowed to the taxpayer for such taxable year under section 222.''

(d) FULL DEDUCTION FOR HEALTH INSURANCE FOR SELF-EMPLOYEDS.—The table contained in section 162(l)(1)(B) is amended—

(1) by striking ''and 1999'',

(2) by striking the items relating to years 1998 through 2006, and

(3) by striking ''2007 and thereafter'' and inserting ''1999 and thereafter''.

(e) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the item relating to section 222 and inserting the following new items:

''Sec. 222. Deduction for married couples to eliminate the marriage penalty.

''Sec. 223. Cross reference.''

(f) REDUCTION IN TRANSFERS TO NATIONAL TOBACCO TRUST FUND.—

(1) IN GENERAL.—Except as provided in paragraph (2) and notwithstanding any other provision of this Act, the amount credited to the National Tobacco Trust Fund under section 401(b) of this Act for any fiscal year shall be reduced by the amount of the decrease in Federal revenues for such fiscal year which the Secretary of the Treasury estimates will result from the amendments made by this title. The Secretary shall increase or decrease the amount of any reduction under this section to reflect any incorrect estimate for any preceding fiscal year.

(2) LIMITATION ON REDUCTION AFTER FISCAL YEAR 2007.—

(A) IN GENERAL.—Except as provided in subparagraph (B), with respect to any fiscal year after fiscal year 2007, the reduction determined under paragraph (1) shall not exceed 33 percent of the total amount credited to the National Tobacco Trust Fund for such fiscal year.

(B) SPECIAL RULE.—If in any fiscal year the youth smoking reduction goals under section 203 are attained, subparagraph (A) shall be applied by substituting ''50 percent'' for ''33 percent''.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

WELLSTONE AMENDMENT NO. 2687

(Ordered to lie on the table.)

Mr. WELLSTONE submitted an amendment intended to be proposed by him to amendment No. 2512 proposed by Mr. ROTH to the bill, S. 1415, supra; as follows:

Beginning on page 4, strike line 14 and all that follows through page 6, line 6 and insert in lieu thereof the following:

(ii) the aggregate payments which are due to be received by such State for such calendar year under the settlement, judgement, or other agreement.

(B) REALLOCATION OF AMOUNT FOR OTHER STATES.—If the amount determined under subparagraph (A)(ii) exceeds the amount determined under subparagraph (A)(i) for one or more States for any calendar year, the amount of the payments under paragraph (3)(A) to all States to which subparagraph (A) does not apply shall be ratably reduced by the aggregate amount of such excess for all 4 States.

(5) SET-OFF PAYMENTS FROM LITIGATION.—

(A) IN GENERAL.—For any State which has entered into a settlement agreement prior to the date of enactment of this Act, that resolves litigation by the State against a tobacco manufacturer or a group of tobacco manufacturers for expenditures of the State for tobacco related diseases or conditions, to be eligible to receive any funds from the State Litigation Settlement Account, the amount of any payment due in any year under the settlement agreement must first be received by the State after which the amount actually received will be set-off against any amount which the State is entitled to receive from the State Litigation Settlement Account. The failure of a State to receive any payment due under the settlement agreement will not prohibit the State from receiving any amount which the State is entitled to receive from the State Litigation Settlement Account.

(B) REDISTRIBUTION OF SET-OFF PAYMENTS.—Any payments out of the State Litigation Settlement Account which would otherwise have been made to such State but for the set-off in paragraph (A) shall be reallocated to all other States receiving such payments for such calendar year in the same proportion as the payments received by any State bear to all such payments.

DASCHLE AMENDMENT NO. 2688

Mr. DASCHLE proposed an amendment to amendment No. 2437 proposed by Mr. DURBIN to the bill, S. 1415, supra; as follows:

At the end of the amendment add the following:

The provisions of Senate Amendment No. 2686 are null and void.

TITLE ___—TAX BENEFITS FOR MARRIED COUPLES AND SELF-EMPLOYED INDIVIDUALS

SEC. ___01. DEDUCTION FOR TWO-EARNER MARRIED COUPLES.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 222 as section 223 and by inserting after section 221 the following new section:

"SEC. 222. DEDUCTION FOR MARRIED COUPLES TO ELIMINATE THE MARRIAGE PENALTY.

''(a) IN GENERAL.—In the case of a joint return under section 6013 for the taxable year, there shall be allowed as a deduction an amount equal to the applicable percentage of the qualified earned income of the spouse with the lower qualified earned income for the taxable year.

''(b) APPLICABLE PERCENTAGE.—For purposes of this section—

''(1) IN GENERAL.—The term 'applicable percentage' means 20 percent, reduced by 2 percentage points for each $1,000 (or fraction thereof) by which the taxpayer's modified adjusted gross income for the taxable year exceeds $50,000.

''(2) TRANSITION RULE FOR 1999 AND 2000.—In the case of taxable years beginning in 1999

and 2000, paragraph (1) shall be applied by substituting '10 percent' for '20 percent' and '1 percentage point' for '2 percentage points'.

''(3) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this subsection, the term 'modified adjusted gross income' means adjusted gross income determined—

''(A) after application of sections 86, 219, and 469, and

''(B) without regard to sections 135, 137, and 911 or the deduction allowable under this section.

''(4) COST-OF-LIVING ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2002, the $50,000 amount under paragraph (1) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, except that subparagraph (B) thereof shall be applied by substituting 'calendar year 2002' for 'calendar year 1992'. If any amount as adjusted under this paragraph is not a multiple of $2,000, such amount shall be rounded to the next lowest multiple of $2,000.

''(c) QUALIFIED EARNED INCOME DEFINED.—

''(1) IN GENERAL.—For purposes of this section, the term 'qualified earned income' means an amount equal to the excess of—

''(A) the earned income of the spouse for the taxable year, over

''(B) an amount equal to the sum of the deductions described in paragraphs (1), (2), (7), and (15) of section 62 to the extent such deductions are properly allocable to or chargeable against earned income described in subparagraph (A).

The amount of qualified earned income shall be determined without regard to any community property laws.''

''(2) EARNED INCOME.—For purposes of paragraph (1), the term 'earned income' means income which is earned income within the meaning of section 911(d)(2) or 401(c)(2)(C), except that—

''(A) such term shall not include any amount—

''(i) not includible in gross income,

''(ii) received as a pension or annuity,

''(iii) paid or distributed out of an individual retirement plan (within the meaning of section 7701(a)(37)),

''(iv) received as deferred compensation, or

''(v) received for services performed by an individual in the employ of his spouse (within the meaning of section 3121(b)(3)(A)), and

''(B) section 911(d)(2)(B) shall be applied without regard to the phrase 'not in excess of 30 percent of his share of net profits of such trade or business'.''

(b) DEDUCTION TO BE ABOVE-THE-LINE.—Section 62(a) of the Internal Revenue Code of 1986 (defining adjusted gross income) is amended by adding after paragraph (17) the following new paragraph:

''(18) DEDUCTION FOR TWO-EARNER MARRIED COUPLES.—The deduction allowed by section 222.''

(c) EARNED INCOME CREDIT PHASEOUT TO REFLECT DEDUCTION.—Section 32(c)(2) of the Internal Revenue Code of 1986 (defining earned income) is amended by adding at the end the following new subparagraph:

''(C) MARRIAGE PENALTY REDUCTION.—Solely for purposes of applying subsection (a)(2)(B), earned income for any taxable year shall be reduced by an amount equal to the amount of the deduction allowed to the taxpayer for such taxable year under section 222.''

(d) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the item relating to section 222 and inserting the following new items:

''Sec. 222. Deduction for married couples to eliminate the marriage penalty.

''Sec. 223. Cross reference.''

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

SEC. ___02. DEDUCTION FOR HEALTH INSURANCE COSTS FOR SELF-EMPLOYED INDIVIDUALS.

(a) IN GENERAL.—Paragraph (1) of section 162(l) of the Internal Revenue Code of 1986 is amended to read as follows:

''(1) ALLOWANCE OF DEDUCTION.—In the case of an individual who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to 100 percent (75 percent in the case of taxable years beginning in 1999 and 2000) of the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer, his spouse, and dependents.''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

SEC. ___03. REDUCTION IN TRANSFERS TO NATIONAL TOBACCO TRUST FUND.

Notwithstanding any other provision of this Act—

(1) the amount credited to the National Tobacco Trust Fund under section 401(b) of this Act for any fiscal year shall be reduced by the amount of the decrease in Federal revenues for such fiscal year which the Secretary of the Treasury estimates will result from the amendments made by this title, and

(2) for purposes of allocating amounts to accounts under section 451 of this Act, the reduction under paragraph (1) shall be treated as having been made proportionately from the amounts described in paragraphs (1), (2), and (3) of section 401(b) of this Act.

The Secretary shall increase or decrease the amount of any reduction under this section to reflect any incorrect estimate for any preceding fiscal year.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be allowed to meet during the session of the Senate on Wednesday, June 10, 1998, at 2 P.M. in SR–328A. The purpose of this meeting will be to examine livestock issues.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the Senate Committee on Indian Affairs be authorized to meet during the session of the Senate on Wednesday, June 10, 1998 at 9:30 a.m. to conduct an oversight hearing on Bureau of Indian Affairs School Construction. The hearing will be held in room 106 of the Dirksen Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, June 10, 1998 at 2:30 p.m. to hold an open hearing on Intelligence Matters.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON COMMUNICATIONS

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the Communications Subcommittee of the Senate Committee on Commerce, Science, and Transportation be authorized to meet on June 10, 1998, at 9:30 a.m. on FCC reauthorization.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON EAST ASIAN AND PACIFIC AFFAIRS

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the Subcommittee on East Asian and Pacific Affairs be authorized to meet during the session of the Senate on Wednesday, June 10, 1998 at 2:00 p.m. to hold a hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON FINANCIAL SERVICES AND TECHNOLOGY

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the Subcommittee on Financial Services and Technology of the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Wednesday, June 10, 1998, to conduct a hearing on ''Disclosing Year 2000 Readiness: Are the Companies You Invest in Ready for the Year 2000? Will You Know if They're Not?''

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON TECHNOLOGY, TERRORISM, AND GOVERNMENT INFORMATION

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the Subcommittee on Technology, Terrorism, and Government Information, of the Senate Judiciary Committee be authorized to hold a hearing during the session of the Senate on Wednesday, June 10, 1998 at 2:15 p.m. in room 226, Senate Dirksen Office Building, on: ''Critical Infrastructure Protection: 'Eligible Receiver' and the New PDD.''

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

TRIBUTE TO CAPTAIN MICHAEL J. LANDERS

● Mr. D'AMATO. Mr. President, I rise today to recognize and honor Captain Michael J. Landers, United States Navy, as he retires upon completion of over 30 years of honorable and faithful service to our Nation.

A native of Utica, NY, Captain Landers was enlisted into the Regular Navy in November 1968 as a Seaman Recruit. After 5 years of enlisted submarine service, he was commissioned an Ensign upon graduation from the University of Missouri in December 1973.

Captain Landers, a Submarine Warfare Officer, has performed in a consistently outstanding manner under the

most challenging of circumstances. From 1973 to 1985 Captain Landers served with the surface and submarine fleets of the Atlantic and pacific Oceans. He gained extensive experience aboard *USS ALEXANDER HAMILTON* (SSBN) 617) *USS VON STEUBEN* (SSBN 632), and *USS PIGEON* (ASR 21). After serving on the staff of the Director of Strategic Systems Programs, Washington, DC, Captain Landers commanded the *USS ORTOLAN* (ASR 22) from 1987 to 1990. He subsequently became the Executive Assistant to the Deputy Chief of Naval Personnel. Captain Landers left the Navy Annex in 1994 and reported for duty at the Industrial College of the Armed Forces at Fort McNair where he received a Master of Science Degree in National Resource Strategy.

From 1995 to 1997, Captain Landers commanded the naval Submarine Base, Bangor, WA. He returned to the Pentagon in November 1997, where he served as the Deputy Chief of Legislative Affairs. In this capacity he has been a major asset to the Navy, Marine Corps and Congress. He is considered a valued advisor to the very top echelons of the Navy and Congress. His consummate leadership, energy and integrity ensured that the morale and effectiveness of the Navy-Marine Corps team reached heights otherwise thought to be impossible to achieve in such an austere budget climate. During a period of significant change and restructuring of naval forces, Captain Landers helped to obtain Congressional support for a strong and balanced navy and marine Corps. Through his brilliant insight, he has directly contributed to their future readiness and success.

Captain Landers' distinguished awards include the legion of Merit with three gold stars, the meritorious Service medal with one gold star, the navy Commendation Medal with two gold stars and the navy Achievement Medal with one gold star.

The Department of the navy, the Congress, and the American people have been defended and well served by this dedicated naval officer for over 30 years. Captain Mike Landers will long be remembered for his leadership, service and dedication. He will be missed. We wish Mike, and his lovely wife Kris, our very best as they begin a new chapter in their life together.●

VERMONT'S SMALL BUSINESS PERSON OF THE YEAR

● Mr. LEAHY. Mr. President, today I rise to recognize two very special Vermont business people. Tom and Sally Fegley are the owners and founders of Tom and Sally's Handmade Chocolates of Brattleboro, Vermont. For the past two years I have been pleased to nominate Tom and Sally for the U.S. Small Business Administration's Small Business Person of the Year award for the state of Vermont. This year, I am proud to announce that Tom and Sally Fegley are the recipients of this prestigious award.

Eight and a half years ago, the Fegleys had the courage to move to Vermont and risk their lives' savings to undertake their start-up business in chocolates, a field in which neither of them had any previous experience. With hard work and intense dedication they have built this business to more than $1 million in gross sales in 1997. Their products are sold in all fifty states and they are exported all over the world, including Canada, Great Britain, France, Germany, South Africa and the Netherlands. Tom and Sally's entrepreneurial savvy has helped to spread the distinctive high quality of Vermont specialty foods across the globe.

The Fegley's chocolates are so unique they have received five federal trademarks for their chocolates ranging from ''Vermont Pasture Patties'' to ''Cowlicks.'' In addition, their products have won eight national awards and have received media coverage ranging from ''Good Morning, America'' and ''The Today Show'' to such magazines as Bon Appetit, Fine Cooking, and Mademoiselle, as well as newspapers including The New York Times, The Wall Street Journal, and The Washington Post.

I remember the first time that Marcelle and I visited Tom and Sally's shop in 1992. We were especially impressed with its old-fashioned atmosphere and Vermont country charm. A few years ago, Tom and Sally decided to combine the sale of their handmade chocolates and candies with the sale of Vermont folkart. This gallery displays the handicrafts of Vermonters as the Fegleys display the fruits of their own handicraft. This innovative combination makes visiting Tom and Sally's a unique and charming experience while promoting Vermont's distinct character.

Not only have Tom and Sally made an imprint on Vermont's specialty food industry, but they have made an even larger contribution to their community. Perhaps the Fegleys should be recognized more for what they do for others than for their business success. From donating chocolates to local charities, to helping a local apple orchard after vandals destroyed the apple trees, Tom and Sally's involvement and contributions have expanded beyond the business industry and have made them important members of Vermont's communities.

I am pleased that the Fegleys have been named 1998 Vermont Small Business Persons of the Year. I believe that they embody what Vermont is all about—a fine tradition of quality products with a strong sense of community.●

REMARKS BY SENATOR BILL FRIST TO THE ASSOCIATION OF AMERICAN UNIVERSITIES

● Mr. FRIST. Mr. President, on Tuesday, June 2nd, I addressed the Association of American Universities regarding the importance of federal support for university-based research. I ask that my remarks be printed in the RECORD.

The remarks follow:

FEDERAL SUPPORT FOR UNIVERSITY-BASED RESEARCH HAS PRODUCED A WEALTH OF BENEFITS FOR ALL AMERICANS

As a medical scientist, a researcher, a former university faculty member, a current university Trustee, and a life-long explorer in the quest for new knowledge, I believe, as you do, that America's strategy of federally-supported university-based research has produced a wealth of benefits for all Americans.

It's not only expanded our scientific and academic national base, but increased the economic vitality of our Nation, raised the standard of living all Americans enjoy, and produced a highly-educated workforce that has made us a leader in today's global economy. In fact, in economic terms alone, the return on our federal investment has been huge. As much as one half of all U.S. growth is a result of the technical progress we've achieved through research.

According to the Office of Science and Technology Policy (OSTP), technology is the single most important factor in long-term economic growth. Not only is the performance of U.S. businesses and their contributions to economic growth directly linked to their use of technology, but as cited in a study conducted by the US Department of Commerce, manufacturing businesses that used eight or more advanced technologies grew 14.4 percent more than plants that used none—and production wages were more than 14 percent higher.

For any of you who may encounter doubters in other Congressional offices let me give you just two quick examples from the President of MIT, who testified before my committee, of how the federal investment in university research has produced phenomenal returns.

Over the last three decades, the Department of Defense has funded $5 billion in university in information technology. Those programs alone created one-third to one-half of all major breakthroughs in the computer and communications industries. Today, those businesses account for $500 billion of GDP—a return on our investment of 3,000 percent!

In fact, studies of just that one university along—MIT—found that, in Massachusetts, MIT grads and faculty founded over 600 companies that produced 300,000 jobs and $40 billion in sales. In Silicon Valley, MIT grads founded 225 companies which produced 150,000 jobs and more than $22 billion in sales.

In one industry alone—biotechnology—government's $43 million annual investment has not only produced the human capital of the biotech industry—scientists, engineers, managers—and new knowledge that's led to an understanding of the molecular basis of disease, but it's also produced new companies and new wealth.

To again use MIT as an example, in Massachusetts alone, MIT-related companies have produced 10,000 new jobs, $3 billion in annual revenues, and 100 new biotech patents licensed the U.S. companies that have induced investment of $650 million. Those companies now produce nine of the 10 FDA-approved biotech drugs that stop heart attacks and treat cancer, cystic fibrosis and diabetes—and we've only just begun to tap the potential returns of this rapidly advancing new field.

And I'm sure every one of the universities you represent could cite statistics that are equally impressive.

But, as you well know, universities are not just the fountainhead of innovation. They

are the wellsprings that provide the intellectual underpinning of future progress, because they train the people who will translate tomorrow's discoveries into even more exciting products and processes and industries. And when you consider what today's students are already capable of, the potential is truly breathtaking.

Jennifer Mills, for example, is a physics undergraduate from Portland, Oregon who wrote much of the computer code responsible for the astounding images sent back to Earth by the Hubble telescope.

James McLurkin, an undergrad engineer, created a tiny robot that may well revolutionize certain kinds of surgery, enabling surgeons to operate inside the body without ever touching the patient! Just imagine what tomorrow's students to do!

AMERICA'S INVESTMENT IN SCIENCE AND TECHNOLOGY MUST CONTINUE

Clearly, America's investment in science and technology must continue. The two central questions that Congress must ask and answer, however, are: (1) Will science and technology continue to be as great a Congressional priority in the future as it has been in the past; and (2) Will the kind of financial investment necessary to sustain future progress even be possible in light of our other growing financial commitments?

The history of the last five decades has shown us that there is a federal role in the creation and nurturing of science and technology, and that even in times of fiscal austerity that commitment has been relatively consistent. However, the last three decades have also shown us something else: fiscal reality. The simple truth is there's just not enough money to do everything we'd like to do. It took some time for us to realize that, and by the time we did, we found ourselves in a fiscal situation that is only now being addressed. And, budget surpluses notwithstanding, discretionary spending is, and will continue to be, under immense fiscal pressure.

One only has to look back over the last 30 years to confirm this trend. In 1965, mandatory federal spending on entitlements and interest on the debt accounted for 30 percent of the federal budget. Fully 70 percent went toward discretionary programs—research, education, roads, bridges, national parks, and national defense.

Today, just 30 years later, that ratio has been almost completely reversed: 67 percent of the budget is spent on mandatory programs and interest on the debt; only 33 percent is left for absolutely everything else, including research.

In fact, total R&D spending today as a percentage of GDP is just .75 percent—as compared to 2.2 percent in the mid-1960s when superpower rivalry and the race to space fueled a national commitment to science and technology. And as the Baby Boom generation begins to retire and the discretionary portion of the budget shrinks even further, this situation will only grow worse.

Thus, we have both a long-term problem: addressing the ever-increasing level of mandatory spending; and a near-term challenge: apportioning the ever-dwindling amount of discretionary funding.

The confluence of this increased dependency on technology and decreased fiscal flexibility has created a problem too obvious to ignore: not all deserving programs can be funded; not all authorized programs can be fully implemented. In other words, the luxury of fully funding science and technology programs across the board has long since passed. We must set priorities.

VISION FOR THE FUTURE: HOW WE ENSURE FEDERAL SUPPORT FOR SCIENCE AND TECHNOLOGY

With the introduction of S.1305, the Federal Research Investment Act, * * * a debate on funding for science and technology that is long overdue, and I commend them for it.

I firmly believe that Congress must reaffirm our national commitment to science and technology, and redouble its efforts to ensure that funding is not only maintained but increased. However, I also believe that funding levels alone are not the answer.

What we really need is a strategy for the future, a vision that not only provides adequate levels of funding, but ensures that that funding is both responsible and sustainable over the long term.

I believe we do that by establishing and applying a set of first or guiding principles that will enable Congress to (1) consistently ask the right questions about each competing technology program; (2) focus on that program's effectiveness and appropriateness for Federal funding, and most importantly, (3) make the hard choices about which programs deserve to be funded and which do not. Only then can we be assured that Congress has invested wisely and well.

What are these first principles? There are four.

(1) Federal R&D programs must be good science. They must be focused, not duplicative, and peer-reviewed. Because there is strength in diversity, they must support both knowledge-driven science—which broadens our base of knowledge and advances the frontiers of science; and mission-driven science requirements—which push the state-of-the-art in specific technology fields.

(2) Program must be fiscally accountable. Especially in today's fiscal environment, wasteful administrative habits can't be tolerated.

(3) They must have measurable results. Programs must achieve their aims. Their effectiveness must be evaluated, not on the basis of individual projects which can have varying rates of success, but on basis of the entire program.

(4) They must employ a consistent approach. Federal policy must be applied consistently across the entire spectrum of Federal research agencies. High quality, productive research programs must be encouraged regardless of where they are located.

Accompanying the four first principles, are four corollaries:

(1) *Flow of Technology*.—The process of creating technology involves many steps. However, the current federal structure clearly reinforces increasingly artificial distinctions across the spectrum of research and development activities. The result is a set of a programs which each support a narrow phase of research and development, but are not coordinated with one another.

Government must maximize its investment by encouraging the progression of a technology from the earliest stages of research up to commercialization, through funding agencies and vehicles appropriate for each stage. This creates a flow of technology, subject to merit at each stage, so that promising technology is not lost in a bureaucratic maze.

(2 *Excellence in the American Research Infrastructure*.—We must foster a close relationship between research and education. Our investment at the university level creates more than simply world class research. It creates would class researchers as well. We must continue this strong research infrastructure, and find ways to extend the excellence of our university system to primary and secondary educational institutions.

(3) *Commitment to a Board Range of Research Initiatives*.—Revolutionary innovation is taking place at the overlap of research disciplines. We must continue to encourage this by providing opportunities for interdisciplinary projects and fostering collaboration across fields of research.

(4) *Partnerships among Industry, Universities, and Federal Labs*.—Each of these has special talents and abilities that complement the other. Our federal dollars are wisely spent by facilitating the creation of partnerships, in effect creating a whole that is greater than the sum of its parts.

These first principles and their four corollaries provide a framework that will not only guide the creation of new, federally-funded research and development programs, but validate existing ones. Taken together, they create a powerful method for elevating the debate by increasing Congress' ability to focus on the important issues; decreasing the likelihood that it will get sidetracked on politically-charged technicalities; and ensuring that federal R&D programs are consistent and effective. They will also help us establish a both consistent set of national goals, and a vision for the future.

S. 1305: A GOOD FIRST STEP, BUT A MORE COMPREHENSIVE APPROACH IS NEEDED

S. 1305 has put funding for science and technology at the forefront of the 105th Congress. It is an important first step in the creation of a long-term federal research and development strategy, and I wholeheartedly support its general concept and thrust. However, I believe it falls short in many of the areas I have just outlined.

In S. 1305, funding levels are dramatically increased within the first five years regardless of economic conditions—making funding targets unrealistic and unsustainable, particularly when those funding levels jeopardize discretionary programs necessary to the maintenance and operation of the nation.

The bipartisan bill I will propose with Senator Rockefeller will also substantially increase funding but more gradually. Rather than achieve a doubling of funds in 10 years as S. 1305 proposes, the First bill will achieve the same goal in 12 years.

My bill also requires the President to provide, as part of his annual budget, a detailed summary of the total level of federal funding for all civilian research agencies, as well as a focused strategy that reflects the funding projections of Congress for each future fiscal year until 2010.

S. 1305 provides Congress with no mechanism to identify or target those programs that are either marginal or ineffective. In keeping with the third principle that all federal R&D programs must be fiscally accountable, my bill will include a mechanism that requires OMB to indicate those programs that fail to meet a minimally acceptable criteria as defined by a National Academy of Science study.

Finally, S. 1305 effects only civilian research and development programs, and provides no support for highly successful defense science and technologies efforts such as those under DARPA. And, as I demonstrated in my earlier example, defense-related research has produced remarkable spinoffs in the private sector, the Internet being the most obvious example. Thus, in a companion bill, I will propose a similar strategy for increasing funding for defense-related R&D.

Even with its imperfections, S. 1305 is already a success—because it has commenced a debate on science and technology investment that is long overdue. And it is a debate I am committed to furthering.

LEGISLATIVE UPDATE

Accordingly, I commenced a process, which continues daily, through which I hope to examine all relevant approaches, and collect and compile the input of all federal research agencies, the scientific community, my distinguished colleagues in Congress and government, and all other relevant parties in an effort to construct a comprehensive, feasible

and effective strategy for future federal funding of science and technology.

On April 28th, the Science, Technology, and Space Subcommittee which I chair, held a hearing to further explore the whole issue of federal funding, and three of the original cosponsors of S. 1305—Senators GRAMM, LIEBERMAN, and BINGAMAN—participated. Senator DOMENICI, who was unable to attend, submitted testimony for the RECORD.

At my direction, my personal chief of staff, and my Commerce Committee staff, have met extensively with professional societies, private industry, and university representatives, some of whom are here today, to get a clear sense of your reality, your vision of where research and development ought to be headed, and your reaction to both S. 1305 and a First alternative.

They've also been meeting with the senior legislative staffs of other Members to develop a strategy everyone is comfortable with, and that addresses everyone's primary concerns. And we've been meeting with House staff and coordinating our goals with those of the House Policy Study. The response has been very positive.

After comprehensive discussions my Senate colleagues have agreed to support a First alternative in which funding would rise from $34 billion to $68 billion. And all other parties seem to like the idea of a long-term vision, a concrete strategy to take us there (vs. rhetoric that is subject to change), and realistic numbers that stand a good chance of being achieved.

Your input into this process has been particularly important. Every time we meet, my staff and I gain a better understanding of the complexity of these issues as they relate to universities. And I hope you'll continue to work with us in the days ahead.

In the very near future, probably within a week or two, a Frist/Rockefeller bill, officially called the Federal Research Investment Act of 1998, will be dropped. It is a bill that represents—not a roadblock to increased federal funding for research—but a carefully-crafted compromise, agreed to by all, and representing the best efforts of all.

CHALLENGE OF THE FUTURE

Today, in every known field of exploration, man has answered questions once considered unanswerable, and questions impossible to even conceive just a short time ago. Yet so many mysteries remain. And so we must continue to seek, to define, to know.

Yet science today is not only about the esoteric, it's about the practical. It's about the simple as well as the deep. It is both a luxury and a necessity. Science helps us feed our families. It helps keep our loved ones healthy. By continually creating new goods and services, new jobs and new capital, it raises our standard of living. And it produces the technologies that protect our troops and project our resolve around the world. In other words, science has helped keep us prosperous, and science has helped keep us free.

Without a doubt, science is an integral part of our present. But because we live in a world now dependent upon science and technology excellence, a world driven by a science and technology economy, science is even more important to our future.

To a large extent, universities hold the key to that future because universities guide America's youth and inspire them to seek out the deep truths of life, to lift the veil from its fascinating secrets, to seek, to define, to know. It is the University that fosters a love for the mysteries of God and nature, and propels the next generation forward to explore and improve our world. And that makes you a vital link between the present and the future.

We are—and we should be—justly proud of our scientific accomplishments thus far. But if there is one thing science has taught us, it is that man's challenges only increase with every new level of knowledge we achieve. Which is why continued research and development is so important.

Expanding scientific knowledge is a responsibility that extends well beyond the classrooms and universities of our Nation. It is the responsibility of us all. As John F. Kennedy said, ''Every educated citizen has the special obligation to encourage the pursuit of learning, to promote exploration of the unknown, to preserve the freedom of inquiry, [and to] to support the advancement of research . . .''

I take his words seriously. I know you do as well. Working together, I believe we can ensure that American commitment to research and scientific inquiry continues unabated in the years ahead.●

HONORING THE RETIREMENT OF COLONEL MARY TRIPP

● Ms. MOSELEY-BRAUN. Mr. President, it is my privilege to say a few words in honor of a native Illinoisan, Colonel Mary Tripp, who retired from the United States Air Force on June 1, 1998 after 23 years of proud service to our nation.

Colonel Tripp's final assignment in the Air Force was director of the program honoring the 50th anniversary of the service. The project was a blend of motivational and historic information, which under Colonel Tripp's direction both informed the general public and energized her fellow airmen. From the national recognition at the Tournament of Roses Parade to the Pentagon Cake Cutting Ceremony with President Clinton, the hard work and dedication of Colonel Tripp shined in every event. The distinguished history of the United States Air Force is a story every American should know. Under Colonel Tripp's direction, this story was told. Through the example Colonel Tripp set as an officer duirng her career, the Air Force's proud legacy will continue to grow.

As Colonel Tripp returns to private life in West Chicago, Illinois, I ask my colleagues to join me in commending her outstanding service to our nation, and wish her good luck and Godspeed in all of her future endeavors.●

RECOGNITION OF ''FATHER'S MONTH''

● Mr. BOND. Mr. President, I rise today to recognize the new tradition of ''Father's Month'' in St. Louis, Missouri founded by Mayor Clarence Harmon. Being a father myself, I know the important role that a father's nurturing can make in a child's life. A father's influence can help a child grow into a healthy, happy, well-adjusted adult.

The purpose of ''Father's Month'' will be to encourage the community to actively work toward a common goal of fathers who take a larger role in the development of their children. I agree with Mayor Harmon that merely providing financial support is not enough. With the continuing efforts of St. Louis to promote events that teach positive family values and family togetherness, there is no telling how much the community can achieve. I offer Mayor Harmon and the community of St. Louis support and gratitude during ''Father's Month.'' ●

REMEMBERING THE LIFE AND COMMITMENT OF ROBERT F. KENNEDY ON THE 30TH ANNIVERSARY OF HIS DEATH

● Mr. CLELAND. Mr. President, I rise today to honor the memory of one of our Nation's most compassionate and visionary leaders, Robert F. Kennedy, who was assassinated 30 years ago. He served our nation as Attorney General and United States Senator, but his impact on our nation's history cannot be measured by mere titles or the offices he held.

Although his life was cut short thirty years ago, his legacy will live on forever. Many of today's leaders were inspired by Bobby Kennedy—he inspired me to become involved in politics more than three decades ago. I had the privilege to meet Bobby Kennedy in the summer of 1965 at Stetson University. Shaking his hand forever changed my life. Now today in the Senate my desk is very close to his old desk on the Senate floor—close enough to always remind me of why I first got involved in politics.

Bobby Kennedy's philosophy was truly admirable. Bobby Kennedy was committed to equal opportunity for all. He displayed ceaseless devotion to the impoverished members of the American community, and pushed for decent wages and adequate healthcare for all. He knew the importance of protecting the well-being of our youth, and he fought to improve their education. Throughout his life, he worked toward a more just society.

His tragic death shocked and saddened the hearts of America. I was recovering from my injuries from Vietnam in Walter Reed Hospital the day I heard of his tragic death. I am sure many others have a similarly clear recollection of that day. We had lost a committed, warmhearted leader who we would never forget or replace.

Mr. President, I ask that you and my colleagues join me in remembering this admirable and courageous leader, who forever changed the history of this nation. Thirty years later, his memory and legacy live on. We continue to remember Robert F. Kennedy for his passion, courage and devotion, and will always do so.●

TRIBUTE TO AARON LOPEZ: NEW HAMPSHIRE'S 1998 STATE YOUTH OF THE YEAR 1998

● Mr. SMITH of New Hampshire. Mr. President, I rise today to congratulate Aaron Lopez of Nashua, NH. Aaron was recently named the New Hampshire State Youth of the Year by the Boys and Girls Clubs of America.

The Youth of the Year program, in its 51st year, recognizes outstanding

contributions to a member's family, school, community, and Boys and Girls Club, as well as personal challenges and obstacles overcome.

At the Club, Aaron has served as president of the Toastmasters, treasurer of the Keystone Club, a teen leadership group, and peer leader of Smart Moves, a drug and sex prevention program. Aaron, a senior at Nashua High School, is also active in his community. He participated in the Teen Institute, a leadership seminar to educate teens about drug and alcohol abuse, violence, teen pregnancy, and family and community issues. He is also organizing a program for Parents and Children Together (P.A.C.T.) to help families resolve conflicts.

For the first time, winners of the 1998 State Youth of the Year honors will receive scholarships for post-secondary education from popular television personality Oprah Winfrey. A nationwide fund drive, known as ''Oprah's Angel Network,'' was announced by Oprah on her nationally-syndicated television program last fall.

Boys and Girls Clubs of America comprises a national network of close to 2,000 neighborhood-based facilities annually serving some three million young people, primarily from disadvantaged circumstances. Known as ''The Positive Place for Kids,'' the Clubs provide guidance-oriented character development programs on a daily basis for children 6–18 years old, conducted by a full-time professional staff. Key Boys and Girls Club programs, such as Youth of the Year, emphasize character and leadership development, education and career enhancement, health and life skills, the arts, sports, fitness and recreation.

Aaron and other extraordinary young people from the Boys and Girls Clubs of America continue to keep alive the virtue of community service and inspire others to do the same. Their personal initiatives, dedicated service, and hard work have impacted the lives of many. In a time when young people seem to be less involved in their communities, these young Americans continue to defend and keep the spirit of community alive. I want to congratulate Aaron Lopez for his outstanding work and I am proud to represent him in the United States Senate.●

GENEROSITY OF ENTREPRENEURS LEADS WAY FOR SCHOOL CHOICE

● Mr. BROWNBACK. Mr. President, due to the generosity of two entrepreneurs, the children of Kansas City, Kansas have become eligible for a new privately funded scholarship program to provide low-income children the choice of private, parochial or public school.

Last October, Ted Forstmann and John Walton each contributed $3 million to create a fund for scholarships in Washington, D.C. Their programs were in such high demand—50,000 applications for 3,000 scholarships—that the two businessmen have decided to greatly expand the scope of their scholarship programs.

Yesterday, Mr. Forstmann and Mr. Walton joined together to announce the Children's Scholarship Fund, a foundation to award $200 million in scholarships to low-income children around the country, including Kansas. The Children's Scholarship Fund will partner with local entities in an effort to provide children the choice of private, parochial or public education.

I applaud the generosity of these two entrepreneurs, as well as urge corporate America to follow their lead and aid this effort in their own cities. I also hope that the eligible cities will do all they can to work with the Children's Scholarship Fund, which next year will send at least 50,000 low-income children to the schools of their choice.●

AUTHORIZATION THE TAKING OF A PHOTOGRAPH IN THE SENATE CHAMBER

Ms. COLLINS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 246 submitted earlier today by Senators LOTT and DASCHLE.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A resolution (S. Res. 246) authorizing the taking of a photograph in the Chamber of the United States Senate.

There being no objection, the Senate proceeded to consider the resolution.

Ms. COLLINS. I ask unanimous consent that the resolution be agreed to and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 246) was agreed to, as follows:

S. RES. 246

Resolved, That paragraph 1 of Rule IV of the Rules for the Regulation of the Senate Wing of the United States Capitol (prohibiting the taking of pictures in the Senate Chamber) be temporarily suspended for the sole and specific purpose of permitting an official photograph to be taken off the United States Senate in actual session on a date and time to be announced by the Majority Leader after consultation with the Democratic Leader.

SEC. 2. The Sergeant of Arms of the Senate is authorized and directed to make the necessary arrangements therefor, which arrangements shall provide for a minimum of disruption to Senate proceedings.

ACKNOWLEDGING 1998 AS THE INTERNATIONAL YEAR OF THE OCEAN

Ms. COLLINS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 405, House Concurrent Resolution 131.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A concurrent resolution (H. Con. Res. 131) acknowledging 1998 as the International Year of the Ocean and expressing the sense of the Congress regarding the ocean.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution, which had been reported from the Committee on Commerce, Science, and Transportation with an amendment.

Ms. COLLINS. Mr. President, I ask unanimous consent that the committee substitute be agreed to, the resolution be agreed to, the amendment to the preamble be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the resolution appear in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 131), as amended, was agreed to.

The preamble, as amended, was agreed to.

The concurrent resolution (H. Con. Res. 131), as amended, together with its preamble, as amended, is as follows:

Resolved, That the resolution from the House of Representatives (H. Con. Res. 131) entitled ''Concurrent resolution acknowledging 1998 as the International Year of the Ocean and expressing the sense of the Congress regarding the ocean.'', do pass with the following amendments:

Strike out all after the resolving clause and insert:

That it is the sense of the Congress that—

(1) the ocean is of paramount importance to the economic future, environmental quality, and national security of the United States;

(2) the United States has a responsibility to exercise and promote comprehensive stewardship of the ocean and the living marine resources it contains; and

(3) Federal agencies are encouraged to take advantage of the International Year of the Ocean in 1998, to—

(A) review United States oceanography and marine resource management policies and programs;

(B) identify opportunities to streamline, better direct, and increase interagency cooperation in oceanographic research and marine resource management policies and programs;

(C) identify opportunities to further cooperation between the United States and other nations to enhance oceanographic research and exploration, and to strengthen international marine resource conservation policies and programs;

(D) in cooperation with academic institutions, nongovernmental organizations, and industry, develop scientific, educational, and resource management programs which will advance the exploration of the ocean, the conservation of marine habitats and species, and the sustainable use of ocean resources; and

(E) encourage participation in State, local, and private initiatives and programs that use education and the arts to increase public awareness of the ocean and the many benefits that it provides, and to foster understanding of the need to conserve and sustainably manage ocean resources.

Strike out the preamble and insert:

Whereas the ocean, which comprises nearly three quarters of the Earth's surface, sustains a large part of the Earth's biodiversity, provides an important source of food, and interacts with and affects global weather and climate;

Whereas the ocean is critical to national security, is the common means of transportation

among coastal nations, and carries 95 percent of the United States foreign trade;

Whereas the ocean and sea floor contain vast energy and mineral resources that are critical to the economy of the United States and the world;

Whereas ocean resources are limited and susceptible to change as a direct and indirect result of human activities, and such changes can impact the ability of the ocean to provide the benefits upon which the Nation depends;

Whereas the vast majority of the deep ocean is unexplored and unknown, and the ocean is truly the last frontier on Earth for science and civilization;

Whereas there exists significant promise for the development of new ocean technologies for stewardship of ocean resources that will contribute to the economy through business and manufacturing innovations and the creation of new jobs;

Whereas any nation's use or misuse of ocean resources has effects far beyond that nation's borders;

Whereas it has been 30 years since the Commission on Marine Science, Engineering, and Resources (popularly known as the Stratton Commission) met to examine the state of United States ocean policy and issued recommendations that led to the present Federal structure for oceanography and marine resources management;

Whereas recent public opinion polls indicate that a large majority of Americans consider the condition of the oceans to be important, and that a large majority rate the overall health of the oceans negatively; and

Whereas the United Nations has declared 1998 to be the International Year of the Ocean, and in order to observe this occasion, the National Oceanic and Atmospheric Administration and other Federal agencies, in cooperation with organizations concerned with ocean science and marine resources, have resolved to promote exploration, utilization, conservation, and public awareness of the ocean: Now, therefore, be it

FEDERAL REPORTS ELIMINATION ACT OF 1998

Ms. COLLINS. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 363, S. 1364.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (S. 1364) to eliminate unnecessary and wasteful Federal reports.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Governmental Affairs, with amendments; as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

S. 1364

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

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Federal Reports Elimination Act of [1997] 1998''.

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

TITLE I—DEPARTMENT OF AGRICULTURE

SEC. 101. REPORTS ELIMINATED.

(a) SECONDARY MARKET OPERATIONS.—Section 338(b) of the Consolidated Farm and Rural Development Act (as redesignated by section 749(a)(2) of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 1988(b))) is amended—

(1) by striking paragraph (4); and

(2) by redesignating paragraph (5) as paragraph (4).

(b) PILOT PROGRAMS TO TEST MEASUREMENT OF NUTRITIONAL STATUS OF LOW-INCOME HOUSEHOLDS.—Section 17 of the Food Stamp Act of 1977 (7 U.S.C. 2026) is amended by striking subsection (c).

(c) ESTIMATE OF SECOND PRECEDING MONTH'S EXPENDITURES UNDER FOOD STAMP PROGRAM.—Section 18(a)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2027(a)(1)) is amended by striking the third and fourth sentences.

(d) ADVISORY COMMITTEES.—Section 1804 of the Food and Agriculture Act of 1977 (7 U.S.C. 2284) is repealed.

(e) FARMER-TO-CONSUMER DIRECT MARKETING ACT OF 1976.—

(1) IN GENERAL.—Section 6 of the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3005) is repealed.

(2) CONFORMING AMENDMENT.—Section 7(a) of the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3006(a)) is amended by striking ''the provisions of sections 4 and 6'' and inserting ''section 4''.

(f) AGRICULTURAL RESEARCH AT LAND-GRANT COLLEGES.—Section 1445(g) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3222(g)) is amended by striking paragraph (4).

(g) FOREIGN OWNERSHIP OF AGRICULTURAL LAND.—Section 5 of the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3504) is repealed.

(h) SUGAR PRICE INCREASES.—Section 6 of Public Law 96–236 (7 U.S.C. 3606) is repealed.

(i) HOUSING PRESERVATION GRANT PROGRAM.—Section 533 of the Housing Act of 1949 (42 U.S.C. 1490m) is amended by striking subsection (j).

(j) NATIONAL ADVISORY COUNCIL ON MATERNAL, INFANT, AND FETAL NUTRITION.—Section 17(k) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(k)) is amended—

(1) by striking paragraph (4); and

(2) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

TITLE II—DEPARTMENT OF DEFENSE

SEC. 201. REPORTS ELIMINATED.

(a) NOTIFICATIONS OF CONVERSION OF HEATING FACILITIES AT INSTALLATIONS IN EUROPE.—Section 2690(b) of title 10, United States Code, is amended by striking out ''unless the Secretary—'' and all that follows through the end of the subsection and inserting in lieu thereof ''unless the Secretary determines that the conversion—

''(1) is required by the government of the country in which the facility is located; or

''(2) is cost effective over the life cycle of the facility.''.

(b) NOTIFICATIONS OF DISAGREEMENTS REGARDING AVAILABILITY OF ALTERNATIVE HOUSING.—Section 2823 of title 10, United States Code, is amended—

(1) by striking out subsection (b); and

(2) by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

TITLE III—EDUCATION

SEC. 301. REPORT ELIMINATED.

Section 1411 of the Higher Education Amendments of 1992 is repealed.

TITLE IV—DEPARTMENT OF ENERGY

SEC. 401. REPORTS ELIMINATED.

(a) NUCLEAR TEST BAN READINESS REPORT.—Section 1436 of the National Defense Authorization Act, Fiscal Year 1989 (Public Law 100–456; 42 U.S.C. 2121 note), is amended by striking subsection (e).

(b) REPORT ON RESUMPTION OF PLUTONIUM OPERATIONS AT ROCKY FLATS.—Section 3133 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (105 Stat. 1574) is amended—

(1) by striking subsections (c) and (d); and

(2) by redesignating subsection (e) as subsection (c).

(c) REPORT ON POTENTIAL FOR HYDROPOWER DEVELOPMENT, UTILIZING TIDAL CURRENTS.—The first section of the Act of August 30, 1935 (49 Stat. 1028, chapter 831), as amended by section 2409 of the Energy Policy Act of 1992 (106 Stat. 3101), is amended by striking ''The Secretary shall undertake a demonstration project to evaluate the potential for hydropower development, utilizing tidal currents;''.

(d) ELECTRIC UTILITY PARTICIPATION STUDY.—Section 625 of the Energy Policy Act of 1992 (42 U.S.C. 13295) is repealed.

(e) REPORT ON STEEL AND ALUMINUM RESEARCH AND DEVELOPMENT ACTIVITIES.—The Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988 is amended—

(1) by striking section 8 (15 U.S.C. 5107); and

(2) by redesignating sections 9, 10, and 11 (15 U.S.C. 5108, 5109, and 5110) as sections 8, 9, and 10, respectively.

(f) REPORT ON METAL CASTING RESEARCH AND DEVELOPMENT ACTIVITIES.—Section 10 of the Department of Energy Metal Casting

Competitiveness Research Act of 1990 (15 U.S.C. 5309) is repealed.

(g) BIENNIAL UPDATE TO THE NATIONAL ADVANCED MATERIALS INITIATIVE 5-YEAR PROGRAM PLAN.—Section 2201(b) of the Energy Policy Act of 1992 (42 U.S.C. 13501(b)) is amended by striking the second sentence.

(h) REPORT ON VIBRATION REDUCTION TECHNOLOGIES.—Section 173(c) of the Energy Policy Act of 1992 (Public Law 102–486; 42 U.S.C. 13451 note) is amended—

(1) by striking subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

(i) REPORT ON PROCESS-ORIENTED INDUSTRIAL ENERGY EFFICIENCY.—Section 132 of the Energy Policy Act of 1992 (42 U.S.C. 6349) is amended—

(1) by striking subsection (d); and

(2) by redesignating subsection (e) as subsection (d).

(j) REPORT ON INDUSTRIAL INSULATION AND AUDIT GUIDELINES.—Section 133 of the Energy Policy Act of 1992 (42 U.S.C. 6350) is amended by striking subsection (c).

(k) REPORT EVALUATION OF OPPORTUNITIES FOR ENERGY EFFICIENT POLLUTION PREVENTION.—Section 2108 of the Energy Policy Act of 1992 (42 U.S.C. 13457) is amended—

(1) by striking subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

(l) REPORT ON CONTINENTAL SCIENTIFIC DRILLING PROGRAM.—Section 4 of the Continental Scientific Drilling and Exploration Act (Public Law 100–441; 43 U.S.C. 31 note) is amended—

(1) by adding ''and'' at the end of paragraph (4);

(2) by striking ''; and'' at the end of paragraph (5) and inserting a period; and

(3) by striking paragraph (6).

(m) REPORT ON COAL RESEARCH, DEVELOPMENT, DEMONSTRATION, AND COMMERCIALIZATION PROJECTS.—Section 1301 of the Energy Policy Act of 1992 (42 U.S.C. 13331) is amended—

(1) by striking subsection (d); and

(2) by redesignating subsection (e) as subsection (d).

(n) REPORT ON THE USE OF ENERGY FUTURES FOR FUEL PURCHASES.—Section 3014 of the Energy Policy Act of 1992 (42 U.S.C. 13552) is amended—

(1) by striking subsection (b); and

(2) by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

(o) REPORT ON IMPLEMENTATION OF THE ALASKA FEDERAL CIVILIAN ENERGY EFFICIENCY SWAP ACT OF 1980.—Section 6 of the Alaska Federal Civilian Energy Efficiency Swap Act of 1980 (40 U.S.C. 795d) is repealed.

(p) REPORT ON MAJOR NATIONAL SECURITY PROGRAMS.—Section 3143 of the National Defense Authorization Act, fiscal years 1990 and 1991 (42 U.S.C. 7271a) is repealed.

SEC. 402. REPORTS MODIFIED.

[(a) REPORT ON MAJOR NATIONAL SECURITY PROGRAMS.—Section 3143 of the National Defense Authorization Act, Fiscal Years 1990 and 1991 (42 U.S.C. 7271a) is amended by striking subsections (b), (c), and (d) and inserting the following:

[''(b) INFORMATION TO BE INCLUDED IN THE PRESIDENT'S ANNUAL BUDGET REQUEST.—With respect to each major Department of Energy national security program, the President shall include in each annual budget request under section 1105 of title 31, United States Code—

[''(1) a description of the program, the purpose of the program, and the relationship of the program to the mission of the national security program of the Department of Energy;

[''(2) the program schedule, including estimated annual costs; and

[''(3) a comparison of the then-current schedule and cost estimates with previous schedules and cost estimates and an explanation of the changes.''.

[(b)] (a) Report on Plan for Electric Motor Vehicles.—Section 2025(b) of the Energy Policy Act of 1992 (42 U.S.C. 13435(b)) is amended—

(1) in the second sentence of paragraph (1), by striking ''annually'' and inserting ''biennially''; and

(2) in the second sentence of paragraph (4), by striking ''Annual'' and inserting ''Biennial''.

(c) *(b)* Coke Oven Production Technology Study.—Section 112(n)(2)(C) of the Clean Air Act (42 U.S.C. 7412(n)(2)(C)) is amended by striking ''The Secretary shall prepare annual reports to Congress on the status of the research program and at the completion of the study'' and inserting ''On completion of the study, the Secretary shall submit to Congress a report on the results of the study and''.

TITLE V—ENVIRONMENTAL PROTECTION AGENCY

SEC. 501. REPORTS ELIMINATED.

(a) REPORT ON CONDITIONAL REGISTRATION OF PESTICIDES.—

(1) IN GENERAL.—The Federal Insecticide, Fungicide, and Rodenticide Act is amended—

(A) by striking section 29 (7 U.S.C. 136w–4); and

(B) by redesignating sections 30 and 31 (7 U.S.C. 136x and 136y) as sections 29 and 30, respectively.

(2) CONFORMING AMENDMENTS.—The table of contents in section 1(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. prec. 121) is amended—

(A) by striking the item relating to section 29; and

(B) by redesignating the items relating to sections 30 and 31 as the items relating to sections 29 and 30, respectively.

(b) REPORT ON IMPLEMENTATION OF TOXIC SUBSTANCES CONTROL ACT.—

(1) IN GENERAL.—The Toxic Substances Control Act is amended—

(A) by striking section 30 (15 U.S.C. 2629); and

(B) by redesignating section 31 (Public Law 94–469; 15 U.S.C. 2601 note) as section 30.

(2) CONFORMING AMENDMENTS.—

(A) The table of contents in section 1 of the Toxic Substances Control Act (15 U.S.C. prec. 2601) is amended—

(i) by striking the item relating to section 30; and

(ii) by redesignating the item relating to section 31 as the item relating to section 30.

(B) The second sentence of section 9(d) of the Toxic Substances Control Act (15 U.S.C. 2608(d)) is amended by striking '', in the report required by section 30,''.

(c) REPORT ON EFFECT OF POLLUTION ON ESTUARIES AND ESTUARINE ZONES.—

(1) IN GENERAL.—Section 104(n) of the Federal Water Pollution Control Act (33 U.S.C. 1254(n)) is amended—

(A) by striking paragraph (3); and

(B) by redesignating paragraph (4) as paragraph (3).

(2) CONFORMING AMENDMENT.—Section 320(k) of the Federal Water Pollution Control Act (33 U.S.C. 1330(k)) is amended by striking ''section 104(n)(4)'' and inserting ''section 104(n)(3)''.

(d) CLEAN LAKES REPORT.—Section 314(a) of the Federal Water Pollution Control Act (33 U.S.C. 1324(a)) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraph (4) as paragraph (3).

(e) REPORT ON NONPOINT SOURCE MANAGEMENT PROGRAMS.—Section 319 of the Federal Water Pollution Control Act (33 U.S.C. 1329) is amended—

(1) in subsection (i), by striking paragraph (4);

(2) by striking subsection (m); and

(3) by redesignating subsection (n) as subsection (m).

(f) REPORT ON MEASURES TAKEN TO MEET OBJECTIVES OF FEDERAL WATER POLLUTION CONTROL ACT.—

(1) IN GENERAL.—Section 516 of the Federal Water Pollution Control Act (33 U.S.C. 1375) is amended—

(A) by striking subsections (a), (b)(2), (c), (d), and (e);

(B) by striking ''(b)(1)''; and

(C) by redesignating subparagraphs (A) through (D) as paragraphs (1) through (4), respectively.

(2) CONFORMING AMENDMENTS.—

(A) Section 104 of the Federal Water Pollution Control Act (33 U.S.C. 1254) is amended—

(i) in subsection (a)(5), by striking ''in the report required under subsection (a) of section 516'' and inserting ''not later than 90 days after the date of convening of each session of Congress''; and

(ii) in the first sentence of subsection (o)(2), by striking ''in the report required under subsection (a) of section 516'' and inserting ''not later than 90 days after the date of convening of each session of Congress''.

(B) The fourth sentence of section 116(b) of the Federal Water Pollution Control Act (33 U.S.C. 1266(b)) is amended by striking ''section 616(b) of this Act'' and inserting ''section 516''.

(C) The last sentence of section 205(a) of the Federal Water Pollution Control Act (33 U.S.C. 1285(a)) is amended by striking ''section 516(b)'' and inserting ''section 516''.

(D) The second sentence of section 210 of the Federal Water Pollution Control Act (33 U.S.C. 1290) is amended by striking ''shall be included in the report required under section 516(a) of this Act'' and inserting ''shall be reported to Congress not later than 90 days after the date of convening of each session of Congress''.

(g) REPORT ON SAFE DRINKING WATER ACT COSTS OF COMPLIANCE.—Section 1442(a)(3) of the Public Health Service Act (42 U.S.C. 300j–1(a)(3)) is amended—

(1) in subparagraph (A), by striking ''(A)''; and

(2) by striking subparagraph (B).

(h) ANALYSIS OF ALTERNATIVE MOTOR VEHICLE FUELS USE ON ENVIRONMENT.—Section 400EE of the Energy Policy and Conservation Act (42 U.S.C. 6374d) is repealed.

(i) COMPREHENSIVE REPORT ON ACTIVITIES OF OFFICE OF SOLID WASTE.—

(1) IN GENERAL.—The Solid Waste Disposal Act is amended—

(A) by striking section 2006 (42 U.S.C. 6915); and

(B) by redesignating section 2008 (42 U.S.C. 6917) as section 2006 and moving the section to appear after section 2005.

(2) CONFORMING AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended—

(A) by striking the item relating to section 2006; and

(B) by redesignating the item relating to section 2008 as the item relating to section 2006 and moving the item to appear after the item relating to section 2005.

(j) STUDY OF ENVIRONMENTAL PROBLEMS ASSOCIATED WITH IMPROPER DISPOSAL OR REUSE OF OIL.—Section 9 of the Used Oil Recycling Act of 1980 (Public Law 96–463; 94 Stat. 2058) is repealed.

(k) REPORT ON STATE AND LOCAL TRAINING NEEDS AND OBSTACLES TO EMPLOYMENT IN SOLID WASTE MANAGEMENT AND RESOURCE RECOVERY.—Section 7007 of the Solid Waste Disposal Act (42 U.S.C. 6977) is amended by striking subsection (c).

(l) INTERIM REPORT OF NATIONAL ADVISORY COMMISSION ON RESOURCE CONSERVATION AND RECOVERY.—Section 33(a) of the Solid Waste Disposal Act Amendments of 1980 (Public Law 96–482, 94 Stat. 2356; 42 U.S.C. 6981 note) is amended—

(1) by striking paragraph (7); and

(2) by redesignating paragraph (8) as paragraph (7).

(m) FINAL REPORT ON MEDICAL WASTE MANAGEMENT.—

(1) IN GENERAL.—The Solid Waste Disposal Act is amended—

(A) by striking section 11008 (42 U.S.C. 6992g); and

(B) by redesignating sections 11009 through 11012 (42 U.S.C. 6992h through 6992k) as sections 11008 through 11011, respectively.

(2) CONFORMING AMENDMENTS.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended—

(A) by striking the item relating to section 11008; and

(B) by redesignating the items relating to sections 11009 through 11012 as the items relating to sections 11008 through 11011, respectively.

(n) REPORT ON STATUS OF DEMONSTRATION PROGRAM TO TEST METHODS AND TECHNOLOGIES OF REDUCING OR ELIMINATING RADON GAS.—Section 118(k)(2) of the Superfund Amendments and Reauthorization Act of 1986 (Public Law 99–499; 42 U.S.C. 7401 note) is amended—

(1) by striking subparagraph (B); and

(2) by redesignating subparagraph (C) as subparagraph (B).

(o) REPORT ON CANADIAN ACID RAIN CONTROL PROGRAM.—Section 408 of the Act entitled ''An Act to amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes'', approved November 15, 1990 (commonly known as the ''Clean Air Act Amendments of 1990'') (Public Law 101–549; 42 U.S.C. 7651 note), is repealed.

(p) BIENNIAL POLLUTION PREVENTION REPORT.—The Pollution Prevention Act of 1990 is amended—

(1) by striking section 6608 (42 U.S.C. 13107); and

(2) by redesignating sections 6609 and 6610 (42 U.S.C. 13108 and 13109) as sections 6608 and 6609, respectively.

[SEC. 502. REPORTS MODIFIED.

[The first sentence of section 112(m)(5) of the Clean Air Act (42 U.S.C. 7412(m)) is amended by striking ''Within 3 years of the date of enactment of the Clean Air Act Amendments of 1990 and biennially thereafter,'' and inserting ''Not later than November 15, 1997, and every 4 years thereafter,''.]

TITLE VI—DEPARTMENT OF HEALTH AND HUMAN SERVICES

SEC. 601. REPORTS ELIMINATED.

(a) REPEALS.—

(1) PUBLIC HEALTH SERVICE ACT.—The following provisions of the Public Health Service Act (42 U.S.C. 201 et seq.) are repealed:

(A) Section 376 (42 U.S.C. 274d) relating to the biennial report on the scientific and clinical status of organ transplantation.

(B) Section 403 (42 U.S.C. 283) relating to the biennial report of the Director of the National Institutes of Health.

(C) Paragraph (4) of section 408(a) (42 U.S.C. 284c(a)(4)) relating to the annual report of the National Institutes of Health on administrative expenses.

(D) Subsection (c) of section 429 (42 U.S.C. 285c–3(c)) relating to the annual report of the Diabetes Mellitus Interagency Coordinating Committee, the Digestive Diseases Interagency Coordinating Committee, and National Kidney and Urologic Diseases Interagency Coordinating Committee.

(E) Subsection (j) of section 430 (42 U.S.C. 285c–4(j)) relating to the annual reports of the National Diabetes Advisory Board, the National Digestive Diseases Advisory Board, and the National Kidney and Urologic Diseases Advisory Board.

(F) Subsection (c) of section 439 (42 U.S.C. 285d–4(c)) relating to the annual report by the Arthritis and Musculoskeletal and Skin Diseases Interagency Coordinating Committee.

(G) Subsection (j) of section 442 (42 U.S.C. 285d–7(j)) relating to the annual report by the Arthritis and Musculoskeletal and Skin Diseases Advisory Board.

(H) Subsection (b) of section 494A (42 U.S.C. 289c–1(b)) relating to the report on health services research.

(I) Paragraph (3) of section 501(e) (42 U.S.C. 290aa(e)(2)) relating to the report of the Substance Abuse and Mental Health Services Administration.

(J) Subsection (b) of section 503 (42 U.S.C. 290aa–2(b)) relating to the triennial report on drug abuse.

(K) Section 1009 (42 U.S.C. 300a–6a) relating to the family planning and population research report.

(L) Section 1122 (42 U.S.C. 300c–12) relating to the sudden infant death syndrome research report.

(M) Section 2104 (42 U.S.C. 300aa–4) relating to the National Vaccine Program report.

(2) OTHER ACTS.—The following provisions are repealed:

(A) Section 540 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360qq) relating to the annual report on the administration of the Radiation Control for Health and Safety program.

(B) Section 304 of the Home Health Care and Alzheimer's Disease Amendments of 1990 (42 U.S.C. 242q–3) relating to the report of the Task Force on Aging Research.

(C) Section 1901 of the NIH Revitalization Act of 1993 (42 U.S.C. 285f–1 note) relating to the report of the research activities concerning chronic fatigue syndrome.

(D) Paragraph (7) of section 1881(f) of the Social Security Act (42 U.S.C. 1395rr(c)(7)) relating to the report on end-stage renal disease.

(E) Section 402 of the Indian Health Care Improvement Act (42 U.S.C. 1395qq note) relating to the tribal organization demonstration program for direct billing of medicare, medicaid, and other third party payors.

(F) Section 1200 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (42 U.S.C. 3509) relating to the report of the Public Health Service.

(G) Subsection (d) of section 719 of the Indian Health Care Amendments of 1988 (Public Law 100–713; 102 Stat. 4838) relating to the impact of the final rule relating to eligibility for health care services of the Indian Health Service.

(b) SOCIAL SECURITY ACT AND RELATED PROVISIONS.—

(1) Section 8403(b) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647; 102 Stat. 3799) is repealed.

(2) Section 4207(c)(2)(B) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508; 104 Stat. 1388–120) (42 U.S.C. 1395x note) is repealed.

(3) Section 9601(f) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272; 100 Stat. 222) (42 U.S.C. 1395b note) is repealed.

(4) Section 6003(i) of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101–239; 103 Stat. 2158) (42 U.S.C. 1395ww note) is repealed.

(5) Section 6102(d)(4) of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101–239; 103 Stat. 2185) (42 U.S.C. 1395w–4 note) is repealed.

(6) Section 1882(l)(6) of the Social Security Act (42 U.S.C. 1395ss(l)(6)) is repealed.

[(7) Section 4801(e)(17)(B) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508; 104 Stat. 1388–218) (42 U.S.C. 1396r note) is amended by striking ''January 1, 1992'' and inserting ''January 1, 1999''.

[(8) Section 4360(f) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508; 104 Stat. 1388–140) (42 U.S.C. 1395b–4) is amended by striking ''Not later than 180 days after [the date of the enactment of this section'' and inserting ''Beginning with 1992''.]

(7) [(9)] Section 4056(d) of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203; 101 Stat. 1330–99) (42 U.S.C. 1395l note) (as redesignated by section 411(f)(14) of the Medicare Catastrophic Coverage Act of 1988 (Public Law 100–360; 102 Stat. 781)) is repealed.

[(c) Amendment.—]

SEC. 602. REPORTS MODIFIED.

(a) INDIAN HEALTH.—Subsection (e) of section 513 of the Indian Health Care Improvement Act (25 U.S.C. 1660c(e)) is amended by striking ''two years'' and inserting ''5 years''.

(b) SOCIAL SECURITY ACT.—

(1) Section 4801(e)(17)(B) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508; 104 Stat. 1388–218) (42 U.S.C. 1396r note) is amended by striking ''January 1, 1992'' and inserting ''January 1, 1999''.

(2) Section 4360(f) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508; 104 Stat. 1388–140) (42 U.S.C. 1395b–4) is amended by striking ''Not later than 180 days after the date of the enactment of this section'' and inserting ''Beginning with 1992''.

TITLE VII—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SEC. 701. REPORTS ELIMINATED.

[(a) NOTIFICATION OF PROPOSED GRANT CONTRACT OR COOPERATIVE AGREEMENT RELATING TO DISCRIMINATORY HOUSING PRACTICES.—Section 561(e) of the Housing and Community Development Act of 1987 (42 U.S.C. 3616 note) is amended by striking the subsection designation and all that follows through ''(2) The Secretary'' and inserting the following:

[''(b) QUARTERLY REPORTS.—The Secretary''.

[(b)] *(a)* FEDERAL ACTIVITIES UNDER SOLAR HEATING AND COOLING DEMONSTRATION ACT OF 1974.—Section 12 of the Solar Heating and Cooling Demonstration Act of 1974 (42 U.S.C. 5510) is amended by striking subsection (d).

[(c)] *(b)* FUNDING RELATING TO EVALUATING AND MONITORING PROGRAMS.—Section [7] 7(r) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(r)) is amended—

(1) by striking paragraph (5); and

(2) by redesignating paragraph (6) as paragraph (5).

[(d)] *(c)* STATE AND LOCAL STRATEGIES FOR REMOVAL OF BARRIERS TO AFFORDABLE HOUSING.—Section 1207 of the Housing and Community Development Act of 1992 (42 U.S.C. 12705a note) is repealed.

[(e)] (d) COMPREHENSIVE REVIEW AND EVALUATION OF HOMELESS ASSISTANCE PROGRAMS.—Section 1409 of the Housing and Community Development Act of 1992 (42 U.S.C. 11361 note) is amended—

(1) by striking ''(a) IN GENERAL.—''; and

(2) by striking subsection (b).

[(f)] (e) NEIGHBORHOOD REDEVELOPMENT PROGRAM.—Section 123 of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 5318 note) is amended—

(1) by striking subsection (f); and

(2) by redesignating subsections (g) and (h) as subsections (f) and (g), respectively.

[(g)] *(f)* HOMEOWNERSHIP DEMONSTRATION PROGRAM.—Section 132 of the Housing and

Community Development Act of 1992 (Public Law 102–550; 106 Stat. 3712) is amended—

(1) by striking subsection (f); and

(2) by redesignating subsections (g) and (h) as subsections (f) and (g), respectively.

[(h)] (g) RURAL RENTAL REHABILITATION DEMONSTRATION.—Section 311 of the Housing and Community Development Act of 1987 (42 U.S.C. 1490m note) is amended—

(1) by striking subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

[(i) COMMUNITY DEVELOPMENT PROGRAM.—Section 113 of the Housing and Community Development Act of 1974 (42 U.S.C. 5313) is repealed.

[(j)] *(h)* SUMMARY OF ACTIVITIES UNDER NEW TOWN DEMONSTRATION.—Section 1108 of the Housing and Community Development Act of 1992 (42 U.S.C. 5318 note) is amended by striking ''the following'' and all that follows before the period at the end of the section and inserting the following: ''a copy of the new town plan of the governing board, upon the approval of that plan under section 1102(d)''.

TITLE VIII—INDIAN AFFAIRS

SEC. 801. REPORTS ELIMINATED.

(a) INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION REPORT.—Section 412 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3211) is repealed.

(b) REPORTS UNDER THE INDIAN FINANCING ACT OF 1974.—

(1) ADJUSTMENT OR CANCELLATION OF OBLIGATIONS RELATED TO THE INDIAN REVOLVING LOAN FUND.—Section 105 of the Indian Financing Act of 1974 (25 U.S.C. 1465) is repealed.

(2) INDIAN LOAN GUARANTY AND INSURANCE FUND DEFICIENCIES.—Section 217 of the Indian Financing Act of 1974 (25 U.S.C. 1497) is amended by striking subsection (f).

(c) EDUCATION AMENDMENTS OF 1978.—

(1) REPORT ON DEMONSTRATION PROJECTS.—Section 1121(h) of the Education Amendments of 1978 (25 U.S.C. 2001(h)) is amended—

(A) by striking paragraph (4); and

(B) by redesignating paragraph (5) as paragraph (4).

(2) NATIONAL CRITERIA FOR DORMITORY SITUATIONS.—Section 1122(d) of the Education Amendments of 1978 (25 U.S.C. 2002(d)) is amended by striking paragraph (3).

(3) POSITIONS CONTRACTED UNDER GRANTS OF POST-DIFFERENTIAL AUTHORITY IN THE BIA SCHOOLS.—Section 1132(h)(3)(B) of the Education Amendments of 1978 (25 U.S.C. 2012(h)(3)(B)) is amended by striking clause (iii).

(4) REPORT.—Section 1137 of the Education Amendments of 1978 (25 U.S.C. 2017) is amended—

(A) by striking the section heading and inserting the following:

''SEC. 1137. BIENNIAL REPORT.'';

and

(B) in the first sentence of subsection (a)—

(i) by striking ''annual report'' and inserting ''biennial report''; and

(ii) by striking ''during the year'' and inserting ''during the 2-year period covered by the report''.

(5) REGULATIONS.—Section 1139 of the Education Amendments of 1978 (25 U.S.C. 2019) is repealed.

(6) TECHNICAL CORRECTION.—Section 605(b)(2) of the School-to-Work Opportunity Act of 1994 (20 U.S.C. 6235(b)(2)) is amended by striking ''(as defined in section 1139(3) of the Education Amendments of 1978 (25 U.S.C. 2019(3))'' and inserting ''(as defined in section 1146(3) of the Education Amendments of 1978 (25 U.S.C. 2026(3))''.

(d) TRIBALLY CONTROLLED SCHOOLS ACT OF 1988.—Section 5026 of the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2505) is amended by striking subsection (g).

(e) PUBLIC LAW 96–135.—Section 2 of Public Law 96–135 (25 U.S.C. 472a) is amended—

(1) by striking subsection (d);

(2) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively; and

(3) in subsection (d), as so redesignated—

(A) by striking paragraph (2); and

(B) by striking ''(1) The Office'' and inserting ''The Office''.

(f) NATIVE AMERICANS EDUCATIONAL ASSISTANCE ACT.—Section 4 of the Native Americans Educational Assistance Act (25 U.S.C. 2001 note) is amended—

(1) by striking subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

(g) INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT.—Section 106 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j–1) is amended—

(1) by striking subsection (c); and

(2) by redesignating subsections (d) through (o) as subsections (c) through (m), respectively.

TITLE IX—DEPARTMENT OF THE INTERIOR

SEC. 901. REPORTS ELIMINATED.

(a) PACIFIC YEW ACT.—The Pacific Yew Act (16 U.S.C. 4801 et seq.) is repealed.

(b) SIZE AND CONDITION OF THE TULE ELK HERD IN CALIFORNIA.—

(1) REPEAL.—Section 3 of Public Law 94–389 (16 U.S.C. 673f) is repealed.

(2) REDESIGNATION.—Section 4 of Public Law 94–389 (16 U.S.C. 673g) is redesignated as section 3.

(c) REVIEWS AND EXTENSIONS OF WITHDRAWALS OF LANDS.—Section 204(f) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714(f)) is amended by striking the second sentence.

(d) STATUS OF THE WILD FREE-ROAMING HORSE AND BURRO PROGRAM.—Section 11 of Public Law 92–195 (16 U.S.C. 1340) is amended by striking the first undesignated paragraph.

(e) STATUS OF THE WILDERNESS SYSTEM.—Section 7 of the Wilderness Act (16 U.S.C. 1136) is repealed.

(f) WATER QUALITY OF THE SACRAMENTO-SAN JOAQUIN DELTA AND SAN FRANCISCO BAY ESTUARINE SYSTEMS.—Section 4 of Public Law 96–375 (94 Stat. 1506) is amended by striking the second sentence.

(g) COLORADO RIVER FLOODWAY MAPS.—Section 5(b) of the Colorado River Floodway Protection Act (43 U.S.C. 1600c(b)) is amended—

(1) by striking ''(b)(1)'' and inserting ''(b)'';

(2) by striking paragraphs (2) and (3); and

(3) by redesignating clauses (i) and (ii) as paragraphs (1) and (2), respectively.

(h) CERTIFICATION OF ADEQUATE SOIL SURVEY OF LAND CLASSIFICATION.—

(1) The first section of title I of the Interior Department Appropriation Act, 1953, is amended in the matter under the heading ''CONSTRUCTION AND REHABILITATION'' UNDER THE HEADING ''BUREAU OF RECLAMATION'' (66 Stat. 451) by striking '': *Provided further,* That no part of this or any other appropriation'' and all that follows through ''means of irrigation''.

(2) The first section of title I of the Interior Department Appropriation Act, 1954'' (43 U.S.C. 390a; 67 Stat. 266) is amended—

(A) in the matter under the heading ''CONSTRUCTION AND REHABILITATION'' under the heading ''Bureau of Reclamation'', by striking '': *Provided further,* That no part of this or any other appropriation'' and all that follows through ''demonstrated in practice''; and

(B) by striking ''Such surveys shall include an investigation of soil characteristics which might result in toxic or hazardous irrigation return flows.'' (as added by section 10 of the Garrison Diversion Unit Reformulation Act of 1986 (100 Stat. 426)).

(i) CLAIMS SUBMITTED FROM THE TETON DAM FAILURE.—Section 8 of Public Law 94–400 (90 Stat. 1213) is repealed.

(j) STUDY OF THE FEASIBILITY AND SUITABILITY OF ESTABLISHING NIOBRARA-BUFFALO PRAIRIE NATIONAL PARK.—

(1) REPEAL.—Section 8 of the Niobrara Scenic River Designation Act of 1991 (Public Law 102–50; 16 U.S.C. 1a–5 note) is repealed.

(2) REDESIGNATION.—Section 9 of the Act (Public Law 102–50; 105 Stat. 258) is redesignated as section 8.

(k) STUDY OF ROUTE 66.—The Route 66 Study Act of 1990 (Public Law 101–400; 104 Stat. 861) is repealed.

(l) REPORT ON ANTHRACITE MINE WATER CONTROL AND MINE SEALING AND FILLING PROGRAM.—The Act entitled ''An Act to provide for the conservation of anthracite coal resources through measures of flood control and anthracite mine drainage, and for other purposes'', approved July 15, 1955, is amended—

(1) by striking section 5 (30 U.S.C. 575); and

(2) by redesignating section 6 (30 U.S.C. 576) as section 5.

(m) AUDIT OF FEDERAL ROYALTY MANAGEMENT SYSTEM.—

(1) IN GENERAL.—Section 302 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1752) is amended—

(A) in subsection (a), by striking ''(a)''; and

(B) by striking subsection (b).

(2) CONFORMING AMENDMENT.—Section 304(c) of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1753(c)) is amended by striking ''Except as expressly provided in subsection 302(b), nothing'' and inserting ''Nothing''.

(n) REPORT ON BIDDING OPTIONS FOR OIL AND GAS LEASES ON OUTER CONTINENTAL SHELF LAND.—Section 8(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(a)) is amended by striking paragraph (9).

(o) REPORTS ON OUTER CONTINENTAL SHELF LEASING AND PRODUCTION PROGRAM AND PROMOTION OF COMPETITION IN LEASING.—

(1) IN GENERAL.—Section 15 of the Outer Continental Shelf Lands Act (43 U.S.C. 1343) is repealed.

(2) CONFORMING AMENDMENT.—Section 22 of the Outer Continental Shelf Lands Act (43 U.S.C. 1348) is amended by striking subsection (g).

(p) AUDIT OF FINANCIAL REPORT OF GOVERNOR OF GUAM.—The sixth undesignated paragraph of section 6 of the Organic Act of Guam (48 U.S.C. 1422) is amended by striking the third and fifth sentences.

(q) AUDIT OF FINANCIAL REPORT OF GOVERNOR OF THE VIRGIN ISLANDS.—The fourth undesignated paragraph of section 11 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1591) is amended by striking the third and fifth sentences.

(r) AUDIT OF FINANCIAL REPORT OF GOVERNOR OF AMERICAN SAMOA.—Section 501(a) of Public Law 96–205 (48 U.S.C. 1668(a)) is amended by striking the third and fifth sentences.

(s) AUDIT OF FINANCIAL REPORT OF CHIEF EXECUTIVES OF CERTAIN TERRITORIES.—Section 5 of Public Law 92–257 (48 U.S.C. 1692) is amended by striking the third and fifth sentences.

(t) REPORT ON ACTIVITIES UNDER HELIUM ACT.—Section 16 of the Helium Act (50 U.S.C. 167n) is repealed.

(u) REPORT ON CONTRACT AWARDS MADE TO FACILITATE NATIONAL DEFENSE.—

(1) IN GENERAL.—Public Law 85–804 is amended—

(A) by striking section 4 (50 U.S.C. 1434); and

(B) by redesignating section 5 (50 U.S.C. 1435) as section 4.

(2) CONFORMING AMENDMENT.—Section 501(a)(6) of the National Emergencies Act (50 U.S.C. 1651(a)(6)) is amended by striking ''1431–1435'' and inserting ''1431 et seq.''.

SEC. 902. REPORTS MODIFIED.

(a) RECOMMENDATIONS ON PROSPECTIVE TIMBER SALES.—The first sentence of section 318(h) of Public Law 101–121 (103 Stat. 750) is amended by striking ''a monthly basis'' and inserting ''an annual basis''.

(b) REPORT ON NATIONWIDE GEOLOGIC MAPPING PROGRAM.—Section 8 of the National Geologic Mapping Act of 1992 (43 U.S.C. 31g) is amended—

(1) in the section heading, by striking ''ANNUAL'' and inserting ''BIENNIAL''; and

(2) in the first sentence—

(A) by striking ''each fiscal year, submit an annual report'' and inserting ''each second fiscal year, submit a biennial report''; and

(B) by striking ''preceding fiscal year'' and inserting ''2 preceding fiscal years''.

TITLE X—DEPARTMENT OF JUSTICE

SEC. 1001. REPORTS ELIMINATED.

(a) EMERGENCY LAW ENFORCEMENT ASSISTANCE REPORT.—Section 609U of the Justice Assistance Act of 1984 (42 U.S.C. 10509) is repealed.

(b) IMMIGRATION AND NATIONALITY ACT.—The Immigration and Nationality Act is amended—

(1) in section 103 (8 U.S.C. 1103(d)), by striking subsection (d);

(2) in section 214(c) (8 U.S.C. 1184(c)), by striking paragraph (8);

(3) in section 286 (8 U.S.C. 1356)—

(A) by striking subsection (l) and inserting the following:

''*(l)* [Reserved].'';

(B) in subsection (q)—

(i) by striking paragraph (4); and

(ii) by redesignating paragraph (5) as paragraph (4); and

(C) in subsection (r)—

(i) by striking paragraph (5); and

(ii) by redesignating paragraph (6) as paragraph (5); and

(4) in section 344(f) (8 U.S.C. 1455(f))—

(A) by striking ''(f)(1) The Attorney General'' and inserting ''(f) The Attorney General''; and

(B) by striking paragraph (2).

(c) IMMIGRATION AND NATURALIZATION DOCUMENT SECURITY REPORT.—Section 5 of the Immigration Nursing Relief Act of 1989 (8 U.S.C. 1324a note) is amended by striking subsection (d) and inserting the following:

''(d) [Reserved].''.

(d) DIVERSION CONTROL FEE ACCOUNT REPORT.—Section 111(b) of the Departments of Commerce, Justice, and State, and the Judiciary, and Related Agencies Appropriations Act, 1993 (21 U.S.C. 886a(b)) is amended by striking paragraph (5).

(e) ASSET FORFEITURE REPORT.—Section 524(c) of title 28, United States Code, is amended—

(1) by striking paragraph (6); and

(2) by redesignating paragraphs (7) through (12) as paragraphs (6) through (11), respectively.

(f) CIVIL FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT REPORT.—Section 918 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833) is repealed.

(g) DAMAGE SETTLEMENT REPORT.—Section 3724 of title 31, United States Code, is amended—

(1) by striking subsection (b); and

(2) by redesignating subsection (c) as subsection (b).

(h) BANKING LAW OFFENSE REPORT.—Section 8(u) of the Federal Deposit Insurance Act (12 U.S.C. 1818(u)) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraphs (4) through (8) as paragraphs (3) through (7), respectively.

(i) BANKING LAW OFFENSE REWARDS REPORT.—Section 2571 of the Crime Control Act of 1990 (12 U.S.C. 4211) is repealed.

(j) BANKING INSTITUTIONS SOUNDNESS REPORT.—Section 1542 of the Housing and Community Development Act of 1992 (12 U.S.C. 1831m–1) is repealed.

TITLE XI—NASA

SEC. 1101. REPORTS ELIMINATED.

(a) CONTINGENT LIABILITY.—Section 6 of the National Aeronautics and Space Administration Authorization Act, 1978 (42 U.S.C. 2463) is repealed.

(b) ACTIVITIES OF THE NATIONAL SPACE GRANT AND FELLOWSHIP PROGRAM.—Section 212 of the Land Remote-Sensing Commercialization Amendments of 1987 (42 U.S.C. 2486j) is repealed.

(c) NOTIFICATION OF PROCUREMENT OF LONG-LEAD MATERIALS FOR SOLID ROCKET MONITORS ON OTHER THAN COOPERATIVE BASIS.—Section 121 of the National Aeronautics and Space Administration Authorization Act of 1988 (101 Stat. 869) is amended by striking subsection (d).

(d) CONTRACTS TO FACILITATE THE NATIONAL DEFENSE.—

(1) IN GENERAL.—Section 1434 of title 50, United States Code, is repealed.

(2) CONFORMING AMENDMENT.—The table of sections for chapter 29 of title 50, United States Code, is amended by striking the item relating to section 1434.

(e) CAPITAL DEVELOPMENT PLAN FOR SPACE STATION PROGRAM.—Section 107 of the National Aeronautics and Space Administration Authorization Act of 1988 (101 Stat. 864) is repealed.

(f) CERTIFICATION RELATING TO PAYLOADS.—Section 112 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1991 (42 U.S.C. 2465a) is amended by striking subsections (c) and (d).

(g) NOTICE OF MODIFICATION OF NASA.—

(1) 1985 ACT.—Section 103 of the National Aeronautics and Space Administration Authorization Act, 1985 (98 Stat. 424) is repealed.

(2) 1986 ACT.—Section 103 of the National Aeronautics and Space Administration Authorization Act of 1986 (99 Stat. 1014) is repealed.

(h) EXPENDITURES EXCEEDING ASTRONOMY PROGRAM.—Section 104 of the National Aeronautics and Space Administration Authorization Act, 1984 (97 Stat. 284) is repealed.

(i) LAUNCH VOUCHER DEMONSTRATION PROJECT.—Section 504 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993 (15 U.S.C. 5803) is repealed.

(j) SPACE SETTLEMENTS.—Section 217 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989 (42 U.S.C. 2451 note) is repealed.

(k) PROPOSED DECISION OR POLICY CONCERNING COMMERCIALIZATION.—Section 110 of the National Aeronautics and Space Administration Authorization Act, 1984 (42 U.S.C. 2465) is repealed.

(l) JOINT FORMER SOVIET UNION STUDIES IN BIOMEDICAL RESEARCH.—Section 605 of the National Aeronautics and Space Administration Act, Fiscal Year 1993 (42 U.S.C. 2487d) is repealed.

TITLE XII—NUCLEAR REGULATORY COMMISSION

SEC. 1201. REPORTS ELIMINATED.

(a) REPORT OF ADVISORY COMMITTEE ON REACTOR SAFEGUARDS.—Section 29 of the Atomic Energy Act of 1954 (42 U.S.C. 2039) is amended by striking the sixth and seventh sentences.

(b) REPORT ON THE PRICE-ANDERSON ACT.—Section 170 p. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(p)) is amended—

(1) by striking ''(1)''; and

(2) by striking paragraph (2).

SEC. 1202. REPORTS MODIFIED.

Section 1701(b)(1) of the Atomic Energy Act of 1954 (42 U.S.C. 2297f(b)(1)) is amended—

(1) by striking ''The Nuclear'' and inserting ''Not later than the date on which a certificate of compliance is issued under subsection (c), the Nuclear''; and

(2) by striking ''at least annually''.

TITLE XIII—OMB, OPM, AND GSA

SEC. 1301. OMB.

[(a) AGENCY DEBT COLLECTION ACTIVITIES.—Section 12 of the Debt Collection Act of 1982 (Public Law 97–365; 96 Stat. 1756) is amended—

[(1) by striking ''(a)'' after ''SEC. 12.''; AND

[(2) by striking subsection (b).]

(a) FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT ACT OF 1990.—The Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101–410; 28 U.S.C. 2461 note) is amended by—

(1) striking section 6; and

(2) redesignating section 7 as section 6.

(b) VOLUNTARY CONTRIBUTIONS BY THE UNITED STATES TO INTERNATIONAL ORGANIZATIONS.—Section 306 of the Foreign Assistance Act of 1961 (22 U.S.C. 2226) is amended by striking subsection (b).

(c) PROMPT PAYMENT ACT.—

(1) IN GENERAL.—Section 3906 of title 31, United States Code, is repealed.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 39 of title 31, United States Code, is amended by striking the item relating to section 3906.

(d) FEDERAL ACQUISITION REGULATORY COUNCIL.—Section 25 of the Office of Federal Procurement Policy Act (41 U.S.C. 421(g)) is amended by striking subsection (g).

(e) TITLE 5.—Section 552a(u) of title 5, United States Code, is amended by—

(1) striking paragraph (6); and

(2) redesignating paragraph (7) as paragraph (6) and in that redesignated paragraph striking ''paragraphs (3)(D) and (6)'' and inserting ''paragraph (3)(D)''.

SEC. 1302. OPM.

(a) ADMINISTRATIVE LAW JUDGES.—Section 1305 of title 5, United States Code, is amended by striking ''require reports by agencies, issue reports, including an annual report to Congress,''.

(b) FEDERAL EMPLOYEE RETIREMENT AND BENEFITS.—

(1) IN GENERAL.—Section 1308 of title 5, United States Code, is repealed.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The title of sections for chapter 13 of title 5, United States Code, is amended by striking the item relating to section 1308.

(c) CIVIL SERVICE RETIREMENT AND DISABILITY FUND.—Section 8348(g) of title 5, United States Code, is amended by striking the third sentence.

(d) PLACEMENT OF NON-INDIAN EMPLOYEES.—Section 2(e) of the Act of December 5, 1979 (25 U.S.C. 472a(e); Public Law 96–135; 93 Stat. 1058) is amended—

(1) by striking ''(1)'' after ''(e)''; and

(2) by striking paragraph (2).

SEC. 1303. GSA.

Section 203(e)(6) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(e)(6)) is repealed.

TITLE XIV—TRADE

SEC. 1401. REPORTS ELIMINATED.

(a) COFFEE TRADE.—

(1) Section 5 of the International Coffee Agreement Act of 1980 (19 U.S.C. 1356n) is repealed.

(2) Section 4 of the International Coffee Agreement Act of 1980 (19 U.S.C. 1356m) is repealed.

(b) TRADE ACT OF 1974.—

(1) Subsection (c) of section 126 of the Trade Act of 1974 (19 U.S.C. 2136(c)) is repealed.

(2) Section 411 of the Trade Act of 1974 (19 U.S.C. 2441) is repealed.

(c) URUGUAY ROUND AGREEMENTS ACT.—Section 424 of the Uruguay Round Agreements Act (19 U.S.C. 3622) is repealed.

(d) RESTRICTIONS ON EXPENDITURES.—Subparagraph (C) of section 109(c)(3) of Public Law 100–202 (101 Stat. 1329–435) (40 U.S.C. 601 note) is repealed.

TITLE XV—DEPARTMENT OF TRANSPORTATION

SEC. 1501. REPORTS ELIMINATED.

(a) COAST GUARD REPORT ON ENVIRONMENTAL COMPLIANCE.—Section 693 of title 14, United States Code, is repealed.

(b) ANNUAL REPORT ON COAST GUARD USER FEES.—Section 664 of title 14, United States Code, is amended by striking subsection (c).

(c) REPORTS ABOUT GOVERNMENT PENSION PLANS.—Section 9503 of title 31, United States Code, is amended by striking subsection (a).

[(d) COAST GUARD REPORT ON MAJOR ACQUISITION PROJECTS.—Section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1993 (106 Stat. 1551) is amended—

[(1) by striking ''quarterly'' and inserting ''biannual''; and

[(2) in the last proviso, by striking ''preceding quarter'' and inserting ''preceding 6-month period''.

[(e)] (d) BIENNIAL REPORT OF THE INTERAGENCY COORDINATING COMMITTEE ON OIL POLLUTION RESEARCH.—Section 7001 of the Oil Pollution Act of 1990 (33 U.S.C. 2761) is amended—

(1) by striking subsection (e); and

(2) by redesignating subsection (f) as subsection (e).

[(f)] *(e)* FEDERAL HIGHWAY ADMINISTRATION REPORT.—Section 307(e) of title 23, United States Code, is amended—

(1) by striking paragraph (11); and

(2) by redesignating paragraphs (12) and (13) as paragraphs (11) and (12), respectively.

[(g)] *(f)* ANNUAL REPORT ON HIGHWAY HAZARD ELIMINATION PROGRAM.—Section 152 of title 23, United States Code, is amended—

(1) by striking subsection (g); and

(2) by redesignating subsection (h) as subsection (g).

[(h)] *(g)* TRANSPORTATION AIR QUALITY REPORT.—Section 108(f) of the Clean Air Act (42 U.S.C. 7408(f)) is amended by striking paragraphs (3) and (4).

[(i)] *(h)* INDIAN RESERVATION ROADS STUDY.—Section 1042 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1993) is repealed.

[(j)] *(i)* STUDY OF IMPACT OF CLIMATIC CONDITIONS.—Section 1101–1102 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2027) is repealed.

[(k)] *(j)* FATAL AND INJURY ACCIDENT RATES ON PUBLIC ROADS IN THE UNITED STATES.—Section 207 of the Highway Improvement Act of 1982 (96 Stat. 2139, 23 United States Code 401 note) is repealed.

[(l) HIGHWAY REPORT.—Section 307(h) of title 23, United States Code is amended by striking ''and in January of every second year thereafter'' and inserting '', in January of every second year thereafter through 1997, and in March of every second year thereafter''.

[(m) AVIATION SECURITY REPORT.—Section 44938 of title 49, United States Code, is amended by striking ''annually'' and inserting ''biennially''.

[(n)] *(k)* BIENNIAL REPORTS ON NATURAL GAS AND HAZARDOUS LIQUID PIPELINE SAFETY.—

(1) IN GENERAL.—Section 60124 of title 49, United States Code, is repealed.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 601 of title 49, United States Code, is amended by striking the item relating to section 60124.

[(o)] *(l)* MOTOR VEHICLE SAFETY.—

(1) IN GENERAL.—Section 30169 of title 49, United States Code, is repealed.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 301 of title 49, United States Code, is amended by striking the item relating to section 30169.

[(p)] *(m)* BUMPER STANDARDS.—

(1) IN GENERAL.—Section 32510 of title 49, United States Code, is repealed.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 325 of title 49, United States Code, is amended by striking the item relating to section 32510.

[(q)] *(n)* HIGHWAY SAFETY.—Section 202 of the Highway Safety Act of 1966 (80 Stat. 736; 23 U.S.C. 401 note) is repealed.

[(r)] *(o)* MARITIME CONSTRUCTION COSTS.—Section 213 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1123) is amended by striking subsection (c).

[(s)] *(p)* FEDERAL TRANSIT ADMINISTRATION.—Section 5335 of title 49, United States Code, is amended by striking subsection (b).

[(t)] *(q)* PROJECT REVIEW.—Section 5328(b) of title 49, United States Code, is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraph (4) as paragraph (3).

[(u)] *(r)* SUSPENDED LIGHT RAIL SYSTEM TECHNOLOGY.—Section 5320 of title 49, United States Code, is amended by striking subsection (k).

[(v) REPORT ON PUBLIC TRANSPORTATION.—Section 308(e)(1) of title 49, United States Code, is amended by striking ''in January of each even-numbered year'' and inserting ''in January of each even-numbered year through 1996, and in March of each odd-numbered year thereafter''.

[(w)] *(s)* NEEDS SURVEY; TRANSFERABILITY REPORT.—Section 5335 of title 49, United States Code, as amended by this section, is further amended by striking subsections (c) and (d).

SEC. 1502. REPORTS MODIFIED.

(a) COAST GUARD REPORT ON MAJOR ACQUISITION PROJECTS.—Section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1993 (106 Stat. 1551) is amended—

(1) by striking ''quarterly'' and inserting ''biannual''; and

(2) in the last proviso, by striking ''preceding quarter'' and inserting ''preceding 6-month period''.

(b) HIGHWAY REPORT.—Section 307(h) of title 23, United States Code, is amended by striking ''January 1983, and in January of every second year thereafter'' and inserting ''March 1998, and in March of every second year thereafter''.

(c) AVIATION SECURITY REPORT.—Section 44938 of title 49, United States Code, is amended by striking ''annually'' and inserting ''biennially''.

(d) REPORT ON PUBLIC TRANSPORTATION.—Section 308(e)(1) of title 49, United States Code, is amended by striking ''in January of each even-numbered year'' and inserting ''in March 1998, and in March of each even-numbered year thereafter''.

(e) NATIONAL BALLAST INFORMATION CLEARINGHOUSE.—Section 1102(f)(2) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4712(f)(2)) is amended by striking ''biannual'' and inserting ''biennial''.

TITLE XVI—NOAA

SEC. 1601. REPORTS ELIMINATED.

(a) REPORT CONCERNING PRICES FOR NAUTICAL AND AERONAUTICAL PRODUCTS.—Section 1307(a)(2)(A) of title 44, United States Code, is amended by striking the last sentence.

(b) REPORT ON NATIONAL SHELLFISH RESEARCH PROGRAM.—Section 308 of the National Oceanic and Atmospheric Administration Authorization Act of 1992 (33 U.S.C. 1251 note) is amended—

(1) by striking subsection (d); and

(2) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(c) GEOSTATIONARY OPERATIONAL ENVIRONMENTAL SATELLITES CERTIFICATION AND REPORT REGARDING TECHNICAL PERFORMANCE SPECIFICATIONS.—Subsection (d) of section 105 of the National Oceanic and Atmospheric Administration Authorization Act of 1992 (Public Law 102–567; 106 Stat. 4273) is amended—

(1) in paragraph (1), by striking ''(1) Except as provided in paragraph (2), there'' and inserting ''There''; and

(2) by striking paragraph (2).

(d) NEXT GENERATION WEATHER RADAR SYSTEM CERTIFICATION AND REPORT REGARDING TECHNICAL PERFORMANCE SPECIFICATIONS.—Section 102(b) of the National Oceanic and Atmospheric Administration Authorization Act of 1992 (Public Law 102–567; 106 Stat. 4271) is amended—

(1) in paragraph (1), by striking ''(1) Except as provided in paragraph (2), there'' and inserting ''There''; and

(2) by striking paragraph (2).

(e) REPORT ON ENFORCEMENT OF VIOLATIONS CONCERNING THE USE OF UNENHANCED DATA FOR COMMERCIAL PURPOSES.—Section 508(d) of the Land Remote Sensing Policy Act of 1992 (15 U.S.C. 5658(d)) is amended by striking '', and shall report annually to the Congress on instances of such violations''.

(f) REPORT ON THE NATIONAL CLIMATE PROGRAM ACTIVITIES.—Section 7 of the National Climate Program Act (15 U.S.C. 2906) is repealed.

AMENDMENT NO. 2570

(Purpose: To add additional reports)

Ms. COLLINS. Senators LEVIN and MCCAIN have a substitute amendment at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Maine [Ms. COLLINS], for Mr. LEVIN, for himself and Mr. MCCAIN, proposes an amendment numbered 2570.

Ms. COLLINS. I ask unanimous consent the amendment be considered as read and agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of section 601 add the following:

(d) NIH.—

(1) ANNUAL REPORT ON DISEASE PREVENTION.—Section 402(f) of the Public Health Service Act (42 U.S.C. 282(f)) is amended—

(A) in paragraph (1), by striking ''and'' at the end;

(B) in paragraph (2), by striking ''; and'' and inserting a period; and

(C) by striking paragraph (3).

(2) REPORT OF NICHD ASSOCIATE DIRECTOR FOR PREVENTION.—Section 451 of the Public Health Service Act (42 U.S.C. 285g-3) is amended—

(A) in subsection (a), by striking ''(a) There'' and inserting ''There''; and

(B) by striking subsection (b).

(3) REPORT OF COUNCIL ON ALZHEIMER'S DISEASE.—The Alzheimer's Disease Research, Training, and Education Amendments of 1992 is amended by striking sections 911 and 912 (42 U.S.C. 11211 and 11212).

(4) INTERNATIONAL HEALTH RESEARCH.—The International Health Research Act of 1960 (Public Law 86-610) is amended by striking section 5(h).

The amendment (No. 2570) was agreed to.

Ms. COLLINS. Mr. President, I ask unanimous consent the bill be considered read a third time and passed, as amended, the motion to reconsider be laid upon the table, and any statements relating to the bill appear in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill was considered read the third time and passed, as follows:

S. 1364

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

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Federal Reports Elimination Act of 1998''.

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

TITLE I—DEPARTMENT OF AGRICULTURE

SEC. 101. REPORTS ELIMINATED.

(a) SECONDARY MARKET OPERATIONS.—Section 338(b) of the Consolidated Farm and Rural Development Act (as redesignated by section 749(a)(2) of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 1988(b))) is amended—

(1) by striking paragraph (4); and

(2) by redesignating paragraph (5) as paragraph (4).

(b) PILOT PROGRAMS TO TEST MEASUREMENT OF NUTRITIONAL STATUS OF LOW-INCOME HOUSEHOLDS.—Section 17 of the Food Stamp Act of 1977 (7 U.S.C. 2026) is amended by striking subsection (c).

(c) ESTIMATE OF SECOND PRECEDING MONTH'S EXPENDITURES UNDER FOOD STAMP PROGRAM.—Section 18(a)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2027(a)(1)) is amended by striking the third and fourth sentences.

(d) ADVISORY COMMITTEES.—Section 1804 of the Food and Agriculture Act of 1977 (7 U.S.C. 2284) is repealed.

(e) FARMER-TO-CONSUMER DIRECT MARKETING ACT OF 1976.—

(1) IN GENERAL.—Section 6 of the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3005) is repealed.

(2) CONFORMING AMENDMENT.—Section 7(a) of the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3006(a)) is amended by striking ''the provisions of sections 4 and 6'' and inserting ''section 4''.

(f) AGRICULTURAL RESEARCH AT LAND-GRANT COLLEGES.—Section 1445(g) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3222(g)) is amended by striking paragraph (4).

(g) FOREIGN OWNERSHIP OF AGRICULTURAL LAND.—Section 5 of the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3504) is repealed.

(h) SUGAR PRICE INCREASES.—Section 6 of Public Law 96–236 (7 U.S.C. 3606) is repealed.

(i) HOUSING PRESERVATION GRANT PROGRAM.—Section 533 of the Housing Act of 1949 (42 U.S.C. 1490m) is amended by striking subsection (j).

(j) NATIONAL ADVISORY COUNCIL ON MATERNAL, INFANT, AND FETAL NUTRITION.—Section 17(k) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(k)) is amended—

(1) by striking paragraph (4); and

(2) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

TITLE II—DEPARTMENT OF DEFENSE

SEC. 201. REPORTS ELIMINATED.

(a) NOTIFICATIONS OF CONVERSION OF HEATING FACILITIES AT INSTALLATIONS IN EUROPE.—Section 2690(b) of title 10, United States Code, is amended by striking out ''unless the Secretary—'' and all that follows through the end of the subsection and inserting in lieu thereof ''unless the Secretary determines that the conversion—

''(1) is required by the government of the country in which the facility is located; or

''(2) is cost effective over the life cycle of the facility.''.

(b) NOTIFICATIONS OF DISAGREEMENTS REGARDING AVAILABILITY OF ALTERNATIVE HOUSING.—Section 2823 of title 10, United States Code, is amended—

(1) by striking out subsection (b); and

(2) by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

TITLE III—EDUCATION

SEC. 301. REPORT ELIMINATED.

Section 1411 of the Higher Education Amendments of 1992 is repealed.

TITLE IV—DEPARTMENT OF ENERGY

SEC. 401. REPORTS ELIMINATED.

(a) NUCLEAR TEST BAN READINESS REPORT.—Section 1436 of the National Defense Authorization Act, Fiscal Year 1989 (Public Law 100–456; 42 U.S.C. 2121 note), is amended by striking subsection (e).

(b) REPORT ON RESUMPTION OF PLUTONIUM OPERATIONS AT ROCKY FLATS.—Section 3133 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (105 Stat. 1574) is amended—

(1) by striking subsections (c) and (d); and

(2) by redesignating subsection (e) as subsection (c).

(c) REPORT ON POTENTIAL FOR HYDROPOWER DEVELOPMENT, UTILIZING TIDAL CURRENTS.—The first section of the Act of August 30, 1935 (49 Stat. 1028, chapter 831), as amended by section 2409 of the Energy Policy Act of 1992 (106 Stat. 3101), is amended by striking ''The Secretary shall undertake a demonstration project to evaluate the potential for hydropower development, utilizing tidal currents;''.

(d) ELECTRIC UTILITY PARTICIPATION STUDY.—Section 625 of the Energy Policy Act of 1992 (42 U.S.C. 13295) is repealed.

(e) REPORT ON STEEL AND ALUMINUM RESEARCH AND DEVELOPMENT ACTIVITIES.—The Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988 is amended—

(1) by striking section 8 (15 U.S.C. 5107); and

(2) by redesignating sections 9, 10, and 11 (15 U.S.C. 5108, 5109, and 5110) as sections 8, 9, and 10, respectively.

(f) REPORT ON METAL CASTING RESEARCH AND DEVELOPMENT ACTIVITIES.—Section 10 of the Department of Energy Metal Casting Competitiveness Research Act of 1990 (15 U.S.C. 5309) is repealed.

(g) BIENNIAL UPDATE TO THE NATIONAL ADVANCED MATERIALS INITIATIVE 5-YEAR PROGRAM PLAN.—Section 2201(b) of the Energy Policy Act of 1992 (42 U.S.C. 13501(b)) is amended by striking the second sentence.

(h) REPORT ON VIBRATION REDUCTION TECHNOLOGIES.—Section 173(c) of the Energy Policy Act of 1992 (Public Law 102–486; 42 U.S.C. 13451 note) is amended—

(1) by striking subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

(i) REPORT ON PROCESS-ORIENTED INDUSTRIAL ENERGY EFFICIENCY.—Section 132 of the Energy Policy Act of 1992 (42 U.S.C. 6349) is amended—

(1) by striking subsection (d); and

(2) by redesignating subsection (e) as subsection (d).

(j) REPORT ON INDUSTRIAL INSULATION AND AUDIT GUIDELINES.—Section 133 of the Energy Policy Act of 1992 (42 U.S.C. 6350) is amended by striking subsection (c).

(k) REPORT EVALUATION OF OPPORTUNITIES FOR ENERGY EFFICIENT POLLUTION PREVENTION.—Section 2108 of the Energy Policy Act of 1992 (42 U.S.C. 13457) is amended—

(1) by striking subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

(l) REPORT ON CONTINENTAL SCIENTIFIC DRILLING PROGRAM.—Section 4 of the Continental Scientific Drilling and Exploration Act (Public Law 100–441; 43 U.S.C. 31 note) is amended—

(1) by adding ''and'' at the end of paragraph (4);

(2) by striking ''; and'' at the end of paragraph (5) and inserting a period; and

(3) by striking paragraph (6).

(m) REPORT ON COAL RESEARCH, DEVELOPMENT, DEMONSTRATION, AND COMMERCIALIZATION PROJECTS.—Section 1301 of the Energy Policy Act of 1992 (42 U.S.C. 13331) is amended—

(1) by striking subsection (d); and

(2) by redesignating subsection (e) as subsection (d).

(n) REPORT ON THE USE OF ENERGY FUTURES FOR FUEL PURCHASES.—Section 3014 of the Energy Policy Act of 1992 (42 U.S.C. 13552) is amended—

(1) by striking subsection (b); and

(2) by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

(o) REPORT ON IMPLEMENTATION OF THE ALASKA FEDERAL CIVILIAN ENERGY EFFICIENCY SWAP ACT OF 1980.—Section 6 of the

Alaska Federal Civilian Energy Efficiency Swap Act of 1980 (40 U.S.C. 795d) is repealed.

(p) REPORT ON MAJOR NATIONAL SECURITY PROGRAMS.—Section 3143 of the National Defense Authorization Act, fiscal years 1990 and 1991 (42 U.S.C. 7271a) is repealed.

SEC. 402. REPORTS MODIFIED.

(a) REPORT ON PLAN FOR ELECTRIC MOTOR VEHICLES.—Section 2025(b) of the Energy Policy Act of 1992 (42 U.S.C. 13435(b)) is amended—

(1) in the second sentence of paragraph (1), by striking ''annually'' and inserting ''biennially''; and

(2) in the second sentence of paragraph (4), by striking ''Annual'' and inserting ''Biennial''.

(b) COKE OVEN PRODUCTION TECHNOLOGY STUDY.—Section 112(n)(2)(C) of the Clean Air Act (42 U.S.C. 7412(n)(2)(C)) is amended by striking ''The Secretary shall prepare annual reports to Congress on the status of the research program and at the completion of the study'' and inserting ''On completion of the study, the Secretary shall submit to Congress a report on the results of the study and''.

TITLE V—ENVIRONMENTAL PROTECTION AGENCY

SEC. 501. REPORTS ELIMINATED.

(a) REPORT ON CONDITIONAL REGISTRATION OF PESTICIDES.—

(1) IN GENERAL.—The Federal Insecticide, Fungicide, and Rodenticide Act is amended—

(A) by striking section 29 (7 U.S.C. 136w–4); and

(B) by redesignating sections 30 and 31 (7 U.S.C. 136x and 136y) as sections 29 and 30, respectively.

(2) CONFORMING AMENDMENTS.—The table of contents in section 1(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. prec. 121) is amended—

(A) by striking the item relating to section 29; and

(B) by redesignating the items relating to sections 30 and 31 as the items relating to sections 29 and 30, respectively.

(b) REPORT ON IMPLEMENTATION OF TOXIC SUBSTANCES CONTROL ACT.—

(1) IN GENERAL.—The Toxic Substances Control Act is amended—

(A) by striking section 30 (15 U.S.C. 2629); and

(B) by redesignating section 31 (Public Law 94–469; 15 U.S.C. 2601 note) as section 30.

(2) CONFORMING AMENDMENTS.—

(A) The table of contents in section 1 of the Toxic Substances Control Act (15 U.S.C. prec. 2601) is amended—

(i) by striking the item relating to section 30; and

(ii) by redesignating the item relating to section 31 as the item relating to section 30.

(B) The second sentence of section 9(d) of the Toxic Substances Control Act (15 U.S.C. 2608(d)) is amended by striking '', in the report required by section 30,''.

(c) REPORT ON EFFECT OF POLLUTION ON ESTUARIES AND ESTUARINE ZONES.—

(1) IN GENERAL.—Section 104(n) of the Federal Water Pollution Control Act (33 U.S.C. 1254(n)) is amended—

(A) by striking paragraph (3); and

(B) by redesignating paragraph (4) as paragraph (3).

(2) CONFORMING AMENDMENT.—Section 320(k) of the Federal Water Pollution Control Act (33 U.S.C. 1330(k)) is amended by striking ''section 104(n)(4)'' and inserting ''section 104(n)(3)''.

(d) CLEAN LAKES REPORT.—Section 314(a) of the Federal Water Pollution Control Act (33 U.S.C. 1324(a)) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraph (4) as paragraph (3).

(e) REPORT ON NONPOINT SOURCE MANAGEMENT PROGRAMS.—Section 319 of the Federal Water Pollution Control Act (33 U.S.C. 1329) is amended—

(1) in subsection (i), by striking paragraph (4);

(2) by striking subsection (m); and

(3) by redesignating subsection (n) as subsection (m).

(f) REPORT ON MEASURES TAKEN TO MEET OBJECTIVES OF FEDERAL WATER POLLUTION CONTROL ACT.—

(1) IN GENERAL.—Section 516 of the Federal Water Pollution Control Act (33 U.S.C. 1375) is amended—

(A) by striking subsections (a), (b)(2), (c), (d), and (e);

(B) by striking ''(b)(1)''; and

(C) by redesignating subparagraphs (A) through (D) as paragraphs (1) through (4), respectively.

(2) CONFORMING AMENDMENTS.—

(A) Section 104 of the Federal Water Pollution Control Act (33 U.S.C. 1254) is amended—

(i) in subsection (a)(5), by striking ''in the report required under subsection (a) of section 516'' and inserting ''not later than 90 days after the date of convening of each session of Congress''; and

(ii) in the first sentence of subsection (o)(2), by striking ''in the report required under subsection (a) of section 516'' and inserting ''not later than 90 days after the date of convening of each session of Congress''.

(B) The fourth sentence of section 116(b) of the Federal Water Pollution Control Act (33 U.S.C. 1266(b)) is amended by striking ''section 616(b) of this Act'' and inserting ''section 516''.

(C) The last sentence of section 205(a) of the Federal Water Pollution Control Act (33 U.S.C. 1285(a)) is amended by striking ''section 516(b)'' and inserting ''section 516''.

(D) The second sentence of section 210 of the Federal Water Pollution Control Act (33 U.S.C. 1290) is amended by striking ''shall be included in the report required under section 516(a) of this Act'' and inserting ''shall be reported to Congress not later than 90 days after the date of convening of each session of Congress''.

(g) REPORT ON SAFE DRINKING WATER ACT COSTS OF COMPLIANCE.—Section 1442(a)(3) of the Public Health Service Act (42 U.S.C. 300j–1(a)(3)) is amended—

(1) in subparagraph (A), by striking ''(A)''; and

(2) by striking subparagraph (B).

(h) ANALYSIS OF ALTERNATIVE MOTOR VEHICLE FUELS USE ON ENVIRONMENT.—Section 400EE of the Energy Policy and Conservation Act (42 U.S.C. 6374d) is repealed.

(i) COMPREHENSIVE REPORT ON ACTIVITIES OF OFFICE OF SOLID WASTE.—

(1) IN GENERAL.—The Solid Waste Disposal Act is amended—

(A) by striking section 2006 (42 U.S.C. 6915); and

(B) by redesignating section 2008 (42 U.S.C. 6917) as section 2006 and moving the section to appear after section 2005.

(2) CONFORMING AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended—

(A) by striking the item relating to section 2006; and

(B) by redesignating the item relating to section 2008 as the item relating to section 2006 and moving the item to appear after the item relating to section 2005.

(j) STUDY OF ENVIRONMENTAL PROBLEMS ASSOCIATED WITH IMPROPER DISPOSAL OR REUSE OF OIL.—Section 9 of the Used Oil Recycling Act of 1980 (Public Law 96–463; 94 Stat. 2058) is repealed.

(k) REPORT ON STATE AND LOCAL TRAINING NEEDS AND OBSTACLES TO EMPLOYMENT IN SOLID WASTE MANAGEMENT AND RESOURCE RECOVERY.—Section 7007 of the Solid Waste Disposal Act (42 U.S.C. 6977) is amended by striking subsection (c).

(l) INTERIM REPORT OF NATIONAL ADVISORY COMMISSION ON RESOURCE CONSERVATION AND RECOVERY.—Section 33(a) of the Solid Waste Disposal Act Amendments of 1980 (Public Law 96–482, 94 Stat. 2356; 42 U.S.C. 6981 note) is amended—

(1) by striking paragraph (7); and

(2) by redesignating paragraph (8) as paragraph (7).

(m) FINAL REPORT ON MEDICAL WASTE MANAGEMENT.—

(1) IN GENERAL.—The Solid Waste Disposal Act is amended—

(A) by striking section 11008 (42 U.S.C. 6992g); and

(B) by redesignating sections 11009 through 11012 (42 U.S.C. 6992h through 6992k) as sections 11008 through 11011, respectively.

(2) CONFORMING AMENDMENTS.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended—

(A) by striking the item relating to section 11008; and

(B) by redesignating the items relating to sections 11009 through 11012 as the items relating to sections 11008 through 11011, respectively.

(n) REPORT ON STATUS OF DEMONSTRATION PROGRAM TO TEST METHODS AND TECHNOLOGIES OF REDUCING OR ELIMINATING RADON GAS.—Section 118(k)(2) of the Superfund Amendments and Reauthorization Act of 1986 (Public Law 99–499; 42 U.S.C. 7401 note) is amended—

(1) by striking subparagraph (B); and

(2) by redesignating subparagraph (C) as subparagraph (B).

(o) REPORT ON CANADIAN ACID RAIN CONTROL PROGRAM.—Section 408 of the Act entitled ''An Act to amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes'', approved November 15, 1990 (commonly known as the ''Clean Air Act Amendments of 1990'') (Public Law 101–549; 42 U.S.C. 7651 note), is repealed.

(p) BIENNIAL POLLUTION PREVENTION REPORT.—The Pollution Prevention Act of 1990 is amended—

(1) by striking section 6608 (42 U.S.C. 13107); and

(2) by redesignating sections 6609 and 6610 (42 U.S.C. 13108 and 13109) as sections 6608 and 6609, respectively.

TITLE VI—DEPARTMENT OF HEALTH AND HUMAN SERVICES

SEC. 601. REPORTS ELIMINATED.

(a) REPEALS.—

(1) PUBLIC HEALTH SERVICE ACT.—The following provisions of the Public Health Service Act (42 U.S.C. 201 et seq.) are repealed:

(A) Section 376 (42 U.S.C. 274d) relating to the biennial report on the scientific and clinical status of organ transplantation.

(B) Section 403 (42 U.S.C. 283) relating to the biennial report of the Director of the National Institutes of Health.

(C) Paragraph (4) of section 408(a) (42 U.S.C. 284c(a)(4)) relating to the annual report of the National Institutes of Health on administrative expenses.

(D) Subsection (c) of section 429 (42 U.S.C. 285c–3(c)) relating to the annual report of the Diabetes Mellitus Interagency Coordinating Committee, the Digestive Diseases Interagency Coordinating Committee, and National Kidney and Urologic Diseases Interagency Coordinating Committee.

(E) Subsection (j) of section 430 (42 U.S.C. 285c–4(j)) relating to the annual reports of the National Diabetes Advisory Board, the

National Digestive Diseases Advisory Board, and the National Kidney and Urologic Diseases Advisory Board.

(F) Subsection (c) of section 439 (42 U.S.C. 285d–4(c)) relating to the annual report by the Arthritis and Musculoskeletal and Skin Diseases Interagency Coordinating Committee.

(G) Subsection (j) of section 442 (42 U.S.C. 285d–7(j)) relating to the annual report by the Arthritis and Musculoskeletal and Skin Diseases Advisory Board.

(H) Subsection (b) of section 494A (42 U.S.C. 289c–1(b)) relating to the report on health services research.

(I) Paragraph (3) of section 501(e) (42 U.S.C. 290aa(e)(2)) relating to the report of the Substance Abuse and Mental Health Services Administration.

(J) Subsection (b) of section 503 (42 U.S.C. 290aa–2(b)) relating to the triennial report on drug abuse.

(K) Section 1009 (42 U.S.C. 300a–6a) relating to the family planning and population research report.

(L) Section 1122 (42 U.S.C. 300c–12) relating to the sudden infant death syndrome research report.

(M) Section 2104 (42 U.S.C. 300aa–4) relating to the National Vaccine Program report.

(2) OTHER ACTS.—The following provisions are repealed:

(A) Section 540 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360qq) relating to the annual report on the administration of the Radiation Control for Health and Safety program.

(B) Section 304 of the Home Health Care and Alzheimer's Disease Amendments of 1990 (42 U.S.C. 242q–3) relating to the report of the Task Force on Aging Research.

(C) Section 1901 of the NIH Revitalization Act of 1993 (42 U.S.C. 285f–1 note) relating to the report of the research activities concerning chronic fatigue syndrome.

(D) Paragraph (7) of section 1881(f) of the Social Security Act (42 U.S.C. 1395rr(c)(7)) relating to the report on end-stage renal disease.

(E) Section 402 of the Indian Health Care Improvement Act (42 U.S.C. 1395qq note) relating to the tribal organization demonstration program for direct billing of medicare, medicaid, and other third party payors.

(F) Section 1200 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (42 U.S.C. 3509) relating to the report of the Public Health Service.

(G) Subsection (d) of section 719 of the Indian Health Care Amendments of 1988 (Public Law 100–713; 102 Stat. 4838) relating to the impact of the final rule relating to eligibility for health care services of the Indian Health Service.

(b) SOCIAL SECURITY ACT AND RELATED PROVISIONS.—

(1) Section 8403(b) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647; 102 Stat. 3799) is repealed.

(2) Section 4207(c)(2)(B) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508; 104 Stat. 1388–120) (42 U.S.C. 1395x note) is repealed.

(3) Section 9601(f) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272; 100 Stat. 222) (42 U.S.C. 1395b note) is repealed.

(4) Section 6003(i) of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101–239; 103 Stat. 2158) (42 U.S.C. 1395ww note) is repealed.

(5) Section 6102(d)(4) of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101–239; 103 Stat. 2185) (42 U.S.C. 1395w–4 note) is repealed.

(6) Section 1882(l)(6) of the Social Security Act (42 U.S.C. 1395ss(l)(6)) is repealed.

(7) Section 4056(d) of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203; 101 Stat. 1330–99) (42 U.S.C. 1395l note) (as redesignated by section 411(f)(14) of the Medicare Catastrophic Coverage Act of 1988 (Public Law 100–360; 102 Stat. 781)) is repealed.

(c) NIH.—

(1) ANNUAL REPORT ON DISEASE PREVENTION.—Section 402(f) of the Public Health Service Act (42 U.S.C. 282(f)) is amended—

(A) in paragraph (1), by striking ''and'' at the end;

(B) in paragraph (2), by striking ''; and'' and inserting a period; and

(C) by striking paragraph (3).

(2) REPORT OF NICHD ASSOCIATE DIRECTOR FOR PREVENTION.—Section 451 of the Public Health Service Act (42 U.S.C. 285g–3) is amended—

(A) in subsection (a), by striking ''(a) There'' and inserting ''There''; and

(B) by striking subsection (b).

(3) REPORT OF COUNCIL ON ALZHEIMER'S DISEASE.—The Alzheimer's Disease Research, Training, and Education Amendments of 1992 is amended by striking sections 911 and 912 (42 U.S.C. 11211 and 11212).

(4) INTERNATIONAL HEALTH RESEARCH.—The International Health Research Act of 1960 (Public Law 86–610) is amended by striking section 5(h).

SEC. 602. REPORTS MODIFIED.

(a) INDIAN HEALTH.—Subsection (e) of section 513 of the Indian Health Care Improvement Act (25 U.S.C. 1660c(e)) is amended by striking ''two years'' and inserting ''5 years''.

(b) SOCIAL SECURITY ACT.—

(1) Section 4801(e)(17)(B) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508; 104 Stat. 1388–218) (42 U.S.C. 1396r note) is amended by striking ''January 1, 1992'' and inserting ''January 1, 1999''.

(2) Section 4360(f) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508; 104 Stat. 1388–140) (42 U.S.C. 1395b–4) is amended by striking ''Not later than 180 days after the date of the enactment of this section'' and inserting ''Beginning with 1992''.

TITLE VII—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SEC. 701. REPORTS ELIMINATED.

(a) FEDERAL ACTIVITIES UNDER SOLAR HEATING AND COOLING DEMONSTRATION ACT OF 1974.—Section 12 of the Solar Heating and Cooling Demonstration Act of 1974 (42 U.S.C. 5510) is amended by striking subsection (d).

(b) FUNDING RELATING TO EVALUATING AND MONITORING PROGRAMS.—Section 7(r) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(r)) is amended—

(1) by striking paragraph (5); and

(2) by redesignating paragraph (6) as paragraph (5).

(c) STATE AND LOCAL STRATEGIES FOR REMOVAL OF BARRIERS TO AFFORDABLE HOUSING.—Section 1207 of the Housing and Community Development Act of 1992 (42 U.S.C. 12705a note) is repealed.

(d) COMPREHENSIVE REVIEW AND EVALUATION OF HOMELESS ASSISTANCE PROGRAMS.—Section 1409 of the Housing and Community Development Act of 1992 (42 U.S.C. 11361 note) is amended—

(1) by striking ''(a) IN GENERAL.—''; and

(2) by striking subsection (b).

(e) NEIGHBORHOOD REDEVELOPMENT PROGRAM.—Section 123 of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 5318 note) is amended—

(1) by striking subsection (f); and

(2) by redesignating subsections (g) and (h) as subsections (f) and (g), respectively.

(f) HOMEOWNERSHIP DEMONSTRATION PROGRAM.—Section 132 of the Housing and Community Development Act of 1992 (Public Law 102–550; 106 Stat. 3712) is amended—

(1) by striking subsection (f); and

(2) by redesignating subsections (g) and (h) as subsections (f) and (g), respectively.

(g) RURAL RENTAL REHABILITATION DEMONSTRATION.—Section 311 of the Housing and Community Development Act of 1987 (42 U.S.C. 1490m note) is amended—

(1) by striking subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

(h) SUMMARY OF ACTIVITIES UNDER NEW TOWN DEMONSTRATION.—Section 1108 of the Housing and Community Development Act of 1992 (42 U.S.C. 5318 note) is amended by striking ''the following'' and all that follows before the period at the end of the section and inserting the following: ''a copy of the new town plan of the governing board, upon the approval of that plan under section 1102(d)''.

TITLE VIII—INDIAN AFFAIRS

SEC. 801. REPORTS ELIMINATED.

(a) INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION REPORT.—Section 412 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3211) is repealed.

(b) REPORTS UNDER THE INDIAN FINANCING ACT OF 1974.—

(1) ADJUSTMENT OR CANCELLATION OF OBLIGATIONS RELATED TO THE INDIAN REVOLVING LOAN FUND.—Section 105 of the Indian Financing Act of 1974 (25 U.S.C. 1465) is repealed.

(2) INDIAN LOAN GUARANTY AND INSURANCE FUND DEFICIENCIES.—Section 217 of the Indian Financing Act of 1974 (25 U.S.C. 1497) is amended by striking subsection (f).

(c) EDUCATION AMENDMENTS OF 1978.—

(1) REPORT ON DEMONSTRATION PROJECTS.—Section 1121(h) of the Education Amendments of 1978 (25 U.S.C. 2001(h)) is amended—

(A) by striking paragraph (4); and

(B) by redesignating paragraph (5) as paragraph (4).

(2) NATIONAL CRITERIA FOR DORMITORY SITUATIONS.—Section 1122(d) of the Education Amendments of 1978 (25 U.S.C. 2002(d)) is amended by striking paragraph (3).

(3) POSITIONS CONTRACTED UNDER GRANTS OF POST-DIFFERENTIAL AUTHORITY IN THE BIA SCHOOLS.—Section 1132(h)(3)(B) of the Education Amendments of 1978 (25 U.S.C. 2012(h)(3)(B)) is amended by striking clause (iii).

(4) REPORT.—Section 1137 of the Education Amendments of 1978 (25 U.S.C. 2017) is amended—

(A) by striking the section heading and inserting the following:

''SEC. 1137. BIENNIAL REPORT.'';

and

(B) in the first sentence of subsection (a)—

(i) by striking ''annual report'' and inserting ''biennial report''; and

(ii) by striking ''during the year'' and inserting ''during the 2-year period covered by the report''.

(5) REGULATIONS.—Section 1139 of the Education Amendments of 1978 (25 U.S.C. 2019) is repealed.

(6) TECHNICAL CORRECTION.—Section 605(b)(2) of the School-to-Work Opportunity Act of 1994 (20 U.S.C. 6235(b)(2)) is amended by striking ''(as defined in section 1139(3) of the Education Amendments of 1978 (25 U.S.C. 2019(3))'' and inserting ''(as defined in section 1146(3) of the Education Amendments of 1978 (25 U.S.C. 2026(3))''.

(d) TRIBALLY CONTROLLED SCHOOLS ACT OF 1988.—Section 5026 of the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2505) is amended by striking subsection (g).

(e) PUBLIC LAW 96–135.—Section 2 of Public Law 96–135 (25 U.S.C. 472a) is amended—

(1) by striking subsection (d);

(2) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively; and

(3) in subsection (d), as so redesignated—

(A) by striking paragraph (2); and

(B) by striking ''(1) The Office'' and inserting ''The Office''.

(f) NATIVE AMERICANS EDUCATIONAL ASSISTANCE ACT.—Section 4 of the Native Americans Educational Assistance Act (25 U.S.C. 2001 note) is amended—

(1) by striking subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

(g) INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT.—Section 106 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j–1) is amended—

(1) by striking subsection (c); and

(2) by redesignating subsections (d) through (o) as subsections (c) through (m), respectively.

TITLE IX—DEPARTMENT OF THE INTERIOR

SEC. 901. REPORTS ELIMINATED.

(a) PACIFIC YEW ACT.—The Pacific Yew Act (16 U.S.C. 4801 et seq.) is repealed.

(b) SIZE AND CONDITION OF THE TULE ELK HERD IN CALIFORNIA.—

(1) REPEAL.—Section 3 of Public Law 94–389 (16 U.S.C. 673f) is repealed.

(2) REDESIGNATION.—Section 4 of Public Law 94–389 (16 U.S.C. 673g) is redesignated as section 3.

(c) REVIEWS AND EXTENSIONS OF WITHDRAWALS OF LANDS.—Section 204(f) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714(f)) is amended by striking the second sentence.

(d) STATUS OF THE WILD FREE-ROAMING HORSE AND BURRO PROGRAM.—Section 11 of Public Law 92–195 (16 U.S.C. 1340) is amended by striking the first undesignated paragraph.

(e) STATUS OF THE WILDERNESS SYSTEM.—Section 7 of the Wilderness Act (16 U.S.C. 1136) is repealed.

(f) WATER QUALITY OF THE SACRAMENTO-SAN JOAQUIN DELTA AND SAN FRANCISCO BAY ESTUARINE SYSTEMS.—Section 4 of Public Law 96–375 (94 Stat. 1506) is amended by striking the second sentence.

(g) COLORADO RIVER FLOODWAY MAPS.—Section 5(b) of the Colorado River Floodway Protection Act (43 U.S.C. 1600c(b)) is amended—

(1) by striking ''(b)(1)'' and inserting ''(b)'';

(2) by striking paragraphs (2) and (3); and

(3) by redesignating clauses (i) and (ii) as paragraphs (1) and (2), respectively.

(h) CERTIFICATION OF ADEQUATE SOIL SURVEY OF LAND CLASSIFICATION.—

(1) The first section of title I of the Interior Department Appropriation Act, 1953, is amended in the matter under the heading ''CONSTRUCTION AND REHABILITATION'' under the heading ''BUREAU OF RECLAMATION'' (66 Stat. 451) by striking '': *Provided further*, That no part of this or any other appropriation'' and all that follows through ''means of irrigation''.

(2) The first section of title I of the Interior Department Appropriation Act, 1954'' (43 U.S.C. 390a; 67 Stat. 266) is amended—

(A) in the matter under the heading ''CONSTRUCTION AND REHABILITATION'' under the heading ''BUREAU OF RECLAMATION'', by striking '': *Provided further*, That no part of this or any other appropriation'' and all that follows through ''demonstrated in practice''; and

(B) by striking ''Such surveys shall include an investigation of soil characteristics which might result in toxic or hazardous irrigation return flows.'' (as added by section 10 of the Garrison Diversion Unit Reformulation Act of 1986 (100 Stat. 426)).

(i) CLAIMS SUBMITTED FROM THE TETON DAM FAILURE.—Section 8 of Public Law 94–400 (90 Stat. 1213) is repealed.

(j) STUDY OF THE FEASIBILITY AND SUITABILITY OF ESTABLISHING NIOBRARA-BUFFALO PRAIRIE NATIONAL PARK.—

(1) REPEAL.—Section 8 of the Niobrara Scenic River Designation Act of 1991 (Public Law 102–50; 16 U.S.C. 1a–5 note) is repealed.

(2) REDESIGNATION.—Section 9 of the Act (Public Law 102–50; 105 Stat. 258) is redesignated as section 8.

(k) STUDY OF ROUTE 66.—The Route 66 Study Act of 1990 (Public Law 101–400; 104 Stat. 861) is repealed.

(l) REPORT ON ANTHRACITE MINE WATER CONTROL AND MINE SEALING AND FILLING PROGRAM.—The Act entitled ''An Act to provide for the conservation of anthracite coal resources through measures of flood control and anthracite mine drainage, and for other purposes'', approved July 15, 1955, is amended—

(1) by striking section 5 (30 U.S.C. 575); and

(2) by redesignating section 6 (30 U.S.C. 576) as section 5.

(m) AUDIT OF FEDERAL ROYALTY MANAGEMENT SYSTEM.—

(1) IN GENERAL.—Section 302 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1752) is amended—

(A) in subsection (a), by striking ''(a)''; and

(B) by striking subsection (b).

(2) CONFORMING AMENDMENT.—Section 304(c) of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1753(c)) is amended by striking ''Except as expressly provided in subsection 302(b), nothing'' and inserting ''Nothing''.

(n) REPORT ON BIDDING OPTIONS FOR OIL AND GAS LEASES ON OUTER CONTINENTAL SHELF LAND.—Section 8(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(a)) is amended by striking paragraph (9).

(o) REPORTS ON OUTER CONTINENTAL SHELF LEASING AND PRODUCTION PROGRAM AND PROMOTION OF COMPETITION IN LEASING.—

(1) IN GENERAL.—Section 15 of the Outer Continental Shelf Lands Act (43 U.S.C. 1343) is repealed.

(2) CONFORMING AMENDMENT.—Section 22 of the Outer Continental Shelf Lands Act (43 U.S.C. 1348) is amended by striking subsection (g).

(p) AUDIT OF FINANCIAL REPORT OF GOVERNOR OF GUAM.—The sixth undesignated paragraph of section 6 of the Organic Act of Guam (48 U.S.C. 1422) is amended by striking the third and fifth sentences.

(q) AUDIT OF FINANCIAL REPORT OF GOVERNOR OF THE VIRGIN ISLANDS.—The fourth undesignated paragraph of section 11 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1591) is amended by striking the third and fifth sentences.

(r) AUDIT OF FINANCIAL REPORT OF GOVERNOR OF AMERICAN SAMOA.—Section 501(a) of Public Law 96–205 (48 U.S.C. 1668(a)) is amended by striking the third and fifth sentences.

(s) AUDIT OF FINANCIAL REPORT OF CHIEF EXECUTIVES OF CERTAIN TERRITORIES.—Section 5 of Public Law 92–257 (48 U.S.C. 1692) is amended by striking the third and fifth sentences.

(t) REPORT ON ACTIVITIES UNDER HELIUM ACT.—Section 16 of the Helium Act (50 U.S.C. 167n) is repealed.

(u) REPORT ON CONTRACT AWARDS MADE TO FACILITATE NATIONAL DEFENSE.—

(1) IN GENERAL.—Public Law 85–804 is amended—

(A) by striking section 4 (50 U.S.C. 1434); and

(B) by redesignating section 5 (50 U.S.C. 1435) as section 4.

(2) CONFORMING AMENDMENT.—Section 501(a)(6) of the National Emergencies Act (50 U.S.C. 1651(a)(6)) is amended by striking ''1431–1435'' and inserting ''1431 et seq.''.

SEC. 902. REPORTS MODIFIED.

(a) RECOMMENDATIONS ON PROSPECTIVE TIMBER SALES.—The first sentence of section 318(h) of Public Law 101–121 (103 Stat. 750) is amended by striking ''a monthly basis'' and inserting ''an annual basis''.

(b) REPORT ON NATIONWIDE GEOLOGIC MAPPING PROGRAM.—Section 8 of the National Geologic Mapping Act of 1992 (43 U.S.C. 31g) is amended—

(1) in the section heading, by striking ''annual'' and inserting ''biennial''; and

(2) in the first sentence—

(A) by striking ''each fiscal year, submit an annual report'' and inserting ''each second fiscal year, submit a biennial report''; and

(B) by striking ''preceding fiscal year'' and inserting ''2 preceding fiscal years''.

TITLE X—DEPARTMENT OF JUSTICE

SEC. 1001. REPORTS ELIMINATED.

(a) EMERGENCY LAW ENFORCEMENT ASSISTANCE REPORT.—Section 609U of the Justice Assistance Act of 1984 (42 U.S.C. 10509) is repealed.

(b) IMMIGRATION AND NATIONALITY ACT.—The Immigration and Nationality Act is amended—

(1) in section 103 (8 U.S.C. 1103(d)), by striking subsection (d);

(2) in section 214(c) (8 U.S.C. 1184(c)), by striking paragraph (8);

(3) in section 286 (8 U.S.C. 1356)—

(A) by striking subsection (l) and inserting the following:

''(l) [Reserved].'';

(B) in subsection (q)—

(i) by striking paragraph (4); and

(ii) by redesignating paragraph (5) as paragraph (4); and

(C) in subsection (r)—

(i) by striking paragraph (5); and

(ii) by redesignating paragraph (6) as paragraph (5); and

(4) in section 344(f) (8 U.S.C. 1455(f))—

(A) by striking ''(f)(1) The Attorney General'' and inserting ''(f) The Attorney General''; and

(B) by striking paragraph (2).

(c) IMMIGRATION AND NATURALIZATION DOCUMENT SECURITY REPORT.—Section 5 of the Immigration Nursing Relief Act of 1989 (8 U.S.C. 1324a note) is amended by striking subsection (d) and inserting the following:

''(d) [Reserved].''.

(d) DIVERSION CONTROL FEE ACCOUNT REPORT.—Section 111(b) of the Departments of Commerce, Justice, and State, and the Judiciary, and Related Agencies Appropriations Act, 1993 (21 U.S.C. 886a(b)) is amended by striking paragraph (5).

(e) ASSET FORFEITURE REPORT.—Section 524(c) of title 28, United States Code, is amended—

(1) by striking paragraph (6); and

(2) by redesignating paragraphs (7) through (12) as paragraphs (6) through (11), respectively.

(f) CIVIL FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT REPORT.—Section 918 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833) is repealed.

(g) DAMAGE SETTLEMENT REPORT.—Section 3724 of title 31, United States Code, is amended—

(1) by striking subsection (b); and

(2) by redesignating subsection (c) as subsection (b).

(h) BANKING LAW OFFENSE REPORT.—Section 8(u) of the Federal Deposit Insurance Act (12 U.S.C. 1818(u)) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraphs (4) through (8) as paragraphs (3) through (7), respectively.

(i) BANKING LAW OFFENSE REWARDS REPORT.—Section 2571 of the Crime Control Act of 1990 (12 U.S.C. 4211) is repealed.

(j) BANKING INSTITUTIONS SOUNDNESS REPORT.—Section 1542 of the Housing and Community Development Act of 1992 (12 U.S.C. 1831m–1) is repealed.

TITLE XI—NASA

SEC. 1101. REPORTS ELIMINATED.

(a) CONTINGENT LIABILITY.—Section 6 of the National Aeronautics and Space Administration Authorization Act, 1978 (42 U.S.C. 2463) is repealed.

(b) ACTIVITIES OF THE NATIONAL SPACE GRANT AND FELLOWSHIP PROGRAM.—Section 212 of the Land Remote-Sensing Commercialization Amendments of 1987 (42 U.S.C. 2486j) is repealed.

(c) NOTIFICATION OF PROCUREMENT OF LONG-LEAD MATERIALS FOR SOLID ROCKET MONITORS ON OTHER THAN COOPERATIVE BASIS.—Section 121 of the National Aeronautics and Space Administration Authorization Act of 1988 (101 Stat. 869) is amended by striking subsection (d).

(d) CONTRACTS TO FACILITATE THE NATIONAL DEFENSE.—

(1) IN GENERAL.—Section 1434 of title 50, United States Code, is repealed.

(2) CONFORMING AMENDMENT.—The table of sections for chapter 29 of title 50, United States Code, is amended by striking the item relating to section 1434.

(e) CAPITAL DEVELOPMENT PLAN FOR SPACE STATION PROGRAM.—Section 107 of the National Aeronautics and Space Administration Authorization Act of 1988 (101 Stat. 864) is repealed.

(f) CERTIFICATION RELATING TO PAYLOADS.—Section 112 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1991 (42 U.S.C. 2465a) is amended by striking subsections (c) and (d).

(g) NOTICE OF MODIFICATION OF NASA.—

(1) 1985 ACT.—Section 103 of the National Aeronautics and Space Administration Authorization Act, 1985 (98 Stat. 424) is repealed.

(2) 1986 ACT.—Section 103 of the National Aeronautics and Space Administration Authorization Act of 1986 (99 Stat. 1014) is repealed.

(h) EXPENDITURES EXCEEDING ASTRONOMY PROGRAM.—Section 104 of the National Aeronautics and Space Administration Authorization Act, 1984 (97 Stat. 284) is repealed.

(i) LAUNCH VOUCHER DEMONSTRATION PROJECT.—Section 504 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993 (15 U.S.C. 5803) is repealed.

(j) SPACE SETTLEMENTS.—Section 217 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989 (42 U.S.C. 2451 note) is repealed.

(k) PROPOSED DECISION OR POLICY CONCERNING COMMERCIALIZATION.—Section 110 of the National Aeronautics and Space Administration Authorization Act, 1984 (42 U.S.C. 2465) is repealed.

(l) JOINT FORMER SOVIET UNION STUDIES IN BIOMEDICAL RESEARCH.—Section 605 of the National Aeronautics and Space Administration Act, Fiscal Year 1993 (42 U.S.C. 2487d) is repealed.

TITLE XII—NUCLEAR REGULATORY COMMISSION

SEC. 1201. REPORTS ELIMINATED.

(a) REPORT OF ADVISORY COMMITTEE ON REACTOR SAFEGUARDS.—Section 29 of the Atomic Energy Act of 1954 (42 U.S.C. 2039) is amended by striking the sixth and seventh sentences.

(b) REPORT ON THE PRICE-ANDERSON ACT.—Section 170 p. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(p)) is amended—

(1) by striking ''(1)''; and

(2) by striking paragraph (2).

SEC. 1202. REPORTS MODIFIED.

Section 1701(b)(1) of the Atomic Energy Act of 1954 (42 U.S.C. 2297f(b)(1)) is amended—

(1) by striking ''The Nuclear'' and inserting ''Not later than the date on which a certificate of compliance is issued under subsection (c), the Nuclear''; and

(2) by striking ''at least annually''.

TITLE XIII—OMB, OPM, AND GSA

SEC. 1301. OMB.

(a) FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT ACT OF 1990.—The Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101–410; 28 U.S.C. 2461 note) is amended by—

(1) striking section 6; and

(2) redesignating section 7 as section 6.

(b) VOLUNTARY CONTRIBUTIONS BY THE UNITED STATES TO INTERNATIONAL ORGANIZATIONS.—Section 306 of the Foreign Assistance Act of 1961 (22 U.S.C. 2226) is amended by striking subsection (b).

(c) PROMPT PAYMENT ACT.—

(1) IN GENERAL.—Section 3906 of title 31, United States Code, is repealed.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 39 of title 31, United States Code, is amended by striking the item relating to section 3906.

(d) FEDERAL ACQUISITION REGULATORY COUNCIL.—Section 25 of the Office of Federal Procurement Policy Act (41 U.S.C. 421(g)) is amended by striking subsection (g).

(e) TITLE 5.—Section 552a(u) of title 5, United States Code, is amended by—

(1) striking paragraph (6); and

(2) redesignating paragraph (7) as paragraph (6) and in that redesignated paragraph striking ''paragraphs (3)(D) and (6)'' and inserting ''paragraph (3)(D)''.

SEC. 1302. OPM.

(a) ADMINISTRATIVE LAW JUDGES.—Section 1305 of title 5, United States Code, is amended by striking ''require reports by agencies, issue reports, including an annual report to Congress,''.

(b) FEDERAL EMPLOYEE RETIREMENT AND BENEFITS.—

(1) IN GENERAL.—Section 1308 of title 5, United States Code, is repealed.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The title of sections for chapter 13 of title 5, United States Code, is amended by striking the item relating to section 1308.

(c) CIVIL SERVICE RETIREMENT AND DISABILITY FUND.—Section 8348(g) of title 5, United States Code, is amended by striking the third sentence.

(d) PLACEMENT OF NON-INDIAN EMPLOYEES.—Section 2(e) of the Act of December 5, 1979 (25 U.S.C. 472a(e); Public Law 96–135; 93 Stat. 1058) is amended—

(1) by striking ''(1)'' after ''(e)''; and

(2) by striking paragraph (2).

SEC. 1303. GSA.

Section 203(e)(6) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(e)(6)) is repealed.

TITLE XIV—TRADE

SEC. 1401. REPORTS ELIMINATED.

(a) COFFEE TRADE.—

(1) Section 5 of the International Coffee Agreement Act of 1980 (19 U.S.C. 1356n) is repealed.

(2) Section 4 of the International Coffee Agreement Act of 1980 (19 U.S.C. 1356m) is repealed.

(b) TRADE ACT OF 1974.—

(1) Subsection (c) of section 126 of the Trade Act of 1974 (19 U.S.C. 2136(c)) is repealed.

(2) Section 411 of the Trade Act of 1974 (19 U.S.C. 2441) is repealed.

(c) URUGUAY ROUND AGREEMENTS ACT.—Section 424 of the Uruguay Round Agreements Act (19 U.S.C. 3622) is repealed.

(d) RESTRICTIONS ON EXPENDITURES.—Subparagraph (C) of section 109(c)(3) of Public Law 100–202 (101 Stat. 1329–435) (40 U.S.C. 601 note) is repealed.

TITLE XV—DEPARTMENT OF TRANSPORTATION

SEC. 1501. REPORTS ELIMINATED.

(a) COAST GUARD REPORT ON ENVIRONMENTAL COMPLIANCE.—Section 693 of title 14, United States Code, is repealed.

(b) ANNUAL REPORT ON COAST GUARD USER FEES.—Section 664 of title 14, United States Code, is amended by striking subsection (c).

(c) REPORTS ABOUT GOVERNMENT PENSION PLANS.—Section 9503 of title 31, United States Code, is amended by striking subsection (a).

(d) BIENNIAL REPORT OF THE INTERAGENCY COORDINATING COMMITTEE ON OIL POLLUTION RESEARCH.—Section 7001 of the Oil Pollution Act of 1990 (33 U.S.C. 2761) is amended—

(1) by striking subsection (e); and

(2) by redesignating subsection (f) as subsection (e).

(e) FEDERAL HIGHWAY ADMINISTRATION REPORT.—Section 307(e) of title 23, United States Code, is amended—

(1) by striking paragraph (11); and

(2) by redesignating paragraphs (12) and (13) as paragraphs (11) and (12), respectively.

(f) ANNUAL REPORT ON HIGHWAY HAZARD ELIMINATION PROGRAM.—Section 152 of title 23, United States Code, is amended—

(1) by striking subsection (g); and

(2) by redesignating subsection (h) as subsection (g).

(g) TRANSPORTATION AIR QUALITY REPORT.—Section 108(f) of the Clean Air Act (42 U.S.C. 7408(f)) is amended by striking paragraphs (3) and (4).

(h) INDIAN RESERVATION ROADS STUDY.—Section 1042 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1993) is repealed.

(i) STUDY OF IMPACT OF CLIMATIC CONDITIONS.—Section 1101–1102 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2027) is repealed.

(j) FATAL AND INJURY ACCIDENT RATES ON PUBLIC ROADS IN THE UNITED STATES.—Section 207 of the Highway Improvement Act of 1982 (96 Stat. 2139, 23 United States Code 401 note) is repealed.

(k) BIENNIAL REPORTS ON NATURAL GAS AND HAZARDOUS LIQUID PIPELINE SAFETY.—

(1) IN GENERAL.—Section 60124 of title 49, United States Code, is repealed.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 601 of title 49, United States Code, is amended by striking the item relating to section 60124.

(l) MOTOR VEHICLE SAFETY.—

(1) IN GENERAL.—Section 30169 of title 49, United States Code, is repealed.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 301 of title 49, United States Code, is amended by striking the item relating to section 30169.

(m) BUMPER STANDARDS.—

(1) IN GENERAL.—Section 32510 of title 49, United States Code, is repealed.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 325 of title 49, United States Code, is amended by striking the item relating to section 32510.

(n) HIGHWAY SAFETY.—Section 202 of the Highway Safety Act of 1966 (80 Stat. 736; 23 U.S.C. 401 note) is repealed.

(o) MARITIME CONSTRUCTION COSTS.—Section 213 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1123) is amended by striking subsection (c).

(p) FEDERAL TRANSIT ADMINISTRATION.—Section 5335 of title 49, United States Code, is amended by striking subsection (b).

(q) PROJECT REVIEW.—Section 5328(b) of title 49, United States Code, is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraph (4) as paragraph (3).

(r) SUSPENDED LIGHT RAIL SYSTEM TECHNOLOGY.—Section 5320 of title 49, United

States Code, is amended by striking subsection (k).

(s) NEEDS SURVEY; TRANSFERABILITY REPORT.—Section 5335 of title 49, United States Code, as amended by this section, is further amended by striking subsections (c) and (d).

SEC. 1502. REPORTS MODIFIED.

(a) COAST GUARD REPORT ON MAJOR ACQUISITION PROJECTS.—Section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1993 (106 Stat. 1551) is amended—

(1) by striking ''quarterly'' and inserting ''biannual''; and

(2) in the last proviso, by striking ''preceding quarter'' and inserting ''preceding 6-month period''.

(b) HIGHWAY REPORT.—Section 307(h) of title 23, United States Code, is amended by striking ''January 1983, and in January of every second year thereafter'' and inserting ''March 1998, and in March of every second year thereafter''.

(c) AVIATION SECURITY REPORT.—Section 44938 of title 49, United States Code, is amended by striking ''annually'' and inserting ''biennially''.

(d) REPORT ON PUBLIC TRANSPORTATION.—Section 308(e)(1) of title 49, United States Code, is amended by striking ''in January of each even-numbered year'' and inserting ''in March 1998, and in March of each even-numbered year thereafter''.

(e) NATIONAL BALLAST INFORMATION CLEARINGHOUSE.—Section 1102(f)(2) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4712(f)(2)) is amended by striking ''biannual'' and inserting ''biennial''.

TITLE XVI—NOAA

SEC. 1601. REPORTS ELIMINATED.

(a) REPORT CONCERNING PRICES FOR NAUTICAL AND AERONAUTICAL PRODUCTS.—Section 1307(a)(2)(A) of title 44, United States Code, is amended by striking the last sentence.

(b) REPORT ON NATIONAL SHELLFISH RESEARCH PROGRAM.—Section 308 of the National Oceanic and Atmospheric Administration Authorization Act of 1992 (33 U.S.C. 1251 note) is amended—

(1) by striking subsection (d); and

(2) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(c) GEOSTATIONARY OPERATIONAL ENVIRONMENTAL SATELLITES CERTIFICATION AND REPORT REGARDING TECHNICAL PERFORMANCE SPECIFICATIONS.—Subsection (d) of section 105 of the National Oceanic and Atmospheric Administration Authorization Act of 1992 (Public Law 102–567; 106 Stat. 4273) is amended—

(1) in paragraph (1), by striking ''(1) Except as provided in paragraph (2), there'' and inserting ''There''; and

(2) by striking paragraph (2).

(d) NEXT GENERATION WEATHER RADAR SYSTEM CERTIFICATION AND REPORT REGARDING TECHNICAL PERFORMANCE SPECIFICATIONS.—Section 102(b) of the National Oceanic and Atmospheric Administration Authorization Act of 1992 (Public Law 102–567; 106 Stat. 4271) is amended—

(1) in paragraph (1), by striking ''(1) Except as provided in paragraph (2), there'' and inserting ''There''; and

(2) by striking paragraph (2).

(e) REPORT ON ENFORCEMENT OF VIOLATIONS CONCERNING THE USE OF UNENHANCED DATA FOR COMMERCIAL PURPOSES.—Section 508(d) of the Land Remote Sensing Policy Act of 1992 (15 U.S.C. 5658(d)) is amended by striking '', and shall report annually to the Congress on instances of such violations''.

(f) REPORT ON THE NATIONAL CLIMATE PROGRAM ACTIVITIES.—Section 7 of the National Climate Program Act (15 U.S.C. 2906) is repealed.

FORT BERTHOLD INDIAN RESERVATION

Ms. COLLINS. Mr. President, I now ask unanimous consent that the Senate proceed to the consideration of Calendar No. 400, S. 2069.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (S. 2069) to permit the leasing of mineral rights in any case in which the Indian owners of an allotment that is located within the boundaries of the Fort Berthold Indian Reservation and held in trust by the United States have executed leases to more than 50 percent of the mineral estate of that allotment.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Indian Affairs, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. LEASES OF ALLOTTED LANDS OF THE FORT BERTHOLD INDIAN RESERVATION.

(a) IN GENERAL.—

(1) DEFINITIONS.—In this section:

(A) INDIAN LAND.—The term ''Indian land'' means an undivided interest in a single parcel of land that—

(i) is located within the Fort Berthold Indian Reservation in North Dakota; and

(ii) is held in trust or restricted status by the United States.

(B) INDIVIDUALLY OWNED INDIAN LAND.—The term ''individually owned Indian land'' means Indian land that is owned by 1 or more individuals.

(C) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(2) EFFECT OF APPROVAL BY SECRETARY OF THE INTERIOR.—

(A) IN GENERAL.—The Secretary may approve any mineral lease or agreement that affects individually owned Indian land, if—

(i) the owners of a majority of the undivided interest in the Indian land that is the subject of the mineral lease or agreement (including any interest covered by a lease or agreement executed by the Secretary under paragraph (3)) consent to the lease or agreement; and

(ii) the Secretary determines that approving the lease or agreement is in the best interest of the Indian owners of the Indian land.

(B) EFFECT OF APPROVAL.—Upon the approval by the Secretary under subparagraph (A), the lease or agreement shall be binding, to the same extent as if all of the Indian owners of the Indian land involved had consented to the lease or agreement, upon—

(i) all owners of the undivided interest in the Indian land subject to the lease or agreement (including any interest owned by an Indian tribe); and

(ii) all other parties to the lease or agreement.

(C) DISTRIBUTION OF PROCEEDS.—The proceeds derived from a lease or agreement that is approved by the Secretary under subparagraph (A) shall be distributed to all owners of the Indian land that is subject to the lease or agreement in accordance with the interest owned by each such owner.

(3) EXECUTION OF LEASE OR AGREEMENT BY SECRETARY.—The Secretary may execute a mineral lease or agreement that affects individually owned Indian land on behalf of an Indian owner if—

(A) that owner is deceased and the heirs to, or devisees of, the interest of the deceased owner have not been determined; or

(B) the heirs or devisees referred to in subparagraph (A) have been determined, but 1 or more of the heirs or devisees cannot be located.

(4) PUBLIC AUCTION OR ADVERTISED SALE NOT REQUIRED.—It shall not be a requirement for the approval or execution of a lease or agreement under this subsection that the lease or agreement be offered for sale through a public auction or advertised sale.

(b) RULE OF CONSTRUCTION.—This Act supersedes the Act of March 3, 1909 (35 Stat. 783, chapter 263; 25 U.S.C. 396) only to the extent provided in subsection (a).

Ms. COLLINS. Mr. President, I ask unanimous consent the committee amendment be agreed to, the bill as amended be read a third time, passed, and the motion to reconsider be laid upon the table, that the title amendment be agreed to, and that any statements related to the bill appear in the RECORD with the above occurring without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment was agreed to.

The bill (S. 2069), as amended, was read the third time and passed.

The title was amended so as to read:

A bill to permit the mineral leasing of Indian land located within the Fort Berthold Indian Reservation in any case in which there is consent from a majority interest in the parcel of land under consideration.

U.S. HOLOCAUST ASSETS COMMISSION ACT OF 1998

Ms. COLLINS. Mr. President, I ask the Chair lay before the Senate a message from the House of Representatives on the bill (S. 1900) to establish a commission to examine issues pertaining to the disposition of Holocaust-era assets in the United States before, during, and after World War II, and to make recommendations to the President on further action, and for other purposes.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1900) entitled ''An Act to establish a commission to examine issues pertaining to the disposition of Holocaust-era assets in the United States before, during, and after World War II, and to make recommendations to the President on further action, and for other purposes'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''U.S. Holocaust Assets Commission Act of 1998''.

SEC. 2. ESTABLISHMENT OF COMMISSION.

(a) ESTABLISHMENT.—There is established a Presidential Commission, to be known as the ''Presidential Advisory Commission on Holocaust Assets in the United States'' (hereafter in this Act referred to as the ''Commission'').

(b) MEMBERSHIP.—

(1) NUMBER.—The Commission shall be composed of 21 members, appointed in accordance with paragraph (2).

(2) APPOINTMENTS.—Of the 21 members of the Commission—

(A) eight shall be private citizens, appointed by the President;

(B) four shall be representatives of the Department of State, the Department of Justice,

the Department of the Army, and the Department of the Treasury (one representative of each such Department), appointed by the President;

(C) two shall be Members of the House of Representatives, appointed by the Speaker of the House of Representatives;

(D) two shall be Members of the House of Representatives, appointed by the minority leader of the House of Representatives;

(E) two shall be Members of the Senate, appointed by the majority leader of the Senate;

(F) two shall be Members of the Senate, appointed by the minority leader of the Senate; and

(G) one shall be the Chairperson of the United States Holocaust Memorial Council.

(3) CRITERIA FOR MEMBERSHIP.—Each private citizen appointed to the Commission shall be an individual who has a record of demonstrated leadership on issues relating to the Holocaust or in the fields of commerce, culture, or education that would assist the Commission in analyzing the disposition of the assets of Holocaust victims.

(4) ADVISORY PANELS.—The Chairperson of the Commission may, in the discretion of the Chairperson, establish advisory panels to the Commission, including State or local officials, representatives of organizations having an interest in the work of the Commission, or others having expertise that is relevant to the purposes of the Commission.

(5) DATE.—The appointments of the members of the Commission shall be made not later than 90 days after the date of enactment of this Act.

(c) CHAIRPERSON.—The Chairperson of the Commission shall be selected by the President from among the members of the Commission appointed under subparagraph (A) or (B) of subsection (b)(2).

(d) PERIOD OF APPOINTMENT.—Members of the Commission shall be appointed for the life of the Commission.

(e) VACANCIES.—Any vacancy in the membership of the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(f) MEETINGS.—The Commission shall meet at the call of the Chairperson at any time after the date of appointment of the Chairperson.

(g) QUORUM.—11 members of the Commission shall constitute a quorum, but a lesser number of members may hold meetings.

SEC. 3. DUTIES OF THE COMMISSION.

(a) ORIGINAL RESEARCH.—

(1) IN GENERAL.—Except as otherwise provided in paragraph (3), the Commission shall conduct a thorough study and develop a historical record of the collection and disposition of the assets described in paragraph (2), if such assets came into the possession or control of the Federal Government, including the Board of Governors of the Federal Reserve System and any Federal reserve bank, at any time after January 30, 1933—

(A) after having been obtained from victims of the Holocaust by, on behalf of, or under authority of a government referred to in subsection (c);

(B) because such assets were left unclaimed as the result of actions taken by, on behalf of, or under authority of a government referred to in subsection (c); or

(C) in the case of assets consisting of gold bullion, monetary gold, or similar assets, after such assets had been obtained by the Nazi government of Germany from governmental institutions in any area occupied by the military forces of the Nazi government of Germany.

(2) TYPES OF ASSETS.—Assets described in this paragraph include—

(A) gold, including gold bullion, monetary gold, or similar assets in the possession of or under the control of the Board of Governors of the Federal Reserve System or any Federal reserve bank;

(B) gems, jewelry, and nongold precious metals;

(C) accounts in banks in the United States;

(D) domestic financial instruments purchased before May 8, 1945, by individual victims of the Holocaust, whether recorded in the name of the victim or in the name of a nominee;

(E) insurance policies and proceeds thereof;

(F) real estate situated in the United States;

(G) works of art; and

(H) books, manuscripts, and religious objects.

(3) COORDINATION OF ACTIVITIES.—In carrying out its duties under paragraph (1), the Commission shall, to the maximum extent practicable, coordinate its activities with, and not duplicate similar activities already being undertaken by, private individuals, private entities, or government entities, whether domestic or foreign.

(4) INSURANCE POLICIES.—

(A) IN GENERAL.—In carrying out its duties under this Act, the Commission shall take note of the work of the National Association of Insurance Commissioners with regard to Holocaust-era insurance issues and shall encourage the National Association of Insurance Commissioners to prepare a report on the Holocaust-related claims practices of all insurance companies, both domestic and foreign, doing business in the United States at any time after January 30, 1933, that issued any individual life, health, or property-casualty insurance policy to any individual on any list of Holocaust victims, including the following lists:

(i) The list maintained by the United States Holocaust Memorial Museum in Washington, D.C., of Jewish Holocaust survivors.

(ii) The list maintained by the Yad Vashem Holocaust Memorial Authority in its Hall of Names of individuals who died in the Holocaust.

(B) INFORMATION TO BE INCLUDED.—The report on insurance companies prepared pursuant to subparagraph (A) should include the following, to the degree the information is available:

(i) The number of policies issued by each company to individuals described in such subparagraph.

(ii) The value of each policy at the time of issue.

(iii) The total number of policies, and the dollar amount, that have been paid out.

(iv) The total present-day value of assets in the United States of each company.

(C) COORDINATION.—The Commission shall coordinate its work on insurance issues with that of the international Washington Conference on Holocaust-Era Assets, to be convened by the Department of State and the United States Holocaust Memorial Council.

(b) COMPREHENSIVE REVIEW OF OTHER RESEARCH.—Upon receiving permission from any relevant individuals or entities, the Commission shall review comprehensively any research by private individuals, private entities, and non-Federal government entities, whether domestic or foreign, into the collection and disposition of the assets described in subsection (a)(2), to the extent that such research focuses on assets that came into the possession or control of private individuals, private entities, or non-Federal government entities within the United States at any time after January 30, 1933, either—

(1) after having been obtained from victims of the Holocaust by, on behalf of, or under authority of a government referred to in subsection (c); or

(2) because such assets were left unclaimed as the result of actions taken by, on behalf of, or under authority of a government referred to in subsection (c).

(c) GOVERNMENTS INCLUDED.—A government referred to in this subsection includes, as in existence during the period beginning on March 23, 1933, and ending on May 8, 1945—

(1) the Nazi government of Germany;

(2) any government in any area occupied by the military forces of the Nazi government of Germany;

(3) any government established with the assistance or cooperation of the Nazi government of Germany; and

(4) any government which was an ally of the Nazi government of Germany.

(d) REPORTS.—

(1) SUBMISSION TO THE PRESIDENT.—Not later than December 31, 1999, the Commission shall submit a final report to the President that shall contain any recommendations for such legislative, administrative, or other action as it deems necessary or appropriate. The Commission may submit interim reports to the President as it deems appropriate.

(2) SUBMISSION TO THE CONGRESS.—After receipt of the final report under paragraph (1), the President shall submit to the Congress any recommendations for legislative, administrative, or other action that the President considers necessary or appropriate.

SEC. 4. POWERS OF THE COMMISSION.

(a) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chairperson of the Commission, the head of any such department or agency shall furnish such information to the Commission as expeditiously as possible.

(c) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(e) ADMINISTRATIVE SERVICES.—For the purposes of obtaining administrative services necessary to carry out the purposes of this Act, including the leasing of real property for use by the Commission as an office, the Commission shall have the power to—

(1) enter into contracts and modify, or consent to the modification of, any contract or agreement to which the Commission is a party; and

(2) acquire, hold, lease, maintain, or dispose of real and personal property.

SEC. 5. COMMISSION PERSONNEL MATTERS.

(a) COMPENSATION.—No member of the Commission who is a private citizen shall be compensated for service on the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(b) TRAVEL EXPENSES.—The members of the Commission 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 Commission.

(c) EXECUTIVE DIRECTOR, DEPUTY EXECUTIVE DIRECTOR, GENERAL COUNSEL, AND OTHER STAFF.—

(1) IN GENERAL.—Not later than 90 days after the selection of the Chairperson of the Commission under section 2, the Chairperson shall, without regard to the civil service laws and regulations, appoint an executive director, a deputy executive director, and a general counsel of the Commission, and such other additional personnel as may be necessary to enable the Commission to perform its duties under this Act.

(2) QUALIFICATIONS.—The executive director, deputy executive director, and general counsel of the Commission shall be appointed without regard to political affiliation, and shall possess all necessary security clearances for such positions.

(3) DUTIES OF EXECUTIVE DIRECTOR.—The executive director of the Commission shall—

(A) serve as principal liaison between the Commission and other Government entities;

(B) be responsible for the administration and coordination of the review of records by the Commission; and

(C) be responsible for coordinating all official activities of the Commission.

(4) COMPENSATION.—The Chairperson of the Commission may fix the compensation of the executive director, deputy executive director, general counsel, and other personnel employed by the Commission, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that—

(A) the rate of pay for the executive director of the Commission may not exceed the rate payable for level III of the Executive Schedule under section 5314 of title 5, United States Code; and

(B) the rate of pay for the deputy executive director, the general counsel of the Commission, and other Commission personnel may not exceed the rate payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(5) EMPLOYEE BENEFITS.—

(A) IN GENERAL.—An employee of the Commission shall be an employee for purposes of chapters 83, 84, 85, 87, and 89 of title 5, United States Code, and service as an employee of the Commission shall be service for purposes of such chapters.

(B) NONAPPLICATION TO MEMBERS.—This paragraph shall not apply to a member of the Commission.

(6) OFFICE OF PERSONNEL MANAGEMENT.—The Office of Personnel Management—

(A) may promulgate regulations to apply the provisions referred to under subsection (a) to employees of the Commission; and

(B) shall provide support services, on a reimbursable basis, relating to—

(i) the initial employment of employees of the Commission; and

(ii) other personnel needs of the Commission.

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

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Commission 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) STAFF QUALIFICATIONS.—Any person appointed to the staff of or employed by the Commission shall be an individual of integrity and impartiality.

(g) CONDITIONAL EMPLOYMENT.—

(1) IN GENERAL.—The Commission may offer employment on a conditional basis to a prospective employee pending the completion of any necessary security clearance background investigation. During the pendency of any such investigation, the Commission shall ensure that such conditional employee is not given and does not have access to or responsibility involving classified or otherwise restricted material.

(2) TERMINATION.—If a person hired on a conditional basis as described in paragraph (1) is denied or otherwise does not qualify for all security clearances necessary for the fulfillment of the responsibilities of that person as an employee of the Commission, the Commission shall immediately terminate the employment of that person with the Commission.

(h) EXPEDITED SECURITY CLEARANCE PROCEDURES.—A candidate for executive director or deputy executive director of the Commission and any potential employee of the Commission shall, to the maximum extent possible, be investigated or otherwise evaluated for and granted, if applicable, any necessary security clearances on an expedited basis.

SEC. 6. ADMINISTRATIVE SUPPORT SERVICES.

Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this Act.

SEC. 7. TERMINATION OF THE COMMISSION.

The Commission shall terminate 90 days after the date on which the Commission submits its final report under section 3.

SEC. 8. MISCELLANEOUS PROVISIONS.

(a) INAPPLICABILITY OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) does not apply to the Commission.

(b) PUBLIC ATTENDANCE.—To the maximum extent practicable, each meeting of the Commission shall be open to members of the public.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated not more than $3,500,000, in total, for the interagency funding of activities of the Commission under this Act for fiscal years 1998, 1999, and 2000, of which, notwithstanding section 1346 of title 31, United States Code, and section 611 of the Treasury and General Government Appropriations Act, 1998, $537,000 shall be made available in equal amounts from funds made available for fiscal year 1998 to the Departments of Justice, State, and the Army that are otherwise unobligated. Funds made available to the Commission pursuant to this section shall remain available for obligation until December 31, 1999.

Ms. COLLINS. Mr. President, I ask unanimous consent that the Senate agree to the amendment of the House.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR THURSDAY, JUNE 11, 1998

Ms. COLLINS. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:45 a.m. on Thursday, June 11. I further ask that on Thursday, immediately following the prayer, the routine requests through the morning hour be granted and the Senate then begin a period of morning business until 11:15 a.m., with Senators permitted to speak for up to 5 minutes each, with the following exceptions: Senator ROCKEFELLER, 10 minutes; Senator TORRICELLI, 15 minutes; Senator BAUCUS, 30 minutes; Senator COLLINS, 15 minutes; Senator KERRY, 15 minutes; and Senator SMITH of Oregon, 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. COLLINS. I further ask consent that following morning business the Senate resume consideration of S. 1415, the tobacco bill. Further, that at noon the Senate proceed to vote on the motion to invoke cloture on the modified committee substitute and the mandatory quorum under rule XXII be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Ms. COLLINS. Mr. President, for the information of all Senators, the Senate will reconvene tomorrow at 9:45 a.m. and begin a period of morning business until 11:15 a.m. Following morning business, the Senate will resume consideration of the tobacco bill. At 12 noon, the Senate will proceed to vote on the motion to invoke cloture on the modified tobacco committee substitute. Assuming cloture fails, the Senate will continue debate on the tobacco bill. It is hoped that Members will come to the floor to offer and debate remaining amendments to the bill throughout Thursday's session. The Senate may also consider any other legislative or Executive Calendar item that may be cleared for action. Therefore, rollcall votes are possible throughout Thursday's session of the Senate.

ADJOURNMENT UNTIL 9:45 A.M. TOMORROW

Ms. COLLINS. Mr. President, if there is no further business to come before the Senate, I now ask the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:44 p.m., adjourned until Thursday, June 11, 1998, at 9:45 a.m.