

## Appendix II - Excerpts From the McCain Bill

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## APPENDIX II – EXCERPTS FROM THE MCCAIN BILL

Appendix II contains excerpts from the version of the McCain Bill, S. 1415, 105<sup>th</sup> Cong. (1998), considered by the Senate on May 19, 1998. The full document is available at <<http://www.senate.gov/~commerce/legis/legis.htm>>. Sections of the bill included in Appendix II (in whole or in part) are indicated in the bill's Table of Contents in bold typeface. Omitted text is indicated by “\* \* \*”.

\* \* \*

### 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. 1. Short title; table of contents.

**Sec. 2. Findings.**

**Sec. 3. Purpose.**

Sec. 4. Scope and effect.

Sec. 5. Relationship to other, related Federal, State, local, and Tribal laws.

Sec. 6. Definitions.

Sec. 7. Notification if youthful cigarette smoking restrictions increase youthful pipe and cigar smoking.

Sec. 8. FTC jurisdiction not affected.

Sec. 9. Congressional review provisions.

### TITLE I—REGULATION OF THE TOBACCO INDUSTRY

Sec. 101. Amendment of Federal Food, Drug, and Cosmetic Act of 1938.

Sec. 102. Conforming and other amendments to general provisions.

**Sec. 103. Construction of current regulations.**

### TITLE II—REDUCTIONS IN UNDERAGE TOBACCO USE

#### Subtitle A—Underage Use

Sec. 201. Findings.

**Sec. 202. Purpose.**

**Sec. 203. Goals for reducing underage tobacco use.**

**Sec. 204. Look-back assessment.**

**Sec. 205. Definitions.**

**Subtitle B—State Retail Licensing and Enforcement Incentives**

Sec. 231. State retail licensing and enforcement block grants.

Sec. 232. Block grants for compliance bonuses.

Sec. 233. Conforming change.

**Subtitle C—Tobacco Use Prevention and Cessation Initiatives**

**Sec. 261. Tobacco use prevention and cessation initiatives.**

**TITLE III—TOBACCO PRODUCT WARNINGS AND SMOKE CONSTITUENT DISCLOSURE****Subtitle A—Product Warnings, Labeling and Packaging**

Sec. 301. Cigarette label and advertising warnings.

Sec. 302. Authority to revise cigarette warning label Statements.

Sec. 303. Smokeless tobacco labels and advertising warnings.

Sec. 304. Authority to revise smokeless tobacco product warning label statements.

Sec. 305. Tar, nicotine, and other smoke constituent disclosure to the public.

**Subtitle B—Testing and Reporting of Tobacco Product Smoke Constituents**

Sec. 311. Regulation requirement.

**TITLE IV—NATIONAL TOBACCO TRUST FUND**

**Sec. 401. Establishment of trust fund.**

**Sec. 402. Payments by industry.**

Sec. 403. Adjustments.

**Sec. 404. Payments to be passed through to consumers.**

Sec. 405. Tax treatment of payments.

Sec. 406. Enforcement for nonpayment.

**Subtitle B—General Spending Provisions**

**Sec. 451. Allocation accounts.**

**Sec. 452. Grants to States.**

**Sec. 453. Indian health service.**

**Sec. 454. Research at the National Science Foundation.**

Sec. 455. Medicare cancer patient demonstration project; evaluation and report to Congress.

**TITLE V—STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE**

Sec. 501. Definitions.

Sec. 502. Smoke-free environment policy.

Sec. 503. Citizen actions.

- Sec. 504. Preemption.
- Sec. 505. Regulations.
- Sec. 506. Effective date.
- Sec. 507. State choice.

#### TITLE VI—APPLICATION TO INDIAN TRIBES

- Sec. 601. Short title.
- Sec. 602. Findings and purposes.
- Sec. 603. Application of title to Indian lands and to Native Americans.

#### TITLE VII—TOBACCO CLAIMS

- Sec. 701. Definitions.
- Sec. 702. Application; preemption.
- Sec. 703. Rules governing tobacco claims.

#### TITLE VIII—TOBACCO INDUSTRY ACCOUNTABILITY REQUIREMENTS AND EMPLOYEE PROTECTION FROM REPRISALS

- Sec. 801. Accountability requirements and oversight of the tobacco industry.
- Sec. 802. Tobacco product manufacturer employee protection.

#### TITLE IX—PUBLIC DISCLOSURE OF TOBACCO INDUSTRY DOCUMENTS

- Sec. 901. Findings.
- Sec. 902. Applicability.
- Sec. 903. Document disclosure.
- Sec. 904. Document review.
- Sec. 905. Resolution of disputed privilege and trade secret claims.
- Sec. 906. Appeal of panel decision.
- Sec. 907. Miscellaneous.
- Sec. 908. Penalties.
- Sec. 909. Definitions.

#### TITLE X—LONG-TERM ECONOMIC ASSISTANCE FOR FARMERS

##### **Sec. 1001. Short title.**

- Sec. 1002. Definitions.

##### Subtitle A—Tobacco Community Revitalization

- Sec. 1011. Authorization of appropriations.

##### **Sec. 1012. Expenditures.**

- Sec. 1013. Budgetary treatment.

##### Subtitle B—Tobacco Market Transition Assistance

- Sec. 1021. Payments for lost tobacco quota.

Sec. 1022. Industry payments for all department costs associated with tobacco production.

Sec. 1023. Tobacco community economic development grants.

Sec. 1024. Flue-cured tobacco production permits.

Sec. 1025. Modifications in Federal tobacco programs.

#### Subtitle C—Farmer and Worker Transition Assistance

Sec. 1031. Tobacco worker transition program.

Sec. 1032. Farmer opportunity grants.

#### Subtitle D—Immunity

Sec. 1041. General immunity for tobacco producers and tobacco warehouseowners.

### TITLE XI—MISCELLANEOUS PROVISIONS

#### Subtitle A—International Provisions

Sec. 1101. Policy.

Sec. 1102. Tobacco control negotiations.

Sec. 1103. Report to Congress.

Sec. 1104. Funding.

Sec. 1105. Prohibition of funds to facilitate the exportation or promotion of tobacco.

Sec. 1106. Health labeling of tobacco products for export.

Sec. 1107. International tobacco control awareness.

#### Subtitle B—Anti-smuggling Provisions

Sec. 1131. Definitions.

Sec. 1132. Tobacco product labeling requirements.

Sec. 1133. Tobacco product licenses.

Sec. 1134. Prohibitions.

Sec. 1135. Labeling of products sold by Native Americans.

Sec. 1136. Limitation on activities involving tobacco products in foreign trade zones.

Sec. 1137. Jurisdiction; penalties; compromise of liability.

Sec. 1138. Amendments to the Contraband Cigarette Trafficking Act.

Sec. 1139. Funding.

Sec. 1140. Rules and regulations.

#### Subtitle C—Other Provisions

Sec. 1161. Improving child care and early childhood development.

Sec. 1162. Ban of sale of tobacco products through the use of vending machines.

Sec. 1163. Amendments to the Employee Retirement Income Security Act of 1974.

**TITLE XII—ASBESTOS-RELATED TOBACCO CLAIMS**

Sec. 1201. National tobacco trust funds available under future legislation.

**TITLE XIII—VETERANS' BENEFITS**

Sec. 1301. Recovery by Secretary of Veterans' Affairs.

**TITLE XIV—EXCHANGE OF BENEFITS FOR AGREEMENT**

Sec. 1401. Conferral of benefits on participating tobacco product manufacturers in return for their assumption of specific obligations.

Sec. 1402. Participating tobacco product manufacturer.

Sec. 1403. General provisions of protocol.

Sec. 1404. Tobacco product labeling and advertising requirements of protocol.

Sec. 1405. Point-of-sale requirements.

Sec. 1406. Application of title.

Sec. 1407. Governmental claims.

Sec. 1408. Addiction and dependency claims; Castano Civil Actions.

Sec. 1409. Substantial non-attainment of required reductions.

Sec. 1410. Public health emergency.

Sec. 1411. Tobacco claims brought against participating tobacco product manufacturers.

Sec. 1412. Payment of tobacco claim settlements and judgments.

Sec. 1413. Attorneys' fees and expenses.

Sec. 1414. Effect of court decisions.

Sec. 1415. Criminal laws not affected.

Sec. 1416. Congress reserves the right to enact laws in the future.

Sec. 1417. Definitions.

\* \* \*

**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.

\* \* \*

(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.

\* \* \*

(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.

\* \* \*

### Sec. 3. PURPOSE.

The purposes of this Act are—

\* \* \*

(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;

\* \* \*

(8) to confirm the Food and Drug Administration's authority to regulate the levels of tar, nicotine, and other harmful components 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 Fed. 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)).

\* \* \*

#### 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.

\* \* \*

(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.

\* \* \*

(d) Methodology.—

(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 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.

\* \* \*

## 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 to-

bacco 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.

\* \* \*

#### 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:

\* \* \*

(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. 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

ity 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. 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 domes-

tic 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. 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 be received in this account will be different 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 excess 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 available 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 section 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).

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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”.

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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.