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Tobacco-Settlement: New

Legislation-McCain: Amendments

[5]

<u>THIS SEARCH</u>	<u>THIS DOCUMENT</u>	<u>THIS CR ISSUE</u>	<u>GO TO</u>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

FORD AMENDMENTS NOS. 2576-2615 (Senate - June 09, 1998)

AMENDMENT NO. 2576

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.'

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AMDNEDMENT NO. 2577

On page 24, line 6, after 'increasing' insert 'materially'.

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AMENDMENT NO. 2578

On page 44, on line 23 change '60' to '90'.

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AMENDMENT NO. 2579

On page 44, on line 24 change '90' to '120'.

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AMENDMENT NO. 2580

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.'

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AMENDMENT NO. 2581

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.`

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AMENDMENT NO. 2582

On page 49, line 15 change `may` to `shall`.

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AMENDMENT NO. 2583

On page 55, after line 10 insert a new paragraph (5) as follows:

`,`(5) **Consulation 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.`

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Amendment No. 2584

On page 57, line 5 delete `60` and insert in lieu thereof `180`.

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Amendment No. 2585

On page 58, line 21 delete `2` and insert in lieu thereof `5`.

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Amendment No. 2586

On page 58, line 17 delete `to zero` and insert in lieu thereof `by fifty percent or more`.

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Amendment No. 2587

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.'

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Amendment No. 2588

On page 60, line 24 after 'substantial' insert 'immediate'.

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Amendment No. 2589

On page 62, line 3 before 'harm' insert 'and immediate'.

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Amendment No. 2590

On page 72, line 10 delete '180' and insert in lieu thereof '90'.

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Amendment No. 2591

On page 82, line 8 insert the following new subsection:

THIS SEARCH

Next Hit

Prev Hit

Hit List

THIS DOCUMENT

Forward

Back

Best Sections

Doc Contents

THIS CR ISSUE

Next Document

Prev Document

Daily Digest

GO TO

New CR Search

HomePage

Help

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
Next Hit	Forward	Next Document	New CR Search
Prev Hit	Back	Prev Document	HomePage
Hit List	Best Sections	Daily Digest	Help
	Doc Contents		

FORD AMENDMENTS NOS. 2576-2615 (Senate - June 09, 1998)

'(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.'

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Amendment No. 2592

On page 102, line 9 insert 'product' immediately following 'tobacco'.

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Amendment No. 2593

On page 102, line 11 immediately after 'private sector,' insert the following: 'including representatives from tobacco manufacturers, distributors, retailers and growers.'

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Amendment No. 2594

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. 2595

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;'

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Amendment No. 2596

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.'

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Amendment No. 2597

On page 165, line 8, delete 'January 1, 2000' and insert in lieu thereof 'January 1, 2002'.

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Amendment No. 2598

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.'

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Amendment No. 2599

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.'

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Amendment No. 2600

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.'

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Amendment No. 2601

On page 178, on line 6, delete 'later than 24 months' and insert in lieu thereof 'sooner than 36 months.'

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Amendment No. 2602

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.'

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
Next Hit	<u>Forward</u>	Next Document	<u>New CR Search</u>
Prev Hit	<u>Back</u>	Prev Document	<u>HomePage</u>
Hit List	<u>Best Sections</u>	Daily Digest	<u>Help</u>
	<u>Doc Contents</u>		

<u>THIS SEARCH</u>	<u>THIS DOCUMENT</u>	<u>THIS CR ISSUE</u>	<u>GO TO</u>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

FORD AMENDMENTS NOS. 2576-2615 (Senate - June 09, 1998)

Amendment No. 2603

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.'

[Page: S5802]

Amendment No. 2604

On page 214, on line 7, delete 'Citizen Actions' and insert 'Enforcement and Penalties'.

Amendment No. 2605

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. 2606

Amendment No. 2606

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'.

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Amendment No. 2607

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'.

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Amendment No. 2608

On page 214, line 22, delete `60' and insert `180'.

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Amendment No. 2609

On page 215, line 2, delete `60-day' and insert `120-day'.

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Amendment No. 2610

On page 215, delete lines 3 through 7 and reletter the next subsection.

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Amendment No. 2611

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.'

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Amendment No. 2612

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.'

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Amendment No. 2613

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;'

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Amendment No. 2614

THIS SEARCH

Next Hit

Prev Hit

Hit List

THIS DOCUMENT

Forward

Back

Best Sections

Doc Contents

THIS CR ISSUE

Next Document

Prev Document

Daily Digest

GO TO

New CR Search

HomePage

Help

<u>THIS SEARCH</u>	<u>THIS DOCUMENT</u>	<u>THIS CR ISSUE</u>	<u>GO TO</u>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

FORD AMENDMENTS NOS. 2576-2615 (Senate - June 09, 1998)

Amendment No. 2614

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.'

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Amendment No. 2615

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 of 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 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 procedures 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.

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
Next Hit	Forward	Next Document	New CR Search
Prev Hit	Back	Prev Document	HomePage
Hit List	Best Sections	Daily Digest	Help
	Doc Contents		

[Full Display](#) ^{NEW} - 3,519 bytes.[\[Help\]](#)

GORTON AMENDMENTS NOS. 2490-2491 (Senate - June 05, 1998)

[Page: S5712]

(Ordered to lie on the table.)

Mr. GORTON submitted two amendments intended to be proposed by him to the bill, S. 1415, supra; as follows:

Amendment No. 2490

At the appropriate place in the pending amendment, add the following:

SEC. 604. STATE TOBACCO TAX COMPLIANCE

(a) **In General.**--An Indian tribe, tribal corporation, or individual member of an Indian tribe engaged in tobacco retailing shall collect all applicable tobacco excise and sales taxes lawfully imposed by the State, within the exterior boundaries of which the purchase occurs, on nonmembers of the Indian tribe as a consequence of the purchase of tobacco products by the nonmember from the Indian tribe, tribal corporation, or individual member.

(b) **Remittance to Treasury Department.**--To the extent that all such taxes are not collected and not remitted to the appropriate State by the Indian tribe, tribal corporation, or individual member of an Indian tribe (or, in the manner provided by State law, by any other person), the tribe, tribal corporation, or individual member shall remit such taxes to the Treasury of the United States, which shall, in turn, remit such taxes to the State in which the purchase by the nonmember took place. The Secretary of the Treasury of the United States shall promulgate regulations within 120 days to enforce this section.

(c) **Exemption Under State Law.**--Subsections (a) and (b) shall not apply if (1) the State's laws provide that Indian tribes or tribal corporations are not obligated to remit excise and sales taxes to the State on the condition that such tribe or tribal corporation imposes and collects tobacco excise and sales taxes on purchases of tobacco products by non-members that are equal to or greater than the applicable excise and sales taxes lawfully imposed by the State on the purchase of tobacco products within the State's exterior borders; or (2) the State's laws exempt or waive the application of such taxes. Nothing in this section is intended to prohibit a State from enacting a law consistent with the provisions of this section.

(d) **Tribal-State Agreements.**--Subsections (a) and (b) shall not apply to Indian tribes or tribal corporations if the tribe or tribal corporation has an agreement with the State, within which the purchase of tobacco products by nonmembers occurs, on the collection and allocation of excise and sales taxes on the purchase of tobacco products by nonmembers. Nothing in this section prohibits a tribe and a State from entering into such an agreement after the date of enactment of this Act.

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Amendment No. 2491

At the appropriate place in the pending amendment, add the following:

SEC. 604. STATE TOBACCO TAX COMPLIANCE.

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

[Page: S5713]

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
Next Hit	Forward	<u>Next Document</u>	<u>New CR Search</u>
Prev Hit	Back	<u>Prev Document</u>	<u>HomePage</u>
Hit List	Best Sections	<u>Daily Digest</u>	<u>Help</u>
	Doc Contents		

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
Next Hit	Forward	Next Document	New CR Search
Prev Hit	Back	Prev Document	HomePage
Hit List	Best Sections	Daily Digest	Help
	Doc Contents		

[Full Display](#) ^{NEW} - 3,408 bytes. [\[Help\]](#)

HOLLINGS AMENDMENTS NOS. 2473-2475 (Senate - June 05, 1998)

[Page: S5706]

(Ordered to lie on the table.)

Mr. HOLLINGS submitted three amendments intended to be proposed by him to the bill, S. 1415, supra; as follows:

Amendment No. 2473

On page 58, strike lines 8 through line 23, and insert the following:

(3) Secretary may not ban class of product or eliminate nicotine content without Congressional authority: The Secretary may not, under this Act or any other provision of law, issue a regulation establishing a performance standard (or take other action)--

(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. If the Secretary determines that such action should be taken, the Secretary shall so notify the Congress, with an explanation of the reasons therefor, and a request for legislative authority explicitly modifying, repealing, or overriding the preceding sentence.'

--

Amendment No. 2474

On page 216, strike lines 11 through 18, and insert the following:

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

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Amendment No. 2475

After section 1134, insert the following:

SEC. 1135. IMPORTATION OF TOBACCO PRODUCTS.

(a) **Findings:** The Congress finds that--

- (1) if the price of cigarettes increases, there may be an increasing incentive to import tobacco leaf of substandard quality;
- (2) the importation of substandard tobacco leaf could cause increased health problems, and possibly expose United States-grown tobacco leaf to infestation from abroad; and
- (3) imported tobacco leaf must be reviewed in a uniform and consistent fashion to ensure the quality and uniform treatment of imports of tobacco leaf.

(b) Requirements:

(1) **In general.**--No tobacco leaf not a product of the United States may be introduced into interstate commerce in the United States unless it is--

- (A) imported through the Port of Omaha, Nebraska;
- (B) held in customs custody for not less than 6 years; and
- (C) entered under single-entry bond.

(2) **Automated entry.**--Tobacco leaf not a product of the United States is not eligible for automated entry under the laws and procedures of the United States relating to the importation of such products.

(3) **Suspension of drawback for drastic reduction in tobacco companies' purchase of tobacco leaf.**--If for any marketing year the aggregate volume of tobacco leaf that United States tobacco product manufacturers purchase under the tobacco marketing program conducted by the Secretary of Agriculture under sections 320A and 320B of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314g and 1314h) (or under the law of any State or compact of States) is less than 85 percent of the aggregate volume of tobacco leaf the manufacturers purchased in the preceding marketing year, no drawback shall be allowed with respect to the duties paid on imported tobacco leaf and related products for a period of 24 months beginning on the first day of such marketing year.

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
Next Hit	Forward	Next Document	New CR Search
Prev Hit	Back	Prev Document	HomePage
Hit List	Best Sections	Daily Digest	Help
	Doc Contents		

HOLLINGS (AND OTHERS) AMENDMENTS NOS. 2682-2683 (Senate - June 10, 1998)

[Page: S6059]

(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 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 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 66 2/3 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 66 2/3 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.'

[Page: S6061]

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.

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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 66 2/3 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 66 2/3 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.'

[Page: S6063]

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).

[Page: S6064]

END

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
Next Hit	Forward	Next Document	New CR Search
Prev Hit	Back	Prev Document	HomePage
Hit List	Best Sections	Daily Digest	Help
	Doc Contents		

Full Display ^{NEW} - 6,272 bytes. [\[Help\]](#)

KERREY AMENDMENT NO. 2442 (Senate - May 21, 1998)

[Page: S5341]

(Ordered to lie on the table.)

Mr. KERREY submitted an amendment intended to be proposed by him to the bill, S. 1415, supra; as follows:

Title IV is amended by adding at the end the following:

SEC. 4XX. SMOKING CESSATION AND PREVENTION BLOCK GRANT.

(a) **Application of Provisions:** Notwithstanding any other provision of this Act--

(1) paragraphs (3) and (4) of section 451(a) and part D of title XIX of the Public Health Service Act, as added by title II of this Act, shall be null and void and shall not be given any effect; and

(2) section 451(b)(2)(A) shall be applied as if `a smoking cessation block grant made under section 4XX' were substituted for `part D of title XIX of the Public Health Service Act, as added by title II of this Act'.

(b) **Funding of Grants:** The sum of the amounts made available under paragraphs (1) and (2) of section 451(a) and subsection (b)(2)(A) of that section (after application of subsection (a)(2) of this section) for a fiscal year shall be used to make grants under this section.

(c) **State Plan:**

(1) **In general:** In order to receive a grant under this section for a fiscal year, a State shall submit, in such form and such manner as the Secretary shall require, a plan that sets forth how the State intends to use the funds provided under the grant for smoking cessation and prevention.

(2) **Community involvement:** The State shall consult with appropriate representatives of local communities in the development of the plan submitted under paragraph (1).

(d) **Distribution of Funds:**

(1) **In general:** Subject to paragraphs (3) and (4), each State with an approved plan under subsection (c) shall receive a payment for a fiscal year equal to the amount determined under paragraph (2).

(2) **Amount determined:**

(A) **In general:** The amount determined under this paragraph for a State for a fiscal year is the amount equal to average of the following 2 ratios:

(i) The ratio of--

(I) the total expenditures by the State under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) for the fiscal years 1992 through 1996 that are attributable to the treatment of individuals with tobacco-related illnesses or conditions for the fiscal year involved; to

(II) the total of such expenditures for all States for such fiscal years.

(II) the total of such expenditures for all States for such fiscal years.

(ii) The ratio of--

(I) the total expenditures incurred in the State for such fiscal years in providing directly, or reimbursing others for the provision of, treatment of individuals with tobacco-related illnesses or conditions that are not taken into account under clause (i); to

(II) the total of such expenditures for all States for such fiscal years.

(B) Determination of expenditures: The method used to determine the expenditures attributable to the treatment of individuals with tobacco-related illnesses or conditions for purposes of subparagraph (A) shall be the method used by the Attorneys General Allocation Subcommittee in its report dated September 16, 1997.

(3) Minimum payments:

(A) In general: Except as provided in subparagraph (B), in no case shall a State receive a payment under this subsection that is less than--

(i) in the case of a State that would otherwise receive under paragraph (2) an amount that is equal to or exceeds 0.1 percent of such total amount but does not exceed 0.2 percent of such amount, 0.2 percent;

(ii) in the case of a State that would otherwise receive under paragraph (2) an amount that is equal to or exceeds 0.2 percent of such total amount but does not exceed 0.3 percent of such amount, 0.3 percent;

(iii) in the case of a State that would otherwise receive under paragraph (2) an amount that is equal to or exceeds 0.3 percent of such total amount but does not exceed 0.4 percent of such amount, 0.4 percent; and

(iv) in the case of a State that would otherwise receive under paragraph (2) an amount that is equal to or exceeds 0.4 percent of such total amount but does not exceed 0.5 percent of such amount, 0.5 percent.

(B) Nonapplication to territories: Subparagraph (A) shall not apply to Puerto Rico, Guam, the United States Virgin Islands, American Samoa, or the Northern Mariana Islands.

(4) Minimum payments to settlement states: In no case shall the States of Florida, Minnesota, Mississippi, and Texas, receive payments under this subsection for a fiscal year that are less than the following:

(A) In the case of Florida, 5.5 percent of the total amount made available under subsection (b) for payments to States under this section.

(B) In the case of Minnesota, 2.55 percent of such amount.

(C) In the case of Mississippi, 1.7 percent of such amount.

(D) In the case of Texas, 7.25 percent of such amount.

(5) Reallocation of amounts for other states: If the amount determined under paragraphs (3) and (4) exceeds the amount otherwise determined under paragraph (2) for 1 or more States for any fiscal year, the amount of the payments under paragraph (2) to all States to which paragraphs (3) and (4) do not apply shall be ratably reduced by the aggregate amount of such excess.

(e) Use of Funds: A State may use funds received under a grant made under this section for any purpose, including any purpose described in section 452(b)(2), so long as the State demonstrates in the State plan required under subsection (c) that the use of funds for such purpose is consistent with promoting and achieving smoking cessation and prevention.

(f) Annual Reports: Each State that receives funds under this section shall report annually to the

Secretary, in such manner and such form as the Secretary shall require, on the use of the funds received under this section and overall smoking trends within their State.

[Page: S5342]

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
Next Hit	Forward	Next Document	New CR Search
Prev Hit	Back	Prev Document	HomePage
Hit List	Best Sections	Daily Digest	Help
	Doc Contents		

KERREY AMENDMENTS NOS. 2699-2700 (Senate - June 11, 1998)

[Page: S6253]

(Ordered to lie on the table.)

Mr. KERREY submitted two amendments intended to be proposed by him to the bill, S. 1415, supra; as follows:

Amendment No. 2699

At the end of subtitle D of title XV, add the following:

[Page: S6254]

SEC. 1563. TOBACCO PRODUCERS MARKETING CORPORATION.

(a) **Establishment:** There is established a corporation to be known as the 'Tobacco Producers Marketing Corporation', which shall be a federally chartered instrumentality of the United States.

(b) **Duties:** The Corporation negotiate with buyers of tobacco produced in the United States on behalf of producers of the tobacco that elect to be represented by the Corporation (referred to in this section as 'participating producers').

(c) **Board of Directors:**

(1) **In general:** The powers of the Corporation shall be vested in a Board of Directors.

(2) **Members:** The Board of Directors shall composed of members elected by participating producers.

(3) **Membership qualifications:** A member of the Board shall not hold any Federal, State, or local elected office or be a Federal officer or employee.

(4) **Chairpersons:** The chairperson of the Board shall be elected by members of the Board.

(5) **Executive director:**

(A) **Appointment:** The Board shall appoint an Executive Director.

(B) **Duties:** The Executive Director shall be the chief executive officer of the Corporation, with such power and authority as may be conferred by the Board.

(C) **Compensation:** The Executive Director shall receive basic pay at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(6) **Officers:** The Board shall establish the offices and appoint the officers of the Corporation, including a Secretary, and define the duties of the officers in a manner consistent with this section.

(7) **Meetings:**

(A) **In general:** The Board shall meet at least 3 times each fiscal year at the call of a Chairperson or at the request of the Executive Director.

(B) **Location:** The location of a meeting shall be subject to approval of the Executive Director.

(C) **Quorum:** A quorum of the Board shall consist of a majority of the members.

(8) **Term; vacancies:**

(A) **Term:** The term of office of a member of the Board elected under paragraph (2) shall be 4 years.

(B) **Vacancies:** A vacancy on the Board shall be filled in the same manner as the original appointment was made.

(9) Compensation:

(A) **In general:** A member of the Board shall receive, for each day (including travel time) that the member is engaged in the performance of the functions of the Board, compensation at a rate not to exceed the daily equivalent of the annual rate in effect for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(B) **Expenses:** A member of the Board shall be reimbursed for travel, subsistence, and other necessary expenses incurred by the member in the performance of the duties of the member.

(10) Conflict of interest; financial disclosure:

(A) **Conflict of interest:** Except as provided in subparagraph (C), a member of the Board shall not vote on any matter concerning any application, contract, or claim, or other particular matter pending before the Corporation, in which, to the knowledge of the member, the member, spouse, or child of the member, partner of the member, or organization in which the member is serving as officer, director, trustee, partner, or employee, or any person or organization with which the member is negotiating or has any arrangement concerning prospective employment, has a financial interest.

(B) **Violations:** Violation of subparagraph (A) by a member of the Board shall be cause for removal of the member, but shall not impair or otherwise affect the validity of any otherwise lawful action by the Corporation in which the member participated.

(C) Exceptions:

(i) **In general:** Except as provided in clause (ii), the prohibitions contained in subparagraph (A) shall not apply if--

(I) a member of the Board advises the Board of the nature of the particular matter in which the member proposes to participate, and if the member makes a full disclosure of the financial interest, prior to any participation; and

(II) the Board determines, by majority vote, that the financial interest is too remote or too inconsequential to affect the integrity of the member's services to the Corporation in that matter.

(ii) **Vote:** The member involved shall not vote on the determination under clause (i)(II).

(D) **Financial disclosure:** A Board member shall be subject to the financial disclosure requirements of subchapter B of chapter XVI of title 5, Code of Federal Regulations (or any corresponding or similar regulation or ruling), applicable to a special Government employee (as defined in section 202(a) of title 18, United States Code).

(11) **Bylaws:** The Board shall adopt, and may from time to time amend, any bylaw that is necessary for the proper management and functioning of the Corporation.

(12) **Personnel:** The Corporation may select and appoint officers, attorneys, employees, and agents, who shall be vested with such powers and duties as the Corporation may determine.

(d) **General Powers:** In addition to any other powers granted to the Corporation under this section, the Corporation--

(1) shall have succession in its corporate name;

(2) may adopt, alter, and rescind any bylaw and adopt and alter a corporate seal, which shall be judicially

noticed;

(3) may enter into any agreement or contract with a person or private or governmental agency;

(4) may lease, purchase, accept a gift or donation of, or otherwise acquire, use, own, hold, improve, or otherwise deal in or with, and sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of, any property or interest in property, as the Corporation considers necessary in the transaction of the business of the Corporation;

(5) may sue and be sued in the corporate name of the Corporation, except that--

(A) no attachment, injunction, garnishment, or similar process shall be issued against the Corporation or property of the Corporation; and

(B) exclusive original jurisdiction shall reside in the district courts of the United States, and the Corporation may intervene in any court in any suit, action, or proceeding in which the Corporation has an interest;

(6) may independently retain legal representation;

(7) may provide for and designate such committees, and the functions of the committees, as the Board considers necessary or desirable;

(8) may indemnify officers of the Corporation, as the Board considers necessary and desirable, except that the officers shall not be indemnified for an act outside the scope of employment;

(9) may, with the consent of any board, commission, independent establishment, or executive department of the Federal Government, including any field service, use information, services, facilities, officials, and employees in carrying out this section, and pay for the use, which payments shall be transferred to the applicable appropriation account that incurred the expense;

(10) may obtain the services and fix the compensation of any consultant and otherwise procure temporary and intermittent services under section 3109(b) of title 5, United States Code;

(11) may use the United States mails on the same terms and conditions as the Executive agencies of the Federal Government;

(12) shall have the rights, privileges, and immunities of the United States with respect to the right to priority of payment with respect to debts due from bankrupt, insolvent, or deceased creditors;

(13) may collect or compromise any obligations assigned to or held by the Corporation, including any legal or equitable rights accruing to the Corporation;

(14) shall determine the character of, and necessity for, obligations and expenditures of the Corporation and the manner in which the obligations and expenditures shall be incurred, allowed, and paid, subject to provisions of law specifically applicable to Government corporations;

(15) may make final and conclusive settlement and adjustment of any claim by or against the Corporation or a fiscal officer of the Corporation;

(16) may sell assets, loans, and equity interests acquired in connection with the financing of projects funded by the Corporation; and

(17) may exercise all other lawful powers necessarily or reasonably related to the establishment of the Corporation to carry out this title and the powers, purposes, functions, duties, and authorized activities of the Corporation.

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Amendment No. 2700

Strike title XV and insert the following:

TITLE XV--TOBACCO TRANSITION

SEC. 1501. DEFINITIONS.

In this title:

- (1) **Governor:** The term `Governor' means the chief executive officer of a State.
- (2) **Lease:** The term `lease' means--
 - (A) the rental of quota on either a cash rent or crop share basis;
 - (B) the rental of farmland to produce tobacco under a farm marketing quota; or
 - (C) the lease and transfer of quota for the marketing of tobacco produced on the farm of a lessor.
- (3) **Owner:** The term `owner' means a person that, on the date of enactment of this Act, owns quota provided by the Secretary.
- (4) **Producer:** The term `producer' means a person that for each of the 1995 through 1997 crops of tobacco (as determined by the Secretary) that were subject to quota--
 - (A) leased quota or farmland;
 - (B) shared in the risk of producing a crop of tobacco; and
 - (C) marketed the tobacco subject to quota.
- (5) **Quota:** The term `quota' means the right to market tobacco under a basic marketing quota or acreage allotment allotted to a person under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.).
- (6) **Secretary:** The term `Secretary' means the Secretary of Agriculture.
- (7) **State:** The term `State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.
- (8) **Tobacco:** The term `tobacco' means any kind of tobacco for which--
 - (A) a marketing quota is in effect;
 - (B) a marketing quota is not disapproved by producers; or
 - (C) price support is available.

[Page: S6255]

Subtitle A--Payments for Lost Value of Tobacco Crops

SEC. 1511. PAYMENTS FOR LOST VALUE OF TOBACCO CROPS.

(a) **In General:** For each of fiscal years 1999 through 2005, the Secretary shall make payments for the lost value of tobacco crops to owners and producers from funds made available from the National Tobacco Trust Fund established by section 401.

(b) **Amount:**

(1) **Owners:** The amount of the payment made to an owner for a fiscal year under this section shall equal 30 percent of the value of the tobacco produced under a tobacco farm marketing quota or farm acreage allotment established owned by the owner under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for the 1997 crop year.

(2) **Producers:** The amount of the payment made to a producer for a fiscal year under this section shall equal 15 percent of the value of the tobacco produced by the producer 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 the 1997 crop year.

Subtitle B--Rural Economic Assistance Block Grants

SEC. 1521. RURAL ECONOMIC ASSISTANCE BLOCK GRANTS.

(a) **In General:** From funds made available from the National Tobacco Trust Fund established by section 401, the Secretary shall use \$200,000,000 for each of fiscal years 1999 through 2003 to provide block grants to tobacco-growing States to assist areas of such a State that are economically dependent on the production of tobacco.

(b) **Payments by Secretary to Tobacco-Growing States:**

(1) **In general:** The Secretary shall use the amount available for a fiscal year under subsection (a) to make block grant payments to the Governors of tobacco-growing States.

(2) **Amount:** The amount of a block grant paid to a tobacco-growing State shall be based on, as determined by the Secretary--

(A) the number of counties in the State in which tobacco production is a significant part of the county's economy; and

(B) the level of economic dependence of the counties on tobacco production.

(c) **Grants by States To Assist Tobacco-Growing Areas:**

(1) **In general:** A Governor of a tobacco-growing State shall use the amount of the block grant to the State under subsection (b) to make grants to counties or other public or private entities in the State to assist areas that are dependent on the production of tobacco, as determined by the Governor.

(2) **Amount:** The amount of a grant paid to a county or other entity to assist an area shall be based on--

(A) the ratio of gross tobacco sales receipts in the area to the total farm income in the area; and

(B) the ratio of all tobacco related receipts in the area to the total income in the area.

(3) **Use of grants:** A county or other entity that receives a grant under this subsection may use the grant in a manner determined appropriate by the county or entity (with the approval of the State) to assist producers and other persons that are economically dependent on the production of tobacco, including use for--

(A) on-farm diversification, alternatives to the production of tobacco, and risk management;

(B) off-farm activities such as education, retraining, and development of non-tobacco related jobs; and

(C) assistance to tobacco warehouse owners or operators.

(d) **Termination of Authority:** The authority provided by this section terminates September 30, 2003.

Subtitle C--Tobacco Price Support and Production Adjustment Programs

SEC. 1531. TERMINATION OF TOBACCO PRICE SUPPORT PROGRAM.

(a) **Parity Price Support:** Section 101 of the Agricultural Act of 1949 (7 U.S.C. 1441) is amended--

(1) in the first sentence of subsection (a), by striking `tobacco (except as otherwise provided herein), corn,' and inserting `corn';

(2) by striking subsections (c), (g), (h), and (i);

(3) in subsection (d)(3)--

(A) by striking `, except tobacco,'; and

(B) by striking `and no price support shall be made available for any crop of tobacco for which marketing quotas have been disapproved by producers;'; and

(4) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

(b) **Termination of Tobacco Price Support and No Net Cost Provisions:** Sections 106, 106A, and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445, 1445-1, 1445-2) are repealed.

(c) **Definition of Basic Agricultural Commodity:** Section 408(c) of the Agricultural Act of 1949 (7 U.S.C. 1428(c)) is amended by striking `tobacco,'.

(d) **Review of Burley Tobacco Imports:** Section 3 of Public Law 98-59 (7 U.S.C. 625) is repealed.

(e) **Powers of Commodity Credit Corporation:** Section 5 of the Corporation Charter Act (15 U.S.C. 714c) is amended by inserting `(other than tobacco)' after `agricultural commodities' each place it appears.

(f) **Transition Provisions:**

(1) **Liability:** The amendments made by this section shall not affect the liability of any person under any provision of law as in effect before the effective date of this section.

(2) **Tobacco stocks and loans:** The Secretary shall issue regulations that require--

(A) the orderly disposition of tobacco stocks; and

(B) the repayment of all tobacco price support loans by not later than 1 year after the effective date of this section.

(g) **Crops:** This section and the amendments made by this section shall apply with respect to the 1999 and subsequent crops of the kind of tobacco involved.

SEC. 1532. TERMINATION OF TOBACCO PRODUCTION ADJUSTMENT PROGRAMS.

(a) **Declaration of Policy:** Section 2 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1282) is amended by striking `tobacco,'.

(b) **Definitions:** Section 301(b) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1301(b)) is amended--

(1) in paragraph (3)--

(A) by striking subparagraph (C); and

(B) by redesignating subparagraph (D) as subparagraph (C);

(2) in paragraph (6)(A), by striking `tobacco,';

(3) in paragraph (7), by striking the following:

`tobacco (flue-cured), July 1--June 30;

`tobacco (other than flue-cured), October 1-September 30;';

(4) in paragraph (10)--

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B);

(5) in paragraph (11)(B), by striking `and tobacco';

(6) in paragraph (12), by striking `tobacco,';

(7) in paragraph (14)--

(A) in subparagraph (A), by striking `(A)'; and

(B) by striking subparagraphs (B), (C), and (D);

(8) by striking paragraph (15);

(9) in paragraph (16)--

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B); and

(10) by redesignating paragraphs (16) and (17) as paragraphs (15) and (16), respectively.

(c) **Parity Payments:** Section 303 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1303) is amended in the first sentence by striking `rice, or tobacco,' and inserting `or rice,'.

(d) **Marketing Quotas:** Part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 et seq.) is repealed.

(e) **Administrative Provisions:** Section 361 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1361) is amended by striking `tobacco,'.

(f) **Adjustment of Quotas:** Section 371 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1371) is amended--

(1) in the first sentence of subsection (a), by striking `peanuts, or tobacco' and inserting `or peanuts'; and

(2) in the first sentence of subsection (b), by striking `peanuts or tobacco' and inserting `or peanuts'.

(g) **Reports and Records:** Section 373 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1373) is amended--

(1) by striking `peanuts, or tobacco' each place it appears in subsections (a) and (b) and inserting `or peanuts'; and

(2) in subsection (a)--

(A) in the first sentence, by striking `all persons engaged in the business of redrying, prizing, or stemming tobacco for producers,'; and

(B) in the last sentence, by striking `\$500;' and all that follows through the period at the end of the sentence and inserting `\$500.'.

(h) **Regulations:** Section 375(a) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1375(a)) is amended by striking `peanuts, or tobacco' and inserting `or peanuts'.

(i) **Eminent Domain:** Section 378 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1378) is amended--

(1) in the first sentence of subsection (c), by striking 'cotton, tobacco, and peanuts' and inserting 'cotton and peanuts'; and

(2) by striking subsections (d), (e), and (f).

(j) **Burley Tobacco Farm Reconstitution:** Section 379 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1379) is amended--

(1) in subsection (a)--

(A) by striking '(a)'; and

(B) in paragraph (6), by striking ', but this clause (6) shall not be applicable in the case of burley tobacco'; and

(2) by striking subsections (b) and (c).

(k) **Acreage-Poundage Quotas:** Section 4 of the Act entitled 'An Act to amend the Agricultural Adjustment Act of 1938, as amended, to provide for acreage-poundage marketing quotas for tobacco, to amend the tobacco price support provisions of the Agricultural Act of 1949, as amended, and for other purposes', approved April 16, 1965 (Public Law 89-12; 7 U.S.C. 1314c note), is repealed.

(l) **Burley Tobacco Acreage Allotments:** The Act entitled 'An Act relating to burley tobacco farm acreage allotments under the Agricultural Adjustment Act of 1938, as amended', approved July 12, 1952 (7 U.S.C. 1315), is repealed.

(m) **Transfer of Allotments:** Section 703 of the Food and Agriculture Act of 1965 (7 U.S.C. 1316) is repealed.

(n) **Advance Recourse Loans:** Section 13(a)(2)(B) of the Food Security Improvements Act of 1986 (7 U.S.C. 1433c-1(a)(2)(B)) is amended by striking 'tobacco and'.

(o) **Tobacco Field Measurement:** Section 1112 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203) is amended by striking subsection (c).

(p) **Liability:** The amendments made by this section shall not affect the liability of any person under any provision of law as in effect before the effective date under subsection (q).

(q) **Crops:** This section and the amendments made by this section shall apply with respect to the 1999 and subsequent crops of the kind of tobacco involved.

[Page: S6256]

Subtitle D--Miscellaneous

SEC. 1541. SAVINGS.

Any savings derived as a result of this title shall be used for tobacco use prevention and cessation initiatives.

END

KOHL AMENDMENT NO. 2635 (Senate - June 10, 1998)

[Page: S6054]

(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. XX. 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.

END

LEAHY (AND DEWINE) AMENDMENT NO. 2637 (Senate - June 10, 1998)

[Page: S6057]

(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

<u>THIS SEARCH</u>	<u>THIS DOCUMENT</u>	<u>THIS CR ISSUE</u>	<u>GO TO</u>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

LUGAR (AND MCCONNELL) AMENDMENTS NOS. 2492-2502 (Senate - June 05, 1998)

[Page: S5713]

(Ordered to lie on the table.)

Mr. LUGAR (for himself and Mr. McConnell) submitted 11 amendments to be proposed by them to the bill, S. 1415, supra; as follows:

Amendment No. 2492

Strike section 1024.

--

Amendment No. 2493

Strike title X.

--

Amendment No. 2494

Strike section 1021(d)(4)(E).

--

Amendment No. 2495

Strike section 1021(d)(13).

--

Amendment No. 2496

Strike title X (relating to long-term economic assistance for farmers).

--

--

Amendment No. 2497

Strike title X and insert the following:

Strike title X and insert the following:

TITLE X--PAYMENTS TO TOBACCO FARMERS

SEC. 1001. BUDGETARY TREATMENT.

Subtitle A of title XV 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 subtitle A of title XV.

SEC. 1002. BUYOUT PAYMENTS TO OWNERS.

(a) **In General:** Notwithstanding, and in lieu of, section 1514, the Secretary of Agriculture shall make buyout payments for each of the 1999 through 2001 marketing years for each kind of tobacco involved to an owner that owns quota at the time of entering into a tobacco transition contract.

(b) **Allocation:** Of the total amount of buyout payments made under subsection (a)--

(1) 46 percent shall be made for the 1999 marketing year;

(2) 27 percent shall be made for the 2000 marketing year; and

(3) 27 percent shall be made for the 2001 marketing year.

(c) **Compensation for Lost Value:** The payment shall constitute compensation for the lost value to the owner of the quota.

(d) **Payment Calculation:** Under this section, the total amount of the buyout payment made to an owner shall be determined by multiplying--

(1) \$8.00; by

(2) the average annual quantity of quota owned by the owner during the 1995 through 1997 crop years.

SEC. 1003. TRANSITION PAYMENTS TO PRODUCERS.

(a) **In General:** Notwithstanding, and in lieu of, section 1515, the Secretary of Agriculture shall make transition payments for each of the 1999 through 2001 marketing years for each kind of tobacco produced, to a producer that--

(1) produced the kind of tobacco for each of the 1995 through 1997 crops; and

(2) entered into a tobacco transition contract.

(b) **Allocation:** Of the total amount of transition payments made under subsection (a)--

(1) 46 percent shall be made for the 1999 marketing year;

(2) 27 percent shall be made for the 2000 marketing year; and

(3) 27 percent shall be made for the 2001 marketing year.

(c) **Transition Payments Limited to Leased Quota:** A producer shall be eligible for transition payments only for the portion of the production of the producer that is subject to quota that is leased (as defined in section 1503(5) of this Act) during the 3 crop years described in subsection (a)(1).

(d) **Compensation for Lost Revenue:** The payments shall constitute compensation for the lost revenue incurred by a tobacco producer for a kind of tobacco.

(e) **Production History; Production:**

(1) **Production history:** The Secretary shall base a transition payment made to a producer on the average quantity of tobacco subject to a marketing quota that is produced by the producer for each of the 1995 through 1997 crops.

(2) **Production:** The producer shall have the burden of demonstrating to the Secretary the production of tobacco for each of the 1995 through 1997 crops.

(f) **Payment Calculation:** Under this section, the total amount of the transition payment made to a

producer shall be determined by multiplying--

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
<u>Next Hit</u>	<u>Forward</u>	Next Document	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	Prev Document	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	Daily Digest	<u>Help</u>
	<u>Doc Contents</u>		

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

LUGAR (AND MCCONNELL) AMENDMENTS NOS. 2492-2502 (Senate - June 05, 1998)

(16) **Trust fund:** The term 'Trust Fund' means the Tobacco Community Revitalization Trust Fund established by section 1011.

(17) **United states:** The term 'United States', when used in a geographical sense, means all of the States.

Subtitle A--Tobacco Production Transition

CHAPTER 1--TOBACCO TRANSITION CONTRACTS

SEC. 1011. TOBACCO COMMUNITY REVITALIZATION TRUST FUND.

(a) **Establishment:** There is established in the Treasury of the United States a trust fund to be known as the 'Tobacco Community Revitalization Trust Fund', consisting of amounts paid into the Trust Fund under subsection (d).

(b) **Administration:** The Trust Fund shall be administered by the Secretary of the Treasury.

(c) **Use:** Funds in the Trust Fund shall be available for making--

(1) buyout payments;

(2) transition payments;

(3) rural economic assistance block grants under section 1021;

(4) payments to carry out sections 106A and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445-1, 1445-2);

(5) payments to reimburse the Commodity Credit Corporation for net losses under section 1032(f)(3); and

(4) payments for tobacco related administrative costs and subsidies described in section 1052.

(d) **Transfer from National Tobacco Settlement Trust Fund:** The Secretary of the Treasury shall transfer from the National Tobacco Settlement Trust Fund to the Trust Fund such amounts as the Secretary of Agriculture determines are necessary to carry out this title.

(e) **Termination:** The Trust Fund shall terminate effective September 30, 2024.

[Page: S5714]

SEC. 1012. OFFER AND TERMS OF TOBACCO TRANSITION CONTRACTS.

(a) **Offer:** The Secretary shall offer to enter into a tobacco transition contract with each owner and producer.

(b) **Terms:**

(1) **Owners:** In exchange for a payment made under section 1014, an owner shall agree to relinquish the quota owned by the owner.

(2) **Producers:** In exchange for a payment made under section 1015, a producer shall agree to relinquish the value of the quota leased by the producer.

(c) **Right To Grow Tobacco:** Each owner or producer that enters into a contract shall have the right to continue the production of tobacco for each of the 1999 and subsequent crops of tobacco.

SEC. 1013. ELEMENTS OF CONTRACTS.

(a) **Deadlines for Contracting:**

(1) **Commencement:** To the maximum extent practicable, the Secretary shall commence entering into contracts under this chapter not later than 90 days after the date of enactment of this Act.

(2) **Deadline:** The Secretary may not enter into a contract under this chapter after June 30, 1999.

(b) **Duration of Contract:** The term of a contract shall--

(1) begin on the date that is the beginning of the 1999 marketing year for a kind of tobacco; and

(2) terminate on the date that is the end of the 2001 marketing year for the kind of tobacco.

(c) **Time for Payment:** A buyout payment or transition payment shall be made not later than the date that is the beginning of the marketing year for a kind of tobacco for each year of the term of a tobacco transition contract of an owner or producer.

SEC. 1014. BUYOUT PAYMENTS TO OWNERS.

(a) **In General:** The Secretary shall make buyout payments in 3 equal installments, 1 installment for each of the 1999 through 2001 marketing years for each kind of tobacco involved, to an owner that owns quota at the time of entering into a tobacco transition contract.

(b) **Compensation for Lost Value:** The payment shall constitute compensation for the lost value to the owner of the quota.

(c) **Payment Calculation:** Under this section, the total amount of the buyout payment made to an owner shall be determined by multiplying--

<u>THIS SEARCH</u>	<u>THIS DOCUMENT</u>	<u>THIS CR ISSUE</u>	<u>GO TO</u>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

<u>THIS SEARCH</u>	<u>THIS DOCUMENT</u>	<u>THIS CR ISSUE</u>	<u>GO TO</u>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

LUGAR (AND MCCONNELL) AMENDMENTS NOS. 2492-2502 (Senate - June 05, 1998)

- (1) \$8.00; by
- (2) the average annual quantity of quota owned by the owner during the 1995 through 1997 crop years.

SEC. 1015. TRANSITION PAYMENTS TO PRODUCERS.

(a) **In General:** The Secretary shall make transition payments in 3 equal installments, 1 installment for each of the 1999 through 2001 marketing years for each kind of tobacco produced, to a producer that--

- (1) produced the kind of tobacco for each of the 1995 through 1997 crops; and
- (2) entered into a tobacco transition contract.

(b) **Transition Payments Limited to Leased Quota:** A producer shall be eligible for transition payments only for the portion of the production of the producer that is subject to quota that is leased during the 3 crop years described in subsection (a)(1).

(c) **Compensation for Lost Revenue:** The payments shall constitute compensation for the lost revenue incurred by a tobacco producer for a kind of tobacco.

(d) **Production History; Production:**

(1) **Production history:** The Secretary shall base a transition payment made to a producer on the average quantity of tobacco subject to a marketing quota that is produced by the producer for each of the 1995 through 1997 crops.

(2) **Production:** The producer shall have the burden of demonstrating to the Secretary the production of tobacco for each of the 1995 through 1997 crops.

(e) **Payment Calculation:** Under this section, the total amount of the transition payment made to a producer shall be determined by multiplying--

- (1) \$4.00; by
- (2) the average quantity of the kind of tobacco produced by the producer for each of the 1995 through 1997 crops.

CHAPTER 2--RURAL ECONOMIC ASSISTANCE BLOCK GRANTS

SEC. 1021. RURAL ECONOMIC ASSISTANCE BLOCK GRANTS.

(a) **In General:** From funds in the Trust Fund, the Secretary shall use \$200,000,000 for each of fiscal years 1999 through 2003 to provide block grants to tobacco-growing States to assist areas of such a State that are economically dependent on the production of tobacco.

(b) **Payments by Secretary to Tobacco-Growing States:**

(1) **In general:** The Secretary shall use the amount available for a fiscal year under subsection (a) to make block grant payments to the Governors of tobacco-growing States.

(2) **Amount:** The amount of a block grant paid to a tobacco-growing State shall be based on--

(A) the number of counties in the State in which tobacco production is a significant part of the county's economy; and

(B) the level of economic dependence of the counties on tobacco production.

(c) **Grants by States To Assist Tobacco-Growing Areas:**

(1) **In general:** A Governor of a tobacco-growing State shall use the amount of the block grant to the State under subsection (b) to make grants to counties or other public or private entities in the State to assist areas that are dependent on the production of tobacco, as determined by the Governor.

(2) **Amount:** The amount of a grant paid to a county or other entity to assist an area shall be based on--

(A) the ratio of gross tobacco sales receipts in the area to the total farm income in the area; and

(B) the ratio of all tobacco related receipts in the area to the total income in the area.

(3) **Use of grants:** A county or other entity that receives a grant under this subsection may use the grant in a manner determined appropriate by the county or entity (with the approval of the State) to assist producers and other persons that are economically dependent on the production of tobacco, including use for--

(A) on-farm diversification, alternatives to the production of tobacco, and risk management;

(B) off-farm activities such as education, retraining, and development of non-tobacco related jobs; and

THIS SEARCH

[Next Hit](#)

[Prev Hit](#)

[Hit List](#)

THIS DOCUMENT

[Forward](#)

[Back](#)

[Best Sections](#)

[Doc Contents](#)

THIS CR ISSUE

[Next Document](#)

[Prev Document](#)

[Daily Digest](#)

GO TO

[New CR Search](#)

[HomePage](#)

[Help](#)

<u>THIS SEARCH</u>	<u>THIS DOCUMENT</u>	<u>THIS CR ISSUE</u>	<u>GO TO</u>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

LUGAR (AND MCCONNELL) AMENDMENTS NOS. 2492-2502 (Senate - June 05, 1998)

- (C) assistance to tobacco warehouse owners or operators.
- (d) **Termination of Authority:** The authority provided by this section terminates October 1, 2003.

Subtitle B--Tobacco Price Support and Production Adjustment Programs

CHAPTER 1--TOBACCO PRICE SUPPORT PROGRAM

SEC. 1031. INTERIM REFORM OF TOBACCO PRICE SUPPORT PROGRAM.

(a) **Price Support Rates:** Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended to read as follows:

SEC. 106. TOBACCO PRICE SUPPORT RATES.

The price support rate for each kind of tobacco for which quotas have been approved shall be reduced by--

- (1) for the 1999 crop, 25 percent from the 1998 support rate for a kind of tobacco;
- (2) for the 2000 crop, 10 percent from the 1999 support rate for a kind of tobacco; and
- (3) for the 2001 crop, 10 percent from the 2000 support rate for a kind of tobacco!.

(b) No Net Cost Tobacco Fund and Account:

(1) **No net cost tobacco fund:** Section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445-1) is amended to read as follows:

SEC. 106A. NO NET COST TOBACCO FUND.

(a) **Definitions:** In this section:

(1) **Association:** The term 'association' means a producer-owned cooperative marketing association that has entered into a loan agreement with the Corporation to make price support available to producers of a kind of tobacco.

(2) **Corporation:** The term 'Corporation' means the Commodity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture through which the Secretary makes price support available to producers.

(3) **Net gains:** The term 'net gains' means the amount by which the total proceeds obtained from the sale by an association of a crop of tobacco pledged to the Corporation for a price support loan exceeds the principal amount of the price support loan made by the Corporation to the association on the crop, plus interest and charges.

(4) **No net cost tobacco fund:** The term 'No Net Cost Tobacco Fund' means the capital account

established within each association under this section.

(5) **Purchaser:** The term 'purchaser' means any person that purchases in the United States, either directly or indirectly for the account of the person or another person, Flue-cured or burley tobacco.

(6) **Tobacco:** The term 'tobacco' means any kind of tobacco for which--

(A) a marketing quota is in effect;

(B) a marketing quota is not disapproved by producers; or

(C) price support is available.

(7) **Trust fund:** The term 'Trust Fund' means the National Tobacco Settlement Trust Fund established in the Treasury of the United States consisting of amounts that are appropriated or credited to the Trust Fund from the tobacco settlement approved by Congress.

(b) **Price Support Program; Loans:** The Secretary--

(1) may carry out the tobacco price support program through the Corporation; and

(2) shall, except as otherwise provided by this section, continue to make price support available to producers through loans to associations that, under agreements with the Corporation, agree to make loan advances to producers.

(c) **Establishment of Fund:**

(1) **In general:** Each association shall establish within the association a No Net Cost Tobacco Fund.

(2) **Amount:** There shall be transferred from the Trust Fund to each No Net Cost Tobacco Fund such amount as the Secretary determines will be adequate to reimburse the Corporation for any net losses that the Corporation may sustain under its loan agreements with the association, based on--

(A) reasonable estimates of the amounts that the Corporation has lent or will lend to the association for price support for the 1982 and subsequent crops of tobacco, except that for the 1986 and subsequent crops of burley tobacco, the Secretary shall determine the amount of assessments without regard to any net losses that the Corporation may sustain under the loan agreements of the Corporation with the association for the 1983 crop of burley tobacco; and

THIS SEARCH
[Next Hit](#)
[Prev Hit](#)
[Hit List](#)

THIS DOCUMENT
[Forward](#)
[Back](#)
[Best Sections](#)
[Doc Contents](#)

THIS CR ISSUE
[Next Document](#)
[Prev Document](#)
[Daily Digest](#)

GO TO
[New CR Search](#)
[HomePage](#)
[Help](#)

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

LUGAR (AND MCCONNELL) AMENDMENTS NOS. 2492-2502 (Senate - June 05, 1998)

`(B) the proceeds that will be realized from the sales of tobacco that are pledged to the Corporation by the association as security for loans.

`(d) **Administration:** The Secretary shall--

`(1) require that the No Net Cost Tobacco Fund established by each association be kept and maintained separately from all other accounts of the association and be used exclusively, as prescribed by the Secretary, for the purpose of ensuring, insofar as practicable, that the Corporation, under its loan agreements with the association with respect to 1982 and subsequent crops of tobacco, will suffer no net losses (including recovery of the amount of loans extended to cover the overhead costs of the association), after any net gains are applied to net losses of the Corporation under paragraph (3), except that, notwithstanding any other provision of law, the association may, with the approval of the Secretary, use funds in the No Net Cost Tobacco Fund, including interest and other earnings, for--

`(A) the purposes of reducing the association's outstanding indebtedness to the Corporation associated with 1982 and subsequent crops of tobacco and making loan advances to producers as authorized; and

`(B) any other purposes that will be mutually beneficial to producers and purchasers and to the Corporation;

`(2) permit an association to invest the funds in the No Net Cost Tobacco Fund in such manner as the Secretary may approve, and require that the interest or other earnings on the investment shall become a part of the No Net Cost Tobacco Fund;

`(3) require that loan agreements between the Corporation and the association provide that the Corporation shall retain the net gains from each of the 1982 and subsequent crops of tobacco pledged by the association as security for price support loans, and that the net gains will be used for the purpose of--

`(A) offsetting any losses sustained by the Corporation under its loan agreements with the association for any of the 1982 and subsequent crops of tobacco; or

`(B) reducing the outstanding balance of any price support loan made by the Corporation to the association under the loan agreements for 1982 and subsequent crops of tobacco; and

`(4) effective for the 1986 and subsequent crops of tobacco, if the Secretary determines that the amount in the No Net Cost Tobacco Fund or the net gains referred to in paragraph (3) exceeds the total amount necessary for the purposes specified in this section, suspend the transfer of amounts from the Trust Fund to the No Net Cost Tobacco Fund under this section.

`(e) **Noncompliance:**

`(1) **In general:** If any association that has entered into a loan agreement with the Corporation with respect to any of the 1982 or subsequent crops of tobacco fails or refuses to comply with this section (including regulations promulgated under this section) or the terms of the agreement, the Secretary may terminate the agreement or provide that no additional loan funds may be made available under the agreement to the association.

(2) Price support: If the Secretary takes action under paragraph (1), the Secretary shall make price support available to producers of the kind or kinds of tobacco, the price of which had been supported through loans to the association, through such other means as are authorized by this Act or the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.).

(f) Termination of Agreement or Association: If, under subsection (e), a loan agreement with an association is terminated, or if an association having a loan agreement with the Corporation is dissolved, merges with another association, or otherwise ceases to operate, the No Net Cost Tobacco Fund or the net gains referred to in subsection (d)(3) shall be applied or disposed of in such manner as the Secretary may approve or prescribe, except that the net gains shall, to the extent necessary, first be applied or used for the purposes specified in this section.

(g) Regulations: The Secretary shall issue such regulations as are necessary to carry out this section.'

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
<u>Next Hit</u>	<u>Forward</u>	Next Document	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	Prev Document	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	Daily Digest	<u>Help</u>
	<u>Doc Contents</u>		

<u>THIS SEARCH</u>	<u>THIS DOCUMENT</u>	<u>THIS CR ISSUE</u>	<u>GO TO</u>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

LUGAR (AND MCCONNELL) AMENDMENTS NOS. 2492-2502 (Senate - June 05, 1998)

(2) **No net cost tobacco account:** Section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445-2) is amended to read as follows:

[Page: S5715]

SEC. 106B. NO NET COST TOBACCO ACCOUNT.

(a) Definitions: In this section:

(1) Area: The term 'area', when used in connection with an association, means the general geographical area in which farms of the producer-members of the association are located, as determined by the Secretary.

(2) Association: The term 'association' has the meaning given the term in section 106A(a)(1).

(3) Corporation: The term 'Corporation' has the meaning given the term in section 106A(a)(2).

(4) Net gains: The term 'net gains' has the meaning given the term in section 106A(a)(3).

(5) No net cost tobacco account: The term 'No Net Cost Tobacco Account' means an account established by and in the Corporation for an association under this section.

(6) Purchaser: The term 'purchaser' has the meaning given the term in section 106A(a)(5).

(7) Tobacco: The term 'tobacco' means any kind of tobacco for which--

(A) a marketing quota is in effect;

(B) a marketing quota is not disapproved by producers; or

(C) price support is available.

(8) Trust fund: The term 'Trust Fund' has the meaning given the term in section 106A(a)(7).

(b) Price Support Program; Loans: Notwithstanding section 106A, the Secretary shall, on the request of any association, and may, if the Secretary determines, after consultation with the association, that the accumulation of the No Net Cost Tobacco Fund for the association under section 106A is, and is likely to remain, inadequate to reimburse the Corporation for net losses that the Corporation sustains under its loan agreements with the association--

(1) continue to make price support available to producers through the association in accordance with loan agreements entered into between the Corporation and the association; and

(2) establish and maintain in accordance with this section a No Net Cost Tobacco Account for the association in lieu of the No Net Cost Tobacco Fund established within the association under section 106A.

(c) Establishment of Account:

(1) In general: A No Net Cost Tobacco Account established for an association under subsection (b)(2) shall be established within the Corporation.

(2) Amount: There shall be transferred from the Trust Fund to each No Net Cost Tobacco Account such amount as the Secretary determines will be adequate to reimburse the Corporation for any net losses that the Corporation may sustain under its loan agreements with the association, based on--

(A) reasonable estimates of the amounts that the Corporation has lent or will lend to the association for price support for the 1982 and subsequent crops of tobacco, except that for the 1986 and subsequent crops of burley tobacco, the Secretary shall determine the amount of assessments without regard to any net losses that the Corporation may sustain under the loan agreements of the Corporation with the association for the 1983 crop of burley tobacco; and

(B) the proceeds that will be realized from the sales of a kind of tobacco that are pledged to the Corporation by the association as security for loans.

(3) Administration: On the establishment of a No Net Cost Tobacco Account for an association, any amount in the No Net Cost Tobacco Fund established within the association under section 106A shall be applied or disposed of in such manner as the Secretary may approve or prescribe, except that the amount shall, to the extent necessary, first be applied or used for the purposes specified in that section.

(d) Use: Amounts deposited in a No Net Cost Tobacco Account established for an association shall be used by the Secretary for the purpose of ensuring, insofar as practicable, that the Corporation under its loan agreements with the association will suffer, with respect to the crop involved, no net losses (including recovery of the amount of loans extended to cover the overhead costs of the association), after any net gains are applied to net losses of the Corporation under subsection (g).

(e) Excess Amounts: If the Secretary determines that the amount in the No Net Cost Tobacco Account or the net gains referred to in subsection (g) exceed the total amount necessary to carry out this section, the Secretary shall suspend the transfer of amounts from the Trust Fund to the No Net Cost Tobacco Account under this section.

(f) Termination of Agreement or Association: In the case of an association for which a No Net Cost Tobacco Account is established under subsection (b)(2), if a loan agreement between the Corporation and the association is terminated, if the association is dissolved or merges with another association that has entered into a loan agreement with the Corporation to make price support available to producers of a kind of tobacco, or if the No Net Cost Tobacco Account terminates by operation of law, amounts in the No Net Cost Tobacco Account and the net gains referred to in subsection (g) shall be applied to or disposed of in such manner as the Secretary may prescribe, except that the net gains shall, to the extent necessary, first be applied to or used for the purposes specified in this section.

(g) Net Gains: The provisions of section 106A(d)(3) relating to net gains shall apply to any loan agreement between an association and the Corporation entered into on or after the establishment of a No Net Cost Tobacco Account for the association under subsection (b)(2).

(h) Regulations: The Secretary shall issue such regulations as are necessary to carry out this section.'

THIS SEARCH
Next Hit
Prev Hit
Hit List

THIS DOCUMENT
Forward
Back
Best Sections
Doc Contents

THIS CR ISSUE
Next Document
Prev Document
Daily Digest

GO TO
New CR Search
HomePage
Help

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

LUGAR (AND MCCONNELL) AMENDMENTS NOS. 2492-2502 (Senate - June 05, 1998)

(2) **Net losses to the commodity credit corporation:** Subsection (f)(3) shall apply with respect to the 2002 and subsequent marketing years until--

(A) all price support loans for each kind of tobacco are repaid to the Commodity Credit Corporation; and

(B) the Commodity Credit Corporation has been reimbursed for all net losses sustained as a result of price support loans provided through the 2001 crop of the kind of tobacco involved.

CHAPTER 2--TOBACCO PRODUCTION ADJUSTMENT PROGRAMS

SEC. 1041. TERMINATION OF TOBACCO PRODUCTION ADJUSTMENT PROGRAMS.

(a) **Declaration of Policy:** Section 2 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1282) is amended by striking `tobacco,'.

(b) **Definitions:** Section 301(b) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1301(b)) is amended--

(1) in paragraph (3)--

(A) by striking subparagraph (C); and

(B) by redesignating subparagraph (D) as subparagraph (C);

(2) in paragraph (6)(A), by striking `tobacco,';

(3) in paragraph (7), by striking the following:

`tobacco (flue-cured), July 1--June 30;

`tobacco (other than flue-cured), October 1-September 30;';

(4) in paragraph (10)--

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B);

(5) in paragraph (11)(B), by striking `and tobacco';

(6) in paragraph (12), by striking `tobacco,';

(7) in paragraph (14)--

(A) in subparagraph (A), by striking `(A)'; and

(B) by striking subparagraphs (B), (C), and (D);

(8) by striking paragraph (15);

(9) in paragraph (16)--

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B); and

(10) by redesignating paragraphs (16) and (17) as paragraphs (15) and (16), respectively.

(c) **Parity Payments:** Section 303 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1303) is amended in the first sentence by striking 'rice, or tobacco,' and inserting 'or rice,'.

(d) **Marketing Quotas:** Part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 et seq.) is repealed.

(e) **Administrative Provisions:** Section 361 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1361) is amended by striking 'tobacco,'.

(f) **Adjustment of Quotas:** Section 371 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1371) is amended--

(1) in the first sentence of subsection (a), by striking 'peanuts, or tobacco' and inserting 'or peanuts'; and

(2) in the first sentence of subsection (b), by striking 'peanuts or tobacco' and inserting 'or peanuts'.

(g) **Reports and Records:** Section 373 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1373) is amended--

(1) by striking 'peanuts, or tobacco' each place it appears in subsections (a) and (b) and inserting 'or peanuts'; and

(2) in subsection (a)--

(A) in the first sentence, by striking 'all persons engaged in the business of redrying, prizing, or stemming tobacco for producers,'; and

(B) in the last sentence, by striking '\$500;' and all that follows through the period at the end of the sentence and inserting '\$500.'.

(h) **Regulations:** Section 375(a) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1375(a)) is amended by striking 'peanuts, or tobacco' and inserting 'or peanuts'.

(i) **Eminent Domain:** Section 378 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1378) is amended--

(1) in the first sentence of subsection (c), by striking 'cotton, tobacco, and peanuts' and inserting 'cotton and peanuts'; and

(2) by striking subsections (d), (e), and (f).

(j) **Burley Tobacco Farm Reconstitution:** Section 379 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1379) is amended--

(1) in subsection (a)--

(A) by striking '(a)'; and

THIS SEARCH
Next Hit
Prev Hit

THIS DOCUMENT
Forward
Back

THIS CR ISSUE
Next Document
Prev Document

GO TO
New CR Search
HomePage

<u>THIS SEARCH</u>	<u>THIS DOCUMENT</u>	<u>THIS CR ISSUE</u>	<u>GO TO</u>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

LUGAR (AND MCCONNELL) AMENDMENTS NOS. 2492-2502 (Senate - June 05, 1998)

(B) in paragraph (6), by striking ` , but this clause (6) shall not be applicable in the case of burley tobacco'; and

(2) by striking subsections (b) and (c).

(k) **Acreage-Poundage Quotas:** Section 4 of the Act entitled `An Act to amend the Agricultural Adjustment Act of 1938, as amended, to provide for acreage-poundage marketing quotas for tobacco, to amend the tobacco price support provisions of the Agricultural Act of 1949, as amended, and for other purposes', approved April 16, 1965 (Public Law 89-12; 7 U.S.C. 1314c note), is repealed.

(l) **Burley Tobacco Acreage Allotments:** The Act entitled `An Act relating to burley tobacco farm acreage allotments under the Agricultural Adjustment Act of 1938, as amended', approved July 12, 1952 (7 U.S.C. 1315), is repealed.

(m) **Transfer of Allotments:** Section 703 of the Food and Agriculture Act of 1965 (7 U.S.C. 1316) is repealed.

(n) **Advance Recourse Loans:** Section 13(a)(2)(B) of the Food Security Improvements Act of 1986 (7 U.S.C. 1433c-1(a)(2)(B)) is amended by striking `tobacco and'.

(o) **Tobacco Field Measurement:** Section 1112 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203) is amended by striking subsection (c).

(p) **Liability:** The amendments made by this section shall not affect the liability of any person under any provision of law as in effect before the effective date under subsection (q).

(q) **Crops:** This section and the amendments made by this section shall apply with respect to the 1999 and subsequent crops of the kind of tobacco involved.

Subtitle C--Funding

SEC. 1051. TRUST FUND.

(a) **Request:** The Secretary of Agriculture shall request the Secretary of the Treasury to transfer from the Trust Fund amounts authorized under sections 1014, 1015, 1021, 1032, and 1052 and the amendments made by section 1031 to the account of the Commodity Credit Corporation.

(b) **Transfer:** On receipt of such a request, the Secretary of the Treasury shall transfer amounts requested under subsection (a).

(c) **Use:** The Secretary of Agriculture shall use the amounts transferred under subsection (b) to carry out the activities described in subsection (a).

(d) **Termination of Authority:** The authority provided under this section shall expire on September 30, 2024.

SEC. 1052. TOBACCO RELATED ADMINISTRATIVE COSTS AND SUBSIDIES.

(a) **In General:** For each of fiscal years 1999 through 2024, the Secretary shall--

(1) estimate the costs to the Federal Government relating to tobacco that involve--

(A) agricultural extension;

(B) handling, sampling, grading, inspecting, and weighing;

(C) crop insurance; and

(D) administering the tobacco price support program; and

(2) use funds transferred from the Trust Fund to the Commodity Credit Corporation to cover the costs estimated under paragraph (1).

(b) **Adjustments:** At the end of each of fiscal years 1999 through 2024, the Secretary shall--

(1) use funds transferred from the Trust Fund to the Commodity Credit Corporation in any amount by which the amount of funds transferred under subsection (a)(2) for the fiscal year is less than the actual costs described in subsection (a)(1) for the fiscal year; or

(2) transfer funds from the Commodity Credit Corporation to the Trust Fund in any amount by which the amount of funds transferred for the fiscal year under subsection (a)(2) is more than the actual costs described in subsection (a)(1) for the fiscal year.

[Page: S5717]

SEC. 1053. COMMODITY CREDIT CORPORATION.

The Secretary may use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out this title and the amendments made by this title.

Subtitle D--Miscellaneous

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
<u>Next Hit</u>	<u>Forward</u>	Next Document	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	Prev Document	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	Daily Digest	<u>Help</u>
	<u>Doc Contents</u>		

<u>THIS SEARCH</u>	<u>THIS DOCUMENT</u>	<u>THIS CR ISSUE</u>	<u>GO TO</u>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

LUGAR (AND MCCONNELL) AMENDMENTS NOS. 2492-2502 (Senate - June 05, 1998)

SEC. 1061. LIABILITY FOR OBLIGATIONS OF TOBACCO PRODUCT MANUFACTURERS.
 A person that owns or produces tobacco, or owns or operates a tobacco warehouse, shall not be liable for--

- (1) any action or legal penalty or obligation of a manufacturer of a tobacco product under this Act; or
- (2) any financial penalty or payment owed by a manufacturer of a tobacco product under this Act.

SEC. 1062. FDA REGULATION OF TOBACCO PRODUCTION AND FARMS.
 Notwithstanding any other provision of law, an officer, employee, or agent of the Food and Drug Administration shall not--

- (1) regulate the production of a crop of tobacco by a person; or
- (2) enter the farm of a person that owns or produces tobacco without the consent of the person.

--
 --

Amendment No. 2499

In lieu of the matter proposed to be inserted for title X, insert the following:

TITLE X--PAYMENTS TO TOBACCO FARMERS

SEC. 1001. BUDGETARY TREATMENT.
 Subtitle A of title XV 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 subtitle A of title XV.

SEC. 1002. BUYOUT PAYMENTS TO OWNERS.
 (a) **In General:** Notwithstanding, and in lieu of, section 1514, the Secretary of Agriculture shall make buyout payments for each of the 1999 through 2001 marketing years for each kind of tobacco involved to an owner that owns quota at the time of entering into a tobacco transition contract.
 (b) **Allocation:** Of the total amount of buyout payments made under subsection (a)--

- (1) 46 percent shall be made for the 1999 marketing year;
 - (2) 27 percent shall be made for the 2000 marketing year; and
 - (3) 27 percent shall be made for the 2001 marketing year.
- (c) **Payment Calculation:** Under this section, the total amount of the buyout payment made to an owner

shall be determined by multiplying--

(1) \$8.00; by

(2) the average annual quantity of quota owned by the owner during the 1995 through 1997 crop years.

SEC. 1003. TRANSITION PAYMENTS TO PRODUCERS.

(a) **In General:** Notwithstanding, and in lieu of, section 1515, the Secretary of Agriculture shall make transition payments for each of the 1999 through 2001 marketing years for each kind of tobacco produced, to a producer that--

(1) produced the kind of tobacco for each of the 1995 through 1997 crops; and

(2) entered into a tobacco transition contract.

(b) **Allocation:** Of the total amount of transition payments made under subsection (a)--

(1) 46 percent shall be made for the 1999 marketing year;

(2) 27 percent shall be made for the 2000 marketing year; and

(3) 27 percent shall be made for the 2001 marketing year.

(c) **Transition Payments Limited to Leased Quota:** A producer shall be eligible for transition payments only for the portion of the production of the producer that is subject to quota that is leased (as defined in section 1503(5) of this Act) during the 3 crop years described in subsection (a)(1).

(d) **Production History; Production:**

(1) **Production history:** The Secretary shall base a transition payment made to a producer on the average quantity of tobacco subject to a marketing quota that is produced by the producer for each of the 1995 through 1997 crops.

(2) **Production:** The producer shall have the burden of demonstrating to the Secretary the production of tobacco for each of the 1995 through 1997 crops.

(e) **Payment Calculation:** Under this section, the total amount of the transition payment made to a producer shall be determined by multiplying--

(1) \$4.00; by

(2) the average quantity of the kind of tobacco produced by the producer for each of the 1995 through 1997 crops.

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
<u>Next Hit</u>	<u>Forward</u>	Next Document	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	Prev Document	<u>HomePage</u>
<u>Hit List</u>	Best Sections	Daily Digest	<u>Help</u>
	<u>Doc Contents</u>		

<u>THIS SEARCH</u>	<u>THIS DOCUMENT</u>	<u>THIS CR ISSUE</u>	<u>GO TO</u>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

LUGAR (AND MCCONNELL) AMENDMENTS NOS. 2492-2502 (Senate - June 05, 1998)

SEC. 1004. EFFECTIVE DATE.

This title takes effect 2 days after the date of enactment of this Act.

Amendment No. 2500

In lieu of the matter proposed to be inserted for title X, insert the following:

TITLE X--PAYMENTS TO TOBACCO FARMERS

SEC. 1001. BUDGETARY TREATMENT.

Subtitle A of title XV 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 subtitle A of title XV.

SEC. 1002. BUYOUT PAYMENTS TO OWNERS.

(a) **In General:** Notwithstanding, and in lieu of, section 1514, the Secretary of Agriculture shall make buyout payments for each of the 1999 through 2001 marketing years for each kind of tobacco involved to an owner that owns quota at the time of entering into a tobacco transition contract.

(b) **Allocation:** Of the total amount of buyout payments made under subsection (a)--

(1) 46 percent shall be made for the 1999 marketing year;

(2) 27 percent shall be made for the 2000 marketing year; and

(3) 27 percent shall be made for the 2001 marketing year.

(c) **Compensation for Lost Value:** The payment shall constitute compensation for the lost value to the owner of the quota.

(d) **Payment Calculation:** Under this section, the total amount of the buyout payment made to an owner shall be determined by multiplying--

(1) \$8.00; by

(2) the average annual quantity of quota owned by the owner during the 1995 through 1997 crop years.

SEC. 1003. TRANSITION PAYMENTS TO PRODUCERS.

(a) **In General:** Notwithstanding, and in lieu of, section 1515, the Secretary of Agriculture shall make transition payments for each of the 1999 through 2001 marketing years for each kind of tobacco produced, to a producer that--

(1) produced the kind of tobacco for each of the 1995 through 1997 crops; and

(2) entered into a tobacco transition contract.

(b) **Allocation:** Of the total amount of transition payments made under subsection (a)--

(1) 46 percent shall be made for the 1999 marketing year;

(2) 27 percent shall be made for the 2000 marketing year; and

(3) 27 percent shall be made for the 2001 marketing year.

(c) **Transition Payments Limited to Leased Quota:** A producer shall be eligible for transition payments only for the portion of the production of the producer that is subject to quota that is leased (as defined in section 1503(5) of this Act) during the 3 crop years described in subsection (a)(1).

(d) **Compensation for Lost Revenue:** The payments shall constitute compensation for the lost revenue incurred by a tobacco producer for a kind of tobacco.

(e) **Production History; Production:**

(1) **Production history:** The Secretary shall base a transition payment made to a producer on the average quantity of tobacco subject to a marketing quota that is produced by the producer for each of the 1995 through 1997 crops.

(2) **Production:** The producer shall have the burden of demonstrating to the Secretary the production of tobacco for each of the 1995 through 1997 crops.

(f) **Payment Calculation:** Under this section, the total amount of the transition payment made to a producer shall be determined by multiplying--

(1) \$4.00; by

(2) the average quantity of the kind of tobacco produced by the producer for each of the 1995 through 1997 crops.

Amendment No. 2501

Strike title X in the Committee amendment and insert the following:

TITLE X--PAYMENTS TO TOBACCO FARMERS

SEC. 1001. BUDGETARY TREATMENT.

Subtitle A of title XV 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 subtitle A of title XV.

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
<u>Next Hit</u>	<u>Forward</u>	Next Document	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	Prev Document	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	Daily Digest	<u>Help</u>
	<u>Doc Contents</u>		

<u>THIS SEARCH</u>	<u>THIS DOCUMENT</u>	<u>THIS CR ISSUE</u>	<u>GO TO</u>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

LUGAR (AND MCCONNELL) AMENDMENTS NOS. 2492-2502 (Senate - June 05, 1998)

SEC. 1002. BUYOUT PAYMENTS TO OWNERS.

(a) **In General:** Notwithstanding, and in lieu of, section 1514, the Secretary of Agriculture shall make buyout payments for each of the 1999 through 2001 marketing years for each kind of tobacco involved to an owner that owns quota at the time of entering into a tobacco transition contract.

(b) **Allocation:** Of the total amount of buyout payments made under subsection (a)--

(1) 46 percent shall be made for the 1999 marketing year;

(2) 27 percent shall be made for the 2000 marketing year; and

(3) 27 percent shall be made for the 2001 marketing year.

(c) **Compensation for Lost Value:** The payment shall constitute compensation for the lost value to the owner of the quota.

(d) **Payment Calculation:** Under this section, the total amount of the buyout payment made to an owner shall be determined by multiplying--

(1) \$8.00; by

(2) the average annual quantity of quota owned by the owner during the 1995 through 1997 crop years.

[Page: S5718]

SEC. 1003. TRANSITION PAYMENTS TO PRODUCERS.

(a) **In General:** Notwithstanding, and in lieu of, section 1515, the Secretary of Agriculture shall make transition payments for each of the 1999 through 2001 marketing years for each kind of tobacco produced, to a producer that--

(1) produced the kind of tobacco for each of the 1995 through 1997 crops; and

(2) entered into a tobacco transition contract.

(b) **Allocation:** Of the total amount of transition payments made under subsection (a)--

(1) 46 percent shall be made for the 1999 marketing year;

(2) 27 percent shall be made for the 2000 marketing year; and

(3) 27 percent shall be made for the 2001 marketing year.

(c) **Transition Payments Limited to Leased Quota:** A producer shall be eligible for transition payments only for the portion of the production of the producer that is subject to quota that is leased (as defined in section 1503(5) of this Act) during the 3 crop years described in subsection (a)(1).

(d) **Compensation for Lost Revenue:** The payments shall constitute compensation for the lost revenue incurred by a tobacco producer for a kind of tobacco.

(e) **Production History; Production:**

(1) **Production history:** The Secretary shall base a transition payment made to a producer on the

average quantity of tobacco subject to a marketing quota that is produced by the producer for each of the 1995 through 1997 crops.

(2) **Production:** The producer shall have the burden of demonstrating to the Secretary the production of tobacco for each of the 1995 through 1997 crops.

(f) **Payment Calculation:** Under this section, the total amount of the transition payment made to a producer shall be determined by multiplying--

(1) \$4.00; by

(2) the average quantity of the kind of tobacco produced by the producer for each of the 1995 through 1997 crops.

SEC. 1004. EFFECTIVE DATE.

This title takes effect on the day after the date of enactment of this Act.

Amendment No. 2502

In lieu of the matter proposed to be inserted for title X, insert the following:

TITLE X--PAYMENTS TO TOBACCO FARMERS

SEC. 1001. BUDGETARY TREATMENT.

Subtitle A of title XV 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 subtitle A of title XV.

SEC. 1002. BUYOUT PAYMENTS TO OWNERS.

(a) **In General:** Notwithstanding, and in lieu of, section 1514, the Secretary of Agriculture shall make buyout payments for each of the 1999 through 2001 marketing years for each kind of tobacco involved to an owner that owns quota at the time of entering into a tobacco transition contract.

(b) **Allocation:** Of the total amount of buyout payments made under subsection (a)--

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

<u>THIS SEARCH</u>	<u>THIS DOCUMENT</u>	<u>THIS CR ISSUE</u>	<u>GO TO</u>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

LUGAR (AND MCCONNELL) AMENDMENTS NOS. 2492-2502 (Senate - June 05, 1998)

- (1) 46 percent shall be made for the 1999 marketing year;
- (2) 27 percent shall be made for the 2000 marketing year; and
- (3) 27 percent shall be made for the 2001 marketing year.
- (c) **Compensation for Lost Value:** The payment shall constitute compensation for the lost value to the owner of the quota.
- (d) **Payment Calculation:** Under this section, the total amount of the buyout payment made to an owner shall be determined by multiplying--

- (1) \$8.00; by
- (2) the average annual quantity of quota owned by the owner during the 1995 through 1997 crop years.

SEC. 1003. TRANSITION PAYMENTS TO PRODUCERS.

(a) **In General:** Notwithstanding, and in lieu of, section 1515, the Secretary of Agriculture shall make transition payments for each of the 1999 through 2001 marketing years for each kind of tobacco produced, to a producer that--

- (1) produced the kind of tobacco for each of the 1995 through 1997 crops; and
- (2) entered into a tobacco transition contract.
- (b) **Allocation:** Of the total amount of transition payments made under subsection (a)--

- (1) 46 percent shall be made for the 1999 marketing year;
- (2) 27 percent shall be made for the 2000 marketing year; and
- (3) 27 percent shall be made for the 2001 marketing year.
- (c) **Transition Payments Limited to Leased Quota:** A producer shall be eligible for transition payments only for the portion of the production of the producer that is subject to quota that is leased (as defined in section 1503(5) of this Act) during the 3 crop years described in subsection (a)(1).
- (d) **Compensation for Lost Revenue:** The payments shall constitute compensation for the lost revenue incurred by a tobacco producer for a kind of tobacco.
- (e) **Production History; Production:**

(1) **Production history:** The Secretary shall base a transition payment made to a producer on the average quantity of tobacco subject to a marketing quota that is produced by the producer for each of the 1995 through 1997 crops.

(2) **Production:** The producer shall have the burden of demonstrating to the Secretary the production of tobacco for each of the 1995 through 1997 crops.

(f) **Payment Calculation:** Under this section, the total amount of the transition payment made to a producer shall be determined by multiplying--

(1) \$4.00; by

(2) the average quantity of the kind of tobacco produced by the producer for each of the 1995 through 1997 crops.

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
<u>Next Hit</u>	Forward	Next Document	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	Prev Document	<u>HomePage</u>
<u>Hit List</u>	Best Sections	Daily Digest	<u>Help</u>
	<u>Doc Contents</u>		

<u>THIS SEARCH</u>	<u>THIS DOCUMENT</u>	<u>THIS CR ISSUE</u>	<u>GO TO</u>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

SESSIONS (AND OTHERS) AMENDMENT NO. 2459 (Senate - June 05, 1998)

[Page: S5702]

(Ordered to lie on the table.)

Mr. SESSIONS (for himself, Mr. Jeffords, Mr. Enzi, and Mr. Faircloth) submitted an amendment intended to be proposed by them to the bill, S. 1415, supra; as follows:
Beginning on page 435, strike line 12 and all that follows through line 4 on page 442, and insert the following:

SEC. 1413. NATIONAL TOBACCO COMPENSATION PROGRAM.

(a) **Administration by Secretary:** The Secretary of Health and Human Services (referred to in this section as the 'Secretary') shall administer the Voluntary National Tobacco Compensation Program (referred to in this section as the 'Program') established under this section.

(b) **Voluntary Payments by Industry:**

(1) **Certain tobacco product manufacturers:** The amount of the voluntary contributions described in this subsection for each year during which the Program is in existence shall equal, in the aggregate, \$8,000,000,000, to be 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) **Contributions in future years:** If contributions under paragraph (1) result in amounts in the fund exceeding \$25,000,000,000 in any fiscal year, any such excess amount shall be made available to the States as provided for in section 452.

(3) **No contribution from other tobacco product manufacturers:** No other tobacco product manufacturer may make contributions under this subsection unless such manufacturer is the successor or assign of one or more of the manufacturers described in paragraph (1).

(4) **Commencement of program:** The Program shall commence operations on the date on which at least 1 manufacturer has paid the full share of its contribution under this subsection. The Program shall only be available to those manufacturers that have contributed their full shares under this subsection.

(c) **Responsibility of Secretary:** The Secretary shall administer the Program pursuant to the guidelines established by the National Tobacco Compensation Commission established under subsection (d).

(d) **National Tobacco Compensation Commission:**

(1) **Establishment:** There is hereby established a commission to be known as the 'National Tobacco

Compensation Commission' (referred to in this subsection as the 'Commission').

(2) **Composition:** The Commission shall be composed of 7 members, of which--

(A) 1 member shall be appointed by the President;

(B) 2 members shall be appointed by the Majority Leader of the Senate;

(C) 1 member shall be appointed by the Minority Leader of the Senate;

(D) 2 members shall be appointed by the Speaker of the House of Representatives; and

(E) 1 member shall be appointed by the Minority Leader of the House of Representatives.

(3) **Time for appointment, terms and vacancies:** The members of the Commission shall be appointed not later than 90 days after the date of enactment of this Act. A vacancy in the Commission shall not affect the powers of the Commission and shall be filled in the same manner in which the original appointment was made.

(4) **Compensation and expenses:** Members of the Commission may not receive compensation for service on the Commission. Such members may, in accordance with chapter 57 of title 5, United States Code, be reimbursed for reasonable travel, subsistence, and other necessary expenses incurred in carrying out the duties of the Commission, notwithstanding the limitations contained in sections 5701 through 5733 of such title 5.

(5) **Establishment of program:** Not later than 90 days after the expiration of the period described in paragraph (3), the Commission, in consultation with the Secretary and the Congress, shall establish a Voluntary National Tobacco Compensation Program to provide compensation to claimants who have a total disability or terminal disease, as classified under the list developed under subsection (e)(2), that is directly attributable to the use of a tobacco product in accordance with subsection (e)(3). Such program shall, subject to the payment of contributions under subsection (b), continue in operation for the 25-year period beginning on the date of enactment of this Act, or until the provisions of this title are repealed, whichever occurs first. Congress may at any time act to reauthorize and extend the Program established under this section.

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
<u>Next Hit</u>	<u>Forward</u>	Next Document	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	Prev Document	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	Daily Digest	<u>Help</u>
	<u>Doc Contents</u>		

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

SESSIONS (AND OTHERS) AMENDMENT NO. 2459 (Senate - June 05, 1998)

(6) Duties: The Commission shall--

- (A) annually meet and review the most recent scientific developments and research relating to tobacco use and update the comprehensive list described in subsection (e)(2);
- (B) develop rules and procedures for the administration of the program established under this section;
- (C) develop procedures for paying compensation to claimants under this section, including procedures to provide for the payment of such claims over more than 1 year if sufficient funds are not available under subsection (b) for the year in which the claim is made;
- (D) develop procedures for the submission of conflicts to binding arbitration;
- (E) procedures for waiving the compensation limitations described in subsection (e) in cases of extraordinary circumstances;
- (F) procedures for the conduct of internal reviews under subsection (e)(8)(A);
- (G) carry out any other activities determined appropriate by the Commission; and
- (H) at its discretion based on the remaining funds make a determination as to the availability of the Program for individuals with a partial disability that is directly attributable to the use of a tobacco product in accordance with subsection (e)(3), while assuring that claimants suffering from a total disability or terminal disease that is directly attributable to the use of a tobacco product have a priority when applying for compensation under the Program.

(7) Report:

(A) In general: Not later than 180 days after the expiration of the period described in paragraph (3), the Commission shall prepare a report that describes the establishment, guidelines and operations of the Program, that recommends adjustments in the contribution levels under subsection (b), that provides the list of illnesses described in subsection (e)(3), and that provides the procedures described in subsection (e)(5).

(B) Submission: The report described in subparagraph (A) shall be submitted to the--

- (i) President and the Secretary;
- (ii) Majority and Minority Leaders of the Senate;
- (iii) Committees on Commerce, Labor and Human Resources, Finance, and Judiciary of the Senate;
- (iv) Speaker and Minority Leader of the House of Representatives; and
- (v) Committees on Commerce, Judiciary, and Ways and Means of the House of Representatives.

(8) **Information:** Each department, agency, and instrumentality of the executive branch of the Federal Government, including independent agencies, shall furnish to the Commission, upon request by the Commission, such information as the Commission determines to be necessary to carry out its functions under this section.

(9) **Use of services and facilities:** The Commission may utilize the services and facilities of any Federal agency without reimbursement, may accept voluntary services notwithstanding section 1342 of title 31, United States Code, and may enter into contracts with any public or private person or entity for reports or research in furtherance of the work of the Commission.

(10) **Termination:** The Commission shall terminate on the date that is 5 years after the date on which the final report of the Commission is submitted under paragraph (7). Congress may at any time act to reauthorize and extend the Commission established under this subsection.

(11) **Authorization of Appropriations:** Subject to the limitation described in subsection (e), there is authorized to be appropriated not to exceed \$1,000,000 for each of the fiscal years during which the Commission is in operation, from the National Tobacco Settlement Trust Fund to carry out this section.

(e) **Procedure:** The Commission, in developing the National Tobacco Compensation Program under subsection (d), shall establish--

(1) procedures under which an individual with a disease described in subsection (d)(5) may file a one-time administrative claim per separate and distinct disease with the Secretary seeking compensation for any and all diseases and conditions appearing on the comprehensive list described in paragraph (2);

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
<u>Next Hit</u>	<u>Forward</u>	Next Document	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	Prev Document	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	Daily Digest	<u>Help</u>
	<u>Doc Contents</u>		

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
<u>Next Hit</u>	<u>Forward</u>	Next Document	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	Prev Document	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	Daily Digest	<u>Help</u>
	<u>Doc Contents</u>		

SESSIONS (AND OTHERS) AMENDMENT NO. 2459 (Senate - June 05, 1998)

(2) procedures to ensure that such claims are submitted on a form to be developed by the Commission that shall contain--

(A) the name and address of the individual;

(B) a description of the disease or condition for which the individual is seeking compensation; and

(C) any other supporting documentation that is determined appropriate by the Commission or the Secretary;

(3) in consultation with the Centers for Disease Control and Prevention, the Department of Health and Human Services, and appropriate committees of Congress, a comprehensive list of diseases and conditions which constitute total disability or are terminal for purposes of paying claims brought under this section on an equitable basis, taking into consideration age and tobacco product use history, including tobacco use in conjunction with exposure to asbestos and black lung disease;

(4) procedures to require that a claimant provide supporting documentation that such claimant has a compensable disease that is directly attributable to the use of tobacco, including documentation pertaining to the claimants tobacco use history and exposure to asbestos or black lung disease;

(5) procedures, in order to make a determination with respect to a claim under paragraph (2), or to make a determination with respect to the amount of compensation for which a claimant is eligible, for the requesting from a claimant of additional information relating to the disease or condition involved;

(6) procedures for the implementation of a schedule to pay claims in a manner that ensure the full payment of claims;

(7) streamlined procedures so as to ensure that a claimant is not required to be represented by an attorney;

(8) procedures to provide for the resolution of disputes regarding determinations of the Secretary concerning the eligibility of the claimant for compensation, or the amount of compensation to be paid, under which the claimant may--

(A) obtain an internal review of the determination of the Secretary;

(B) after a review under subparagraph (A), submit the dispute to arbitration as described in subsection (d)(6)(D) under procedures to be established by the Commission; and

(C) after an arbitration hearing under subparagraph (B), file a civil action against the manufacturer involved;

(9) procedures to provide for the collection of voluntary contributions under subsection (b); and

(10) procedures to ensure that the liability of manufacturers for claims under this section are separate

based on the illnesses involved and the nature of the tobacco product involved.

(f) **No Judicial Action:** Except as provided in subsection (e)(8)(C), upon the contribution of funds as provided for under subsection (b), an individual may not commence a tobacco claim in any Federal or State court against a tobacco product manufacturer who makes such a contribution.

(g) **Administration and Attorneys Fees:**

(1) **In general:** The procedures developed under subsection (e) shall ensure that amounts paid from the Program in connection with administrative costs do not exceed an amount equal to 10 percent of the amounts available under the program in each fiscal year.

(2) **Attorneys fees:**

(A) **In general:** Procedures developed under subsection (e) shall provide that, whenever the Secretary renders a determination favorable to a claimant under the Program and that claimant was represented by an attorney, the Secretary may determine and allow as part of its determination a reasonable fee for such representation, not in excess of 10 percent of the total of the benefits to which the claimant is entitled by reason of such determination. In case of any such determination, no fee may be payable or certified for payment for such representation except as provided in this paragraph.

(B) **Limitation:** Any attorney who charges, demands, receives, or collects for services rendered in connection with proceedings to which subparagraph (A) applies, any amount in excess of that permitted under such subparagraph (A) shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than \$500, or imprisonment for not more than 1 year, or both.

(h) **Time for Payment:** The Secretary shall take steps to ensure that, to the maximum extent practicable, claimants receive compensation in accordance with this section not later than 90 days after the date on which the claim involved is filed.

(i) **Limitation With Respect to Prisoners:** No individual incarcerated in a Federal, State or local prison or jail may file a claim with the Program under this section.

(j) **Applicability:** This section shall apply as provided for under subsection (b)(4). The provisions of section 1412 shall apply only if the voluntary contributions are not made in any year or are less than the amount described in subsection (b) in any year.

(k) **Effective Date:** The Secretary shall implement the compensation program under this section not later than 90 days after the date on which the report of the Commission is submitted under subsection (d)(7).

THIS SEARCH

- [Next Hit](#)
- [Prev Hit](#)
- [Hit List](#)

THIS DOCUMENT

- [Forward](#)
- [Back](#)
- [Best Sections](#)
- [Doc Contents](#)

THIS CR ISSUE

- [Next Document](#)
- [Prev Document](#)
- [Daily Digest](#)

GO TO

- [New CR Search](#)
 - [HomePage](#)
 - [Help](#)
-

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
Next Hit	Forward	Next Document	New CR Search
Prev Hit	Back	Prev Document	HomePage
Hit List	Best Sections	Daily Digest	Help
	Doc Contents		

[Full Display](#) ^{NEW} - 5,853 bytes. [\[Help\]](#)

SMITH AMENDMENT NO. 2435 (Senate - May 21, 1998)

[Page: S5334]

(Ordered to lie on the table.)

Mr. SMITH of Oregon 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:

[Page: S5335]

On page 182, strike lines 11 through 23, and insert the following:

(b) **Annual Payments:** Each calendar year beginning after the required payment date under subsection (a)(3) the participating tobacco product manufacturers shall make total payments into the Fund for each calendar year in the following applicable base amounts, subject to adjustment as provided in paragraph (4) and section 403:

- (1) For year 1--\$14,400,000,000;
- (2) For year 2, an amount equal to the product of \$1.00 and the total number of units of tobacco products that were sold in the United States in the previous year.
- (3) For year 3, an amount equal to the product of \$1.50 and the total number of units of tobacco products that were sold in the United States in the previous year.
- (4) For year 4, and each subsequent year, an amount equal to the amount paid in the prior year, multiplied by a ratio in which the numerator is the number of units of tobacco products sold in the prior year and the denominator is the number of units of tobacco products sold in the year before the prior year, adjusted in accordance with section 403.

Beginning on page 192, strike line 6 and all that follows through line 23 on page 199, and insert the following:

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, 10 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.

(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 including smoking cessation and related public health programs.

(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) **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), 10 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) For the Centers for Disease Control under section 1991C of the Public Health Service Act, as added by this Act, of the total amounts allocated to this account, not more than 5 percent shall be used for this purpose.

(B) For the National Institutes of Health under section 1991D of the Public Health Service Act, as added by this Act. Of the total amounts allocated to this account, not more than 5 percent shall be used for this purpose.

(c) **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 10 percent shall be allocated to this account for the first 10 years after the date of enactment of this Act.

(2) **Appropriation:** Amounts allocated to this account are hereby appropriated and shall be available until expended for the purposes of section 1012.

(d) **Medicare Preservation Account:** There is established within the trust fund a separate account, to be known as the Medicare Preservation Account. Of the net revenues credited to the trust fund under section 401(b)(1) in each fiscal year 70 percent, and all of the revenues credited to the trust fund under section 401(b)(3), shall be allocated to this account for the first 10 years after the date of enactment of this Act. Funds credited to this account shall be transferred to the Medicare Hospital Insurance Trust Fund.

THIS SEARCH

[Next Hit](#)
[Prev Hit](#)
[Hit List](#)

THIS DOCUMENT

[Forward](#)
[Back](#)
[Best Sections](#)
[Doc Contents](#)

THIS CR ISSUE

[Next Document](#)
[Prev Document](#)
[Daily Digest](#)

GO TO

[New CR Search](#)
[HomePage](#)
[Help](#)

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
Next Hit	Forward	<u>Next Document</u>	<u>New CR Search</u>
Prev Hit	Back	<u>Prev Document</u>	<u>HomePage</u>
Hit List	Best Sections	<u>Daily Digest</u>	<u>Help</u>
	Doc Contents		

Full Display ^{NEW} - 440 bytes.[\[Help\]](#)

SMITH AMENDMENT NO. 2572 (Senate - June 09, 1998)

[Page: S5800]

(Ordered to lie on the table.)

Mr. SMITH of Oregon submitted an amendment intended to be proposed by him to amendment No. 2435 proposed by him to the bill, S. 1415, supra; as follows:

Beginning on page 1 of the amendment strike line 1 and all that follows through line 15 on page 2.

<u>THIS SEARCH</u>	<u>THIS DOCUMENT</u>	<u>THIS CR ISSUE</u>	<u>GO TO</u>
<u>Next Hit</u>	<u>Forward</u>	Next Document	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	Prev Document	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	Daily Digest	<u>Help</u>
	<u>Doc Contents</u>		

SNOWE AMENDMENTS NOS. 2476-2477 (Senate - June 05, 1998)

[Page: S5706]

(Ordered to lie on the table.)

Ms. SNOWE submitted two amendments intended to be proposed by her to the bill, S. 1415, supra; as follows:

Amendment No. 2476

On page 408, between lines 5 and 6, insert the following:

Subtitle A--Provisions Relating to the Protocol and Liability'

On page 444, after line 14, insert the following:

Subtitle B--Codification of Marketing and Advertising Restrictions

SEC. 1421. FINDINGS.

To demonstrate the need for restrictions on the marketing and advertising of tobacco products, and to demonstrate that the restrictions contained in this subtitle are constitutional and meet the requirements of the *Central Hudson* case that the asserted governmental interest is substantial, directly advances the governmental interest, and is no more extensive than is necessary to serve that governmental interest, Congress makes the following findings:

- (1) The sale of tobacco to minors is illegal in the United States. Therefore, forms of marketing and advertising that appeal to children must be restricted accordingly.
- (2) Substantial restrictions on tobacco marketing and advertising are necessary to protect the public health, reduce the illegal sale and purchase of tobacco products by minors, and reduce the cost of tobacco-related illnesses on Federal and State health care programs.
- (3) As recognized in *New York v. Ferber*, protecting the physical and psychological well-being of children is a compelling, not merely a substantial, interest of the government.
- (4) The cost of tobacco on public health care programs is substantial as evidenced by a 1995 study by Columbia University that found that the estimated cost of tobacco on the medicare and medicaid programs was \$25,500,000,000 and \$8,200,000,000 respectively. Therefore, reducing these costs, which absorb substantial public resources, by reducing the utilization of tobacco would serve a substantial government interest.

(5) According to the 1994 Surgeon General's Report, nearly 90 percent of all adults who have ever been regular smokers began smoking at or before the age of 18, and, according to a Robert Wood Johnson Foundation Survey, the average smoker begins smoking at age 13 and is hooked by age 14 1/2 . Therefore, reducing the attractiveness of tobacco to children will reduce the likelihood that a child ever tries tobacco, and ensure that the long-term costs of tobacco-related illnesses will be averted.

(6) Marketing and advertising plays a significant role in attracting teens to tobacco and determining the brands that they use. According to the Centers for Disease Control and Prevention, 86 percent of children who buy their own cigarettes choose one of the 3 most heavily advertised brands (Marlboro (60 percent), Camel (13.3 percent), or Newport (12.7 percent)). In contrast, most adult smokers opt for generic or 'value category' cigarette brands that rely on little, if any, image advertising.

(7) Tobacco industry documents and memorandums make clear that the industry considers children a key market, studied the smoking habits of children, and developed products and marketing campaigns that are directly intended to attract children to the purchase and use of their products.

(8) According to a 1995 study by The Journal of the National Cancer Institute, tobacco marketing has a greater influence in spurring children to take up smoking than exposure to parents or peers who smoke, and must be restricted accordingly.

(9) Children are more sensitive to tobacco advertising than adults, as evidenced by a 1996 study in the Journal of Marketing that found that children are 3 time more sensitive than adults to cigarette advertising.

(10) Tobacco advertising in magazines and periodicals influences the decision of children to use tobacco, as cited in the proceedings of the Food and Drug Administration and its supporting documents, In addition, children who report seeing cigarette advertising in magazines are more likely to experiment with tobacco.

THIS SEARCH

[Next Hit](#)
[Prev Hit](#)
[Hit List](#)

THIS DOCUMENT

[Forward](#)
[Back](#)
[Best Sections](#)
[Doc Contents](#)

THIS CR ISSUE

[Next Document](#)
[Prev Document](#)
[Daily Digest](#)

GO TO

[New CR Search](#)
[HomePage](#)
[Help](#)

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

SNOWE AMENDMENTS NOS. 2476-2477 (Senate - June 05, 1998)

(11) Cartoon images in advertising greatly enhance the appeal of tobacco to children, as evidenced by the 'Joe Camel' marketing campaign. According to the Centers for Disease Control and Prevention, when advertising for the 'Joe Camel' campaign rose from \$27,000,000 to \$43,000,000 between 1989 and 1993, Camel's market share among youth increased by more than 50 percent while it's share among adults was unchanged. Therefore, because cartoon advertising has been demonstrated to be a direct appeal to minors and not adults, such images should be banned.

(12) Children as young as 3 to 6 years of age can recognize a character associated with smoking at the same rate as they recognize cartoons and fast food characters.

(13) Human and animal images in tobacco advertising, and the themes that these images portray, have a profound impact on children, as evidenced by the 'Marlboro Man' and the 'Marlboro Horses'. The image of independence and freedom conveyed by these images has led to Marlboro cigarettes capturing nearly 60 percent of the youth market even though the brand accounts for only 12.7 percent of cigarette advertising overall. Therefore, images portraying human and animal images should be restricted to adult-only venues.

(14) Event sponsorships by tobacco companies increase the likelihood that children will use tobacco as these events connect the product to individuals and activities that are admired and respected by children.

(15) According to a report in the American Journal of Public Health, the observation of tobacco marketing in stores is a significant predictor of a child's likelihood of experimenting with tobacco, increasing the probability by 38 percent. Therefore, in-store marketing should be restricted accordingly.

(16) Tobacco promotions greatly enhance the likelihood that children will use tobacco products, as evidenced by a November 1996 study in the American Journal of Public Health. This study found that a child who was simply aware of tobacco promotions was twice as likely to use tobacco as a child who was not. In addition, it found that a child who is aware of tobacco promotion, has knowledge of an adolescent friend with promotional items, and participates in a promotional activity is 9.3 time more likely to use tobacco.

(17) A 1998 study of teenagers in the Journal of the American Medical Association showed that tobacco industry promotional activities influenced previously non-susceptible non-smokers to become susceptible or to experiment with smoking.

(18) Restrictions on the number and placement of point-of-sale advertisements in stores and other outlets that are permissible for children to enter are necessary to reduce the appeal of tobacco products to children, while ensuring that consumers who can legally purchase these products are able to receive useful information.

(19) As demonstrated in the Food and Drug Administration rule, billboards and other forms of outdoor advertising that are located near schools and playgrounds can affect the decision of children to use tobacco products. Therefore, bans on these forms of advertising near these facilities, and within distances that are frequently traveled by children to access these facilities, would be a narrowly-tailored method of fulfilling the government interest, while still allowing information to be provided in this

format to consumers who can legally purchase these products at other locations that are less-frequently viewed by children.

(20) 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.

(21) Because children are influenced by the images, habits, and mannerisms depicted by actresses and actors in movies and other forms of print and film media, tobacco companies should not be permitted to receive payments for the inclusion of logos, symbols, or mottoes in these types of venues if they will be viewed by children under the age of 18 without the supervision of a parent or guardian.

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

<u>THIS SEARCH</u>	<u>THIS DOCUMENT</u>	<u>THIS CR ISSUE</u>	<u>GO TO</u>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

SNOWE AMENDMENTS NOS. 2476-2477 (Senate - June 05, 1998)

(22) Because children are influenced by the behavior of musical and other live entertainers whom they admire, payments by tobacco companies to live entertainers or their agents should be restricted at events in which individuals under the age of 18 are permitted to attend, and a substantial number of these individuals would reasonably be expected to attend.

(23) To ensure that advertising and marketing efforts are not deceptive or misleading, descriptors such as 'light' and 'low tar' should be accompanied by a disclaimer that the product is not less hazardous than any other tobacco product.

(24) Restrictions on the placement of advertisements in buses, subways, and other forms of public transportation that are reasonably expected to be utilized by a significant number of children on a daily basis will ensure that children are not exposed to such advertising for an extended period of time during a commute, and will reduce the susceptibility of children to tobacco advertising accordingly.

[Page: S5707]

SEC. 1422. ADVERTISING PROVISIONS.

(a) **In General:** A tobacco product may not be sold or distributed in the United States--

(1) if its advertising or labeling (including the package)--

(A) contains a cartoon character;

(B) except as provided in subsection (b), contains a human image or animal image;

(C) appears in an enclosed stadia during events that are conducted with a reasonable expectation that 5 percent or more of the attendees will be under the age of 18 years;

(D) appears within 5000 feet of any elementary or secondary school, playground, or public park containing playground equipment;

(E) appears in public transportation, including buses, subways, and trains, that is reasonably expected to be utilized by 5 percent or more of passengers under the age of 18 years on an average daily basis; or

(F) contains words such as 'light' or 'low tar' and is not accompanied by a disclaimer that words such as 'light' or 'low tar' describing the product do not render the product less hazardous than any other tobacco product, in addition to such other requirements as the Secretary may impose;

(2) if a logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of the tobacco product that would be readily identifiable, and therefore appealing, to individuals under the age of 18 years is contained in a movie, program, or video game that an individual under the age of 18 years is able to attend or utilize without the accompaniment or consent of a parent or adult age 18 years or older for which a direct or indirect payment has been made to ensure its placement; or

(3) if a direct or indirect payment has been made by any manufacturer, distributor, or retailer to any

entity for the purpose of promoting the image or use of a tobacco product through print or film media that is recognizable, and therefore appealing, to individuals under the age of 18 years and at which individuals under the age of 18 years are permitted to attend without the accompaniment or consent of a parent or adult age 18 years or older, or through a live performance by an entertainment artist where individuals under the age of 18 years are permitted to attend without the accompaniment of a parent or adult age 18 years or older, and would reasonable expect that 5 percent or more of the audience will be under the age of 18 years.

(b) **Exception:** The prohibition contained in subsection (a)(1)(B) shall not apply to a tobacco product advertisement that appears in an adult-only facility, or in any publication which the 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 2,000,000 persons under the age of 18 years as measured by competent and reliable survey evidence.

<u>THIS SEARCH</u>	<u>THIS DOCUMENT</u>	<u>THIS CR ISSUE</u>	<u>GO TO</u>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

<u>THIS SEARCH</u>	<u>THIS DOCUMENT</u>	<u>THIS CR ISSUE</u>	<u>GO TO</u>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

SNOWE AMENDMENTS NOS. 2476-2477 (Senate - June 05, 1998)

SEC. 1423. POINT-OF-SALE RESTRICTIONS.

(a) **In General:** Except as provided in subsection (b), no manufacturer, distributor, or retailer shall engage in point-of-sale advertising of any tobacco product in any retail establishment (other than an establishment that sells only tobacco products) in which an individual under the age of 18 is present, or permitted to enter, at any time.

(b) **Exception:**

(1) **In general:** A retailer may place 1 point-of-sale advertisement in or at each such location for its brand or the contracted house retailer or private label brand of its wholesaler.

(2) **Display area:** The display area of any point-of-sale advertisement permitted under paragraph (1) (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) **Limitation:** A point-of-sale advertisement permitted under paragraph (1) shall not be attached to or located within 2 feet of any display fixture on which candy is displayed for sale.

(c) **Audio and Video:** Any audio or video format permitted under regulations promulgated by the Secretary may be distributed at the time of sale of a tobacco product to individuals over the age of 18 years, but no such format may be played or shown in or at any location where tobacco products are offered for sale and individuals under the age of 18 years are permitted.

(d) **Definition:** As used in this section, the terms 'point-of-sale advertisement' and 'point-of-sale advertising' mean all printed or graphical materials 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 reasonable be anticipated to be seen by customers at a location where tobacco products are offered for sale.

SEC. 1424. STATUTORY ADVERTISING RESTRICTIONS.

(a) **Authority of Secretary:** The provisions of this subtitle shall in no way affect the authority of the Secretary to regulate tobacco as prescribed in any other provision of this Act or an amendment made by this Act.

(b) **Authority of Federal Trade Commission:** The provisions of this subtitle shall in no way affect the authority of the Federal Trade Commission to regulate tobacco as prescribed in any other provision of this Act or an amendment made by this Act.

(c) **Severability:** If any provision of this subtitle or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this subtitle and the application of the provisions of such to any person or circumstance shall not be affected thereby.

Amendment No. 2477

On page 408, between lines 5 and 6, insert the following:

Subtitle A--Provisions Relating to the Protocol and Liability'

On page 444, after line 14, insert the following:

Subtitle B--Codification of Marketing and Advertising Restrictions

SEC. 1421. FINDINGS.

To demonstrate the need for restrictions on the marketing and advertising of tobacco products, and to demonstrate that the restrictions contained in this subtitle are constitutional and meet the requirements of the *Central Hudson* case that the asserted governmental interest is substantial, directly advances the governmental interest, and is no more extensive than is necessary to serve that governmental interest, Congress makes the following findings:

- (1) The sale of tobacco to minors is illegal in the United States. Therefore, forms of marketing and advertising that appeal to children must be restricted accordingly.

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
<u>Next Hit</u>	<u>Forward</u>	Next Document	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	Prev Document	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	Daily Digest	<u>Help</u>
	<u>Doc Contents</u>		

<u>THIS SEARCH</u>	<u>THIS DOCUMENT</u>	<u>THIS CR ISSUE</u>	<u>GO TO</u>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

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(d) **Definition:** As used in this section, the terms 'point-of-sale advertisement' and 'point-of-sale advertising' mean all printed or graphical materials 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 reasonable be anticipated to be seen by customers at a location where tobacco products are offered for sale.

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<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
<u>Next Hit</u>	<u>Forward</u>	Next Document	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	Prev Document	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	Daily Digest	<u>Help</u>
	<u>Doc Contents</u>		

<u>THIS SEARCH</u>	<u>THIS DOCUMENT</u>	<u>THIS CR ISSUE</u>	<u>GO TO</u>
<u>Next Hit</u>	<u>Forward</u>	Next Document	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	Prev Document	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	Daily Digest	<u>Help</u>
	<u>Doc Contents</u>		

SNOWE AMENDMENTS NOS. 2476-2477 (Senate - June 05, 1998)

(2) Substantial restrictions on tobacco marketing and advertising are necessary to protect the public health, reduce the illegal sale and purchase of tobacco products by minors, and reduce the cost of tobacco-related illnesses on Federal and State health care programs.

(3) As recognized in *New York v. Ferber*, protecting the physical and psychological well-being of children is a compelling, not merely a substantial, interest of the government.

(4) The cost of tobacco on public health care programs is substantial as evidenced by a 1995 study by Columbia University that found that the estimated cost of tobacco on the medicare and medicaid programs was \$25,500,000,000 and \$8,200,000,000 respectively. Therefore, reducing these costs, which absorb substantial public resources, by reducing the utilization of tobacco would serve a substantial government interest.

(5) According to the 1994 Surgeon General's Report, nearly 90 percent of all adults who have ever been regular smokers began smoking at or before the age of 18, and, according to a Robert Wood Johnson Foundation Survey, the average smoker begins smoking at age 13 and is hooked by age 14 1/2 . Therefore, reducing the attractiveness of tobacco to children will reduce the likelihood that a child ever tries tobacco, and ensure that the long-term costs of tobacco-related illnesses will be averted.

(6) Marketing and advertising plays a significant role in attracting teens to tobacco and determining the brands that they use. According to the Centers for Disease Control and Prevention, 86 percent of children who buy their own cigarettes choose one of the 3 most heavily advertised brands (Marlboro (60 percent), Camel (13.3 percent), or Newport (12.7 percent)). In contrast, most adult smokers opt for generic or 'value category' cigarette brands that rely on little, if any, image advertising.

(7) Tobacco industry documents and memorandums make clear that the industry considers children a key market, studied the smoking habits of children, and developed products and marketing campaigns that are directly intended to attract children to the purchase and use of their products.

(8) According to a 1995 study by The Journal of the National Cancer Institute, tobacco marketing has a greater influence in spurring children to take up smoking than exposure to parents or peers who smoke, and must be restricted accordingly.

(9) Children are more sensitive to tobacco advertising than adults, as evidenced by a 1996 study in the Journal of Marketing that found that children are 3 time more sensitive than adults to cigarette advertising.

(10) Tobacco advertising in magazines and periodicals influences the decision of children to use tobacco, as cited in the proceedings of the Food and Drug Administration and its supporting documents, In addition, children who report seeing cigarette advertising in magazines are more likely to experiment with tobacco.

(11) Cartoon images in advertising greatly enhance the appeal of tobacco to children, as evidenced by the 'Joe Camel' marketing campaign. According to the Centers for Disease Control and Prevention, when advertising for the 'Joe Camel' campaign rose from \$27,000,000 to \$43,000,000 between 1989 and

1993, Camel's market share among youth increased by more than 50 percent while it's share among adults was unchanged. Therefore, because cartoon advertising has been demonstrated to be a direct appeal to minors and not adults, such images should be banned.

(12) Children as young as 3 to 6 years of age can recognize a character associated with smoking at the same rate as they recognize cartoons and fast food characters.

(13) Human and animal images in tobacco advertising, and the themes that these images portray, have a profound impact on children, as evidenced by the 'Marlboro Man' and the 'Marlboro Horses'. The image of independence and freedom conveyed by these images has led to Marlboro cigarettes capturing nearly 60 percent of the youth market even though the brand accounts for only 12.7 percent of cigarette advertising overall. Therefore, images portraying human and animal images should be restricted to adult-only venues.

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
Next Hit	Forward	Next Document	New CR Search
Prev Hit	Back	Prev Document	HomePage
Hit List	Best Sections	Daily Digest	Help
	Doc Contents		

SNOWE AMENDMENTS NOS. 2476-2477 (Senate - June 05, 1998)

(14) Event sponsorships by tobacco companies increase the likelihood that children will use tobacco as these events connect the product to individuals and activities that are admired and respected by children.

(15) According to a report in the American Journal of Public Health, the observation of tobacco marketing in stores is a significant predictor of a child's likelihood of experimenting with tobacco, increasing the probability by 38 percent. Therefore, in-store marketing should be restricted accordingly.

(16) Tobacco promotions greatly enhance the likelihood that children will use tobacco products, as evidenced by a November 1996 study in the American Journal of Public Health. This study found that a child who was simply aware of tobacco promotions was twice as likely to use tobacco as a child who was not. In addition, it found that a child who is aware of tobacco promotion, has knowledge of an adolescent friend with promotional items, and participates in a promotional activity is 9.3 time more likely to use tobacco.

(17) A 1998 study of teenagers in the Journal of the American Medical Association showed that tobacco industry promotional activities influenced previously non-susceptible non-smokers to become susceptible or to experiment with smoking.

(18) Restrictions on the number and placement of point-of-sale advertisements in stores and other outlets that are permissible for children to enter are necessary to reduce the appeal of tobacco products to children, while ensuring that consumers who can legally purchase these products are able to receive useful information.

(19) As demonstrated in the Food and Drug Administration rule, billboards and other forms of outdoor advertising that are located near schools and playgrounds can affect the decision of children to use tobacco products. Therefore, bans on these forms of advertising near these facilities, and within distances that are frequently traveled by children to access these facilities, would be a narrowly-tailored method of fulfilling the government interest, while still allowing information to be provided in this format to consumers who can legally purchase these products at other locations that are less-frequently viewed by children.

(20) 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.

(21) Because children are influenced by the images, habits, and mannerisms depicted by actresses and actors in movies and other forms of print and film media, tobacco companies should not be permitted to receive payments for the inclusion of logos, symbols, or mottoes in these types of venues if they will be viewed by children under the age of 18 without the supervision of a parent or guardian.

(22) Because children are influenced by the behavior of musical and other live entertainers whom they admire, payments by tobacco companies to live entertainers or their agents should be restricted at events in which individuals under the age of 18 are permitted to attend, and a substantial number of these individuals would reasonably be expected to attend.

(23) To ensure that advertising and marketing efforts are not deceptive or misleading, descriptors such as 'light' and 'low tar' should be accompanied by a disclaimer that the product is not less hazardous than any other tobacco product.

(24) Restrictions on the placement of advertisements in buses, subways, and other forms of public transportation that are reasonably expected to be utilized by a significant number of children on a daily basis will ensure that children are not exposed to such advertising for an extended period of time during a commute, and will reduce the susceptibility of children to tobacco advertising accordingly.

SEC. 1422. ADVERTISING PROVISIONS.

(a) **In General:** A tobacco product may not be sold or distributed in the United States--

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
<u>Next Hit</u>	<u>Forward</u>	Next Document	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	Prev Document	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	Daily Digest	<u>Help</u>
	<u>Doc Contents</u>		

<u>THIS SEARCH</u>	<u>THIS DOCUMENT</u>	<u>THIS CR ISSUE</u>	<u>GO TO</u>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

SNOWE AMENDMENTS NOS. 2476-2477 (Senate - June 05, 1998)

(1) if its advertising or labeling (including the package)--

(A) contains a cartoon character;

(B) except as provided in subsection (b), contains a human image or animal image;

(C) appears in an enclosed stadia during events that are conducted with a reasonable expectation that 5 percent or more of the attendees will be under the age of 18 years;

(D) appears within 5000 feet of any elementary or secondary school, playground, or public park containing playground equipment;

(E) appears in public transportation, including buses, subways, and trains, that is reasonably expected to be utilized by 5 percent or more of passengers under the age of 18 years on an average daily basis; or

(F) contains words such as 'light' or 'low tar' and is not accompanied by a disclaimer that words such as 'light' or 'low tar' describing the product do not render the product less hazardous than any other tobacco product, in addition to such other requirements as the Secretary may impose;

(2) if a logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of the tobacco product that would be readily identifiable, and therefore appealing, to individuals under the age of 18 years is contained in a movie, program, or video game that an individual under the age of 18 years is able to attend or utilize without the accompaniment or consent of a parent or adult age 18 years or older for which a direct or indirect payment has been made to ensure its placement; or

(3) if a direct or indirect payment has been made by any manufacturer, distributor, or retailer to any entity for the purpose of promoting the image or use of a tobacco product through print or film media that is recognizable, and therefore appealing, to individuals under the age of 18 years and at which individuals under the age of 18 years are permitted to attend without the accompaniment or consent of a parent or adult age 18 years or older, or through a live performance by an entertainment artist where individuals under the age of 18 years are permitted to attend without the accompaniment of a parent or adult age 18 years or older, and would reasonable expect that 5 percent or more of the audience will be under the age of 18 years.

(b) **Exception:** The prohibition contained in subsection (a)(1)(B) shall not apply to a tobacco product advertisement that appears in an adult-only facility, or in any publication which the 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 2,000,000 persons under the age of 18 years as measured by competent and reliable survey evidence.

SEC. 1423. POINT-OF-SALE RESTRICTIONS.

(a) **In General:** Except as provided in subsection (b), no manufacturer, distributor, or retailer shall engage in point-of-sale advertising of any tobacco product in any retail establishment (other than an

establishment that sells only tobacco products) in which an individual under the age of 18 is present, or permitted to enter, at any time.

(b) Exception:

(1) **In general:** A retailer may place 1 point-of-sale advertisement in or at each such location for its brand or the contracted house retailer or private label brand of its wholesaler.

(2) **Display area:** The display area of any point-of-sale advertisement permitted under paragraph (1) (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) **Limitation:** A point-of-sale advertisement permitted under paragraph (1) shall not be attached to or located within 2 feet of any display fixture on which candy is displayed for sale.

(c) **Audio and Video:** Any audio or video format permitted under regulations promulgated by the Secretary may be distributed at the time of sale of a tobacco product to individuals over the age of 18 years, but no such format may be played or shown in or at any location where tobacco products are offered for sale and individuals under the age of 18 years are permitted.

(d) **Definition:** As used in this section, the terms 'point-of-sale advertisement' and 'point-of-sale advertising' mean all printed or graphical materials 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.

THIS SEARCH

Next Hit

Prev Hit

Hit List

THIS DOCUMENT

Forward

Back

Best Sections

Doc Contents

THIS CR ISSUE

Next Document

Prev Document

Daily Digest

GO TO

New CR Search

HomePage

Help

<u>THIS SEARCH</u>	<u>THIS DOCUMENT</u>	<u>THIS CR ISSUE</u>	<u>GO TO</u>
<u>Next Hit</u>	<u>Forward</u>	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	<u>Back</u>	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	<u>Best Sections</u>	<u>Daily Digest</u>	<u>Help</u>
	<u>Doc Contents</u>		

SNOWE AMENDMENTS NOS. 2476-2477 (Senate - June 05, 1998)

SEC. 1424. STATUTORY ADVERTISING RESTRICTIONS.

(a) **Authority of Secretary:** The provisions of this subtitle shall in no way affect the authority of the Secretary to regulate tobacco as prescribed in any other provision of this Act or an amendment made by this Act.

(b) **Authority of Federal Trade Commission:** The provisions of this subtitle shall in no way affect the authority of the Federal Trade Commission to regulate tobacco as prescribed in any other provision of this Act or an amendment made by this Act.

(c) **Severability:** If any provision of this subtitle or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this subtitle and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 1425. EFFECTIVE DATE.

The provisions of this subtitle shall become effective on the date that is 120 days after the enactment of the Act.

SEC. 1426. SUNSET PROVISION.

The provisions of this subtitle shall cease to apply beginning on the date on which all tobacco manufacturers to which the Act applies have entered into the Protocol.

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
Next Hit	Forward	Next Document	New CR Search
Prev Hit	Back	Prev Document	HomePage
Hit List	Best Sections	Daily Digest	Help
	Doc Contents		

[Full Display](#) ^{NEW} - 821 bytes. [\[Help\]](#)

SNOWE (AND JEFFORDS) AMENDMENT NO. 2478 (Senate - June 05, 1998)

[Page: S5709]

(Ordered to lie on the table.)

Ms. SNOWE (for herself and Mr. **Jeffords**) submitted an amendment intended to be proposed by them to the bill, S. 1415, supra; as follows:
 On page 194, after line 8, after the period add the following: 'The net revenues credited to the trust fund under section 401(b)(3) and allocated to this account shall be used for smoking prevention and counter-advertising programs as provided for in clauses (i) and (ii) of paragraph (2)(C), with not less than 50 percent of such revenues being used for State and community-based prevention activities under section 1981C(b) of the Public Health Service Act.'

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
Next Hit	Forward	Next Document	New CR Search
Prev Hit	Back	Prev Document	HomePage
Hit List	Best Sections	Daily Digest	Help
	Doc Contents		

Congressional Record article 1 of 19 [Full Display](#) ^{NEW} - 2,851 bytes. [[Help](#)]

WELLSTONE AMENDMENT NO. 2458 (Senate - June 05, 1998)

[Page: S5702]

(Ordered to lie on the table.)

Mr. Wellstone submitted an amendment intended to be proposed by him the bill (S. 1415) to reform and restructure the processes b which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the advers health effects of tobacco use, and for other purposes; as follows:

At the appropriate place in title XI, insert the following:

SEC. XX. SALE, DISTRIBUTION, AND ADVERTISING OF TOBACCO PRODUCTS IN FOREIGN COUNTRIES.

(a) **Amendment to Chapter VIII:** Chapter VIII of the Federal Food, Drug, and Cosmetic Act is amended by adding at the end the following:

SEC. 804. SALE, DISTRIBUTION, AND ADVERTISING OF TOBACCO PRODUCTS IN FOREIGN COUNTRIES.

(a) **Regulations:** Not later than 2 years after the date of the enactment of this section, the Secretary shall promulgate regulations to--

(1) prohibit domestic concerns from--

(A) selling or distributing tobacco products in a foreign country to children; or

(B) advertising or promoting tobacco products in a foreign country in a manner that appeals to children;

(2) require domestic concerns to ensure that any person under the control of a domestic concern does not engage in conduct that would be prohibited under this section if engaged in by the domestic concern; and

(3) require domestic concerns to take all feasible measures to ensure that tobacco products bearing a brand name controlled or used by a domestic concern are not sold, distributed, advertised, or promoted in a manner that would be prohibited under this section if engaged in by a domestic concern.

(b) **Interpretation:** For purposes of this section, advertising or promoting tobacco products in a manner that would not be lawful under this Act if it occurred in the United States shall be deemed to be advertising or promotion that appeals to children.

(c) **Definition:** The term 'domestic concern' means--

(1) any individual who is a citizen, national, or resident of the United States; and

(2) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States.'

(b) **Enforcement:** Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C 331) is amended by adding at the end the following:
'(bb) The violation of any requirement under section 804.'

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
<u>Next Hit</u>	Forward	<u>Next Document</u>	<u>New CR Search</u>
<u>Prev Hit</u>	Back	<u>Prev Document</u>	<u>HomePage</u>
<u>Hit List</u>	Best Sections	<u>Daily Digest</u>	<u>Help</u>
	Doc Contents		

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>THIS CR ISSUE</i>	<i>GO TO</i>
Next Hit	Forward	Next Document	New CR Search
Prev Hit	Back	Prev Document	HomePage
Hit List	Best Sections	Daily Digest	Help
	Doc Contents		

[Full Display](#) ^{NEW} - 1,753 bytes. [\[Help\]](#)

WELLSTONE AMENDMENT NO. 2573 (Senate - June 09, 1998)

[Page: S5800]

(Ordered to lie on the table.)

Mr. WELLSTONE submitted an amendment intended to be proposed by him to amendment No. 2508 proposed by Mr. **Craig** to the bill, S. 1415, supra; as follows:

Add the following at the end of the amendment:

(C) Set-off payments from state litigation:

(i) **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.

(ii) **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 subparagraph (i) 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.

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WELLSTONE AMENDMENT NO. 2574 (Senate - June 09, 1998)

[Page: S5800]

(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:

Delete Section (4)(A)(ii) and Section (5) and insert in lieu thereof the following:

Section (4)(A)(ii) 'the aggregate payments which are due to be received by such State for such calendar year under the settlement, judgement, or other agreement.'
and

SEC. 5. SET-OFF PAYMENTS FROM STATE 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.

WELLSTONE AMENDMENT NO. 2687 (Senate - June 10, 1998)

[Page: S6110]

(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.

END