

# THE TOBACCO QUOTA BUYOUT

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## HEARING

BEFORE THE

## COMMITTEE ON AGRICULTURE HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

JULY 24, 2003

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# THE TOBACCO QUOTA BUYOUT

THURSDAY, JULY 24, 2003

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON AGRICULTURE,  
*Washington, DC.*

The committee met, pursuant to call, at 9:35 a.m., in room 1300 of the Longworth House Office Building, Hon. Bob Goodlatte (chairman of the committee) presiding.

Present: Representatives: Boehner, Smith, Moran, Jenkins, Ose, Hayes, Osborne, Pence, Putnam, Burns, Rogers, King, Neugebauer, Stenholm, Peterson, Dooley, McIntyre, Etheridge, Bacam, Ross, Ballance, Scott, Marshall, Pomeroy, Lucas of Kentucky, and Davis.

Staff present: Brent Gattis, Matt Leggett, Pelham Straughn, Kellie Rogers, and Callista Gingrich, clerk; Elyse Bauer, Pam Scott, and Tony Jackson.

## **OPENING STATEMENT OF HON. BOB GOODLATTE, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF VIRGINIA**

The CHAIRMAN. Good morning. This hearing of the House Committee on Agriculture to review the tobacco quota buyout will come to order.

Today we convene the Committee on Agriculture to review concepts surrounding a tobacco quota buyout. We will hear testimony from four separate panels consisting of Members of Congress, tobacco producers, tobacco product manufacturers, and health groups. Each panel will offer its own unique perspective on the problems faced by the American tobacco industry and how a tobacco quota buyout may help. In the same way, each individual panelist will bring his or her own particular view to the debate. Ultimately, there will be agreement and disagreement among the panels and among the individual panelists. It is important that we, the members of the committee, hear both.

The American tobacco producer is, I am sure we will all agree, subject to intense pressures that substantially impede his or her own ability to maintain a profitable farming operation. For one, factors affecting the profitability of U.S. tobacco product manufacturers essentially trickle down to negatively impact the individual tobacco farm. More importantly, though, American tobacco producers find themselves trapped within an outdated Federal price support system which limits supply and raises the price of U.S. tobacco above competitive, international market levels. Drastic cuts in quota levels over the past several years have dramatically raised the cost of producing U.S. tobacco, which has in turn exacerbated

its already high price. As that price has risen, domestic and foreign manufacturers have increasingly turned to foreign tobacco leaf, which has only served to squeeze the American tobacco farmer even more.

We can also stipulate that U.S. tobacco product manufacturers face a mountain of challenges to their ability to remain profitable. Over the past several years, they have endured a variety of lawsuits holding them liable for disease and death. Extensive efforts by health organizations, some of whom are represented here today, to persuade people not to smoke, and ever-increasing Federal and State excise taxes on tobacco products. The 1998 Master Settlement Agreement obligates participating manufacturers to pay \$206 billion over 25 years to States. On their own accord, manufacturers committed to pay \$5.15 billion over 12 years to growers. In order to comply, these companies have been forced to raise the price of cigarettes by as much as 51 cents per pack. These developments collectively impose an extremely high level of financial liability on tobacco product manufacturers that has translated into higher product costs and sharply declining sales.

Over the past several years, many have advocated a buyout of tobacco quota as a possible step that could be taken by Congress to help alleviate some the burdens faced by domestic tobacco product manufacturers and tobacco growers. Supporters specifically argue that a tobacco quota buyout would release the individual tobacco farmer from the smothering constraints of a current Federal price support system. The consequent removal of soaring quota rent would substantially lower the cost of production of American tobacco, enabling domestic farmers to market it for less. This, in turn, would make American tobacco more price-competitive on the world market, allowing the domestic grower to reestablish previously lost market share both at home and abroad.

On the surface, there is apparent consensus within the tobacco community concerning the need for a tobacco quota buyout. Manufacturers and growers have passionately debated a variety of proposals for how to achieve one over the past several years. There has even been a willingness among the tobacco community to engage our friends from the health community, who are committed to advocating against the use of tobacco products, in dialog about how they may help in bringing a buyout to fruition.

Although much progress has been made in the tobacco quota buyout debate, I suspect there is still much work to be done. Many convincing proposals exist that outline detailed plans for how to achieve a buyout, and in some cases, how to shape post-buyout tobacco policy, but many questions remain unresolved.

How much money truly amounts to fair compensation for quota holders if a buyout should occur? Should growers receive compensation as well? If so, how much and why?

Who should pay for a quota buyout? If tobacco product manufacturers should, do they agree? Are they willing? Are they able?

How should post-buyout tobacco policy be formulated? Would some sort of new program be needed? Could those who want to continue to farm tobacco do so without one?

What is more important, the money or the ability of a grower to continue producing after a buyout takes place?

Is FDA regulation of tobacco products really an acceptable compromise in return for a buyout? If so, which kind of FDA regulation is acceptable? Which kind isn't? Would a buyout be worth it if FDA were, in return, allowed to regulate the American tobacco industry out of existence? What are the consequences of that?

These are the types of questions we must not just ponder casually. We must ask them and answer them directly.

There is one more notion upon which I think we can all agree; that is, achieving a buyout of tobacco quota in the U.S. House of Representatives is no piece of cake. In order to help better the prospects for a buyout, the Committee on Agriculture must uncover precisely what a buyout's prospects are right now. The testimony we receive today will prove integral in our ability to fairly and accurately assess where we are, and more importantly, what we need to work on in the tobacco buyout debate. Only then will we be able to decipher the all-important question of where to go from here.

I welcome all of you to today's hearing.

I am going to recognize the gentleman from Texas, Mr. Stenholm, the ranking member, and then also the chairman and ranking member of the Specialty Crops Subcommittee for opening statements.

Other opening statements will be made a part of the record and because of the very lengthy list of witnesses, we are then going to move to our first panel, but at this time, it is my pleasure to recognize the gentleman from Texas, Mr. Stenholm.

**OPENING STATEMENT OF HON. CHARLES W. STENHOLM, A  
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. STENHOLM. Thank you, Mr. Chairman, and thank you for your opening statement, a very clear and concise statement of what we hope to accomplish, beginning with this hearing today. And I would also like to thank the many witnesses who have come, many cases, many great distances to be here for this hearing and to share your thoughts and ideas as to how a consensus might ultimately be developed.

The purpose of this hearing, as you are all aware, is to discuss the Tobacco Program and the various proposals regarding the tobacco quota buyout.

The Tobacco Program was established in the 1930's as a means of controlling production and stabilizing the price of tobacco. It has served tobacco farmers well over the years. However, now, as we did with peanuts in the farm bill, tobacco farmers are looking at a change. What we are being asked to consider is no small matter, because it involves altering, in one way or another, the manner in which the Tobacco Program has operated and affected farmers for over 60 years.

As I am sure most of you are aware, there are a number of legislative proposals that seek their goal, a buyout of tobacco quotas, and though these proposals may all have the same goal, the mechanisms they use for achieving that goal, and what they propose to do after the goal is achieved varies greatly. That is why I am glad to see we have a wide range of panels present today, representing the growers, the manufacturers and the health groups. These are

the groups that have been instrument in bringing this issue to the forefront, and must ultimately be part of a solution.

It is important for each of the panels to listen to each other, just as those of us on the committee will be listening and looking and hopefully, finding that consensus package that will ultimately find the necessary 218 votes, 51 votes and Presidential signature.

I look forward to hearing from the witnesses that will testify before this committee today. It is my hope that this hearing will not only be informative, but also provide the insights into the myriad issues surrounding the production of tobacco and the rural communities that depend upon it.

Thank you once again, Mr. Chairman.

The CHAIRMAN. I thank the gentleman. It is now my pleasure to recognize the chairman of the Specialty Crop Subcommittee, who has worked very hard on this issue, the gentleman from Tennessee, Mr. Jenkins.

**OPENING STATEMENT OF HON. WILLIAM L. JENKINS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE**

Mr. JENKINS. Thank you, Mr. Chairman, and I thank you for convening this hearing, and I, too, like the ranking member would commend you on making a very accurate portrayal of the situation that confronts us, in your opening statement.

The subject of this hearing has many interested parties, and each category is entitled to, and I hope has been invited to be heard. The primary concern for many of us are the families that own allotments and grow tobacco. Many families who have engaged in this agricultural activity, which has a heritage that began in Colonial days, and was a mainstay of the economy of many of the colonies, are aging, and profitability is not what it used to be. These hardy Americans can contend with both these conditions, but cannot withstand the fury that has been unleashed against this particular commodity, while ignoring or even encouraging the use of others, whose impact is far more harmful and expensive to individuals in our society.

Lawsuits and political correctness abound and seem to be replacing common sense and good judgment as forces that guide us. We have reached the point where the tobacco community must have relief. I hope that at the end of this process, those with property rights can receive the compensation to which they are entitled, and those who continue to farm tobacco will not see yet another industry driven from our shores, resulting in the loss of farm income, farm jobs, manufacturing income, manufacturing jobs and billions of dollars in tax revenue that flows to the States of our Union, while witnessing the importation of perhaps a more harmful version of the same product. If this happens, it leaves us in the confusing posture of having eliminated all of the benefits of this agricultural endeavor while leaving all of the detriment with us.

Mr. Chairman, I look forward to hearing these witnesses, and to working with this committee to devise a remedy to this dilemma. Thank you.

The CHAIRMAN. I thank the gentleman, and it is now my pleasure to recognize the gentleman from North Carolina, Mr. McIntyre,



who is the ranking member of the Specialty Crops Subcommittee and the author of one of the many pieces of legislation that addresses this issue.

The gentleman is recognized.

**OPENING STATEMENT OF HON. MIKE MCINTYRE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA**

Mr. MCINTYRE. Thank you. Mr. Chairman, I would like to thank you and Mr. Stenholm for holding this hearing on this legislation that is so critical to the future of tobacco farmers and the tobacco industry in America. I would also like to thank Mr. Jenkins, our colleagues Mr. Fletcher and Mr. Etheridge, Messrs. Hill, Goode, Coble, Kingston and others who have worked so hard to help move this process forward. I look forward to continuing our work together.

Mr. Chairman and my colleagues, the future is now. It is time for this uncertainty to end. Our farmers and families, our communities in tobacco growing areas, the companies, our friends in the health community, indeed, our Nation, is ready for the uncertainty surrounding tobacco to end.

The battle over what to do with the Tobacco Program does not need to go on and on, and that is why I do appreciate very much your willingness to bring everyone together today. Never before have we seen such unanimity among farmers regarding what to do about the future of tobacco. We do agree now, and we have moved forward in the past year and a half to show that a buyout is needed, and it is needed now. The farmers, their families, the communities that we represent across the Tobacco Belt depend upon tobacco as a means to support their way of life, and the future of tobacco is so important not only to my district, but to so many other districts represented here today, and to those who have come to depend on the income generated from tobacco farming, that it is time to move forward.

As you mentioned, I had the opportunity to introduce the first comprehensive buyout legislation during the last session of Congress, and I reintroduced this same bill, designated H.R. 140, on the very first day of this year's session of Congress. This legislation promoted the 8 and 4 that we are all familiar with, as now have other pieces of legislation as well, \$8 per pound for the quota owner's \$4 per pound for tobacco growers who want to continue growing tobacco, based on the 1998 growing year for quota owners and 2001 for growers.

This bill provides a way to pay for a buyout without raising taxes, and does call for FDA regulation, not of farms or farmers, but only for the manufacture and sale of tobacco products. It also provides a way to eliminate Federal price supports for tobacco, freeing up revenue for agriculture programs in other parts of our country and other agricultural programs in general throughout the country, including our areas as well, while still providing an orderly economic transition away from the current price support system.

Last September, we had a hearing in this very room. We had the opportunity to put 10,000 signatures of farmers on that very table

saying they were ready for a buyout. This bill has 20 bipartisan co-sponsors, including Members from each of the major tobacco-producing States. I am so excited today that we can now all come together ready to move forward.

As the ranking member of the Subcommittee on Specialty Crops and as a member of this committee, I look forward to working with everyone in this room, and I mean that sincerely, so that we can reach a compromise to garner the support of our entire Agriculture Committee, and yes, the full House of Representatives.

As we come together to do this today, I hope you will remember that in our effort in good faith, it was the week before Palm Sunday, back before Easter, that we put a discussion draft on the table in an attempt to bring the best of all of the pieces of legislation we are going to hear about today, to deal with what needs to be done to move forward with the tobacco buyout.

From dealing with the cost of the buyout, the production controls and price support, what will happen with WTO, the implications on public health, what this means to non-tobacco-producing States and even the financial burden that the companies may face, we want to put it all on the table so we can now move forward together.

In closing, let me say that I hope that when we are finished today, that we will not be worn out and tired, but actually we will all be fired up to get going to get this thing done, to bring all parties together. Our farmers, our families, our tobacco communities deserve nothing less.

I say sincerely, I look forward to working with all of you in accomplishing this goal. Indeed, it is time for the uncertainty to end. We can all talk all day about differences, but I trust that those testifying today, as well as others in the room who have a stake in this, will share how they will commit to achieve our common goal of getting the tobacco buyout legislation done. I am ready to do that. I trust we are all ready, and God willing, we can do it. The time is now, and I thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman.

As the chair indicated earlier, because of the number of witnesses before us today, submitted statements will be accepted for the record.

[The prepared statements follow:]

PREPARED STATEMENT OF HON. NICK SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Thank you Chairman Goodlatte, Ranking Member Stenholm, and panel members. This hearing to review the issues surrounding tobacco quota buyouts is extremely important.

Even though we don't really grow tobacco in Michigan, as a farmer myself I can appreciate the struggles of a family farmer and realize how frustrating it must be to work with a Federal tobacco support program that is simply not working as it was intended to. In short, as we have heard today, the Federal tobacco policy of price support and marketing quotas is simply not effective and only seems to be hurting U.S. tobacco producers rather than helping them by decreasing demand for U.S. tobacco.

With guaranteed prices above the cost of production and the prices of our competitors, it is no wonder that cigarette manufacturers have turned to cheaper imported tobacco. Something is obviously wrong when our Federal farm policy hinders our producers' ability to market their product both domestically and in the world market. It seems as though the real beneficiaries of our current tobacco policies are not those actually producing tobacco but instead those who own quotas and choose not to produce and instead rent or lease or maybe sell their quota rights. The tobacco

program, as well as all other commodity programs, will face new challenges over the next decade. In 1970 when I was a Deputy Administrator of ASCS Farm Programs in Washington, we started changes in an effort to improve the Federal tobacco program. I suggest the objective of Federal farm policies of the future should be to simply provide producers a means by which to help manage their own risks.

Unfortunately, we are now at a crossroad on how to deal with the tobacco situation and must make some tough decisions that are not going to please everybody. I look forward to working with this committee and the various segments of the tobacco industry to find commonsense, non-market distorting approaches to dealing with U.S. tobacco production and our overall Federal tobacco policy.

PREPARED STATEMENT OF HON. ROBIN HAYES, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF NORTH CAROLINA

Mr. Chairman, I want to thank you and Ranking Member Stenholm for holding this hearing to discuss the possibility of a tobacco buyout. When I meet with my farmers back home in North Carolina, the buyout is what I hear about the most. Tobacco producers are eager to see congressional action on a buyout, and I am glad we can discuss this topic in a public forum-to hear from producers, the companies and the health organizations about the possibility of a buyout becoming a reality.

I realize that achieving a buyout has many obstacles that must be addressed. First and foremost is how to fund a buyout, by either assessing the companies or by using CCC funds. Second, what type of program, if any, do producers want in place to assist those who want to grow tobacco after the buyout. Finally, will the Food and Drug Administration be included in the final outcome. These are serious concerns that must be addressed in order to move forward. I am hopeful through this hearing process we can generate some ideas and develop some consensus on how Congress should proceed.

Mr. Chairman, I am committed to developing a reasonable, workable solution that ultimately is fair to tobacco producers. I look forward to working with you and Mr. Stenholm on this issue.

PREPARED STATEMENT OF HON. BOB ETHERIDGE, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF NORTH CAROLINA

I want to thank the chairman and the ranking member for holding this hearing.

I often call tobacco the forgotten crop. Because we have our program in permanent law so it doesn't require periodic reauthorization, it is easy to forget about us.

Usually, the only time Congress deals with tobacco is when there is problem. Well, guess what, we have a problem.

The witnesses the committee has brought before us today will go into great detail about the problems tobacco farmers are facing and offer possible solutions. It is my sincere hope that the committee can sift through all this testimony and develop a legislative solution addressing the needs of tobacco farmers, quota holders, companies, and health groups when we return in September.

As you many of you know, I am a supporter of Mr. Fletcher's bill because I think it represents the best deal for the farmers. However, I recognize that other proposals have their merits as well.

Working together, I believe we can craft a reasonable compromise between the various plans that can get through Congress and reach the President's desk. But time is running out. We need to act and act quickly. Target adjournment is just 4 weeks after Labor Day.

My farmers and I know that the current tobacco system needs fixing. Whether it is called reform, a transition, or a buyout, they want it, and we need it, this year, not next.

PREPARED STATEMENT OF HON. FRANK W. BALLANCE, JR., A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. Chairman, I thank you for holding this important hearing. I represent the First Congressional District of North Carolina, where my farmers produce more tobacco than any other congressional district. Many of those who depend on it for their livelihood are African-American farmers. American farmers produce the highest quality tobacco in the world.

I support a tobacco buyout of \$8 per pound for quota holders and \$4 per pound for quota growers based on 1998 quota.

Sadly, many farms have seen their quota shrink by as much as 50 percent since 1997.

Many have lost their farms already, and the rest are on the brink of bankruptcy. After relying on a Federal program that is no longer working for them, they need help now. This is a problem that they cannot farm their way out of.

Many people may criticize farmers for producing tobacco. I do not. Only a few cents out of every tobacco product find their way back to farmers. One acre of tobacco produces 2,000 pounds of tobacco, which can go into as many as 50,000 packs of cigarettes. In New York City, at \$7.50 per pack, this is worth \$375,000, but the farmer sees \$1.65 per pound or \$3,300 for 1 acre

The CHAIRMAN. At this time, we would like to welcome our first panel, the Honorable Ernie Fletcher, Member of Congress from Kentucky; and the Honorable Jack Kingston, Member of Congress from Georgia, and vice chairman of the House Republican Conference. I would like to welcome both of you, advise you that your full statements will be made a part of the record, and first recognize Congressman Fletcher, who is also the author of legislation addressing this issue.

**STATEMENT OF HON. ERNIE FLETCHER, A REPRESENTATIVE  
IN CONGRESS FROM THE COMMONWEALTH OF KENTUCKY**

Mr. FLETCHER. Thank you, Chairman Goodlatte, and I appreciate you and Ranking Member Stenholm holding this hearing. We also appreciate the chairman of the Specialty Crops Subcommittee, Chairman Jenkins, Ranking Member McIntyre, we certainly appreciate your work and leadership on this, and other colleagues I have worked with, specifically Representatives Etheridge and Lucas, we thank you for your work on this very important legislative initiative.

Last September, I had the opportunity to share with you the situation of our tobacco farmers. That situation is worsened since that time. In our part of the country, the quotas are as low as they have been since 1874. Since that time, we have had constructive dialog that has been taken place between Members, farmers, farmer organizations, manufacturers and public health groups, and I greatly appreciate their participation at this hearing today.

Today, you may hear a near consensus that a buyout is necessary, or at least acceptable in some form. However, there will be a healthy discussion on the particular details of the reform. I would like to use my time today to briefly address some of the most common questions about a tobacco buyout.

The question I am perhaps most often asked about a buyout is how much will the buyout cost. Any buyout will be drafted to conform to the budget agreement and should score zero. Just as the current Tobacco Program is not supported with Treasury money, the tobacco buyout should be privately funded. Currently, both H.R. 140, Mr. McIntyre's bill, and H.R. 245, the bill I filed, assess about \$2.3 billion a year over 9 years. It is also worth noting that the average individual payment in a buyout based on 8 and 4 in 1998 poundage paid over 5 years is about 12½ percent less than the average annual farm bill payment to a program participant.

There are some questions, additionally, about the WTO implications of a buyout. Most buyout proposals make decoupled payments based on historic ownership patterns, and should be constituted as green box payments under WTO rules. Where there is uncertainty is whether some Master Settlement Agreement phase II payments may be amber box, such North Carolina, which has made payments

based on each year's production. A buyout should eliminate such concerns, because a buyout would supersede phase II payments. Also, the current program is not classified by the WTO, because it is a no-net-cost structure, which would not change for future production after a buyout.

The issue that may be most discussed today regards how a post-buyout market should look. There are some concerns voiced about "selling the truck and driving it home," but such concerns are misplaced. Any post-buyout market that eliminates quota will be radically different from the 1940 to 2003 Federal Tobacco Program. Any buyout will eliminate about 326,000 people from tobacco production, leaving at most, the 90,000 current producers. More importantly, farmers will be able to receive the full value of their crop. The external value of paying rent to participate in growing tobacco is eliminated. To suggest the elimination of the right to sell and lease quota is anything less than a fundamental change to the way tobacco is grown in this country is inaccurate.

At the same time, the stability of tobacco supply is a common concern of producers, manufacturers and public health groups. Our farmers need some form of production control to keep tobacco grown in traditional growing areas, to prevent disastrous overproduction and to maintain an adequate supply for the manufacturers.

Stability is also in the interests of public health, to maintain predictability and quality standards, as well as to avoid the impoverishment of our rural communities that have long been dependent upon tobacco production for their commerce. While the farm bill continues to provide significant income and price support for other major commodities, that is likely tobacco's one opportunity to end a controversial program and provide support for current and future tobacco farmers, as well as the rural communities throughout the Southeast that depend upon them.

All of this can be done while improving public health protection for Americans. While tobacco product regulation is not an issue in this committee's jurisdiction, it is certainly related to the buyout question. It has been said it is likely that a buyout will need a regulatory component to pass the Senate, and any conference will likely include some FDA regulation of tobacco products. Moving forward on the legislation will depend on the degree of commitment to progress of many of those testifying today.

There is no doubt that the Agriculture Committee and its leadership care about tobacco farmers and their plight, and about building a healthier nation, and we certainly appreciate that concern. It seems that we have begun to make progress, but our farmers cannot wait. We have a unique window of opportunity to pass meaningful program reform.

I respectfully request of you, and all of the parties involved in the process today, to work to build on the developing consensus for a buyout, and above all, work to be ready for action on this critical issue soon after the August recess. Together with the input from today's hearing, we must work to improve current proposals to provide adequate compensation for the relief of quota equity, transition payments and public health protection, while providing a framework to ensure stability for growers after quota is eliminated.

In closing, I would like to also thank Bill O'Conner and the Agriculture Committee staff for their hard work and dedication to this issue, and certainly, my gratitude to everyone here today for honoring my request to testify.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Fletcher appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Congressman Fletcher. We are now pleased to welcome Congressman Jack Kingston.

**STATEMENT OF HON. JACK KINGSTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA**

Mr. KINGSTON. Thank you, Mr. Chairman and Mr. Stenholm and members of the committee. It is good to be back here. I was a member of this committee when Kika de la Garza was the chairman and it is truly one of the great committees in the House, and it is just good to be home. Also, we have always been proud to have Georgians on here. Mr. Burns and Mr. Scott right now are doing a great job for us, and I wanted to say to Mr. McIntyre and Mr. Etheridge, I am not sure which one of you represents Wayne County, but is it Goldsboro? But we had a tobacco hearing there when I was on this committee. Mr. Rose was the chairman of the subcommittee, and we have been working on tobacco since I have been in Congress, because it is such an important commodity to the State of Georgia. In my district alone, I represent 29 counties. Tobacco is grown in 22 of them, and it has a farm gate value of \$69 million. Mr. Burns also has a lot of tobacco, and so does Mr. Bishop and Mr. Norwood.

When tobacco farmers have a bad year, the whole town, the whole county and the whole regions have bad years. This Government made the decision, I would say 200 years ago, that tobacco was a good thing, as evidenced by the tobacco leaves that are on the columns in the Capitol, which most people don't even recognize to be tobacco leaves, but from a mission statement of saying let us grow, let us export, let us tax it, let us depend on it for a good revenue stream, to in the last 10 years saying tobacco is a bad thing, and yet, we have changed our mind, rural economies can't transition that quickly. That is why I believe the tobacco buyout is so very important. Again, when tobacco farmers have a bad year, it affects the entire areas.

I have submitted my full statement for the record, so I am not going to read through it. There are a lot of stories which we all have in our districts of the impact and the hardship it places on individual farm families, but I wanted to summarize the four points that I think are important, in terms of the bills which have all been offered and a lot of good committee work and informal committee work has taken place.

The things that I like in them would be first and foremost, the 8/4 buyout for our quota holders, and I think most people are building the consensus that that is a good thing. The other thing is to look at the quota cut situation. Last year, Flue-cured tobacco acreage in Georgia was 26,500 acre, or down 43,000 acres since 1997. The acreage decrease was due to another decline in the basic Flue-cured quota and represent a huge reduction in farm income.

Tobacco ranks third in the single crop income in Georgia. With the value of Flue-cured leaf declining approximately 50 percent in 6 years, I am committed to do everything I can to help the farmers recover from quota cuts that they have had to deal with.

The third point that I want to emphasize is that I strongly believe that the buyout be based on the 1998 quota. In 1998, Georgia tobacco quota was 85 million pounds. As of 2002, the quota has been cut to 60 million pounds, so 85 million to 60 million pounds, or a reduction of 25 million pounds, based on an 8/4 buyout, this represents a difference of \$200 million for quota owners, and a difference of \$100 million for growers in Georgia. As you can see, the 1998 buyout represents a difference in the livelihood of tobacco growers and all the communities around them.

I am strongly committed to that, as I know many of the other Georgia Members and other House Members are, as well, and then, finally, I want to emphasize that I think often in this discussion, we have left out the tobacco warehousemen. In the State of Georgia, in 1998, there were 23 tobacco warehouses. Today, there are only four, and we have all been in tobacco warehouses. You really can't do that much else with it. The ventilation, you can't turn it into retail, you can't start selling cars in there. You can have flea markets, but these things are so huge, how can you have a flea market on a regular basis enough to bring in income, and I truly believe that we have to do something for the tobacco warehousemen, because they have been devastated by all the changes in tobacco as well, and the way the auctions have been done has certainly hurt them, and I have got things in my statement about that, and I guess I wanted to make two other points, Mr. Chairman.

This needs to happen, as Dr. Fletcher says, in the year 2003. We have been talking about it for a long time. The whole time that we are doing it, more and more communities are losing revenues and going broke, so we need to try to address this as soon as possible, and I will say this, as a member of the Agriculture Subcommittee on Appropriations, I want to do my part, and then one final note, the farmers in our area are somewhat ambivalent about FDA regulation. What they are telling, I believe, Mr. Burns and me is, hey, we don't care, we just want this thing done.

My caution to them, though, is if you start doing business with the FDA, it is not just going to end. It is going to be a permanent partnership, and that partnership is one of dictation, not one of cooperation, so personally speaking, I think we need to be real cautious about the FDA oversight, and I have seen, as we all have, that FDA depends on who is leading FDA at the time. Sometimes they are pro-tobacco, sometimes they are not, and that can be used as a hammer against them, so those are my comments, and Mr. Chairman and members of the committee, I greatly appreciate everything you all are doing as leaders on this issue.

[The prepared statement of Mr. Kingston appears at the conclusion of the hearing.]

The CHAIRMAN. I thank both Congressman Kingston and Congressman Fletcher for your valuable contribution to this issue. I want to take this opportunity also to acknowledge the presence in the hearing room of Congressman Ron Lewis, a former member of

the committee, who is also very interested in this issue and who represents a district in Kentucky to which this issue is of great importance to many of his constituents as well.

So I thank all of you for your contribution today, and we will move forward with the next panel. Thank you both.

We would now like to invite our second panel of witnesses to the table. Mr. Jeff Aiken, owner and operator of Aiken Farm of Telford, TN; Mr. John William Carter III, owner and operator of Carter Farms from Eagle Springs, NC; Mr. David Chappell, owner and operator of Chappell Farms in Owenton, KY; Mr. Donald Moore, owner and operator of Moore Farms from Chatham, VA; Mr. David Winkles, Jr., president of South Carolina Farm Bureau, from Columbia, SC; and Mr. Donald Wright, owner and operator of Wright Farm from Glade Spring, VA.

I would like to welcome all of the members of the panel, to advise you that your full written statement will be made a part of the record, ask that you limit your remarks to 5 minutes, given the large number of witnesses we have today and the great many Members who would like to ask questions of you, and we will begin with Mr. Aiken. Welcome.

**STATEMENT OF JEFF AIKEN, OWNER AND OPERATOR,  
CARTER FARMS, EAGLE SPRINGS, NC**

Mr. AIKEN. Mr. Chairman, committee members, I would like to thank you for the opportunity to share my views on an issue of vital importance to myself and my fellow producers in Tennessee.

Times are tough on the farm for any commodity, but there are some unique issues in the tobacco industry. We have invested in a program operating under the restrictions and benefits of that same program, and now find it crumbling due to necessary changes not being addressed. It is the question of how to address those changes that brings us here today. I am a producer of Burley tobacco, and rely on that crop for a profitable, diversified farming operation. We also produce corn and hay on our dairy and beef cattle farm. My 45 acre Burley production is larger than average in Tennessee, but there are many larger growers across the State.

While size of operation may affect the opinion toward buyout proposals, I believe I can include in the concerns of both the larger and smaller growers and quota owners in my comments, and considering the range of concerns, many about our future, it is necessary and wise to look at our past. As a young man in a strong tobacco community of east Tennessee, I had a career decision to make some years ago, and chose to engage in growing tobacco. The opportunities for a career change at this time are limited for myself.

I know of no other legal crop that can provide the level of income that tobacco has traditionally afforded the farming operations in our State. Producers have made an investment in the production of tobacco through the no-net-cost program and its related expenses. In addition to the grading fees, no-net-cost assessments, marketing costs and normal production expenses, there is another major non-value-added expense I have to pay, the cost of acquiring quota to maintain sufficient levels of production to sustain my



farming operation. The quota cuts over the past few years have greatly inflated this cost.

In 1998, the basic quota for Burley tobacco production in Tennessee was nearly 111 million pounds. In 2001, the basic quota for Tennessee Burley was less than 57 million pounds. Obviously, since quota determines the ability to produce and sell, our earning capability has been essentially cut in half since 1998. At a time when production costs continue to rise, our production is reduced and quota availability is limited, resulting in increased quota lease cost. Added to the economics of this situation is quota buyout debate. The continuing discussion about a buyout and the inability to plan ahead because of that discussion has greatly complicated efficient production or the orderly transfer of growing rights from historical quota owners to current tobacco growers. As a State board member of the Tennessee Farm Bureau Federation, I am contacted by various producer and quota owner interests, and hopefully have a broader viewpoint of the buyout discussion as a result of that contact.

There is little argument that quota owners have an asset, one that has affected land values in our State historically, and growers have a valid argument that without their production of that asset, it would no longer have a value. The argument makes very evident the need for a buyout or financed transition from what we now have in a program to whatever follows. The whatever follows needs to receive adequate attention, or we might achieve something far worse than we can now only imagine. The current program is not serving the needs of the producer or the buying segment of the industry. The general public and particularly, the health advocacy groups, apparently want some type of verifiable controls on tobacco production. It would seem production controls could serve the risk management needs of the industry better than becoming an economic burden to Government support. I can not in a very short statement outline a suitable replacement for the existing Tobacco Program, although I think H.R. 245 has made an adequate attempts at describing a suitable framework. I would expect some changes will need to be made to H.R. 245 or to any piece of legislation as it moves through debate. However, I ask you to consider my situation and many like mine. I need to be able to produce for the available tobacco market.

I ask for your support of the concepts included in H.R. 245, and would like to thank you again for giving me the opportunity to address you today.

[The prepared statement of Mr. Aiken appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Mr. Aiken. Mr. Carter, welcome.

**STATEMENT OF JOHN WILLIAM CARTER III, OWNER AND OPERATOR, CARTER FARMS, EAGLE SPRINGS, NC**

Mr. CARTER. Thank you. Mr. Chairman, members of the committee, thank you for the invitation and privilege to speak before you today.

I am Billy Carter, a tobacco farmer from Moore County in North Carolina, which is in the south central region of our State. In addition to my farming, I have had the opportunity to serve in leader-

ship positions in various farm organizations over the last several years, and am the immediate past president of the Tobacco Growers Association of North Carolina.

One of the first trips I made to Capitol Hill was in 1998, to encourage the passage of an \$8 for quota owner and \$4 for producer per pounds buyout of the Federal Tobacco Program.

As has been the case since 1997 in tobacco-producing States, the prospects for the foreseeable future are not as bright as one would want them to be. In fact, they are as dim as they ever have been. If, for a moment, as a grower of Flue-cured tobacco, you could forget the crushing impact of a 50 percent decline in quota, you would still find yourself saddled with more than your share of issues that cause grave concern about your future in this industry. Severe weather, increased costs of production, contractual sales of tobacco, declining exports due to our lack of competitiveness, threatened FDA regulation and multi-billion dollar lawsuits are all playing out against the backdrop of the most vigorously anti-tobacco political climate in history.

However, growers cannot forget the impact of a 50 percent reduction in quota. In the year 2003, our farmers are producing the smallest crop in the history of the Federal program. The devastating results are the same as they would be if any other small business was mandated to produce only half of its capacity, despite its debt load or its capability to produce a desirable crop. Tobacco farms are no less than multiple small business interspersed in some of the most economically deprived rural areas in the nation. The pain of our current situation as tobacco farmers is made doubly difficult because it affects not only our families, but the larger community as well.

It would be presumptuous to assume that I knew how every participant in the industry feels about a buyout of tobacco quota. One thing that I can assure you of is that there is consensus among the vast majority of participants that a sweeping correction needs to be made to our current system of operation, and that a quota buyout is the quickest, most effective vehicle to that end.

I am convinced that the status quo will deliver an even greater blow to the business of tobacco farming in 2004 if a buyout is not achieved. In my home State, that correlates to widespread farm foreclosures and many elderly quota owners finding it impossible to sustain their most basic economic needs.

If done properly, a quota buyout affords the opportunity to address at least three critical areas in the tobacco community. First, it offers a chance to contend with the issues surrounding the Tobacco Program that has remained virtually unchanged in 60-plus years. Second, a quota buyout could largely eliminate the gap that exists in economic opportunity between our rural and urban sectors. And a quota buyout would give us the opportunity to compete in the global tobacco economy again.

There are structural issues within our program that are clearly inefficient. However, we are incapable of any major correction for fear of endangering the fragile environment in which our stand-alone commodity program exists. We are afraid to overhaul obvious inadequacies for fear of losing the whole thing.

The second issue that a quota buyout deals with concerns bridging the gap, the disparity between our rural and urban sectors and stabilizing the economy of our rural communities. This inequity has received great attention from our elected leaders. Their concern is justified and the need is obvious in most of the rural sectors and small towns of tobacco-producing States. The financial weakness that exists in these rural areas is without question significantly attributable to the decline in tobacco production.

I can think of no one single thing that would revitalize the rural economy of tobacco-producing States any more effectively, efficiently, or thoroughly than a quota buyout.

The third area that a quota buyout offers us an unprecedented opportunity to address and deal with is our lack of competitiveness at the international level. We should never forget that we are, in a global context, undeniably blessed with the best climate, the most efficient infrastructure and the best understanding of how to produce the crop. In addition, we are the safest, most scrutinized, most consistent and most politically stable producers of tobacco in the world. The question is not will tobacco be grown, but where will it be grown. Absent a buyout, the answer will soon be not in the United States.

We need to find a way to make these inherent advantages accrue to our benefit. Our problem is competitiveness and a lack of profitability. We produce a product that is the envy of the world, but few can afford it. Our supply control program is the gold standard for all farm programs, but it has failed to change in 60-plus years. Quota ownership has created economic stability in many rural areas, but the rent factor in the costs of our tobacco has nearly crushed us in the world market. We must find a way to compensate current quota owners for their production rights, offer growers a financial opportunity to make the transition to a new system, transfer production rights into the hands of actual producers and remove the value of those production rights from the cost of our tobacco.

To ignore the opportunity that a quota buyout offers us to shake the status quo, revitalize our rural communities and break the death spiral of minute production levels would be an immense mistake.

Obviously, I am no expert on what is politically possible or practical. I just know that if we do not have a buyout legislation passed that we will to continue to function for only a short period of time. The industry will continue to atrophy and at some point in time, we will be of so little consequence that we very well may have an end to the current program without compensation or any method for transition.

The future of the U.S. tobacco farm depends on the success of adequate legislation to provide the buyout this committee is considering. Any other effort simply will fall short of the mark.

Thank you.

[The prepared statement of Mr. Carter appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Mr. Carter. Mr. Chappell, welcome.

**STATEMENT OF DAVID CHAPPELL, OWNER AND OPERATOR,  
CHAPPELL FARMS, OWENTON, KY**

Mr. CHAPPELL. Mr. Chairman, members of the committee, I want to take this opportunity to thank you for inviting me to make some brief comments on proposed buyout legislation. While I understand this is one of the many issues facing Congress, it is the only issue back home. I can't walk through Owenton, my hometown in north central Kentucky, without being asked about it several times.

I farm about 2,200 acres in Owen County, Kentucky. I raise 50 acres of Burley tobacco on 12 farms and lease off of 17 other farms. I also have a 200 head cow/calf operation and 90 acres cash alfalfa crop.

Owen County ranks third in Kentucky in tobacco dependency. Nearly 10 percent of the total personal income in Owen County is derived from tobacco production. Our primary alternate crop is beef cattle industry.

I want to express to all of you how excited and appreciative I am that you all have taken an interest in the plight of tobacco farmers, and I know many others will talk about the hits we have taken, so I won't go into great detail, but I will remind you that a 65 percent reduction in quota is almost an equal reduction in tobacco farmer income.

I would like to give you the perspective on the tobacco buyout that I believe relates the hopes and concerns of the majority of producers in my area of Kentucky. Put simply, a buyout is imperative to recreating a healthy farm economy in Kentucky, but most producers I have talked to are also very concerned about what the tobacco market structure would like when tobacco buyout payments stop coming. Most buyout bills, if passed, would allocate payments over a 5- to 6-year period. Many in my area wonder what will happen in the 7th year and beyond, when Federal assistance ceases.

Row cropping is not an option in my part of the State. Our ground is not flat. Rather, it is hilly, and farther east of me, it is nearly mountainous. Agriculture has only been a viable industry in central and eastern Kentucky because of the profitability of the tobacco crop. Likewise, farmers in this region do not benefit much from farm bill payments, except the environmental assistance program.

Because of those geographic hindrances, I believe it is extremely important that tobacco buyout legislation should prevent overproduction and at least make sure that tobacco growers who work hard to produce a good crop break even. Without those two components and, most importantly, a system that prevents overproduction, I can assure you that tobacco production will leave my area in just a couple of years and will move to flatter ground west of us. To put that devastation into perspective for you, taking tobacco production out of central and eastern Kentucky would be similar to telling farmers in the Midwest they can't grow corn or beans any more.

I, like most farmers around me, believe that H.R. 245, the Tobacco Equity Elimination Act, introduced by Congressman Ernie Fletcher, is the best plan for growers. His plan of compensating quota owners and growers based on the 1998 quota year, and also creating a new tobacco system that is more in line with the world

market, while also protecting the American tobacco producers, is one that I would hope to see pass.

While H.R. 245 is not currently married to FDA regulations of tobacco products, most growers in Kentucky would not oppose fair regulation of tobacco products, if in conjunction with a tobacco buyout. Growers believe a tobacco buyout can only be accomplished if in conjunction with FDA regulation. They are more concerned about getting the buyout than fighting off the FDA. They do hope, however, the FDA language will restrict the FDA from not having authority to regulate components of the tobacco products that occur naturally in the leaf production.

I understand there have been some questions raised about the dollar amount of H.R. 245, and also about the post-market structure created in it. While I believe both the components are vitally important, I want to let you know that I, like most growers, am willing to be flexible as we move through a debate. I believe flexibility is key to passing the tobacco buyout legislation. However, if changes must be made, I hope you will continue to consider the challenges I mentioned earlier in my tobacco—to my many tobacco producers.

Last, let me say that I believe this is the year to pass the tobacco buyout legislation. Recently, decisions by a tobacco company to completely forego the auction market for Flue-cured tobacco will likely be followed up with a similar decision for Burley. I know Congress has an aggressive agenda and I praise all of you for the work you have done to make this country a safer place for all of us. What a challenge you have faced and I believe you have worked relentlessly and admirably to defend this Nation from those who wish to harm it. It is imperative that you find some time in the calendar in this year to pass a tobacco buyout bill that adequately compensates tobacco quota owners and growers and protects those growers who want to continue to produce tobacco, because I believe if the legislation is not passed this year, the devastation in some heavily tobacco-dependent regions will be beyond the point of no return.

Again, thank you, Mr. Chairman for this opportunity.

[The prepared statement of Mr. Chappell appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Mr. Chappell. Mr. Moore, we are pleased to have you with us. I know you are here from my colleague Congressman Goode's district.

**STATEMENT OF DONALD L. MOORE, OWNER AND OPERATOR,  
MOORE FARMS, CHATHAM, VA**

Mr. MOORE. Yes, sir. Good morning. Mr. Chairman and members of the committee, my name is Donnie Moore and I am from Chatham, Virginia. I would like to thank you for the opportunity to speak to you today. I am 46 years old. I farmed the land my grandfather and father farmed before me. My wife, who works full-time off the farm, and I have twin 14-year old daughters and an 18-year old son that just graduated from high school. Our operation consists of 25 acres of Flue-cured tobacco, approximately 75,000 pounds, 90 brood cows, 85 acres of wheat and around 30 acres of corn.

In 2002, we entered a contract with Perdue and constructed a poultry house holding 17,000 pullets. Even though we are considered diversified, we are still a very small family operation.

However, we do have something in common with other, larger diversified operations, that being that tobacco generates the vast majority of our income. In our case, approximately 70 percent is derived from tobacco.

Over half of the quota I produce is rented from primarily retired farmers or widowed farm wives who consider this quota a retirement asset. I have purchased the rest of the quota and considered it to be an asset acquisition. In last 6 years, we have seen our quotas or the production opportunity for us reduced by 46 percent. Both their income and mine have been reduced dramatically.

Many of my non-farm neighbors can now relate to these reductions in quota values with the value losses that they have suffered to their stocks, bonds, 401(k) plans in the last 3 years. Remember, this quota is part of our retirement plan.

We in the tobacco-producing communities see no sustainable way out of a 50-year old program except for some sort of quota compensation and producer transition payments, simply stated, a buyout. We are trying to compete in a world market with a product that is partially overpriced because of rent. If the cost of quota could be eliminated with compensation, our product would be more in line with world prices. Since we have a better product than the rest of the world, reduced costs of production should result in an improved production opportunity for the U.S. producer.

I am not here to debate whether the rest of the world should be smoking our tobacco or any tobacco, but if people wish to consume a legal product, we want it to be ours. Tobacco quota is an asset tied to our land. I don't believe it is right to take it away without compensation. If allotment holders could be compensated for quota that they own and producers provided transition payments with production remaining in current growing areas with some sort of safety net, we could move forward and again participate in a global tobacco market. Younger farmers could plan for the future. Older farmers could continue to raise tobacco or they could make plans for retirement.

Right now, the farming community is almost in a state of panic wondering if another quota cut is coming and how large will it be, along with having a crop in the field in Virginia right now, this probably will go down as one of the worst in recent history due to the excessive rainfall we have had.

My son has expressed a desire to return to the family farm after college, and to be frank with you, I don't know what to tell him. We ventured into the poultry business as a way he could possibly return to the farm full-time, but in southside Virginia, the only way possible is to raise tobacco as well. But this southside Virginia relies heavily on agriculture, but we are reeling from the loss of jobs in our factories and our textile industry. Very few young people are finding employment in our area, and they are looking elsewhere for jobs. I want my children to have the opportunity to stay in southside if they desire. I hope my son will be able to choose whether he wants to be a fourth generation tobacco farmer and not have outside circumstances dictate for him his career choice.

I thank you for your time and your consideration and may God bless each of you in your daily deliberations. Thank you.

[The prepared statement of Mr. Moore appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Mr. Moore. Mr. Winkles, we welcome you as well.

**STATEMENT OF DAVID M. WINKLES, JR., PRESIDENT, SOUTH CAROLINA FARM BUREAU, ON BEHALF OF THE AMERICAN FARM BUREAU FEDERATION**

Mr. WINKLES. Thank you, Mr. Chairman and other members of the House Agriculture Committee for holding this hearing today to discuss ways to make the active tobacco grower more competitive and more profitable. I am David Winkles, president of the South Carolina Farm Bureau, and I am speaking today on behalf of tobacco producers nationwide and the American Farm Bureau Federation. It is important to note that Farm Bureau represents tobacco producers in 20 States, with the largest quota acreage in North Carolina, Kentucky, Tennessee, South Carolina, Virginia, Georgia and Ohio. According to the 1997 U.S. Census of Agriculture, U.S. tobacco is produced on over 830,000 acres on 90,000 farms. However, tobacco production has declined by 46 percent over the last 50 years, and tobacco acreage has declined by 73 percent.

The Tobacco Program has served farmers for over 60 years. It began as a program intended to control the production of tobacco and to stabilize the price, while at the same time, preventing any one company from monopolizing the market. For the most part, the program was successful in achieving these objectives. However, over the last 10 years, market forces have changed, and public opinion pressure has decreased domestic cigarette purchases. Over the past 7 years, Burley and Flue-cured producers have lost half of their quota. As a result, producers are faced with higher input costs, and at the same time, compelled to produce less tobacco. Even as prices for cigarettes rise, the tobacco farmer's portion of the retail tobacco dollar has fallen from 7 cents in 1980 to less than 2 cents today. More than half of the tobacco farms that existed 25 years ago are gone today.

While American agriculture has faced lean times over the past few years, tobacco farmers have also struggled with massive industry changes.

As the value of U.S. tobacco production declines, it is imperative that we take into consideration the families that are economically and socially impacted by this loss of income. The income and revenue generated provides critical assistance for education and health care systems that would otherwise suffer. Tobacco quotas have real economic value for farmers, communities and governments. There simply is not an equitable substitute or alternative means of income to transition to with the loss of tobacco production in so many of these rural economies. An important component of a tobacco buyout is to provide compensation to tobacco growers and quota owners.

Recently, tobacco growers have been squeezed by big drops in demand for U.S. tobacco both here and abroad, by aggressive competition from cheaper foreign-grown tobacco, by high costs to modern-

ize equipment demanded by manufacturers and by modest increases in price for their own crops. The future of tobacco and the communities who have come to depend on the income generated from tobacco farming is very important to American Farm Bureau. Farmers and their families are desperate for a new direction for the Tobacco Program. It is imperative that we develop a program that provides an orderly transition from the current price support system, compensate growers and quota owners for the equity that they have built in the program, and to do it at no net cost to the taxpayer.

Farm Bureau suggests that any buyout meet the following basic principles.

First and foremost, provide tobacco quota holders with fair and equitable compensation for their quotas. Tobacco quota owners should be compensated at \$8 a pound. Quota is a Government-backed asset that many people rely on for income. Elimination of that quota warrants compensation; and we also feel that we should provide tobacco growers with transition payments at \$4 per pound of tobacco produced. Producers must receive fair compensation.

Second, the right to grow should be in the hands of active growers. That will remove non-essential costs.

Third, just as the 2002 farm bill provided a safety net for producers of other agricultural commodities, there needs to be an adequate safety net for producers.

American Farm Bureau supports H.R. 245, the Tobacco Equity Elimination Act of 2003 as a good starting point. The crisis facing tobacco producers and their communities requires decisive action to address a complex array of problems and needs associated with reducing economic dependence on tobacco and diversifying farming operations and local economies. Due to the dire needs of tobacco quota holders, farmers and communities, I respectfully request the committee report a tobacco buyout bill to the House of Representatives for consideration as soon as possible.

Thank you for the opportunity to testify.

[The prepared statement of Mr. Winkles appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Mr. Winkles. Mr. Wright, we are also pleased to have you with us from Virginia today.

**STATEMENT OF DONALD L. WRIGHT, OWNER AND OPERATOR,  
WRIGHT FARM, GLADE SPRING, VA**

Mr. WRIGHT. Thank you, Mr. Chairman. Mr. Chairman and members of the committee, thank you for the opportunity to address you and to share with you some positions and concerns about a tobacco buyout. I am Don Wright, a Burley producer from southwest Virginia, where I serve as chairman of the Southwest Virginia Agricultural Association. I am also a member of Virginia's Working Tobacco Group and Virginia Farm Bureau's Burley Tobacco Committee.

First, make no mistake, we are in favor of a tobacco buyout that includes \$8 a pound for quota holders, \$4 a pound for producers, based on a year that is most advantageous to the farmer. This will allow non-producing quota holders to get out of the tobacco business with dignity. At the same time, it will allow producers a fair



return on their investment and labor in an already tight market, and will also bring some competition to the world market.

Second, we realize that the Tobacco Program as we know it today will probably not continue. The program is not completely broken, but it is in a sad state of repair. However, we can ill afford to abandon the intent of the program and throw production open to anyone and everyone as so many are already advocating. If this occurs, a huge surplus would soon be on our hands. Therefore, we adamantly request that you incorporate into legislation a plan that controls supply and demand based on company buying intentions. This plan could be in the form of a licensing agreement with current producers who desire to continue producing tobacco. Further, the license would be transferable only to an immediate family member who wishes to continue in the business and restricted to the confines of the current tobacco-producing regions.

Third, some type of safety net must be integrate into legislation, as is already the case with other agricultural commodities. This will help to defray the costs of production in the event of a natural disaster.

Fourth, if the buyout comes to fruition, we can and will work with the FDA if the FDA regulates tobacco as a tobacco product and not as a drug. Yes, we do want a safe product. We strongly support current research efforts by several universities and private industries that work to reduce tobacco-specific nitrosamine levels.

Fifth, southwest Virginia has suffered a loss of 59 percent in basic quota since 1997 growing season until the present time. This translates into a loss of approximately \$30 million annually of gross income in mainly six counties of Appalachia. We in southwest Virginia are small in comparison to the rest of the country, but based on this data, you can imagine the impact in lost dollars to our already economically-depressed area.

For your information, I have attached copies of both the "Core Principles Statement Between the Public Health Community and the Tobacco Producers Community" and also, the "Statement by the Virginia Tobacco Working Group to the U.S. House Committee on Agriculture Subcommittee on Specialty Crops and Agricultural Programs." We support both of these documents.

We do not want to be a part of the problem, but rather, a part of the solution. We hope to be able to work together to protect our children's health and the family farm, as well as to strengthen the economy of all tobacco-producing regions of our country. The future of the hard-working family farmers in our region of Virginia critically depends upon your decision.

Thank you for your time and attention to this vastly important matter. Thank you, Mr. Chairman.

[The prepared statement of Mr. Wright appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Mr. Wright. I want to take the opportunity to acknowledge the presence in the hearing room of Congressman Virgil Goode of the fifth district of Virginia, who also represented a district with a substantial amount of tobacco production and Congressman Gude, your constituent Mr. Moore testified very ably just a few minutes ago, and now we are going to turn to questions.

Mr. MCINTYRE. Mr. Chairman.

The CHAIRMAN. Yes.

Mr. MCINTYRE. Just point of privilege for Mr. Goode. I would like to invite our colleague to come have a seat in some of these empty chairs if he would like to join us up here. I hate for him to have to stand. If that is all right. Thank you.

The CHAIRMAN. I thank the gentleman for his courtesy. Let me begin the questioning of this panel by noting a Congressional Research Service report published this year that suggested the \$8 per pound buyout price as a much higher price than sellers of quota are getting in the marketplace. I wonder if you agree, and if so, how does one reconcile such a high level of compensation relative to the current market value, and related to that is the question that we are very interested in hearing today, and that is at what point does the value of the buyout become too small to be unacceptable? Who would like to answer that question? Mr. Aiken.

Mr. CARTER. The \$8 per pound price suggested for quota owners is certainly higher than the average price for which tobacco sells now. As you are aware, the tobacco legislation is permanent legislation. For 60 years, people have relied on it to be a steady thing. It is real property. It has been bought, sold, inherited, married and the whole prospect, and if there is a termination of that fairly sponsored right, then there should be a guarantee of income that you would have realized if the program would have continued. We think that in the past, there was another committee in 1998 that established that \$8 was a reasonable sum to account for that future value of that quota.

The CHAIRMAN. But Mr. Carter, would you realize that if the program did—we don't have this buyout, isn't the value of that quota going to continue to just slide and slide?

Mr. CARTER. Yes, sir. That is correct.

The CHAIRMAN. Which is more important, the size of the buyout or the continuation of the post-buyout program? Mr. Winkles.

Mr. WINKLES. The size of the buyout is undoubtedly the most important thing to people in South Carolina, and from what I have heard from other States as well, definitely.

The CHAIRMAN. Thank you. Anyone else care to respond to that? Mr. Wright.

Mr. WRIGHT. Yes, sir, Mr. Chairman. I agree with Mr. Winkles, the buyout, the size of the buyout is the No. 1 priority. At the same time, I think it behooves each and every one of us in this room to consider the future generation. Do we want to take the money and run? I am getting a few miles and years on me, and that would just tickle me to death to take the money and run, but being associated with education for many, many years, our future is in our young people. Our future is to protect the family farm. Our future is to have a conveyable commodity for those young people to produce as a livelihood and to raise their families, so I don't want us to lose sight of everything when we see the 8 and the 4. Let us take a look at some other things that are important.

The CHAIRMAN. Thank you. One of the popular conclusions at this point seems to be that in order to achieve a tobacco quota buyout, producers and manufacturers must agree on some form of Food and Drug Administration regulation over tobacco products.

Some proposals directly tie a tobacco quota buyout to the FDA regulation, others do not but are constructed with the notion that such regulation will be married to a buyout during the legislative process. Since this committee doesn't have direct jurisdiction over those regulations, there have been concerns expressed that they are going to come from other quarters and we may or may not like what kind of regulations are proposed, or who proposes them, and so I am wondering if you would tell me, are there any new FDA regulatory authorities that are absolutely unacceptable to you as a grower? Mr. Chappell.

Mr. CHAPPELL. Yes, I believe if you tried to bring FDA onto the farm and tried to regulate the natural growth of the leaf, it would be too much of a burden to the farmer to try to do that.

The CHAIRMAN. Will it be possible to avoid that if you have FDA regulation of the manufacturers, and in order for them to achieve the levels of reduction of chemicals and so on in their product, some of that work can best be accomplished on the farm with new equipment and so on. Is it not likely that they are going to pass that responsibility back on down to the tobacco farmer?

Mr. CHAPPELL. Well, I am sure there would be some things that we would be able to have to accept, but in some things, that occurs naturally in the growth of it that we cannot control at all.

The CHAIRMAN. Do you believe the average farmer will have the resources to do just that, if those things are passed down by the manufacturer and you have to buy new barns or new equipment to put in those barns?

Mr. CHAPPELL. At the level, the only way on the compensation level, and the price of the quota or the tobacco after this system is gone will determine that.

The CHAIRMAN. Thank you very much. We will also let Mr. Winkles and Mr. Wright quickly answer that question.

Mr. WINKLES. Mr. Chairman, we really haven't been privy to exactly what may be coming down the road as far as FDA regulations. We haven't been involved at all with any of those conversations. It is important to note that many, many changes have been made in technology at the farm level, as of to date, and we would certainly be hopeful that those would go a long way towards meeting any fair FDA regulations that are promulgated.

The CHAIRMAN. Thank you. Mr. Wright.

Mr. WRIGHT. Thank you. With regard to your question, a lot of work has been done to reduce the nitrosamine level in tobacco. Now, it is also involving the curing process, and I think the farmer can handle this all right, but there is going to be a change in the barns and the scaffolding, whatever, to be able to do the curing as is necessary, especially in Burley tobacco. So yes, there will be a cost if this does come about.

The CHAIRMAN. Thank you, Mr. Wright. Now I want to recognize the gentleman from Texas, Mr. Stenholm.

Mr. STENHOLM. Thank you, Mr. Chairman. Each of you are tobacco farmers. Each of you have or lease quota, I am assuming. What is the average cost, or some cost basis that you have in the quota that you are now farming that will be subject to a buyout? Mr. Aiken.

Mr. AIKEN. The quota that I leased for this year's crop, I have about 52 cent a pound average in it, and that varies across the State of Tennessee. I know of some producers that have paid as high as 70 cents per pound.

Mr. STENHOLM. That is lease?

Mr. AIKEN. Yes, sir, for the right to grow that tobacco.

Mr. STENHOLM. Have you purchased any quota lately?

Mr. AIKEN. You mean a permanent purchase? No, sir, I have not, and to relate it a little bit to the chairman's question a while ago, as to how you relate the current price to an \$8 figure, we have so much uncertainty that as a producer, I mean I think it is risky to be going out there buying permanent quota, so I think it is hard to relate an \$8 figure to a value today.

Mr. STENHOLM. I understand that, but I am going back, and the year 1998 is being used because of the level of quota that was there compared to where it is today, so I am just wanting to get a general figure.

Mr. CHAPPELL. Congressman?

Mr. STENHOLM. Yes, sir.

Mr. CARTER. The last quota I purchased of any significance was in 1998 for \$3.50 per pound. It was totally financed. I am still paying on that, and over half of it is gone.

Mr. CHAPPELL. Yes, I purchased quota in 1998 also myself, and I paid \$3.25 for it and, same as Mr. Carter, I am still paying on that quota. Average lease price this past year, some of them in the county paid as high as 80 cents and my average is about 60 cents.

Mr. MOORE. I haven't purchased any quota in several years because, as I mentioned, we were a small operation. With the uncertainty, but when you mentioned the price of it a little while ago, the cuts, that is what has driven up the rent prices. The last quota at home that was sold that I remember was around \$4.50, but the average price of rent, every time we get a reduction in our quotas, people that have I rent a lot from the ladies that 1,500, 2,000 pounds, they don't understand a cut. I mean, they lived in the Tobacco Program all their life, but they don't understand it now that they are 70 and 80 years old, they want just about the same amount of money every fall, and so that price of rent has escalated with the production in quota.

Mr. STENHOLM. But one of the messages that has to go to land owners and quota holders is we cannot sustain the prices that so many land owners are requiring from farmers to rent it, whether we are talking tobacco or cotton or corn or soybeans. That is a message that has to be sooner or later delivered, and I understand what you are saying.

Mr. MOORE. I agree, but that compounds with the program with the program being here.

Mr. CARTER. One of the other things that occurs is that any disaster payments or quota loss payments are having a tendency to become accruing to the value of the land, they are anticipated that they will be passed through. It may come to the farm, but it does not stop there, and it becomes a part of the rental agreements.

Mr. STENHOLM. Another—yes, sir.

Mr. WINKLES. The only thing I would like to add, Mr. Stenholm, only about 1 percent of quota has actually changed hands in recent

times, so it is a fairly minor amount. The other comments, I think, are absolutely on the mark, as far as the cost, as far as it represents, from my knowledge of it. Thank you.

Mr. STENHOLM. Now, the quota holders, am I not correct in assuming that many of the quota holders never purchased the quota? It was granted to the land owner at a time of the beginning of the Tobacco Program or in some ensuing changes to the farm program?

Mr. MOORE. I wouldn't say it was granted to them. The land in my time, when you bought it, if you bought it with the quota, before you was able to purchase quota without land, when you bought it, you paid for that quota one way or another. You was not given quota.

Mr. STENHOLM. Yes, sir, but I happen to be a cotton farmer back in Texas, and I remember early in my life purchasing quota and then having the quota go to zero value because of a change in the Government program. That is a risk that is taken and there is a general assumption that the value of quota is automatically a price of the land, and that is something that is, we are going to have to deal with. It has, and my expired here in the length of it, but we have several other questions that we will want to submit to you in writing for purposes of this committee. Thank you very much.

The CHAIRMAN. I thank the gentleman. The gentleman from Tennessee, Mr. Jenkins.

Mr. JENKINS. Thank you, Mr. Chairman. Let me go back to the ranking member's question for a minute and to Mr. Chappell. You bought in the late 1990's tobacco quota for \$3.50?

Mr. CHAPPELL. \$3.25 is what I paid.

Mr. JENKINS. All right, it was Mr. Carter then that paid \$3.50, but somewhere between \$3 and \$4 and now, in both your cases, at least 50 percent of that quota is gone.

Mr. CHAPPELL. Correct, sir.

Mr. JENKINS. So if we trailed it like we did stock dividends going up, you would have \$7 or thereabouts in the quota that you have remaining?

Mr. CHAPPELL. Correct.

Mr. JENKINS. Correct? To follow up on a line of questioning that the chairman asked, and let me go to Mr. Aiken. I know Mr. Aiken and I know more about his operation and even though he is a little bigger than most of us in east Tennessee, the situation that he outlined with respect to his farming operation is pretty typical, Mr. Aiken, is it not, with respect to the costs that you incur and the amount of net profit that you get per pound?

Mr. AIKEN. Some.

Mr. JENKINS. I would ask all of you now if—how many of you are still selling at tobacco auctions? And nobody is raising their hand. All right.

Mr. CARTER. A portion of it.

Mr. JENKINS. At auction. But you would agree that in the way situation is developing, that auctions will soon be out of the picture? Will you agree to that?

Mr. CARTER. Yes.

Mr. JENKINS. And then we will left to contract selling, and are all of you now selling under contract?

Mr. CARTER. Yes, sir.

Mr. JENKINS. Well, doesn't it make sense to you that if the FDA should get into the picture, and if the FDA should put regulations on the manufacturers, that those are simply going to be passed through to you as producers through the contracting provision? How many years, for those of you who have been contracting, how many years have you been contracting? Mr. Carter?

Mr. CARTER. I have had the opportunity probably to contract a certain portion of my tobacco before anyone else, because I grow a portion of my tobacco organically, and I have been under contract in that regard for 6 years on that portion of the tobacco, and the point you are trying to make is that yes, as time has gone by, more has been demanded of what has to occur on my farm, but I can assure that the cost of regulation is of concern to growers, and they certainly don't want FDA intimately involved on their farm, but I can take you to three or four of my neighbors whose farm I now tend because they were no longer a viable unit. If they had the opportunity to advance forward with some degree of profitability and a reasonable degree of FDA regulation, they would rather be farming than be renting their farm, and I think that is the situation that we have been placed in as growers is.

It has only been 4 or 5 years since we had it plastered all over our trucks no FDA on the farm, and it was not a grower issue. It was a cigarette manufacturer issue and we were trying to help them fight that battle, and I think right now, it is still currently a cigarette manufacturing issue, and we are just in the situation that we have bought into the idea, and firmly believe that if FDA regulation is coming, we need to proactively accept that as a portion of what we need to get a quota buyout, and I am not saying we are——

Mr. JENKINS. But at the same time, we need to realistically understand that those contractual provisions have grown more stringent in the 6 years that you have dealt with them, and there was no reason for them to, other than the considerations of the contract between the company and the grower.

Mr. CARTER. Yes, sir.

Mr. JENKINS. And well, let me ask Mr. Wright, did you want to comment on that?

Mr. WRIGHT. Yes, sir, Congressman Jenkins. There are many farmers in southwest Virginia, and I am sure right across the line over into your area that would like to have an opportunity to continue with the auction system. I have heard many say, hey, we are at the mercy of the company now. We don't have an out, and the point that you made is that if we have to continue contracting, it is going to be through that contract that a lot can be dictated by FDA, and whether the farmer can live with that or not, I don't know. Time will only tell, so we must be very, very, very cautious, as we draft this legislation.

Mr. JENKINS. Thank you, Mr. Wright, and my time has expired, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Jenkins. The gentleman from North Carolina, Mr. McIntyre.

Mr. MCINTYRE. Thank you, Mr. Chairman. I would just a short answer to this first question from each of you. What will happen to you if we don't get a buyout this year? Will you be able to con-

tinue producing tobacco, and how will it affect you? We will just go down the table if we could.

Mr. AIKEN. As I look across this panel, I think I am the youngest member testifying today. I am 40 years old, and as I said in my testimony, I made a commitment to grow tobacco. I don't have a lot of other options in east Tennessee. My wife and I made a commitment to work hard and we thought we had a master plan when we got married. My debt load for the last 2 years has actually increased. There are other factors, weather-related and those things, and I accepted those going in. I did not know initially when I went into the tobacco business that I would be looking at the uncertainties that we have in the last couple of years. I still need to produce tobacco. I still want to produce tobacco, but I would hope that we could get some more stability.

Mr. MCINTYRE. Mr. Carter.

Mr. CARTER. Congressman, obviously most of us would anticipate if there is not a quota buyout that we would experience another massive quota cut. I think that my situation must be fairly similar to Mr. Aiken's. I am just a year or two older than he is. We thought we made a very cautious plan. Realizing that the industry was changing, we have invested, we thought, prudently, and positioned ourselves for the future in the industry, but there is no way that you can plan for 50 and 60 percent quota cuts, no matter how prudent you are.

Mr. MCINTYRE. Thank you.

Mr. CHAPPELL. Congressman, I am sure we will still be producing tobacco, but at a less level than I am now. In 1998 and 1999, I produced 192,000 pounds. This year, I am down to 105,000 pounds. I am sure that is going to be less next year. Now I'm also diversifying out into a bigger cattle operation.

Mr. MCINTYRE. Thank you.

Mr. MOORE. I, too, will continue to raise the tobacco, but the problem, I mentioned how small we were, but with the cuts we have had in the last few years, I have actually picked up leases every year, but yet I am—less tobacco than I was 4 or 5 years ago. It scares me sometimes when I look at the land that is under my control, it is over 1,000 acres, and I am raising 25 acres of tobacco. That is how much farmland is tied up, and I grant some of that is timberland, a lot of it pasture, hay land, but yes, we will continue to have to raise the tobacco if I am going to stay there.

Mr. WINKLES. Cost will continue to go up. Producers will have less and less net income as a result, and we will become less and less competitive in these global markets that we are forced to compete in these days.

Mr. WRIGHT. Burley tobacco quotas in southwest Virginia are very small to start with, and this year, I would say that probably 200 acres of tobacco was not put out in Washington County alone, just because the quotas had been shrunken so much that it wasn't profitable to go out there and put out a half acre of tobacco, which is about the size of a quota for Washington County, Virginia, the county I live in. Will I be raising tobacco next year? Next year will only tell. If things continue to go the way they have the last 5 years, we are going to be out in southwest Virginia.

Mr. MCINTYRE. Thank you very much, and Mr. Chairman, in the interest of time, I would just ask each of the panelists, given the importance of the buyout, that if for some reason we did not get a buyout, we are going to be left with having to deal with the current program, and that concerns all of us, just as it concerns you. I would ask each of the panelists if you would submit in writing just a simple list to the committee of what changes would need to be made in the current Tobacco Program if for some reason a buyout does not occur.

You know where I am on this issue, and we have made that clear from the beginning. We want a buyout, but if for some reason, we don't get where we need to be for whatever reason, it may be outside of the control of this committee. It may be something that happens that we don't control over on the floor or on the other body on the other side of the Hill, but if we were not to get a buyout, we still need to do some things to help you, so if you would submit a list, Mr. Chairman, if that would be permissible, in writing, in answer to this question of what changes could occur in the Tobacco Program that would help you in the event for some reason a buyout did not occur. Thank you, Mr. Chairman.

The CHAIRMAN. That request is a good one, and at the end of the hearing, we will ask unanimous consent to keep the record open for 10 days to allow the witnesses to respond.

Mr. MCINTYRE. Thank you.

The CHAIRMAN. I thank the gentleman. I recognize the gentleman from Ohio, Mr. Boehner.

Mr. BOEHNER. Mr. Chairman, thank you for holding this hearing. Over the last 5 years or so, I have spent countless hours talking to farmers, tobacco farmers, Members who were interested in a buyout, and we have had some rather spirited discussion. The gentleman from Tennessee, Mr. Jenkins and I have often had this discussion. I am glad that we are going to have it now in the open today.

Our Government, over the last 30 years, has had a policy of discouraging smoking. Countless efforts to try to reduce the number of people who smoke cigarettes, cigars and other tobacco products, while at the same time, the members of this committee have gone out of their way trying to find a way to help the plight of tobacco farmers, and as a Member who often comes here to cause trouble, we keep working against each other, and I appreciate the plight of tobacco farmers. It is a tough business, where you work hard, the returns are good if the weather is good, but your government continues to work against you, and so, when we look at the plight of tobacco farmers, we can look at the plight of airline workers, we could look at the plight of steel workers, we could look at the plight of auto workers, industries who continue to have difficult trouble, and in those cases, a lot of that trouble is coming from foreign competition, and then we come along with the Master Settlement Agreement in 1998, \$200 billion that the companies have agreed to reduce litigation, including \$5 billion of that to go to tobacco farmers.

And then, over the last couple of years, because of the plight of the tobacco industry, Congress approved \$328 million in tobacco loss payments for farmers in 2000, another \$340 million in 2001,



another \$129 million in fiscal year 2001 and \$53 million in 2003. And now, in addition to \$661 million of no-net-cost price support loan and interest losses for the 1999 crop year. So the Government is spending money, tobacco companies are losing money, tobacco farmers are losing money, but do you know what interests me the most? That in the 12½ years that I have been here, I have never had one discussion, I have never heard one discussion in this body about those of us who smoke. No one on the floor of the House or in this committee has ever talked about who is really paying for all of this. If you look at the Master Settlement Agreement, \$208 million, did the companies get hurt? Yes. They have got less volume, higher prices.

But who is paying the costs of this? The people who smoke cigarettes. About 50 cents to 60 cents a pack cost increase so far, because of the Master Settlement Agreement. Now, add to that the cost increases we see on excise tax increases. My home State of Ohio just had a massive increase a year ago, the average carton of cigarettes in my home State has increased about \$10 over the least years. And when you begin to look at the average cost of a carton of Marlboro, in 1998, between 1998 and today, the average cost for a carton of Marlboro cigarettes is now \$17 higher than it was. So if you begin to look at what has happened here is that we are raising the prices on consumers and as a way of trying to stay in business, we see all of these imported cigarettes.

I have got some numbers here. In 1997, there were about 7.8 billion sticks, cigarettes, brought into the country from non-participating manufacturers. Last year, the number was 28 billion cigarettes brought in. That, again, non-participating manufacturers. And so, we have got the companies being squeezed, we have got tobacco farmers being squeezed, and we have got consumers being squeezed, all at a time that the big policy here is that we want to put everybody out of business. It sounds like it is working, and so, as I listen to a tobacco buyout, the first question I ask myself is until we stop this cycle of killing each other on all ends, we had better figure out what that solution really is.

Is the solution to add more energy to this fight against each other, because if we do the buyout, who is going to pay for it? It is not going to be the companies, it is not going to be the Government, it is going to be the customers, thereby increasing prices higher, putting more demand and more pressure on imports, which is going to drive the amount of domestic tobacco produced down, increasing the plight of tobacco farmers even worse than it is today, so I would just suggest to my colleagues that before we take another step in the wrong direction, that we step back and look at a policy that really will help improve the lot of tobacco farmers and others that are involved in this industry. And I am just afraid that the buyout itself really in the end isn't the answer.

I think you are going to get FDA controls of that in this bill. I don't see how a bill can move without having the FDA overly involved in this process. These licenses that are called for in these bills, to replace the current quota program, are we going to have to buy the licenses back at some point? Possibly. We have got amber box problems, and then, we are going to ask those who aren't involved in the use of domestically produced tobacco, i.e., the

cigar producers, who use imported tobacco, we are going to ask them to pay for part of the program, and I think in the end, we just need to find out what the real solution is, but I am concerned that the only solution on the table today is to take the battle to those who are the consumers, and the consumers out there, and I am one of them, I am not going to deny it, that is why I put them out there, the consumers out there ought to be represented somewhere in this discussion. They haven't been thus far, and I am afraid the solution that is on the table today only puts all of the cost on the consumer, while in the end not doing anything to really solve the problem.

The CHAIRMAN. I thank the gentleman. The gentleman from North Carolina, Mr. Etheridge.

Mr. ETHERIDGE. Thank you, Mr. Chairman. Let me thank you and the ranking member for holding the meeting. Let me thank each of the farmers who are represented here today, especially Mr. Carter, who has done an excellent job in our State as past president of the Tobacco Growers Association in North Carolina, Mr. Keith Parrish, who is somewhere in the audience, who is also a past grower, and I would say to my colleagues, he has submitted written testimony I hope you and your staff will read along with the testimony from the North Carolina Farm Bureau with Larry Wooten, who is here today. So we appreciate you being here. This is an important day, and I think as we move through it and listen to other testimony, it is going to become more crystal clear.

Let me just make a point about something the ranking member said earlier, and I think this is critical to understand, having grown up on a farm and at a time when small farmers could make it, when there was substantial profit in tobacco and on small farms. It is not there any more, for a whole variety of reasons which I don't have time to go into. It has required farmers to go to volumes, as a result of volumes, it has increased, and the increased cost has required more volume, and the cuts. So you get the cycle, so I won't go into it, but one of the things I have heard each of you say this morning, and I think is important is that you are willing to be flexible and that most of you support the concept in H.R. 245, a bill that I have co-sponsored with Representative Fletcher.

Now, being flexible is important in this business, as you have heard from my colleagues already and you will hear from others. I think Mr. McIntyre said it in his opening comments. We are not obviously going to get what we want, but if we work together, hopefully we can come up with a plan that will work and be helpful.

I hope we will hear the same kind of comment from the next two panels, that they are willing to be flexible and to try to find a solution out of this, because the truth is we are losing farmers, and one of the points that was made as relates to allotment holders is I think we tend to forget sometimes, most of the allotment holders in this country either bought it or it was set in place in the 1930's and it has been bought or purchased through with land, and it is very hard to sell it without it unless you dispose of the land and the land winds up going into houses, and that will happen if you live near a town, but if you live in a rural area, it is kind of hard to separate it, and not many people want to buy it at that rate, so simply put, it is time to get the job done and I think this hearing

and your participation is important as we move in that reality is head toward a buyout, because I think that is one of the answers we can get to.

Let me ask each of you to respond to this one question very quickly, because I have been hearing a lot from our farmers in North Carolina and happen to represent one of the largest Flue-cured tobacco growing regions in the country, and if you have that in North Carolina, you certainly have it in the country. As agricultural leaders for your respective States, can you share more with us about how the dire situation of farmers are in your area right now? Weather can be part of it, but the broader issues as it relates to the issues of debt load, you mentioned it in different pieces, debt load, future, how are we going to attract young farmers and I don't think we should forget the reason we have so many small farmers in North Carolina is because we have tobacco, I think the thing is true in each of the other States. If you will touch on that very quickly.

Mr. AIKEN. I would have to say that I am fortunate to come from a family farm, my father and mother helped me get started. If not for that, it would have been virtually impossible for me to have proceeded into agriculture, but I think the last 2 years have been very, very difficult for all producers, not just tobacco producers, because we are looking at prices that some of us have not seen in our lifetime, and as far as the price we see for our commodities, the prices we pay for the input costs have continued to rise, so I think we are looking at tough times.

Mr. ETHERIDGE. As you go down the line, give us some sense of what capitalization would cost if someone wanted to get into farming today in the tobacco and other things you do too, please. Thank you.

Mr. CARTER. Congressman, it has been two of the most difficult years in a row that we have ever experienced on the farm, severe drought followed by excessive moisture, a modest crop at best in the field, and that is describing it liberally, and as I indicated earlier in one of my questions, we have been fortunate, our farming operation is sort of closely maintained the same level of production that we had several years ago, but it has been at the expense of neighbors who fell below the threshold of having a sufficient size of operation to capitalize what they were doing or to maintain a labor force, and I currently grow the tobacco that six of my peers grew in 1998. They are all displaced, they are all the middle age and older and have tried to find other jobs and trying to subsist on the income that they generated from the quota rental that I paid them, which I may indicate escalates every year, on a per unit basis. So it is a difficult time on the farm, and not just in tobacco.

As Mr. Aiken indicated, you have a lot of other commodities in your district, how the cotton crop is suffering. There are just a number of things that are in play right now. The cost of capitalization in Flue-cured tobacco is extraordinary if you were to consider trying to get in at this point in time. A bulk curing facility, a minimum is \$20,000 per unit, and that can accommodate 7 or 8 acres of tobacco, and this is very specialized assets. It has no value outside of the use for tobacco, but the bulk tobacco barn is basically good, heated storage, if you don't cure tobacco in it, it sits idle for

9 months out of the year, so it is a real prohibitive factor from someone just happening to think they might want to grow tobacco. It is also very prohibitive if you want to try to put yourself in a position to advance in this industry, if there is one, if future post-buyout, so it is a very difficult business to work your way into.

Mr. CHAPPELL. In my community, the land price has gone up to \$3,000-plus an acre, because we are kind of becoming a bedroom community where 50 to 80 miles in any general direction of three big large cities, people wanting to leave the large cities and move, and when you are trying to farm, you can't afford to pay \$3,000 an acre for the land in there to raise tobacco on that you are making a very small profit on, or the cattle that you have got there trying to make a small profit on, so we are competing with that. We are losing farmers every day to—leasing their crops out, going getting jobs to supplement their income to make it better and that is what is going on in my community.

Mr. MOORE. I don't think it is any way somebody that is not involved in farming or in tobacco farming, no matter how crazy he was could justify the capitalization to go into it right now, and I never have believed that with post-buyout or no buyout. The only thing that I hope is there is plenty of young growers on the farm, children that are there, I hope that they have the opportunity to stay there, because like where we live, no matter that the quota has been cut, our tax rates at the county revenue office have not been cut. They still consider it to be taxable and they still are raising the taxes, we have less representation on the county board of supervisors, but yet our tax rates have not fell, even though we have got less quota to pay it with.

Mr. WINKLES. Mr. Etheridge, I am here representing American Farm Bureau, but your question is more directed to South Carolina. We are coming off of a period of 5 years of drought to a year, this year, where we have had unusually heavy rains, and I don't appear to be unappreciative, because we really appreciate the rain, but the mood in agriculture in South Carolina is probably as dim and as depressed as I have ever seen it. Profits are harder and harder to come by.

We find ourselves in a more and more competitive situation globally. There are so many questions from biotechnology to WTO and where agriculture is headed in general that need to be answered. Specifically, you asked about getting into agriculture. I think a unit size of operation that would be reasonable with tobacco, cotton, corn, a diversified operation, would probably take about \$2 million to get into in South Carolina at this point. One other thing I would like to mention to you, everybody today either bought tobacco quota or they paid inheritance taxes on it whenever they got it from their predecessors.

Mr. WRIGHT. I wouldn't recommend any young man to go in or try to go in to the tobacco business right now. No way. As you know, tobacco has paid for many a small farm in southwest Virginia. When they bought that farm, it had that tobacco quota on it, and that is what paid for it. Today, that is not happening. No way. So I wouldn't recommend it at all, and also, considering the fact that their prices are an all-time low, our dairy farmers are suffering tremendously. If it wasn't for the little subsidy that they are

getting, no way could they continue on, and weather this year, probably the worst year I can remember for tobacco, and according to Dr. Jones at Blackstone at the Research Station, this is the worst year since 1951 for the tobacco crop in the Commonwealth of Virginia, so for these reasons, I don't think it would be a good decision to try to get in at this time.

Mr. ETHERIDGE. Thank you. And thank you, Mr. Chairman. I yield back.

The CHAIRMAN. I thank the gentleman. The gentleman from Georgia, Mr. Burns is recognized.

Mr. BURNS. Thank you, Mr. Chairman. I would like to thank the chairman and the ranking member for holding this hearing today, and certainly the work of Mr. Jenkins and Mr. McIntyre. I represent an area of Georgia that has a good bit of tobacco, and I would like to thank the panel for their input, and I would also like to point out the fact that your use of the English language is absolutely appropriate, and I am delighted to have you in Washington. We need more folks who speak Southern up here. I want to follow up on a couple of things.

First of all, Mr. Etheridge pointed out, there are very, very few if any first generation farmers out there. I mean, it is just as you all pointed out, it is virtually impossible for someone who did not grow up in that environment and have family connections and support mechanisms there to make a go of it today in American agriculture, and we know that. Another thing I want to follow back up on is when we start talking about marketing your product, we have gone through the auction environment to more contract production, what percentage are you seeing now contract versus auction barns? We are losing auction barns all over in my area of the country. Mr. Aiken.

Mr. AIKEN. I would say between 80 and 90 percent in Tennessee last year was contract.

Mr. BURNS. Contract.

Mr. WILLIAMS. It is basically 80 percent is the industry figure. In my area, it is probably 98 percent.

Mr. BURNS. Ninety-eight.

Mr. WILLIAMS. Yes, sir.

Mr. BURNS. OK. Kentucky.

Mr. CHAPPELL. In my county and surrounding counties, it is probably 95 percent.

Mr. BURNS. Pretty high.

Mr. CHAPPELL. Yes.

Mr. MOORE. I think it is close to 90 percent in my area.

Mr. WINKLES. The figure is around 80 to 90 percent, but of course, you realize one of the major companies just announced they would furnish 100 percent of their needs by contract this year.

Mr. BURNS. And accept no auction-based—

Mr. WINKLES. That is correct.

Mr. BURNS. Product. OK.

Mr. WRIGHT. Probably 95 percent in southwest Virginia, 95 plus.

Mr. BURNS. How does that marketing shift affect the tobacco producer? Is that an advantage to you? Does it put you at a disadvantage? Would you prefer one method over the other, or is it just the way the market is moving?

Mr. WRIGHT. I think every tobacco producer should have the opportunity to sell either way. If he wants to contract, all right, or if he wants to put it on the auction floor and let them duke it out for his tobacco, then he should have that opportunity, and if he has no other opportunity other than contract, then he is at the mercy of one.

Mr. BURNS. Yes, I remember as a boy growing up, going to the auction barn. I always found that to be a very pleasant experience, to spend the day and the evening there and just go through the Americana of a tobacco auction. It is quite enjoyable. Let me ask a specific question. Mr. Winkle, in your testimony, you pointed out that one of the things you would like to see is a safety net, an adequate safety net for tobacco producers. Would you elaborate a little bit on that?

Mr. WINKLES. A number of producers would like to see a very strong safety net, even including, systems very much like in place with the farm bill. Others have a much more liberal feeling of that, and are not quite as concerned about it, so it is a wide range there, Congressman. Anywhere from as much support from the form of LDPs and loan prices all the way down to no supports whatsoever. Now, whatever the final decision is, I know our growers will be happy with that decision and live with it. I think the No. 1 question, though, is whether there will be a buyout of that equity that has been built up in that quota.

Mr. BURNS. I think that leads me to my final question. If, indeed, we are able to achieve a successful buyout, which is going to be a challenge, we know that, but if we are able to achieve that result, then I want to look at post-buyout production controls or management. What recommendations, or how would you feel, do you support a licensing program? Do you support some form of traditional carry-over from the producer's perspective, give me your input on a post-production environment?

Mr. MOORE. In Virginia, we felt that if we could keep it in a geographical areas, again, I think a lot of it boils back, a lot of the questions on FDA, if you enter a contract agreement, the man that is behind your product will tell you that the companies, I don't believe, want all their tobacco grown in one area. I think they are going to move the production where they want it, and I think where it is at now, scattered from Florida to Virginia is how they wish it to be, and I think they will control that. A reasonable FDA authority doesn't scare us on the farm, because we feel like the man that is behind our product is going to tell us how he wants it, and if it is reasonable, I think we can live with it on the farm.

Mr. BURNS. Thank you.

Mr. AIKEN. Being from east Tennessee, we cannot transfer to row crops or anything else. Basically, if we lose tobacco, it would be very detrimental to the producers and a lot of rural communities, so again, I would hope that we could save some geographic protections. I have got to admit to you I am an optimist, and I think maybe everyone at this panel would have to be a little bit to be involved in farming, so I want to tell you that I have high hopes for tobacco production, regardless of what type of program of safeguard we come out with, but the problem is, my banker is not quite as much of an optimist as I am, so for that reason, when you go to

making large scale investments into a tobacco crop, to me, it is almost necessary, or it makes it very beneficial if I can have some safeguard to present to my banker and those type folks.

Mr. CHAPPELL. I think as a minimum, we need to look at restricting it to the geographical areas that we are in currently, because even with the \$4 transition to assist growers and the opportunity to move forward in a new type of marketing opportunity or to offer them the opportunity to either transition to something else, the community is still suffering, and I think that maybe it is unfortunate, but so many of these rural economies are based on agricultural production, and as you heard from the testimony, there is no opportunity to do your traditional row crops in a lot of the places where tobacco actually thrives, so I think it is critical that we maintain that portion of it, and it is also probably important that we look at minimal production controls in order that we are not constantly oversupplying or undersupplying the market demand, and a lot of that obviously will be taken care of through contractual arrangements, but there probably needs to be some oversight in that regard administered by growers along with the industry in relation to what they see as a desirable amount of tobacco to grow in any given year.

The CHAIRMAN. The time of the gentleman has expired. The gentleman from Kentucky, Mr. Lucas.

Mr. LUCAS. Thank you, Mr. Chairman. Again, I would like to welcome all you folks here. This has been invaluable, your testimony and particularly, I would like to welcome David Chappell, who has been a friend of mine for a long time, and David, we have got a lot of folks from Kentucky that are up here today in other room, because they realize the importance of this buyout, and it is almost a life or death situation for us back in Kentucky, because the survival of our farming community is dependent, I believe, on getting a reasonable buyout, and this has been long overdue. When I travel my district back in Kentucky, this issue outweighs anything and everything, all of the other issues put together. I mean, it is that important, and I think the time is now for this buyout. If we don't get it done this year, I really question if we will ever get it done. Being the eternal optimist, and the other thing I would say, too, I am very hopeful that since tobacco is not the most politically correct product out there that our farmers and ranchers produce across this country. I am very hopeful that we will get the empathy and support of our other agriculture State colleagues. We support them and we are very hopeful that they will be supportive of us when it comes to trying to work out a solution here today. I think that is very important. Though being the eternal optimist that I am, David, I would ask you, assuming that we do have a buyout, what do you think would happen if there was no program afterwards?

Mr. CHAPPELL. I think in my county in eastern Kentucky, wouldn't be producing tobacco, because we are, our ground is hilly, like I said in my opening statement, that we are not as efficient or able to make the amount of pounds, our soil is clay soil, and we can't produce like some of the western Kentucky states in the other parts, where they have the real good soil, and I think what would happen is the companies would move the production to the

other places, and Owen County especially, and all of eastern Kentucky would be devastated with the loss of the income in our communities and besides the jobs that would have to be found for all the people in those communities.

Mr. LUCAS. So it is very important that we have this geographic protection, if you will, and a program afterwards.

Mr. CHAPPELL. Yes. It sure is.

Mr. LUCAS. One of the other things that my colleague, Mr. Boehner, he is still here. I heard what he had to say, and obviously, there is a lot of truth in what he has to say, but in my mind, I don't see any other way to pay for this program except for the consumer to pay for it. What I would like to do is, I mean, certainly the Federal Government, we are running a \$455 billion deficit and financing the war in Iraq and other places, we are certainly not going to look to the Federal Government to bail us out, and I don't see any other way, except for this user fee that would need to be there for a buyout. I would like to open this up to any of you as to what you feel and think about that. David, do you want to start, and others, as well?

Mr. CHAPPELL. Yes. Well, I don't see any other way and the only other thing I would like to say about that, when the estimated cost on the Master Settlement Agreement was around 25 to 28 cents, and they raised the price of the cigarette 45 cents a pack, where did the other go, and I guess I am sure that they are charging the consumer for it, but we have been a no-net-cost program, we haven't been a cost to the Government since we were started years ago, and I guess, I think it would be a burden, somewhat of a burden to the smoker, but I don't see any other way.

Mr. LUCAS. Anybody else have a comment on that?

Mr. CARTER. Yes, sir, Congressman. I think you are exactly right. It would be probably insane for us to ask for it to be paid by taxpayers at this point in time. I think that the industry has shown a remarkable ability to generate the income necessary to pay the debt owed by the Master Settlement Agreement. The amount of money that would be required to do a Federal quota buyout is fairly insignificant in relation to the \$206 billion settlement that is currently being paid by the higher prices of cigarettes. Another couple of key factors that are important to bring out on paying for this is that there is some self-financing involved, because purchasers of tobacco in the U.S. will buy U.S. tobacco for less money. They will have to expend much less money than what they are right now, in order to purchase U.S. tobacco, and also as the side agreement, phase II has been alluded to earlier, that is no longer an obligation if there is a quota buyout, and that money has already been earmarked by those folks who are paying it, and it could be transferred into a potential quota buyout as well.

Mr. LUCAS. I see my time is up. I was hoping that before you folks leave, that there is an open period where any of you might be able to cover anything in a few comments that you might have that hasn't been covered, because I think this is very valuable to us, so I hope you get that opportunity. Thank you.

The CHAIRMAN. I thank the gentleman for his contribution and he was wondering where, other than the consumers, to get the money. I am wondering how much of the \$206 billion Master Set-



tlement was paid in attorneys' fees in the multi multi billions of dollars that might have been better spent compensating farmers for that.

Mr. LUCAS. Would the gentleman yield?

The CHAIRMAN. I would definitely yield to the gentleman.

Mr. LUCAS. And I would be happy to support a bill today that took \$19 billion from the trial lawyers and gave it to the tobacco farmers in a heartbeat.

The CHAIRMAN. Now we are starting to see consensus develop here. The gentleman from North Carolina, Mr. Hayes.

Mr. HAYES. Thank you, Mr. Chairman. I appreciate you having this hearing and gentlemen, I appreciate you being here and all you do. I want to publicly thank the judge, Bill Jenkins, for his effort trying to put this together. A strong, united voice, which we have in our producers, is critically important. You have touched on this issue and my good friend Mr. Lucas asked a good question. I might simply amplify his question by saying no matter how we pay for it, the consumer is going to pay for it one way or the other, figure out which pocket to take it out of, but in a post-buyout environment, what programs, if any, do you see as being a part of tobacco post-buyout? If you would just go down the table and anybody that has a comment would be appreciated.

Mr. AIKEN. Some of the comments today have related to the fact that we are probably going to have FDA regulation, and I understand we say that is not going to be at the farm level, but in some shape or form, it is going to trickle down to us. The FDA regulators may not be out there on the farm, but we are going to be held to some standard, I think if we have FDA regulation of tobacco, so I think if we are going to deal with those regulations that we should also be able to have some safeguard as to knowing that we could produce it, and maybe expect a fair price.

Mr. HAYES. Mr. Carter, you are almost in the eighth district, thanks for being here.

Mr. CARTER. Yes, I used to be in your district, Congressman, and I regret that I was redistricted, but that is another issue. I think that the current program, as it exists, has been, as I alluded to in my testimony, a gold standard for a long time. It has offered a lot of stability in the rural communities of North Carolina. Unfortunately, in the last 15 years, it has stabilized us 6 inches underwater and we are drowning, and it doesn't matter if we are stabilized 6 inches underwater, 2 feet underwater, or if we are floating on the bottom. We are still in the same situation, and I think that there is a lot of issues to really be afraid of, to have a lot trepidation about, with the FDA being one of them and I think that growers are in a desperate enough situation that we have considered all of the alternatives. There is not an opportunity to fix what we got and we need to do something different. As a minimum, we need to have a safety net similar to what is available to the other farm programs and commodities, and we need to try to, in order to maintain our rural communities, keep tobacco growing in areas similar to where it is now.

Mr. CHAPPELL. I agree with the two gentleman before me. The one other concern I have, we have got to remember our communities, because when the FDA comes down, and the costs will trick-

le down, like they say, but we have got to remember, if we lose all controls and tobacco moves away from our communities, we are going to be devastated.

Mr. MOORE. I think one of the concerns would be some type of crop insurance, the availability to carry it, because still, with the lower—hopefully, if rent is taken out, tobacco is still a very high value crop, still have to invest a lot of money, it still means borrowing money, and like in Virginia, I am sure some of you are familiar what happened with the peanut program, the value of peanuts whole lot lower than what the actual break-even costs is, and bankers are kind of leery about lending money on a losing proposition, even though they might have enough to offset it somewhere else, so I think crop insurance would be a big.

Mr. WINKLES. Post-buyout, we would like to see a safety net that really reflects the costs of production.

Mr. WRIGHT. Post-buyout, Congressman, seems like would be a fairly simple type of thing to issue a license to those individuals who are currently producing tobacco. Now, based on buying intentions of companies, that thing would have to be pro-rated, but that poundage, or amount of tobacco would remain in each locality, each county, whether it be in Virginia, North Carolina, Tennessee, wherever, and could be pro-rated out to these folks who are currently producing, and I don't think it would be any big deal. I think all that are producing tobacco would be, now currently producing would be happy with something like this. It would keep it in the communities, as these folks before me have said, and we have got to look at that economic impact of what tobacco actually does to these small communities across whatever area we are talking about.

Mr. HAYES. Thank you, sir. Mr. Chairman, I ask unanimous consent to place my written statement in the record and to make one further comment.

Mr. Lucas, and the consumer and Mr. Boehner, we have got a chance here to put an effort together every time a personal injury lawyer files a suit against the tobacco folks, we ought to get a fee, and if they ever win one, I hope they don't, another fee, and we could raise some money in a hurry.

The CHAIRMAN. Well, the gentleman's observation is correct, and his statement will be made a part of the record, and the folks you refer to already have gotten one whopping big fee from the Master Settlement. The gentleman from Tennessee, Mr. Davis, recognized for 5 minutes.

Mr. DAVIS. Thank you, Mr. Chairman, and ranking member and my colleague, Bill Jenkins from Tennessee. It is good to see a Tennessean here as well as many of the other folks who are from the South. I can recall as a youngster growing up the first time I remember tobacco, and I will be 60 years old at my birthday, so for that length of time, there has been tobacco growing at the farm where my father lived and where my brother still produces. It is laid by, do you know what that terminology means, it is laid by waiting, Burley case, cut it and harvest it into the tobacco barns which we now use two broiler houses that basically got to the point where we can no longer get a contract, quite frankly, to grow broiler chickens.

I recall in my early years of studying in school that two products has always been a part of America's history: maize corn and tobacco. The first Americans, the first folks who came here from Europe found Americans growing tobacco and they found corn being grown here. Both have been a major part of agriculture, and both have been a major part of the economy, in the growth of America, and we are seeing corn still there obviously, but tobacco has come on hard time, and sometimes with contempt from those, especially those who may use or consume tobacco. Our farmers today in Tennessee and across the South are, I think, in the quagmire of deciding where you go, because I remember the trips to Dean Planters, Mr. Jenkins, over in Knoxville, that is where we sold our tobacco, put it on the back of the pickup truck and carried it over there, and it wasn't 20 to 30 acres, it was sometimes as much as—ours was a half an acre, which is a pretty sizable crap in Fentress County, where I grew up. Most people had two-tenths or one-tenth, or maybe just a few hundredths, and it provided the payment for that farm. It provided an opportunity for children to get clothing in November or December, when that crop was sold, so as we talk about the tobacco buyout, I think a lot of folks have already gone out of the tobacco business, because with the difficulty of actually raising tobacco and the uncertainty in the last 8 or 10 years of having the continuity of knowing that that crop will always be as it has been, a major part of America's economy.

It also is a major part of our tax base in this country. I just looked at some of the figures a moment ago, and I think some, and one of the testimony that will be heard probably later indicates that there must be somewhere close to \$35 to \$40 billion a year in taxes collected on tobacco, both State and Federal, and we are talking about over a 5-year period, \$20 billion. The consumers obviously pay that. We have reached a point where if we don't do something, our tobacco farmers will not have a program, nor will they be producing tobacco.

As a youngster growing up, we grew tobacco and strawberries. There was an ice cream company that bought the strawberries for a reason. It has a good taste to it, and the strawberries put in that ice cream, folks wanted that ice cream. They moved it to Mexico, and in the mid-1950's or late 1950's, we quit growing strawberries for a reason, and the tobacco crop is in the same situation today, unless—I think we are going to lose it anyway, and it is not right to the American farmer, who for over 200 and some odd years has been producing a major part of America's economy, to lose this product without at least some reimbursement for the work that you have done.

The tobacco warehouses are about to cease existing. My brother and I took tobacco in December and in January to a Kentucky tobacco warehouse and sold it on the auction block and watched it sell. That, too, has been a part of the history of many of us, but the tobacco warehouses are becoming fewer and fewer and fewer, and the place to actually sell the product, our crop, is about to diminish to where it is no longer available, so I guess I give this testimony in support of, and certainly in hopes of that the tobacco farmer in America, from those who don't know what tobacco is about, and the difficulty that you know of producing it, that there

be some consensus and some sensitivity to those farmers in our areas that have really been a major part of history and a major part of our economy.

I could ask several questions, all have already been asked. I just applaud you for being here and for your testimony that you have given, and for the meaningful part of America that our tobacco farmers have been. I see my time is up. Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman. The gentleman from North Carolina, Mr. Ballance.

Mr. BALLANCE. Thank you, Mr. Chairman and gentlemen, farmers, on the panel, thank you for your presence here today and for your testimony.

There is, like my colleague from Tennessee, there is a story that I could tell about growing up on a farm in rural eastern North Carolina, and my mom still lives there, that grows tobacco. My father had to leave the farm and go to New York to get a job, but later he came back and I heard one of you talk about getting into the Perdue chicken business, and because of work ethic, he had retired, but he didn't want to sit around, so he got into the Perdue chicken business, but I have been very moved by your testimony, and I have talked to many farmers in my district, tobacco farmers who are suffering, as I know some of you are, and I have heard a lot of the questions and I am not going to try and ask, but I am interested in knowing, Mr. Carter, maybe I will start with you, are there others who are now able to make a living on your farm in addition to yourself?

Mr. CARTER. Yes, sir. We have a diversified farming operation. We grow 200 acres of Flue-cured tobacco and almost 150 acres of fresh market vegetables, and we are deeply involved right now in cantaloupe, watermelon and tomato harvest. Very difficult to be here, but I thought it was very important to come and offer the testimony that we have been able to have the privilege to do today.

I have 5 full-time employees. Of those, 4 of them are very important to my farm operation. I could not function without them. Those particular men are unemployable in any other situation. I have annual payroll in excess of \$400,000. That money is turned over in the local economy. This is a very small community. That doesn't sound like a lot of money, but again, many of those people are only capable of doing farm labor. That is what they have always done. They don't have the educational experience to pursue other opportunities, and again, there is also the issue of those farmers who have been displaced, which I mentioned earlier. Again, there are six gentlemen whose farms I rent right now, who in 1998, were my peers, the folks who I used to go and compare crops to. We used to talk about how the tobacco sold. Now I farm their farms, just like Mr. Moore alluded to earlier. In my 32 contracts that I have had to accumulate to try to maintain the size of operation that we have, there is over 7,000 acres of land in this combination. I am farming 200 acres of tobacco and 150 acres of vegetable, and that is all that is profitable on that farm. We are on such deep, sandy land that the commodity prices don't work and yields don't work, so it is not a large operation in comparison to some in the Midwest, but it makes a real impact in my community.

Mr. BALLANCE. Without going on a roll, I want to raise this issue. I talked to a farmer in Middleburg, NC, who mentioned that he had nine bulk barns and he only needed about three now, and he had seven or eight tractors and only needed a couple. Any of you involved in that situation or know other farmers who have excess equipment and barns that you can speak of?

Mr. CHAPPELL. Well, in my community, in Burley production, of course, we are using most of the equipment except for the explicit tobacco equipment, for other commodities or hay and there are tractors and stuff for the hay, and for feed for the cattle and taking care of them, but yes, there are several barns, big barns sitting empty and they are converting them now to hay storage with this phase I money, to store the hay and to save it for the cattle, diversifying into better cattle handling operations and things like that.

Mr. CARTER. I don't want to hog the microphone, but in answer to your question, on our farm, we use 25 curing facilities to cure our tobacco. Of those farms that I have rented since 1998, there are 75 barns that are sitting idle.

Mr. BALLANCE. I want to raise just one more issue. Generally speaking, and anybody can respond, what is the—most of us are nostalgic and, of course, in this room, you have total support, and I want to make sure the record is clear that I support the buyout, what is the feeling of your downtown neighbors? Do they support the buyout, or do they think that you all are on your own, or how is that?

Mr. MOORE. I think of the communities around home, they understand, because like I mentioned, with the factories and the textiles, it is no employment, we have high unemployment to start with and with the decrease in quota, that is car sales, that is fertilizer sales, that is everything, sales has decreased that much, and I think a lot of the sentiment is, whatever happens here is because like Mr. Carter said, our land is suitable for tobacco. Yes, we raise some crops, but no large degree. We can graze cattle, but it is hard to stay on the farm. It doesn't generate a lot of income, and you can't employ anybody, because there is not enough income there for other employment, so they understand the predicament we are in, and the communities are suffering as well.

Mr. BALLANCE. Mr. Chairman, one of the things that we know is that as Members of Congress, we are in a minority in terms of representing the farmers. A lot of our colleagues come from areas where they don't grow tobacco, and one of the reasons I raise that question, we are going to need to make sure that they are on board if we are going to get this buyout and I want to just pledge my support again for this buyout and I will work as hard as I can for it. Thank you very much, Mr. Chairman.

The CHAIRMAN. I thank the gentleman. I understand the gentleman from Alabama, Mr. Rogers, does not have any questions, so we will at this time thank this panel for your contribution to this very difficult subject.

It is very helpful to have the benefit of the views of the people who are right on the ground and who are suffering through this difficult economic time that is not getting any better for tobacco farmers. I thank you all very much for your contribution.

At this time, we will invite our third panel to the table. Mr. Brennan Dawson, vice president for external affairs, Brown & Williamson Tobacco Company of Louisville, KY; Mr. Everett Gee III, general counsel of S&M brands, Inc., of Keysville, VA; Mr. Tommy Payne, executive vice president of external relations for R.J. Reynolds Tobacco Holdings, Inc., Winston-Salem, NC; Mr. Norman Sharp, president of the Cigar Association of America of Washington, DC; Mr. Mike Szymanczyk, chairman and CEO of Philip Morris USA of New York, NY; Mr. Ashley Taylor, Jr., legal counsel for the Council of Independent Tobacco Manufacturers of America of Richmond, VA; Mr. Steve Watson, vice president of external affairs to the Lorillard Tobacco Company of Greensboro, North Carolina.

I would like to welcome all of the members of this panel. Thank you for your participation today. I remind you that your full statement will be made a part of the record and ask, given the large number of witnesses, that you limit your remarks to 5 minutes. I will begin by correcting myself, and noting that it is Ms. Brennan Dawson, and Ms. Dawson, we are very pleased to have you with us today.

**STATEMENT OF BRENNAN M. DAWSON, VICE PRESIDENT, EXTERNAL AFFAIRS, BROWN & WILLIAMSON TOBACCO CORPORATION, LOUISVILLE, KY**

Ms. DAWSON. Thank you, Mr. Chairman and members of the committee. My name is Brennan Dawson. I am from Brown & Williamson Tobacco Corporation. I am very happy to be here today to talk about the potential grower buyout.

At Brown & Williamson, we swing about twice our size in terms of how much U.S. leaf we buy. Because we are part of a worldwide group of companies, we actually buy here in the U.S. for the rest of the world, so while we are 10 percent of the market share here, we buy about 20 percent, or double our size, in U.S. leaf. Tobacco growers, like the rest of the tobacco industry, have had several very difficult years recently, and it would be impossible for us to miss that the tobacco growers are in the United States, both Flue-cured and Burley, really want this tobacco buyout. We would be happy to support a tobacco buyout, but it has to be fairly funded, it has to be forward-looking, and we think FDA has absolutely no role in this issue.

When we talk about the grower buyout, there seems to be kind of some sort of false expectation that this is really just a matter of sending a big bill to the tobacco companies and moving on. It is nothing like that. The marketplace for U.S. manufacturers is very, very challenging right now, and that is part of the reason that the growers are having such difficulties. This isn't about litigation or legislation, this is about a price war that is going on in the United States right now. When we signed the Master Settlement Agreement, we took on a huge burden, about 55 cents a pack that gets passed along to consumers. When we raised our prices, that made room for a whole new group of entrants, new companies to come into the U.S. market. These are people who compete on price and price alone. Some consumers walk into a market and they say give me the cheapest pack of smokes you have. Those companies started

out representing 2 percent of cigarettes sold in the United States. They now represent 13 percent. We have had to lower our prices, take it out of our bottom lines just to stay competitive in the U.S. market, so we are not rolling or flush in cash that would make the payments for this grower buyout.

Adding to all of this is a hugely exploding tax that goes directly to our consumers. Right now, 46 percent of the price of a pack of cigarettes is taken directly by State and Federal Governments. It adds up to about \$120 million a day. There is enough tobacco tax money to go around right now, we believe. It is a matter of priorities, and it is a matter of looking at what is already existing and taking from that pot, rather than making the situation worse by coming back to us and asking us to pay a bill that we simply find it impossible to do.

What is left if there is a buyout? We think there should be a free market if growers are bought out. A free market would allow them to reduce their prices and be competitive on the world market, which is one of the main reasons that they are seeing their quotas cut. But if there needs to be licensing or production controls, we have to be careful, this is the forward-looking part, not to put something back in place that replicates the problems that keep U.S. farmers from being competitive now, and that is the artificially inflated price that U.S. leaf now commands.

My company can go to Brazil and buy tobacco for 40 cents on the dollar. We don't do that all the time. We buy as much U.S. as we can, but that is who the farmers are competing against, and we have to make them competitive.

Finally, FDA. The Food and Drug Administration, it is said, is necessary to make this politically possible. That is not the case, we believe. These are two very separate issues. If you look at the Food and Drug Administration proposals that are currently on the table, we would find them unsustainable. If we find them unsustainable, we won't buy tobacco. We won't be here to do it. That, in and of itself, ought to separate these two issues. We have to look at what sort of regulatory regime we want for tobacco, I believe separately, because it is not an easy issue. There is room to have debate on what sort of regulations we should have, additional regulations we should have going forward, but that is not going to help a tobacco buyout, because the proposals that are currently on the table give the FDA virtually wholesale regulatory authority over our products. In fact, they could come in and tell us how to make them, and we would have to translate that down to farmers, and it is not something that we believe we can sustain.

So again, thank you very much, Mr. Chairman, for this opportunity. Thank you for the attention the committee has paid to these complicated issues, and we look forward to working with each of the Members as we move forward.

[The prepared statement of Ms. Dawson appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Ms. Dawson, for that valuable contribution. Mr. Gee, welcome.

**STATEMENT OF EVERETT W. GEE III, GENERAL COUNSEL, S&M BRANDS, INC., KEYSVILLE, VA**

Mr. GEE. Thank you, Mr. Chairman and members of the committee. My name is Everett Gee, general counsel for S&M Brands, Inc., and I guess we are very happy to have a seat at this table, because you would call us small tobacco.

My family lives in southern Virginia, in Congressman Goode's district, and for five generations, we have been farming tobacco in southern Virginia and continue to do so today. Therefore, being a small manufacturer and tobacco farmers, I think we provide a unique perspective, because we wear two hats in addressing this committee, and it is going to be difficult sometimes for me to separate my manufacturer hat from my farmer hat, so I will try to keep the two separate, although we hope that something that could be come to by this committee and by the Congress that would be acceptable to all parties.

We started our company in 1994, and indeed, there has been a lot of changes in the industry, both as a farmer, with all the quota buyouts we have heard today, and as a result of the Master Settlement Agreement. Now, my company was around during the litigation from the States. We were not sued, we were so new, and we are not a member, but one thing I want to leave the committee with today is all small tobacco are not importers, and there are problems in the industry now that we feel primarily are lying at the feet of the importers. Under the Master Settlement Agreement, to those of us who are not signatories, we are required to escrow effectively equivalent moneys, and to me, even more injuriously, no one has agreed at the IRS that those moneys should be tax deductible, as the majors' MSA settlement payments are, so it is a cost built into the MSA to small manufacturers from the very beginning.

That gets me to a buyout issue on the farmers' side, maybe the farmer hat speaking here, but absolutely we support assistance to the tobacco farmers. The issue is what should that look like and who should fund it. From a small tobacco's perspective, we have no problem if the payment schedule is equitable and fair, and what I mean by that, if big companies pay 5 cents a pack and medium companies pay 5 cents a pack, the little guys would like to pay 5 cents a pack as well. That is all we would ask in any buyout scenario. We have heard rumors of credits here and there, maybe more on the Senate side, but we certainly do not have the resources to compete with the major manufacturers if there is a disparity in the amount of money put on small tobacco, and that is not even in the money issue if there are other regulations that come out of Congress that are directed at small tobacco, we would be certainly against that, because it is a tough enough industry as well, being squeezed on one end by the majors, who have some fine products, and worse, on the other end, by importers who are not paying what they are supposed to be paying and are selling on price alone.

And we want to point out to you that our Bailey's flagship product, I am a member of the Bailey family. My mother married Mac Bailey. Being tobacco farmers, we have pride in U.S. tobacco and it is the best in the world, so in our Bailey's product, we put 100



percent U.S. Flue and Burley tobaccos in there. One of the reasons we founded our company was to support the tobacco farmers and the tobacco farmers have supported us.

We are in a rural agricultural area of southern Virginia, and we have lost jobs, as you have heard here. Our company currently employs 200, which is a big employer in our area, and our only intent is to be treated fairly, to help out the farmers, but to be able to maintain and hopefully grow a little bit of our business so we could continue to give good jobs to folks in our rural communities. There are other small U.S. manufacturers in America, and we ask that the treatment of those people be fair as well.

On the FDA issue, I think I am in complete agreement with Ms. Dawson, and I am afraid the farmers may be underestimating the devastating impact that FDA can have. Once you let that genie out of the bottle, it is going to really depend on the devil in the details of the regulators in charge at any particular time, and if they are anti-tobacco, it just seems ironic to me to take a bill where we want to help the farmer in a buyout, but have to hook something to it that in the long term could destroy the farmer, because if the FDA regulations are so harsh as to punish companies, the companies are the ones buying the domestic tobacco, so we are taking with one hand while trying to give with the other, and that just doesn't seem to make a whole lot of common sense here to me, and I don't know how this Congress could keep reasonable FDA regulation, whatever that means, to keep the FDA from taking out natural constituents found in tobaccos, so from our statement, we just ask to be treated fairly and equitably and we certainly do not think that FDA is a good idea for the industry or for our farmers.

Thank you.

[The prepared statement of Mr. Gee appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Mr. Gee. Mr. Payne, welcome.

**STATEMENT OF TOMMY J. PAYNE, EXECUTIVE VICE PRESIDENT, EXTERNAL RELATIONS, R.J. REYNOLDS TOBACCO HOLDINGS, INC., WINSTON-SALEM, NC**

Mr. PAYNE. Thank you. Good afternoon. I appreciate the opportunity to appear, and ask that my written statement be made a part of the record.

The one constant in any review or discussion of a buyout is lack of consensus, not only on the general idea, but also the specifics of any legislative proposal. This overall lack of consensus has been persistent since the Clinton Tobacco Commission suggested an 8 and 4 buyout coupled with broad regulatory FDA authority. Now, there are differing opinions on a whole range of important issues, and many of them you have already listened to this morning, but the appropriate base year, the amount of payment per pound, who actually receives the payment, the viability of the price support program and imposition and impact of additional Federal regulation.

Now, most notably, there is lack of consensus on how to fund a multibillion dollar buyout, particularly at a time when you have record Federal and State budget deficits, and you have a much changed financial dynamic among the major manufacturers. RJR

has not taken a formal position as to whether a buyout should be adopted. However, we have repeatedly stated that we have three major concerns: first, the actual mechanism for funding the buyout; second, combining a buyout with anti-competitive Federal regulation; and finally, the competitiveness of tobacco growers who want to remain in the business.

Now, my written testimony details the areas that I have just covered. I want to focus briefly today to talk about the funding issue. Last week, in an article in the Southeast Farm Press, the president of Flue-cured Stabilization Co-op, Bruce Flye, was quoted as saying it comes down to one thing. We support getting the money. Now, there is no doubt that when you propose to hand out billions of dollars that you are going to tend to get a lot of supporters regardless of the viability or the consequences of that proposal.

The financial position of the industry has changed significantly over the last 4 years, the signing in 1998, when the majors signed the State settlements and also over the last couple of years, because of the enormous increase in State excise taxes to pay for their deficits. Simply put, there are really only two groups in the tobacco business that are legitimately finding their way or adequately finding their way to the bank these days. The first one is the Government, both Federal and State, having made more off each pack of cigarettes by many fold than anyone else in the business, and the second one are the low end manufacturers, who not only don't make settlement payments, they don't make phase II payments, and they get rebates on their escrow payments to the States.

It is critical to recognize this changed financial dynamic as you decide whether or how to fund a buyout. In fact, it is imperative, I think, that you recognize it, so that you understand the simplistic notions or suggestions that are made that we simply raise our price per pack a couple of cents and you understand what implications those actually have.

The reason for the changed dynamic is pretty simple. The price increases that the majors have had to take in order to pay for the State settlements and also the State excise taxes, have cost us in a very short period of time, to lose a very significant amount of volume, market share, and obviously, as a result of that, had significant decreases in our earnings.

At the same time, the volume of the low end manufacturers who don't make the settlement payments has grown enormously, over 1000 percent in just the last 4 years. In 1998, they produced 2 billion cigarettes annually. In 2002, that was over 28 billion cigarettes, and as Mr. Gee noted, some of those are importers. Importers have seen their volumes increase from 4 billion sticks, cigarettes, in 1999, to 18.7 billion cigarettes in 2002.

Let me just give you a quick example of the impact of funding, and RJR provides a good example. We told the Street this year, our investors in the Street, that we projected having operating income, earnings, of \$500 million. Now, one of the bills that is introduced in the House and the staff did a budget analysis of it, for the first year, the total cost of the buyout for the industry would be \$2.1 billion. Of that amount, RJR would be mandated to pay \$400 million, so in other words, four-fifths of our income that we have told Wall

Street and our investors will earn this year will be mandated to pay for the buyout.

Now, again, my written testimony goes into more detail on this and other issues, and again, Mr. Chairman, I appreciate the opportunity to be here today.

[The prepared statement of Mr. Payne appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Mr. Payne. Mr. Sharp, welcome.

**STATEMENT OF NORMAN F. SHARP, PRESIDENT, CIGAR  
ASSOCIATION OF AMERICA, INC., WASHINGTON, DC**

Mr. SHARP. Mr. Chairman and members of the committee, my name is Norman Sharp, and I am president of the Cigar Association of America and the Pipe Tobacco Council.

The CAA is the national trade organization of domestic and foreign cigar manufacturers, importers, leaf dealers and other major suppliers to the industry. The cigar industry has annual sales of about \$2 billion.

The Pipe Tobacco Council consists of manufacturers and importers of pipe tobacco, representing about 98 percent of the pipe tobacco sold in the United States. We estimate annual retail sales of pipe tobacco to be \$150 million. Pipe tobacco sales in the United States have declined 90 percent in the last 30 years.

While I appreciate the opportunity to testify, we cannot understand how the cigar and pipe tobacco industries came to be included in the pending buyout bills, and we certainly cannot fathom from where the numbers in these bills came.

First, both H.R. 140 and H.R. 245 are extremely unfair to the pipe and cigar manufacturing industries. Unlike the cigarette companies, the cigar and pipe tobacco industries use little to no domestic quota tobacco or imported quota-type tobacco. In fact, our use of quota tobacco is so minimal that the USDA doesn't even bother asking our industries for their purchase intentions.

It makes no sense to require our industries to pay taxes for the buyout of a system in which we do not participate and from which we derive no benefits. Indeed, we believe that the amount of quota tobacco we use is similar to that used by the medical research programs. Should they be included as a funding source? Despite this minimal use, these bills propose to hit our combined industries with over \$165 million a year in increased taxes, an amount that may well exceed the net profit after taxes of the domestic cigar and pipe tobacco industries.

Second, while we do not concede that any buyout taxes would be rational, under these bills, our industries would be forced to contribute in an amount far out of proportion to our share of the overall tobacco industry, however it might be measured, based on total revenues, total taxes paid, total tobacco used, you name it. We are being taxed at a punitive rate.

Mr. Chairman, cigarette sales make up roughly 97.5 percent of domestic tobacco sales, but the cigarette industry would pay only about 92 percent of total user fees. The irony of the cigar and pipe tobacco industries subsidizing the cigarette industry is striking indeed.

Third, the imposition of a user fee on the cigar and pipe tobacco industries is illogical, inappropriate and possibly unconstitutional, because we use virtually no quota tobacco. I know the committee would prefer to consider buyout legislation independent of the Ways and Means Committee. However, user fees require a benefit to, or at least a nexus with the user. There is no such link between cigar manufacturers and quota tobacco. The pending buyout bills would impose new excise taxes on my members, pure and simple.

Finally, the FDA regulation that would be the inevitable result of this buyout effort makes no sense for the cigar and pipe tobacco industries. The proponents of FDA authority base their arguments on the need to reduce youth usage of tobacco products, yet there is virtually no youth issue for the cigar industry, nor for the pipe tobacco industry, whose typical consumer is over 50.

The FDA recognized this fact when it released its final rule regulating certain tobacco products in 1996. In that rule, the FDA specifically chose not to regulate cigar and pipe tobacco products, most importantly, because it found no credible evidence that children and adolescents use these products to any significant degree.

Additionally, our industries do relatively little advertising and promotion of our products. In 2001, we spent less than \$45 million, compared to the \$11 billion spent by the cigarette industry.

Our products do not lend themselves to the type of testing and content control regulations proposed by the FDA bills pending in Congress. Cigars, unlike cigarettes, are not uniformly manufactured. Indeed, there are over 2,400 different sizes, shapes and brands of cigars being sold in the United States. Similarly, pipe tobacco is produced in many types of blends, and the use of pipe tobacco is highly individualized, depending on pipe shape, composition and the manner of filling by the user.

In conclusion, the cigar and pipe tobacco industries use virtually no quota tobacco and should not be included as a funding source in any buyout bill. Indeed, including us as a funding source would amount to imposing huge new excise taxes on our industries, which is beyond the authority of this committee. Authority over our industries has not been sought by the FDA and is inappropriate given the unique characteristics of our industries and the absence of youth usage of our products, which is nominally the motivating factor behind granting the FDA authority over the tobacco industry.

Mr. Chairman, our experience and history, as well as our knowledge of our consumers, convinces us that the taxes of an amount even approaching this magnitude would decimate those industries. The imposition of these taxes and FDA regulation would be tantamount to forcing us out of business.

Thank you for this opportunity to testify before you.

[The prepared statement of Mr. Sharp appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Mr. Sharp. Mr. Szymanczyk, we are very pleased to have you with us.

Mr. SZYMANCZYK. Thank you.

The CHAIRMAN. And welcome your testimony.

**STATEMENT OF MICHAEL E. SZYMANCZYK, CHAIRMAN AND  
CEO, PHILIP MORRIS USA, NEW YORK, NY**

Mr. SZYMANCZYK. I am delighted to be here, Mr. Chairman and members of the committee. I am Mike Szymanczyk, chairman and CEO of Philip Morris USA, and I am very proud that Philip Morris USA is here today, I believe as the only tobacco company supporting a tobacco quota buyout that is politically feasible, because it is funded by a realistic revenue source and includes FDA oversight of tobacco products. We believe that these two important goals are inextricably linked.

H.R. 140, introduced by Congressmen McIntyre and Davis, would establish a strong market-oriented fully sustainable alternative to the current Federal Tobacco Program. It would also provide for meaningful and effective regulation of tobacco products by the FDA. The convergence of Federal regulation and the tobacco quota buyout presents an opportunity to work together to ensure that these complementary goals are joined to fashion a comprehensive, effective, national tobacco policy.

In our judgment, H.R. 140 is the only plan currently on the table that has a chance of actually being implemented and of providing the concrete buyout payments that the growing community wants.

There are three principal reasons for this. First, H.R. 140 is fully funded by a realistic revenue source. Buyout proposals with no funding source or proposals that are too expensive simply won't get passed. Second, H.R. 140 proposes a quota buyout that truly is a buyout, and not merely a subsidy posing as one. Alternative proposals that purport to eliminate the existing quota and price support system, only to replace them with new ones, are simply not reasonable or achievable. They are also counterproductive. If a post-buyout marketplace include subsidies that artificially inflate the cost of U.S. tobacco, there will be a very strong financial disincentive for manufacturers to buy out. New subsidies also raise questions both of fairness to farmers of other crops and of our Nation's agreement to observe the caps imposed by the World Trade Organization. These caps, if exceeded, would result in reduced commodity support payments for all American farmers.

Finally, H.R. 140 links the buyout to meaningful and effective regulation by the FDA to both reduce harm caused by tobacco products and to keep FDA personnel off the farm. There are strong supporters of both the buyout and FDA regulation, and by joining forces, we believe that they can forge a majority.

We are convinced that time is slipping away rapidly, and that all parties must come together now in support of a plan that occupies the political center, and that a majority in both the House and the Senate can accept. On every key issue, H.R. 140 occupies the middle ground of the debate. For example, H.R. 245, a bill that has been introduced, is a thoughtful effort to approach some of these important issues, but elements such as its \$19 billion price tag have already drawn some criticism from observers such as the Louisville Courier-Journal, which described it as way too luxurious to stand much of a chance.

H.R. 140 falls halfway between this well-intentioned effort and the \$12 to \$13 billion being currently discussed in the Senate. H.R. 140 also offers a compromise on the issue of safety net, which is

clearly crafted so as not to trigger WTO caps, and H.R. 140 contains comprehensive, effective FDA regulation of tobacco that is not so radical that it would result in prohibition or other serious unintended consequences.

Mr. Chairman, I am not here today to insist that it must be McIntyre-Davis or nothing. However, I do believe that the only legislation containing the fundamental principles of H.R. 140, crafted in light of today's political and economic realities, has a realistic possibility of enactment.

It seems to me that nobody can get everything that they want in this process, and that only a bill that makes reasonable compromises can be signed into law. We understand that there are complex and controversial issues in both parts of this legislation, and we pledge to work with anyone who wishes to join in this challenge.

Mr. Chairman, we commend you and your committee for these hearings as another critical step in the process. Thank you very much.

[The prepared statement of Mr. Szymanczyk appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Mr. Szymanczyk. Mr. Taylor, welcome.

**STATEMENT OF ASHLEY L. TAYLOR, JR., LEGAL COUNSEL,  
COUNCIL OF INDEPENDENT TOBACCO MANUFACTURERS OF  
AMERICA (CITMA), RICHMOND, VA**

Mr. TAYLOR. Thank you. Good afternoon, Mr. Chairman and members of the committee. I am Ashley Taylor, and I serve as legal counsel to the Council of Independent Tobacco Manufacturers of America, a national trade association better known as CITMA. Thank you for allowing me the opportunity to testify before you today.

CITMA consists of more than a dozen small tobacco manufacturers that have elected not to become signatories to the Master Settlement Agreement between the major tobacco manufacturers and the State Attorneys General, such as S&M brands. As non-signatories to the MSA, CITMA members are required under State law enacted as part of the MSA to make certain escrow deposits based upon the number of sticks sold in MSA States.

To become a CITMA member, a tobacco manufacturer must not only be duly authorized to conduct business in the United States, but must also be in compliance with the State escrow obligations imposed pursuant to the MSA, as well as other applicable State and Federal laws governing tobacco manufacturers and the manufacturing process, including but not limited to Federal and State licensing and bonding requirements, CDC ingredient reporting mandates and the Federal Trade Commission health label warnings.

CITMA was formed for a single purpose: to advocate for consistent treatment of all tobacco manufacturers. CITMA was not formed for the purpose of obtaining any competitive advantage through the legislative process, rather to ensure that when other manufacturers sought to do so, a contrary voice would be heard, articulating the inequity of their efforts. Unfortunately, certain forces have sought to enact policies designed to place CITMA members at a competi-

tive disadvantage. Let me again reemphasize that CITMA is not opposed to legislation regulating the tobacco industry, provided such measures are applied equally and not targeted solely upon our members.

Because CITMA members are, in many cases, former tobacco farmers and long-standing members of the local business community, they are sensitive to the plight of their local communities and the small tobacco growers from whom they purchase their leaf. Like the small tobacco farmer, CITMA members must battle the same forces facing all small businesses in this uncertain and constantly changing tobacco industry. CITMA members' experiences as small business owners are often reflected in their business practices.

For example, CITMA members, more often than not, have located their manufacturing facilities in economically depressed areas, which are the same tobacco-producing communities experiencing the loss of tobacco farms. Their factories employ members of the local communities and are, in many cases, the best paying jobs in the local community. CITMA members have facilities all over the country, including factories in Arizona, Florida, New York, North Carolina, Tennessee, Oregon, Virginia, Oklahoma, South Carolina and Kentucky, communities where such high paying manufacturing jobs are important. Another member of CITMA even has a facility in Miami, with a workforce that is more than 95 percent Hispanic.

With regard to the formulation of tobacco quota buyout legislation, CITMA supports your efforts to provide assistance to tobacco-dependent communities, particularly those comprised of small family farms. CITMA further supports legislation that seeks to lend such assistance by making payments to tobacco quota holders as compensation for the loss of the tobacco quota asset.

Turning to the specific measures that must be addressed in any legislation, CITMA makes the following observations. First, CITMA supports the concept that the fund from which quota holders would be paid would be created in part by assessments on manufacturers and importers who sell tobacco products in domestic commerce in the United States, with each class of tobacco product assigned a base payment. However, CITMA strongly urges this committee to consider a payment schedule based upon a company's volume of domestic sales, rather than any proportional market share formula. This latter approach is fraught with difficulties which would make such a collection system less effective than a straight volume-based calculation. The system must be designed to make monetary collection workable over the life of the program. This can be accomplished by tying the system to reports that manufacturers are currently required to make to the Federal agencies and not creating a new reporting system, which will needlessly add another level of bureaucracy.

Any form of buyout should be funded through the Federal excise tax. This is the only way to ensure collection of the money from importers, and in any case, any fee paid directly by manufacturers would simply be passed on to the consumer.

The fact that CITMA members elected not to join the MSA should not be misconstrued to suggest that our members are all new to the tobacco business. They sell a variety of products, includ-

ing smokeless tobacco, roll your own and make your own product, and of course, cigarettes.

In sum, CITMA members believe in a free market system and ask for no special favors or dispensation. Instead, we only ask that rules apply with equal force to all tobacco manufacturers, small and alike.

Thank you again, Mr. Chairman and members of the committee for allowing us to share our concerns with you this afternoon.

[The prepared statement of Mr. Taylor appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Mr. Taylor. Mr. Watson, we are also pleased to have your testimony.

**STATEMENT OF STEVE WATSON, VICE PRESIDENT, EXTERNAL AFFAIRS, LORILLARD TOBACCO COMPANY, GREENSBORO, NC**

Mr. WATSON. Thank you, Mr. Chairman. My name is Steve Watson. I am vice president of external affairs for Lorillard Tobacco Company, which is based in Greensboro, North Carolina, and I appreciate the opportunity to discuss the issue of a tobacco grower buyout with this committee, and to share some of our concerns.

Lorillard supports the buyout of the tobacco quota program. However, we see several major issues that must be resolved prior to the passage of any buyout bill. First, we support a buyout that preserves some type of Federal supply management program. Second, we oppose any buyout paid for with federally-imposed user fees, excise taxes, or assessments. And third, we are concerned that any proposed buyout payments may trigger amber box trade problems that could effect major segments of the U.S. agricultural system. And finally, we oppose tying a buyout to FDA regulation. In addition to needlessly complicating an already complex issue, FDA regulation will threaten the viability of Lorillard and those farmers who want to continue to grow tobacco.

The proponents of a tobacco quota buyout have maintained that a buyout can be accomplished at \$8 a pound for quota owners and \$4 a pound for growers at 1998 crop levels, which would cost as much as \$19 billion. \$19 billion in new taxes would have a disastrous effect on our business and ultimately, on farmers.

Lorillard opposes any increase in the already substantial excise taxes to which cigarettes are subject, and since 1998, the four major cigarette companies have paid over \$100 billion to the Federal and State governments, including excise taxes, sales taxes and MSA payments. Indeed, 34 States have increased taxes on cigarettes in the last 15 months alone.

Let me be clear: in today's market, Lorillard may no longer be able to pass through these increased costs. The price would be the loss of high-paying manufacturing jobs, jobs that are unlikely to be replaced, and our lost volume would be replaced by cigarettes containing virtually domestic-grown tobacco.

As you may be aware, payments to farmers as part of the buyout may qualify as amber box payments under the WTO provisions. If buyout payments were found to fall into the amber box category, the amber box caps would be exceeded, triggering across the board cuts in support programs for all commodities, including corn, wheat, soy and more. Even if USTR and USDA concluded that



these payments are not amber box payments, other nations may disagree. This could lead to a trade action in a forum in which the United States historically has not been particularly successful.

Finally, tobacco growers are not being told that politically, a buyout can only be accomplished by linking it to FDA regulation. We oppose linking the two, and believe that growers are not being fully informed about the impact such legislation would have on farming practices and our ability to be a purchaser of domestic leaf.

Proponents of this legislation maintain that the Agency will not be allowed on the farm, and this is simply not true. This legislation would permit the FDA to regulate components of the tobacco. Components would not simply be limited to nicotine and tar. The FDA would be authorized to regulate any substance in a leaf, including those that occur naturally.

These bills do not take into account the costs of such changes, or whether such changes are even technologically feasible. The FDA must merely determine that a change is "appropriate for public health." With such extensive regulatory authority, the FDA could mandate changes to growing practices or curing practices, or even require genetic modification of tobacco seed.

If the FDA is not permitted on the farm, then the burden will shift to manufacturing, forcing us to become the de facto regulators. Lorillard objects to being forced to play in such a role.

Lastly, all the provisions derive from the 1998 legislation. Wouldn't it be nice if we could all go back to 1998? This would mean rolling back \$2 billion a year in Federal excise taxes and almost \$1 billion a year in State excise taxes, rolling back New York's increase in excise taxes from 64 cents a pack to a current \$3 per pack, reversing smoking bans that have been instituted in places like California, New York, Florida, Connecticut and elsewhere. Over 7,000 tobacco manufacturing jobs have been lost since 1998, yet no one is talking about the special subsidies for them. Going back to 1998 also means fewer counterfeit cigarettes, less interstate smuggling and a higher demand for domestically-grown tobacco.

We understand the problems that tobacco farmers face in this new environment, but many of the bills pending before Congress fail to appreciate that all of us are living in that new environment, manufacturers, farmers, farm equipment suppliers, warehousemen, leaf dealers and our own employees as well.

There are alternatives to a legislative buyout. Implementing the phase II trust fund did not require Congress to raise taxes or expand the regulatory power of the Federal Government. We believe that a buyout of a program could be accomplished without new taxes, without FDA legislation, by bringing all the interested parties to the table to negotiate a buyout that adequately compensates farmers. We would welcome the opportunity to discuss this proposal with members of the committee.

Thank you again for allowing me to share some of the views of Lorillard Tobacco Committee in this important policy debate, and I would be happy to answer any questions you may have.

[The prepared statement of Mr. Watson appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Mr. Watson. I would like to start those question by asking each and every one of you right down the line. Can your company or, in the couple of cases, companies, afford to pay for a tobacco quota buyout? The various bills that we have seen before the Congress seem to range from about \$14 billion to \$19 billion, and that is going to entail payments of tens to hundreds of millions to perhaps billions for some of your companies, and we will start with you, Ms. Dawson, we just would like a brief answer on that question.

Ms. DAWSON. Mr. Chairman, no. We can't afford to pay for hundreds of millions of dollars, and in fact, the Congressional Research Service took a look at it, and even under a very aggressive scenario, that is where leaf drops by 50 cents a pound, it would take the tobacco manufacturers more than 55 years to offset what the growers would be paid in 5.

The CHAIRMAN. Mr. Gee.

Mr. GEE. Truthfully, Mr. Chairman, it would be extremely difficult. Maybe the better question is can the smoker stand paying for it, because I assume that the cost would be paid through to the smoker, but the smoker has been hit from so many sides, Federal excise tax, State excise tax, cost of doing business. I am not sure how much more can be passed through, so it would be extremely difficult, particularly for small companies that don't have a super premium product to absorb any further cost in the margins. But again, if we had to, we would ask it be equal.

The CHAIRMAN. Mr. Gee, that is a good observation, that it will be passed through to the consumer, but of course, every consumer has their own price point, and with lower cost tobacco out there, it is going to affect different companies in different ways. If it forces that consumer to make a change in brand, to go to a lower cost tobacco, when they hit their discomfort level on the price they are paying. Mr. Payne.

Mr. PAYNE. No, Mr. Chairman.

The CHAIRMAN. Mr. Sharp.

Mr. SHARP. Mr. Chairman, no. Our industries, pipe tobacco and cigars, cannot afford to pay, nor should they have to pay for a program that they don't participate in. As I said earlier in my testimony, the \$165 million a year that is being looked to for these industries may well exceed the net profit of those industries after taxes.

The CHAIRMAN. Mr. Szymanczyk.

Mr. SZYMANCZYK. Well, I believe that if the cost of the program is reasonable and it is spread on a proportionate basis as a level playing field for all participants in the marketplace, that in fact, it can be paid for by the price being absorbed by those who buy the product ultimately. That is the only way it can be absorbed, but that is, I believe, possible, yes.

The CHAIRMAN. Mr. Taylor.

Mr. TAYLOR. Mr. Chairman, CITMA, as I mentioned, is comprised of small businesses and, as with every small business, their margins are very small. It would be difficult, but as a counsel, we have taken the position that we support the buyout, provided our companies are treated equally, so long as it is not tied in any way

to the Master Settlement Agreement payments, and so long as it is not tied to the FDA.

The CHAIRMAN. I believe in your testimony, you mentioned that you wanted it based on volume. I take it that is dollar volume, as opposed to numbers of cigarettes. You want it on the total receipts of the company, rather than a per cigarette charge, is that correct?

Mr. TAYLOR. For administrative ease, Mr. Chairman, it would be best for our companies if it were based on a strict volume, that is stick count. Those are reports that we regularly make to the reporting agencies now, and any payment could be linked to those same reports we currently submit.

The CHAIRMAN. And are most of your companies lower cost in terms of what they charge per cigarette?

Mr. TAYLOR. I think it would be generally accurate to say they operate in a third and fourth tier, but again, they also produce chewing tobacco, the Beech-Nut brand is owned by a member of the Council, and they also produce roll your own products as well as make your own products.

The CHAIRMAN. I see. Thank you. Mr. Watson.

Mr. WATSON. No, sir. Lorillard could not absorb nor pass along the costs of a buyout and not experience the direct impact in terms of volume, sales loss that would certainly follow as a result of a buyout.

The CHAIRMAN. Let me ask all of you to do the same thing with regard to your thoughts on the FDA regulation of tobacco products. Do you think this could be done in such a way that your company can manage that regulation?

Ms. DAWSON. Mr. Chairman, I think that certainly that would be possible, although quite difficult, which is kind of yet another reason that it doesn't belong linked to the tobacco buyout. We heard from the growers this morning about the urgency that they are facing. I think that the complexity of FDA, to come up with something that makes sense and meets the needs, would just slow it down to the point where it would become overbearing.

The CHAIRMAN. Mr. Gee.

Mr. GEE. For a smaller company we don't have the margins to support what I assume even a reasonable FDA regulation would look like. We don't have in-house scientists. We don't have the information available to us that the other companies have. We use U.S. tobacco. We don't even use reconstituted tobacco, so the natural ingredients in tobacco is what we have and what we use, and I just don't see how smaller or maybe even medium and some large companies could withstand FDA regulatory authority if it is anything close to what we fear it may look like.

The CHAIRMAN. Mr. Payne.

Mr. PAYNE. Mr. Chairman, looking at the reality of what type bill might be signed into law, our short answer is no. We believe that it would irreparably harm our ability to compete for the business of adult smokers.

The CHAIRMAN. Mr. Sharp.

Mr. SHARP. Mr. Chairman, the FDA did not recommend that our industries be managed, regulated. The proposed legislation, the bills that have been introduced so far seem to realize this. If we are in there, we are in a general sense. I think there is a recogni-

tion of the complexity of the products involved, that it would present unique challenges to the Agency to try to manage, to regulate our industries and for our industries to absorb the costs.

The CHAIRMAN. Thank you. Mr. Szymanczyk.

Mr. SZYMANCZYK. Well, Mr. Chairman, I think that is a difficult question for me to answer in the absence of specific regulations, but—

The CHAIRMAN. We are having the same difficulty.

Mr. SZYMANCZYK. Yes. But let me answer it this way. It seems to me that we have a product here that creates harm in society, and that our objective needs to be to find ways to reduce harm, and having looked into this in a great deal of detail, my belief is that the only way we will achieve that is with some guidance from the FDA, and FDA regulation. We are already seeing issues occur in the marketplace as people attempt to approach this without appropriate guidance, and so I do believe we need it, and I believe that there are examples, the food industry, certainly the pharmaceutical industry, where we have FDA regulation, where we have large companies regulated, small companies regulated. They seem to find their way. They seem to be successful regardless of their size, so a lot of it comes down to let us make sure we have appropriate regulation for this category and for these products. I do believe we need it. I do believe we need to do it, and I do believe we can do it. We just need to do it the right way.

The CHAIRMAN. Well, given the fact that there are an awful lot of folks out there who believe that this product is harmful and even should be banned, what is the risk that that is indeed going to be the regulation, that it is either an outright ban or so onerous that you cannot comply with the regulations that are offered?

Mr. SZYMANCZYK. I think the prohibition, the banning of the product is the right society has. I don't believe at this point in time society wishes to ban the use of tobacco, but society, and I think Congress, needs to retain the right to make that decision, not give it to the FDA, and at some point in the future, Congress determines that is appropriate, then Congress can go ahead and do that, so I wouldn't agree that that is an appropriate direction to give to the FDA at this point, because society hasn't indicated that that is what they want to happen.

The CHAIRMAN. You, I am sure, heard the testimony of the last panel. There was some division amongst the producers as to whether or not they would like FDA regulation, but they were unanimous in wanting that FDA regulation kept off the farm. Do you believe that is accomplishable given the fact that whatever regulations are imposed upon the companies, there are going to be tremendous incentive, with the kind of contract buying that is developing, and I expect will continue in the future, to contractually require those regulations be passed on down to the farmer.

Mr. SZYMANCZYK. Right. Well, I think there are two parts, two things I think that answer that question. One of them is today, already, we have issues that come up, and they necessitate us going to our growers and helping them make changes in their growing process. I think the occurrences over the last couple years related to Flue-cured tobacco and the curing process being determined to create TS and As in tobacco, and ultimately Philip Morris and to-

bacco leadership determining that we needed to fund and help the growers convert their barns to remove that and as a result, have done that, and have had an over 90 percent reduction in TS and As in Flue-cured tobacco in that country, is an example of those things occurring without FDA, so I think that happens in the normal course of doing business one way or the other. The buyer has to dictate the specifications that they need in order to be successful in the marketplace to the supplier. That just happens across the board, not just with growers. Beyond that, I think, virtually every crop that at least ultimately is consumed that this committee has responsibility for ultimately is regulated by the FDA. I believe that is correct, not on the farm, but through the manufacturer, and we seem to manage. We seem to be able to do that in general, I find people to be at the end of the day, pretty sensible and responsible about these things, so we ought to be able to work our way through that, I think, in tobacco, just the way it gets worked through in food.

The CHAIRMAN. Thank you. Mr. Taylor, Mr. Watson, I diverged a little bit there, but please address the question about FDA regulation and include the matters that I mentioned to Mr. Szymanczyk with regard to getting it on the farm.

Mr. TAYLOR. Well, as CITMA looks forward and tries to anticipate the regulations which would ultimately be promulgated by the FDA, once the statute has extended the FDA's authority in this area, we have a difficult time envisioning any regulation that does not set the burden so high that our members simply could not comply. We are, again, small companies, and in the regulatory process, our voice is very small, and we fear that the burden, again, that would be set would be such that we simply could not comply over time. That is something we are very concerned about, and we do work closely with the farmers, our members do, and we see a lot of information and the relationship between the farmers and the manufacturers reflected in the contracts, and ultimately, we believe most manufacturers would who operate pursuant to those contracts, would in some way, shape, or form connect the two.

The CHAIRMAN. Thank you, and finally, Mr. Watson

Mr. WATSON. The short answer, Mr. Chairman, is when you look at the FDA debate, the problem is there is no uniform answer as to what is reasonable and what is appropriate. You will hear in the later panel today what their definition, the public health community's definition of FDA regulation might be, which is much different than that of what Mr. Szymanczyk's position of reasonable FDA ought to be, which is different from my company's, and we have already heard from the farm groups today, they want the money, and they don't really know about FDA. The short of it now, I look at the FDA and whether or not it would be allowed on the farm or needs to be on the farm, is when you look at a cigarette, the major problem that those proponents of FDA have with the cigarette is, it is not the paper and it is not the filter. It is the tobacco, and unless you are able to get into the tobacco, and particularly, those things that occur naturally within the tobacco leaf, that is not going to achieve what the goal is of an FDA regime, so that is how we really see how this debate has been unfolding.

The CHAIRMAN. I thank you all. The gentleman from Texas, Mr. Stenholm.

Mr. STENHOLM. Listening to the first panel and then listening to this panel, world peace suddenly looks more achievable than a consensus being developed by this committee. Now, that is the pessimistic view. Take the optimistic view, but—over the past 3 years, Customs data shows that the value of U.S. tobacco leaf exports has averaged about \$3.07 per pound at the export terminals. Over the same time, the value of tobacco leaf imports has averaged about \$1.23. This suggests the cost of imported tobacco for manufacturers is about 40 percent of the cost of domestic tobacco in this country.

Is this an accurate analysis from the Customs data, based on your experience as buyers of both domestic and imported tobacco?

Ms. DAWSON. Yes, it is. It is about—

Mr. STENHOLM. Yes?

Ms. SZYMANCZYK. Yes. U.S. leaf is higher priced generally than offshore leaf, yes.

Mr. STENHOLM. That might also suggest that whoever is buying our exported tobacco is willing to pay 40 percent more for it. Is that correct? One impact of a buyout would presumably be lower prices for domestic leaf. What savings on a per pound or per pack basis do you expect to see, and how does that compare to the current per pound and per pack cost to you of domestic tobacco leaf?

Mr. PAYNE. Mr. Stenholm, I think in Ms. Dawson's testimony earlier, the Congressional Research Service took a look at that and made an assumption that you would have 50 cents per pound saving as a result of price decrease domestically. Compare that to a \$15 to \$19 billion cost of a buyout and anticipated that it would take 55 years to recover that cost. We do not believe based just on our preliminary look at what potential savings per pound would be, availability of other sources of tobacco, as you mentioned, on an imported basis, versus the cost, that we would realize any savings off this. Certainly not in the immediate future, but it would be very, very long term. And if you were looking at it from an ROI, Return on Investment standpoint as a small businessperson, it probably would fall well outside your parameters of when you would want that money, that return back to your pocket.

Mr. STENHOLM. This is what gets a little bit troubling for me. We have had these same discussions with sugar, with peanuts, with all commodities, and there seems to be—and I understand this, you have got to meet the competition. The question is who is the competition and is the competition fair, and if you are going to lower the price to domestic producers, then you assume somebody benefits from that. Mr. Boehner is interested in the consumer benefiting from that, and I understand that rationale, but the buyout, we have got several problems with the buyout anticipation. One is who is going to pay for it, how much is it going to cost, under what basis, and there are some expectations that are out there that are going to be rather difficult to achieve, from a grower's standpoint, based on who is going to pay. The flip side to this, I mean the FDA question that the chairman talked about is going to be one that is going to have to be rationalized also if you—the McIntyre bill is going to have to be reconciled sooner or later.

Then you come, there has been a tendency of most of you at the table to say you are interested in a buyout, but how much and who pays and is it fair, and some of you contend that it is not fair to pay in a buyout when you are not part of the problem, and that kind of makes sense, but I guess, simple question, it doesn't have to be answered right now, because my time is out, but it seems to me that a buyout is going to be necessary for us to achieve what all of you say you want to achieve in the furtherance of your industry.

A buyout is going to be required. The question then comes, how much and how we evolve into who is going to pay for it, and ultimately, the consumer will pay for it, so those are the three—and then the expectation that many in the producing side, is once we have had the buyout, there will still be a Tobacco Program that will still be regulating the price, which is going to be part of that world peace equation that I am having a difficult time sorting through, so not a specific question for any of you, other than, I appreciate the answer that you have already given in the testimony, but if there is to be a buyout, we are going to have to get a little better consensus that what we have got at the table right now, and how it ultimately will affect your customers, and I wish I had a better question for your answer.

The CHAIRMAN. Mr. Boehner.

Mr. BOEHNER. Well, thank you, Mr. Chairman, and let me start by welcoming back to this room someone who used to sit over at that committee table, the staff table over there, Mr. Payne, who was once a staffer room, and for those of you that are sitting at the staff, see, you too could grow up and have a real job.

Mr. PAYNE. Thank you, Congressman.

Mr. BOEHNER. You will have to excuse me for stepping out of the room, but I happen to be one of your customers, and—except that I have found out that where I was smoking is where the health group are—I was wondering why they were looking at me funny in the back. The health groups seem to be back there, so I decided I had better come back to the committee room.

Without the customer, the grower isn't growing tobacco, and without the customer, those of you that are manufacturers there, you don't have anything to manufacture, and without the customer, there is no distributor. There is no convenience stores, since most of their revenue comes from selling tobacco products, and as I look at what has happened over the last half dozen years, you all signed a consent agreement. The consent agreement has been paid for by the customer. The States and the Federal Government have been jacking up excise taxes, sticking it to the customer, and I just want to know from any one of you down there if any of you believe that if there is a tobacco buyout program that the customer is going to get stuck with the bill once again.

Mr. SZYMANCZYK. Well, could I comment on that, Congressman?

Mr. BOEHNER. Well, either they are going to get stuck with it or not.

Mr. SZYMANCZYK. Well, I think that the consumer will, in fact, now market forces will prevail in this, but I think at the end of the day, if it is a level playing field charge, that ultimately at least a portion of it, if not all of it, will wind up with the consumer, but

having said that, one of the reasons why we have taken the position to support H.R. 140, a piece of legislation that includes a buyout and FDA regulation, is because part of that money goes to fund FDA regulation, and we believe that all of the reasons that you described for the consumer having a lot of pressure put on them today, higher prices, higher taxes, MSA payments, all of those things related back, right back to the issue that tobacco causes harm.

Mr. BOEHNER. Lots of people are trying to do things to correct that, and perhaps, if we could reduce some of the harm through effective FDA regulation, the consumer would get a real benefit and we wouldn't have all these ad hoc efforts going on trying to charge higher prices to keep people from smoking and so on, that—I was trying to avoid getting into the FDA issue, because most people in this room that I have talked to about it realize that there is no way to control the FDA, and there is no way a tobacco buyout bill is ever going to get passed without FDA regulation. FDA regulation is going to lead to who knows what, except the customer is going to pay the price, no ifs, ands, or buts about it.

In an earlier panel, I stepped back to try to take the big picture look at the circular firing squad that is going on in the industry amongst the players and the person stuck in the middle is the customer, because he is the guy paying the price. We talked about the higher prices. We have got a Government policy, State policies, city policies now, all aimed at trying to end the use of tobacco. While at the same time, those of us on this committee are trying to find a way to keep tobacco farmers in business.

People are going to smoke. We all know that, they are going to smoke, and if we keep imposing new regulations, new taxes, all we are going to do is raise the price of cigarettes and what is going to happen, we are going to increase smuggling, we are going to have more imported sticks that don't carry any of the MSA prices, and at some point, I think we, as a government, and you, as an industry, are going to have to sit down and make a logical determination about how we stop the circular firing squad.

And I am not sure that the proposals that we have before us will do anything other than raise the cost of manufacture, the cost of production, the cost of manufacture and in the end, stick it to the customer one more time.

But I appreciate all of you being here. Mr. Chairman, you might want to put me down as undecided on this bill.

The CHAIRMAN. Thank you, Mr. Boehner, and before I recognize the gentleman from North Carolina, I might point out that Mr. Boehner may be directing some of his comments to me with respect to costs, because I am not really a smoker, but I do occasionally smoke other people's brands.

Mr. BOEHNER. You are a smoker, you are just not a purchaser. Or as I would refer to it, a customer.

The CHAIRMAN. The gentleman from North Carolina is recognized.

Mr. MCINTYRE. Thank you, Mr. Chairman. Mr. Szymanczyk, in your testimony before the Subcommittee on Specialty Crops last fall, you alluded to the fact that having a price support or supply control system still in place after a buyout would violate our WTO



obligations. Could you please elaborate on that point for us now, and more importantly, explain to this committee how a buyout might affect other crops in terms of international trade agreements?

Mr. SZYMANCZYK. Well, I will do my best. I am not an expert on this, but we certainly have reviewed this with some people with expertise, and I think that critical here is that any type of buyout that goes forward has to stop at a buyout. It has to pay for an asset, which is what is proposed in H.R. 140. It is to pay for an asset, and then you can't continue to have quotas or subsidies, price supports, after the fact, because if you do that, my understanding is it takes what would be otherwise in the green box, a payment for the asset, and brings it, along with everything else, over into the amber box, and once in the amber box, of course, it gets counted with everything else, and if you hit the cap, which it is my understanding, we increasingly push up toward it, there is some talk about lowering the cap, you all of a sudden trigger reductions in payments to growers of corn and soybeans and other crops, and so I think that is what the issue.

It is not that we can't do a buyout, but I think the buyout has to be truly a buyout, and then stop at that point, and not go on to provide subsidies. There is an issue that is discussed, which is a safety net after a buyout, but a safety net can't be in the form of something that is a license or controls production, or is a price support program, because my understanding is that that would put it into the amber box.

Mr. MCINTYRE. OK, thank you, and of course, that gets into the issue of foreign competition and how much domestic or American tobacco we are really using in our products. Mr. Payne, in last September's hearing that we had in this room, you were not able to specify what percentage of American tobacco is used in your brands. You stated you would give us an answer. The record remained open for 10 days, but I don't find a supplemental answer. Can you tell us now what percentage your company uses?

Mr. PAYNE. If you exclude oriental tobacco, which is not available in the U.S., we do use a majority of American leaf in our blends. I am going to have to tell you that one of the implications of potentially adopting a buyout in the competitive situation is, as I look at competitors at this table, I have one immediately to my right, which is the low end, that can sell a carton of cigarettes \$15 cheaper per carton than RJR can, and then to my left is a market-dominant player, in the sense of Philip Morris USA is one of the great competitors of the world, and they have about 50 percent of the U.S. market, and that is an element that we would have to take a very hard look at in terms of costs and quality, as to what that specific percentage would be.

Mr. MCINTYRE. OK, but right now, it is over 50 percent?

Mr. PAYNE. If you exclude oriental, it does constitute a majority of our cigarettes.

Mr. MCINTYRE. All right, and one other followup. At that hearing, you were also asked to submit to the committee the specific types of FDA regulation that you would support. You have outlined again today the type that you would not support. That information, according to the chairman's directive, was to have been submitted

within 30 days. Apparently, I do not see that in the committee's report. Could you now tell us what FDA regulations you would support?

Mr. PAYNE. Well, as I said at the subcommittee hearing, and say again today, we have long had on our website, available for anyone to see 24 hours a day, 7 days a week, basically, the 8 components of what we believe would be reasonable FDA regulation. Our standard is at the end of the day, regardless of what agency would have the authority, would we still be able to effectively compete for the business of adult smokers. What I mean by that is could we retain our Camel smokers, talk to a Bailey's smoker or a Marlboro smoker about trying one of our products. It involves good manufacturing practices. It involves standardization of tar and nicotine levels and descriptors on the pack, reduced risk standards. Keeping the—no expansion of the marketing and advertising restrictions beyond what is incorporated in the MSA and currently enforced by over 46 States.

Mr. MCINTYRE. All right. Would you be willing to list that and submit it to the committee as requested last fall?

Mr. PAYNE. Well, of course, but it is also on *www.rjrt.com* that you can go to it any time.

Mr. MCINTYRE. Right. I understand that, and you said that last fall, but the committee requested you put it in writing and submit it within 30 days, and are you willing to comply with that?

Mr. PAYNE. Certainly.

Mr. MCINTYRE. OK. Thank you very much, Mr. Chairman. No further questions.

The CHAIRMAN. I will recognize myself. Mr. Szymanczyk, I would like to follow up a little bit with the discussion between you and Mr. Boehner with respect to the possibility that FDA could, in time, provide for a ban on tobacco products.

How likely do you think that is in the future?

Mr. SZYMANCZYK. Well, I suppose it is as likely as—

The CHAIRMAN. As being here today is?

Mr. SZYMANCZYK. No, it is as likely as the members giving it permission to do that. I mean ultimately, Congress reserves the right for those things itself, and currently, the FDA doesn't have that authority and the FDA hasn't generally been given unfettered authority over products that it regulates. It is given direction by Congress and the House of Representatives and the Senate, and in the actual legislation that is passed, and so we don't support legislation that would give the authority to the FDA to prohibit the sale of tobacco. We think the FDA's mission should be to reduce harm caused by tobacco, not make the decision whether or not it should be sold. That should be left to Congress. If the will of the people at some point in time is that tobacco shouldn't be sold, then so be it. I think Congress will have to make that decision, but that is not the case today, and so I don't think that authority should be granted to the FDA today.

The CHAIRMAN. Well, then we get into a definition of what the will of the people is. I agree with Mr. Boehner. I believe that there are people who are going to continue to smoke, but if it is a possibility that tobacco is going to be banned, you can't sell it, people can't smoke it, does that ban extend to a situation where I couldn't

even grow tobacco on my farm and couldn't then roll it or chew it, or use it in any way that I could? Is that a possibility?

Mr. SZYMANCZYK. Not unless the Congress gives the FDA that authority, and I don't think that will pass. I don't think people are going to be willing to give the FDA that authority, nor would I suggest that we do that. I think that——

The CHAIRMAN. Well, if people fear that that is the realistic prospect, then, shouldn't Congress withhold all authority from the FDA to regulate this product?

Mr. SZYMANCZYK. I would hope that what we would be able to do is work through a process that would get us to reasonable regulation, in the House and in the Senate, because I think that consumers do want harm reduced that is caused by tobacco. They do want FDA regulation. They just don't want the product to be banned, and so I think that is the kind of legislation that needs to be passed.

The CHAIRMAN. All right, thank you very much. Let me ask somebody on this panel. We have discussed the price of a package of cigarettes, and we have discussed how much of that price is tax, but nobody, at least I do not remember anybody telling us, how much of the price of a pack of cigarettes goes to the farmer to pay for the tobacco that is in a pack of cigarettes? Ms. Dawson, can you tell us that?

Ms. DAWSON. I don't remember.

The CHAIRMAN. All right. Mr. Gee?

Mr. GEE. I don't know, but as a farming family, I would say not enough.

The CHAIRMAN. All right, Mr. Payne.

Mr. PAYNE. I don't know the exact percentage, but as you look at—you get beyond what the Government takes, what the manufacturer's cost is, and then what the manufacturer makes, wholesaler, retailer, there is no question that the tobacco farmer, and I don't mean the quota holder, I mean the actual farmer, puts their money at risk to produce the product, is on the low end of that totem pole. If for no other reason, they are paying fairly enormous rent and lease rates in order to have the right to grow.

The CHAIRMAN. How far down on the totem pole is it? Do you have any idea? Is it on the bottom row?

Mr. PAYNE. As compared to Government, it is way down. I mean, we basically estimate we make about 12 cents a pack, and so again, it would certainly be less than that, and I would assume it would be some amount less than a penny a pack.

The CHAIRMAN. All right. And how much do the cigarettes sell for?

Mr. PAYNE. Average price nationally last year was right at \$3.57 a pack, right in the \$3.50 range.

The CHAIRMAN. And the farmer gets 1 cent?

Mr. PAYNE. Correct.

The CHAIRMAN. Thank you, Mr. Payne. I appreciate that. Let me go now to the gentleman from North Carolina, Mr. Hayes.

Mr. HAYES. We have got four gentlemen from North Carolina here. We have good representation.

The CHAIRMAN. Well, I——

Mr. HAYES. Appreciate these——

The CHAIRMAN. The gentleman, and——

Mr. HAYES. Well, we have got three left, anyway. I appreciate the chairman holding this hearing and appreciate you all being here. I don't have any questions at this time.

The CHAIRMAN. All right. Now we go to Mr. Etheridge.

Mr. ETHERIDGE. Thank you, Mr. Chairman. Let me thank all of you for being here today. I sort of find myself a lot like the ranking member did. I don't think any of us would have ever thought 5, 6 years ago we would be seated here today talking about this issue, certainly not the farmers who were here earlier today. I think certainly not any of you in on the production side, and probably the health groups that we will hear later probably would have liked to have been here, but they were sure would be here, and I think we are here for a variety of reasons, and having heard from the farmers earlier, I think one of the real issues that we are facing is the crisis that is not just in the tobacco community. This is a crisis in agriculture all across America and the tremendous pressures they are feeling. So I thank you for being here.

Let me, Mr. Szymanczyk, ask you a first question, then I will try to cover the other ones, because my time is limited. According to your testimony and the comments you made a few moments ago as relates to H.R. 140, you sort of sensed that you feel that has the best chance of passing, from what I heard you state.

However, I must confess, in having the benefit of reading the health groups' testimony beforehand, they indicate almost to the person that they are opposed to that piece of legislation, because of some of the provisions of FDA in it. I guess my question is do you really believe we will be able to pass a piece of legislation that the health groups aren't on board with in some way, given that here in this committee, most of us are tied one way or another to agriculture, but if we carry a bill to the floor, we are going to have a lot of others, and so it is just a broader issue. Do you want to comment on that?

Mr. SZYMANCZYK. Yes, I will. Well, I suppose the real answer to that is it remains to be seen, but as I said in my oral comments, I think is a matter of compromise and nobody is going to get everything that they want. Frankly, I think if you look at the provisions of FDA that are in H.R. 140, what you will find is that they are very similar in nature to the Kennedy-DeWine bill with a few exceptions. One of them is the one we have talked, Kennedy-DeWine does not expressly prohibit FDA from banning tobacco products. There is a consumer acceptability clause in McIntyre-Davis that doesn't exist in the Kennedy-DeWine. There is preemption in the McIntyre-Davis bill that doesn't exist in the Kennedy-DeWine bill, but when you come down to ingredients, you come to warning labels, you come down for standards for products, you come to provisions for introducing new products and handling reduced risk or purported to be reduced risk or reduced exposure products, these bills are very similar in that regard, so in actuality, when you look at them, they are closer together than they are far apart. There are more things that are alike than different, and I think there ought to be the ability to come together and find something we can get past.

Mr. ETHERIDGE. Thank you. Let me cover one more point with you, and then I will move on. You had indicated in your written testimony and commented earlier related to some kind of program afterwards that you didn't think we should really do that, provide security for years to come, because the earnings that they would get from a buyout should help cover that, but I am sure you heard from some of the farmers who were here this morning who were probably pretty representative of a lot of farmers, and probably they were more representative than some of the farmers who are out there struggling, because most of these are pretty good-sized farmers, and they talked about eating up the equity, the debts are piling up, and I think farmers really do have some serious problems, and it is not unique, as I said earlier, to these folks.

And I think the greatest fear I sense from farmers is, as unsure as they are of where they are, they really are unsure of the future because they don't know what it is going to be, and my question to you and to all of you, really, assuming we can get a buyout, let us assume that we are fortunate and get one, whether there is a program afterwards that holds something in place to give some kind of security or safety net, whether it be permanent or a phase-out, if that be the case, can you support, and I will go down the line and ask yes or no, can you support first of all, a permanent or a one that would phase out would be the second question?

Mr. SZYMANCZYK. It depends on what it is, obviously, but I think in my comment, what I said was that I believe that some elements of safety net are likely going to be necessary here, but they need to be elements that don't trigger WTO caps and put this money into the amber box.

Mr. ETHERIDGE. We agree on that.

Mr. SZYMANCZYK. So you have got things like, there are some built in, for example, first and foremost, I think in H.R. 140, the money being paid up front, the \$8 and \$4, particularly on the years that are involved, is a safety net, because it gives them the cash in hand, but beyond that, it does have geographic restrictions in it, which I think would help. It does have crop insurance. It does have this notion of a Tobacco Quality Board, that would help growers take their product to the international markets, and I have heard recently that in the Senate, there is some discussion of a private insurance program, which wouldn't be an issue relative to WTO caps, but would provide a protection if prices fell below a certain level, and that that would be funded by manufacturers and growers kind of on a 50-50 basis. I think it is a relatively low cost, and while I have not seen the details on that, that sounds like something that might be an appropriate safety net as well, so I think the possibility exists to do this. We have committed, as a part of selling a piece of litigation to—we made a long term 10-year commitment to buy the majority of our tobacco from domestic growers, so we feel like there is a number of things here that form a safety net that don't have to trigger WTO caps, and there is a way to do it. It just has to be done the right way.

Mr. ETHERIDGE. Mr. Chairman, I realize my time has run out, but I would like to hear a yes or no from folks if they can give that.

Mr. PAYNE. Well, Congressman, as I testified in my written testimony, and also at the Subcommittee, it is not RJR's position that we believe that the price support program should be abolished.

Mr. GEE. I can just say, Congressman, growing up in a small community, where we had a Scoville plant and a button factor and a zipper factory and a Belk-Leggett department store and a hardware all in one town, and they are all gone now. Without something on the other end that is going to take tobacco away, and my area of Virginia is very heavily in red soil, and it grows beautiful old belt tobacco, but if you go pure capitalism, it is going to be devastating, because it is going to go to areas more amenable to huge, corporate farming, and you are going to kill our community.

Ms. DAWSON. Congressman, it would depend on what the details were.

The CHAIRMAN. Anybody else? Mr. Taylor or Mr. Watson, did you wish to comment?

Mr. TAYLOR. Yes, for CITMA members, the majority of which purchase almost 90 percent of tobacco produced here, it is important that whatever program that is ultimately adopted provide some stability for the local community, so if there is a phase-out, going back to what Mr. Gee said, it is important that there be an element of stability for the community, since we rely on that local community.

Mr. WATSON. Congressman, I have never completely understood why the conventional wisdom seems to be that it must be through the United States Congress that you pass the \$19 billion tax increase in order to achieve a buyout. Our position has been is that we can achieve this similar in a way which we negotiated the phase II payments of \$5.15 billion back in the late 1990's. That said, most people have said well, we can't do that, because you will never get Philip Morris to the table, and that may be true, but I would certainly hope and think that maybe this committee could encourage all those people who participated and need to participate in the buyout, manufacturers, farm leadership, States' Attorneys-General, to get together and come to the table. We have seen in the past that when we do get all the members to the table, while it may not be perfect, while everybody may not get exactly what they are looking for, at the end of the day, we can get something done, and the hopes and prospects of modernizing the system that will lower the price of tobacco, make U.S. tobacco, domestically grown tobacco, more competitive around the world, which will allow us to buy more tobacco, is in the best interests of everyone concerned.

Now, the question is whether or not it is politically feasible and whether it is politically advantageous to link a regulatory proposal for which there is no general agreement on, helps or actually complicates the buyout proposal, and I think if we fast forward six months from now, and we are still scratching our heads as to why possibly a buyout has not been accomplished, and one more year of contracting, one more year of purchase intentions has to go through, while at that same time, our farmers are back home suffering. I think we have to look at this FDA issue, and maybe think about—

The CHAIRMAN. Gentleman, the time has expired. The gentleman from Florida, Mr. Putnam.

Mr. PUTNAM. Thank you, Mr. Chairman. Mr. Sharp, I will happy to yield to the gentleman from North Carolina a minute—answer the question.

Mr. SHARP. Oh. I was just going to say that since we don't participate in the price support program, we are neutral.

Mr. PUTNAM. Well, that is a—I segue. I have noticed you have been pretty quiet. I grow citrus in my part of the State of Florida, and that is why it is important that these folks who have such a big growing area have all the time they need to get into the ins and outs of this.

If we could find a way to roll and smoke some kind of a—some piece of the product stream of citrus, I think we would do it if it would add value to our farm gate receipts, but we hadn't figured out how to do it yet. But my new district does go to the edge of Ybor City, and we have got a little interest in the cigar industry, and I am curious, how much American quota tobacco goes into the cigars?

Mr. SHARP. Congressman, the entire cigar industry uses around 40 million pounds of tobacco a year, no more than 40 million pounds, compared to about 700 million pounds for cigarettes. The vast majority of our tobacco is imported. There is a difference between cigarette type tobacco and cigar tobacco, and you will find that there is some domestic cigar tobacco, for example, the Connecticut wrapper and binder that is used in cigars, but in terms of quota-type tobacco, there is very, very little. There might be—I believe there is one small manufacturer in Pennsylvania that uses some fire-cured tobacco, and there may be some other imported quota-type tobacco used in a minor segment of the popular priced cigars, but overwhelmingly, it is cigar-type tobacco, not cigarette-type tobacco.

Mr. PUTNAM. Does the USDA even have a reporting requirement for your quota-grown tobacco?

Mr. SHARP. No, there is no quota-grown tobacco for cigars in the United States for cigar-type tobacco.

Mr. PUTNAM. Well, I guess I would ask what role you see the cigar industry playing in a buyout of quota holders if you are not buying any quota tobacco.

Mr. SHARP. Well, you are echoing the question I would ask also.

Mr. PUTNAM. Mr. Taylor, earlier, you mentioned, when we were trying to get to sort of the driving core policies behind whatever program may end up, you said one of the things was to treat—we need to treat companies equally, measured by volume, and you referred to stick count, where would cigar, pipe tobacco fall into a formula for something like that, if they are not buying any American quota tobacco?

Mr. TAYLOR. I don't know the answer to that question. Most of our members, and as I sit here today, I can't think of a single member of CITMA that manufactures a cigar.

Mr. PUTNAM. For those who are on the panel, I assume some of you probably have cigar divisions within your cigarette manufacturing company. Do you see a role for cigars in a quota buyout, if they are not buying any quota tobacco?

Mr. SZYMANCZYK. Well, can I answer that, Congressman?

Mr. PUTNAM. You may.

Mr. SZYMANCZYK. I don't know that it is so much cigars as it is that I think the idea here is that any offshore tobacco is what is displacing the American grower's ability to make a living, and we have lots and lots of cigarettes coming into this country today that are manufactured offshore with tobacco that is grown somewhere else in the world, and it is displacing the sales of products that use U.S. grown tobacco. I think from a payment point of view, the idea is that this is a user fee for the purpose of using the market, and cigars use the market. I think it is fair to argue that it is a little less of an issue for them, but the issue does remain that if you get price disparities between these products that causes consumption shifts between them, because of those disparities, that that continues the problem, so the idea is this is about using the market, and it is about the fact that you are displacing U.S. grown tobacco with foreign-grown tobacco, most of which is in cigarettes, but certainly some of it is in cigars.

Mr. PUTNAM. The purpose really is to take care of the farmers, though, isn't it?

Mr. SZYMANCZYK. Right, but the idea is, if you funded it purely on the basis of people who are using U.S. grown tobacco, you would simply raise those prices, you would cause the demand for U.S. grown tobacco to go down even more and exacerbate the problem even further. That is why it has to be spread, and the people that are, in fact, chewing up some of the farmers' business, the folks that are using products with offshore tobacco, have to pay their fair share.

Mr. PUTNAM. Well, I am not sure if I totally follow that line of reasoning. I see that my time has expired, but I do have concerns about asking a group that is not participating in our current Government price support system, our current Government quota system, to bear the burden of the buyout, so I look forward to learning more about that.

Mr. Chairman, I appreciate your indulgence.

The CHAIRMAN. The gentleman from Georgia, Mr. Marshall, is recognized.

Mr. MARSHALL. Thank you, Mr. Chairman. I come from middle Georgia, and in my district, there are 236 quota farmers, 9.8 million pounds this year, and then also B & W, with 2,100 good jobs, and so I have got an interesting perspective on all of this. I guess I should add that Mr. Gee was a student at Mercer Law School while I was a professor there. I think he was both lucky and showed good judgment, lucky that he didn't get me his first year, and then showed good judgment not to take me in his—because I never had an opportunity to ask questions of Mr. Gee in law school and I am tempted to just focus on him, and I just announced that it does trouble me that there is a competitive advantage that the smaller producers or manufacturers have, not being part of the Master Settlement Agreement, and anything that we structure here, it seems to me that perhaps a disproportionate share of the cost of the buyout needs to be borne by you guys in order to sort of level the playing field, the competitive playing field, but I do have some questions for Philip Morris.



What I understand is that the other companies think that FDA regulation is going to put them out of business or at least really hurt them a lot, and yet, you, your company, is advocating FDA regulation, and I am wondering why it is that Philip Morris, and I would like you to specific in responding, if you would, why Philip Morris thinks that is going to survive and thrive and do well in comparison with these other companies, that are really kind of worried about what this proposed FDA regulation is going to do to their business.

Mr. SZYMANCZYK. Well, Congressman, I suppose I could take the position that I am worried, and I think we have had some discussion here today about, certainly if the FDA regulation that got enacted allowed the FDA to prohibit the product or things like that, I guess I would be really worried and sorry that I asked for it, but I do think that it is very plausible to have FDA regulation that we can all live with. We have regulation in the food business, and I talked about that a bit earlier, and there are small companies and large companies, all of which participate in the food business and they are regulated by the FDA.

Mr. MARSHALL. I am going to have a very limited amount of time here, so I am going to—I understand that is the official position here. It seems to me that you all must be on the verge of manufacturing a cigarette that you think the FDA will be happier with than it would be with the other brands. How close are you to producing a cigarette that you could perhaps persuade the FDA is safer than cigarettes that we have today?

Mr. SZYMANCZYK. I don't know that I have a cigarette that I can persuade the FDA is safer. I do have technology that we have been working on that at least at this stage, would indicate it reduces exposure in human consumption to a list of various toxins that are in cigarette smoke. Whether or not that translates to disease reduction is another matter, and it is one of the reasons why we have been reluctant with this technology to move ahead. We are—we believe that the FDA will have to provide guidance for us and others now. Some companies, in fact, have already gone forward with similar products. Brown & Williamson is one of them, and has it in the market. I believe they have test marketed—

Mr. MARSHALL. Have you patented the technology that you are referring to?

Mr. SZYMANCZYK. I think there are some elements that may be patented, but I am not sure that it is applicable.

Mr. MARSHALL. Is this technology that you are going to share with the other companies?

Mr. SZYMANCZYK. I am going to put it hopefully in the market one day so they will see it. Do you mean am I going to give it to other companies?

Mr. MARSHALL. Yes. Yes.

Mr. SZYMANCZYK. No, I wouldn't be able to give away property of my company to my competitors.

Mr. MARSHALL. One of the concerns that the other companies have is that the proposed limitations on marketing essentially will freeze the status quo. The big guys stay big, the small—what is your response to that?

Mr. SZYMANCZYK. I am sorry. I didn't hear all of the question.

Mr. MARSHALL. The proposed limitations on marketing.

Mr. SZYMANCZYK. Right.

Mr. MARSHALL. Marlboro has got a brand name recognition at this point, if you dramatically limit marketing, Marlboro's name brand recognition stays high. Others can't really make inroads as a result of your sheer size.

Mr. SZYMANCZYK. Right. Right.

Mr. MARSHALL. Is that part of the strategy?

Mr. SZYMANCZYK. Well, H.R. 140 proposes to codify the MSA, those regulations are already in place and we are already operating with them, and that really is the predominant marketing restriction in that bill.

Mr. MARSHALL. I guess I have a question for Ms. Dawson. Ms. Dawson, how would you modify the bill? Do you have a response to this? If you don't, perhaps you can provide it in writing. How would you modify the FDA regulation part of this bill to eliminate what you perceive to be a competitive disadvantage for both Brown & Williamson and a lot of these other companies vis a vis Philip Morris?

Ms. DAWSON. It would be easier to start rewriting a different bill than it would be to modify the current bill, because what you see with, whether it is H.R. 140 or the other bills that have been proposed, is they take the Food and Drug model, medical device model, and try to jam tobacco products in, and we don't make a safe product. Our products are dangerous, and yet they are trying to be regulated toward safety, and so the disconnect is huge.

Mr. MARSHALL. Ms. Dawson, and Mr. Chairman, may I—just a couple more questions, is that permissible? Thank you, sir. I am sorry. I just have a limited amount of time here. So you do think that you could write something, even if you started from scratch, that would provide for governmental regulation, FDA regulation, which Mr. Boehner says is going to be a precondition to getting anything done, that you think would level the playing field, or at least not cause such a disruption in the playing field as what this proposal?

Ms. DAWSON. It would depend on what one wants to accomplish through additional regulations, if it is ingredient disclosure, if it is youth smoking, if it is plant inspections, you really need to put an agenda on the table, and then start to figure out whether you can—

Mr. MARSHALL. I would be interested in what suggestions you have along those lines, because we seem to be heading in this direction, and you might as well have a voice at the table. One last question. Would Philip Morris be willing to go with the buyout, but no FDA regulation, separate the two issues, do you support the buyout?

Mr. SZYMANCZYK. I support the buyout in the context of FDA regulation, Congressman. Regulation is a key objective for us. We believe that that is necessary and appropriate, and we also think that we will get either one, buyout or regulation, unless they are put together.

Mr. MARSHALL. Thank you, Mr. Chairman. Thank you.

The CHAIRMAN. The gentleman from Michigan, Mr. Smith, is recognized.

Mr. SMITH. Mr. Chairman, thank you. What is the quality of U.S. grown tobacco compared to other parts of the world?

Ms. DAWSON. It is very high. It is very good.

Mr. SZYMANCZYK. It is very high.

Mr. SMITH. What percentage of imported tobacco would you normally blend, is it a question of blending? With most production of cigarettes, for example.

Mr. SZYMANCZYK. Well, it depends on the cigarette. In our cigarettes, we generally carry about an 80 percent content of U.S. grown tobacco, and then part of the blend would include some oriental tobacco, but our cigarettes are predominantly U.S. grown tobacco.

Mr. SMITH. What would happen to your production if there was zero tobacco grown in the United States?

Mr. SZYMANCZYK. We would buy tobacco in other places in the world.

Mr. SMITH. What would happen to the size of your production? Would it go down 10 percent, 20 percent, or stay about the same?

Mr. SZYMANCZYK. Well, I wouldn't anticipate it would go down. I think that you just buy tobacco from an alternative source. Probably more tobacco would be grown in other places in the world.

Mr. SMITH. Mr. Sharp, on cigars, is that true? Is it perception or is it real that the Dominican Republican cigar or the Cuban cigar is a better cigar?

Mr. SHARP. Well, I think that Cuba has very good soil and climate conditions for making cigars, but the quality of the cigar is very inconsistent. The quality of the cigar coming from the Dominican Republic is very good. I look forward to some day when there is availability to Cuban tobacco to fit into Dominican brands, but I don't—I think it is purely subjective right now.

Mr. SMITH. What is happening in terms of research? In Cuba, when I visited Cuba, they have a blight, an infection problem with their tobacco, that the scientists said could be cured with a genetically-modified tobacco that they already have developed a tobacco seed, but they don't want to implement it, because they are afraid of losing some of their European market. Would that be true with the production in the United States, that there is going to be—you are going to avoid any genetically modified tobacco products?

Mr. PAYNE. Let me. There is a tobacco company that is not present on the panel today that has attempted to use genetically modified tobacco leaf. I believe that they have now discontinued that. I think it raises a good question as it relates to, again, given what authority the Commissioner of the Food and Drug Administration may have. Let us assume that they have fairly broad authority in design to enact or adopt proposals they deem beneficial to the public health. Obviously, nicotine is an issue that has long been talked about, and so one immediate way of dealing with the levels of nicotine in the actual production of the leaf would be to go to GMO type tobacco, and it is possible that that might be a recommendation, in fact, in action from Commissioner of FDA with broad regulatory authority.

Mr. SMITH. Is research ongoing now? I mean, I chair the Research Subcommittee in Science, and we have the wherewithal, scientifically, to develop, to take the genes and fold in the proteins in

such a way that they can do a lot of things, and I suspect the potential is very real to develop the kind of tobacco to lower the tars and nicotines. Maybe go through some of the companies, if that was there, would you buy that tobacco from your growers?

Mr. SZYMANCZYK. Congressman, there is a genome project going on at I believe it is North Carolina State University building the genome of the tobacco plant, and there may be potential down the road to use genetic modification as a form of harm reduction. There are issues with that that will have to be taken care of. There are issues relative to products manufactured here that are exported to Europe where genetic modification in some of those countries doesn't meet their regulatory requirements, so some thought has to be put to how you get all these kinds of things done, but there is research going on there, some potential does exist.

Mr. SMITH. In the last 30 years, how much of our tobacco, cigarette and cigar and chewing production has moved offshore? Give me some guesses.

Mr. SZYMANCZYK. Production offshore?

Mr. SMITH. Yes. In the last 30 years, would we have lost half of our production in the last 30 years, or what is somebody's guess?

Mr. SZYMANCZYK. Well, in terms of our production for domestic use here, we haven't lost any of it.

Mr. SMITH. For the last 30 years, we haven't lost, so they are—

Mr. SZYMANCZYK. I am talking about my company. My company hasn't removed any production for U.S. consumption.

Mr. SMITH. Yeah. I mean, I was guessing. I have told that the loss of some businesses that have gone out of business, and some manufacturers that have gone out of business. I am just trying to get a feel of how much we have lost.

Mr. SZYMANCZYK. Imported cigarette products manufactured offshore are growing in this country, and they have begun to grow in the last few years primarily due to great price disparities between the cost of products manufactured here and the costs of those products where they are manufactured.

Mr. SMITH. Any other comments from any of the other witnesses?

Ms. DAWSON. Well, cigarette volumes in the United States have been going down between 1 and 2 percent a year for decades, going back to the first Surgeon General's report. What that means in terms of production, I haven't seen quantified. My company has lost jobs—and union jobs and sales jobs and those sorts of things as our volumes have been hit.

Mr. SMITH. Am I correct that overall, world consumption has been going up? Is that correct? I see some heads nodding in back of you, so I assume that it—

Mr. SHARP. Congressman, I am going to respond to the question on cigars.

Mr. SMITH. I want to find a good domestic cigar. I like a cigar with a little brandy, so that is what I am sort of looking for.

Mr. SHARP. I see.

Mr. SMITH. Do you want to make all these trips to other countries.

Mr. SHARP. Well, you will find that in the cigar industry, the volume last year, the sales volume in the United States was about 58 percent of what it was 30 years ago, but most of the cigars, the

vast majority of cigars made overseas are the premium handmade cigars. Most of the cigars made in the United States are the popular price machine-made cigars.

Mr. SMITH. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. The gentleman from Kentucky, Mr. Lucas.

Mr. LUCAS. Thank you, Mr. Chairman. I was somewhat enlightened and encouraged by our growers panel this morning. I am somewhat conflicted by what we have here. Given the fact that people like me from tobacco-producing States and others in the room here from the Southeast, it is a given that we want to have a program for our tobacco farmers, but it seems like to me everybody is holding pretty steadfast to their positions as it comes to FDA, which is a bugaboo, and I am a little discouraged that we don't seem to have made a lot of progress here, other than people just stating their positions, and other than Mr. Sharp, who I tend to agree with his dilemma, but I would be interested in hearing from someone, a lot of times, up here, that it seems to me that the way we get things done is when everybody is just a little bit unhappy about the settlement we come up with, and I would ask maybe for an open mike session here to see if anyone sees any breakthrough that I am not seeing as far as the companies' positions, I think, it seems to me most everything else can be worked out except the FDA problem. Is there any common ground here? Does anyone want to offer me any ray of hope or optimism about what you agree with about FDA and there is plenty of disagreement. Would anyone want to take a shot at that? Ms. Dawson?

Ms. DAWSON. I am happy to take the first shot at it. On FDA, I think that is a non-starter, so I am not optimistic on that. If you take the group up here, and some of us are saying we like the bill on H.R. 140 and some of us are saying we don't like the bill on H.R. 140. You have one person saying that this would be fine, one company saying this would be fine. My fear is that it only gets worse as it gets through the process, because most of your colleagues don't like my company very much, so the political process in my view makes a very bad bill from the start just get worse, and this is all to help tobacco growers, so it is not a good business equation for me, or a political equation.

On the grower part, if it were separated from FDA, could we use a different base year, can we come to—with different funding source, and again, we would be happy to support it, but we can't pay for it.

Mr. LUCAS. OK, thank you. Who else want to take a shot at that? Mr. Payne.

Mr. PAYNE. I will not attempt to offer a ray of hope, although I do want to be like Norm in the rest of this hearing, where, everyone agrees that Norm should be out with the gal in Cheers sitting at the end of the bar, everybody loves him. I think it is indicative—and I will give you an observation. I think, as I said in my written and oral testimony, this is an issue that has always had a lot of conflict, disagreement over a whole range of issues, but as you look at this panel, you really have the largest tobacco company and then the smallest tobacco company is in agreement, and the guys that are in the middle, it used to be the real big players, such as my

company and B & W to a certain extent Lorillard. The ones that are kind of caught in, how do we compete, and that is really the standard by which we look at—whether it be a buyout or an FDA bill—how are we able to compete in the marketplace, given the current financial dynamics, not only from an existing statutory standpoint, Federal and State, but also from a price standpoint?

The price of a carton of cigarettes for the premium brands for all four of us are now anywhere from \$34 a carton, where 4 years ago, they were approximately \$19 a carton. The low-end and the CITMA guys, they can sell, because they have a built-in price advantage. They can sell a carton of cigarettes, and do, for between \$12 and \$17 a carton, so you think about that in terms of purchasing behavior over a period of a year for a smoker. That is a lot of money, therefore, a lot of volume has moved from the majors to the low end, and probably will continue to move because of that price advantage. So I mean, it is the way that the market works.

So then to say on top of that, OK, we want another \$19 billion out of the guys that are already making the settlement payments, already making phase II payments, the Government collected \$135 billion from smokers between 1998 and 2002. In the vacuum of this legislation, it seems fairly meager, but in the context of what is going on and how people are actually trying to compete, it is very, very impactful, so I think you will continue, at least among some, to see very noticeable disagreement and very drop-dead positions of no, we are not going to pay.

Mr. LUCAS. OK, well, I see my time is up, but I would just suggest that of course, what we are interested in is some relief for our tobacco farmers, and that is first and foremost what we are interested in, and I would just suggest if anybody has anything they would like to talk to me privately about, where we could reach some common ground, and maybe you don't want to state your thoughts as candidly as you would like publicly, but I would be open to hear from anyone after this meeting at any time at your convenience. Thank you.

Mr. WATSON. I would like to meet and talk to you, Congressman, and I think there is a way we can get there.

Mr. LUCAS. Thank you.

The CHAIRMAN. I thank the gentleman. The gentleman from Georgia, Mr. Burns.

Mr. BURNS. Thank you, Mr. Chairman. I thank the panel. I appreciate your willingness to share your input and your expertise. I want to focus on maybe a couple of things. One, again, going back to the foreign cigarette manufacturers, if there is a buyout, and again, perhaps your position should be that the burden of the payment for that buyout should not be borne by the consumer or by your organizations, but if there were a buyout, how would these—how should these—our manufacturers be treated under a buyout?

Ms. Dawson.

Ms. DAWSON. I am not sure there are enough foreign cigarettes being brought into the U.S. to support a \$20 billion plan.

Mr. BURNS. That is a good starting plan. How much foreign importation of finished product do we have?

Ms. DAWSON. Is it available? 18 billion sticks?

Mr. BURNS. As a percent?

Ms. DAWSON. No.

Mr. BURNS. No, I mean, as a percentage, what?

Ms. DAWSON. As a percent, it would be less than 5.

Mr. BURNS. Is it growing?

Ms. DAWSON. Yes, it is, sir.

Mr. BURNS. And the reason is?

Ms. DAWSON. Price.

Mr. BURNS. Price. Again, if we get a buyout, and if we utilize one of the models or two of the models that have been presented here, and we look at the payments coming through the consumer, how would you collect that from a foreign manufacturer? Mr. Gee?

Mr. GEE. Thank you, Congressman. I am very concerned about that as well. Some of the proposals look like the Congressman is just considering looking at what your market share is and sending you a bill at the end of the year. I have no doubt that the domestic companies and certainly the lady and gentlemen sitting here would pay their bill if they were required to, but I am concerned that the foreign manufacturers who have escrow obligations that they are managing to avoid with relative ease would try to play the same game, so if the money is not collected up front, I think you are going to have a real problem, and even though it is a small percentage of the market, if 8 percent, or a growing 8 percent defaults, does it fall back on the Congress to make up that difference or on the manufacturers, do we get a second bill, or the farmers have 8 percent less money than promised, so one of the things we are suggesting is to use the excise tax, Federal excise tax mechanism, collection mechanism, when you hit the borders with imported cigarettes, you have an up front duty to pay that, so we would suggest a mechanism that is an up front payment, rather than a we will trust you to pay the bill type mechanism.

Mr. BURNS. I think one of the things we want to make sure we have here is an equitable and fair implementation of any funding source. Certainly as we look at both the importation of raw product, raw tobacco that you would use to blend into the domestic production environment, or the importation of the finished product, whether we are talking about cigars, or whether we are talking about cigarettes. FDA regulations are of key concern. Certainly that is going to be a tough point, a tough nut for us to get through as we consider this legislation.

I am very interested in the impact that FDA regulations have on small manufacturers, those groups in the middle, those companies in the middle, and then maybe the larger manufacturers. Give me a 2-second summary of where you see the problems are if we look at FDA and how it is going to treat these three different segments of our production environment. Perhaps, we will start with Philip Morris, because you are the biggest gorilla in the jungle.

Mr. SZYMANCZYK. The biggest issue for us with FDA is going to be the complexity that goes along with having large facilities with lots of machines and lots of people, because when you apply good manufacturing processes, you have got to deal with, in a large environment, you have got to deal with all that complexity and all the multiplicity of equipment that you have, and all the people that have to be trained in order to make sure you are always in compli-

ance with the regulations. The size actually works against you, I believe, when it comes to——

Mr. BURNS. Do you feel the FDA would provide the large manufacturer with any advantage?

Mr. SZYMANCZYK. Pardon me?

Mr. BURNS. Would the FDA regulations provide a large manufacturer with any advantages over a medium to small, do you think?

Mr. SZYMANCZYK. I don't know what—it would depend on what it is, I suppose. In some areas in science, we might be able to do some things scientifically, but you know, today you can go to scientific labs and buy scientific support, but for us, the biggest negative is, and it offsets that, really, is the complexity that comes from our size.

Mr. BURNS. Mr. Payne, or Mr. Watson.

Mr. PAYNE. I would agree complexity would be an issue. Our second issue would be impact immediately on competitive ability, and the third area would be uncertainty, meaning rules as issued and promulgated today obviously would change over a period of years, and what would those changes be, and how they might impact your business, would cause uncertainty.

Mr. WATSON. I think there is absolutely no doubt that if you were to have FDA regulation of tobacco, it would impact the farm directly. It would be onerous and burdensome, particularly on the small family farm and would make it more difficult, if not impossible, for the small farm to compete.

Mr. BURNS. Thank you. Just 1 minute for Ms. Dawson and Mr. Gee.

Ms. DAWSON. I think that the larger your company, the better that FDA is for you, because of the competitive advantage that is given by the marketing restrictions, as well as just the scale of bearing the regulatory burden.

Mr. GEE. I would agree as well, from a small company, we don't have the scientists we want to use now for the tobacco and it is a harmful product and give the adult consumer a choice. I would disagree that we have any competitive advantage under the Master Settlement Agreement. We are playing with the rules, but I will say that FDA, for small, big and large, I think it should concern all of us.

Mr. BURNS. Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman. I want to thank all of the members of this panel for a very productive and very helpful presentation to the committee. One area that we didn't spend a good deal of time on, but I would like to part on and give you all an opportunity to say something about it.

The first panel unanimously agreed that they wanted to have a program to support the price of tobacco after the buyout took place. I asked not all, but some of the members whether they wanted the buyout more or the program more, and they wanted the cash on the barrelhead more than the program. Let me ask each and every one of you, is there any kind of a program that you could live with after making these kind of payments that would support that domestic price of tobacco? Ms. Dawson, start with you.

Ms. DAWSON. Mr. Chairman, first you have got us making the payments again, and we are not happy about that, but yes, there



could be a carefully crafted program that did not have value, that is the problem, that you can't let the value get back into——

The CHAIRMAN. Well, I am talking about a program that would effectively raise the price of tobacco, that would allow them to get a better price than they think they will get in the free market, which worries them and causes them to want to have a program.

Ms. DAWSON. No, then it is unsustainable on both ends.

The CHAIRMAN. Mr. Gee.

Mr. GEE. As a farmer family, it is so difficult for me to take that hat off and talk as a manufacturer, but I will try. I think there needs to be some program to keep tobacco in the traditional tobacco areas, and as far as price, it can't be a price such that it drives up costs so much that it makes domestic production of cigarettes impossible and it is all farm.

The CHAIRMAN. But you would support something that limited production to the traditional areas of production? Do you agree——

Mr. GEE. I would say my family wouldn't talk to me if I didn't say that I would support the farmer.

The CHAIRMAN. Mr. Payne.

Mr. PAYNE. As you described, Mr. Chairman, we would not support that.

The CHAIRMAN. Mr. Sharp.

Mr. SHARP. Mr. Chairman, I have been president of the Cigar Association for 22 years, and my knowledge of the domestic price support program is very superficial, because it is just not an issue with our industry. We don't use price-supported tobacco.

The CHAIRMAN. As I understand it, you have been voted off the island already anyway. Mr. Szymanczyk.

Mr. SZYMANCZYK. I believe we could support the limitations in H.R. 140 to current geographies, and as I mentioned earlier, perhaps the private insurance program or idea that has been contemplated in the Senate, provided it doesn't enter into the zone of triggering WTO caps.

The CHAIRMAN. Thank you, Mr. Taylor.

Mr. TAYLOR. Yes, sir. We could, I think, as a Council, support in concept what you have described, provided that it is, again, fair, provides stability to the local communities upon which we depend for most of our tobacco, and so long as it is not used as a vehicle to provide certain companies or certain segments of the industry with a competitive advantage. Again, CITMA was founded on fairness, and that is all we ever ask.

The CHAIRMAN. Thank you. Mr. Watson.

Mr. WATSON. Mr. Chairman, at the end of the day, it is the grower's program, and they have to support whether or not they want a program or not, and clearly, there is a lot of disagreement between the different farm groups on that. We think that there ought to be some sort of supply management system in place, in terms of providing some stability in the long term for those people who want to continue to grow. Ms. Dawson's point is an excellent one, which is if you start to bring back into value, into that licensing system, we will be right back here 5 years, 10 years from now from what we thought we accomplished today, but we do believe that it is in our best interest as a manufacturer to have a stable supplier of domestic leaf.

The CHAIRMAN. Thank you, Mr. Watson, and thank you all. Some of the Members may have some other, and I know I have some questions we would like to submit to you in writing, which we will do, and we would like to receive those replies back within 10 days, if at all possible, and at this time we will thank and excuse the panel.

The final panel to the table: Mr. Matthew Myers, president, the National Center for Tobacco-Free Kids of Washington, DC; Dr. Alfred Munzer, past president of the American Lung Association, also of Washington, DC; Dr. John Seffrin, the CEO of the American Cancer Society of Atlanta, Georgia; and Mr. M. Cass Wheeler, the CEO of the American Heart Association of Dallas, Texas.

I would like to welcome all of the members of the panel, and to remind you that your full statement will be made a part of the record, and ask that you limit your oral testimony to 5 minutes, and we will start with Mr. Myers. Mr. Myers, welcome. We are pleased to have you with us today.

**STATEMENT OF MATTHEW MYERS, PRESIDENT, NATIONAL CENTER FOR TOBACCO-FREE KIDS, WASHINGTON, DC**

Mr. MYERS. Thank you very much, Mr. Chairman. It is a pleasure to be here. My name is Matthew Myers. I am the president of the National Center for Tobacco-Free Kids, a national organization created to protect children from tobacco.

Mr. Chairman, I want to thank you for inviting the National Center to testify on the questions before the committee. We were privileged to serve as the co-chair of the President's Commission on Improving Economic Opportunity in Communities Dependent on Tobacco Production While Protecting the Public Health. Mr. Chairman, it may surprise some that representatives of the public health community are concerned about the plight of tobacco farmers and their communities, but we are. We believe that the health and safety of the American people and that of the tobacco farming communities are linked. A stable tobacco growing industry that operates through price and quality controls and under health and safety standards is in the best economic and health interests of this country.

The current Tobacco Program needs to be significantly restructured but not eliminated. Its elimination would, in the opinion of virtually every farmer and every economist who testified before the Commission, make it impossible for small family farms, that are the backbone of so many communities, to survive, and with the demise of these farms would come the economic strangulation of the communities in which they live. Without meaningful price and production controls, and continued restrictions on where tobacco can be grown, the price of tobacco would drop over the long run and thousands of family farms would be replaced by a few very large farms. Jobs, communities and a way of life would be lost.

As a result, the Commission, our organization, the American Cancer Society and the American Heart Association have joined with tobacco farmers in urging a buyout that meets the following standards. One, provide tobacco growers and quota holders with a fair and equitable compensation for their quota funded through a user fee on the tobacco companies or excise tax. It must come from

new revenue. Two, replace the current program with a new system of licensing that controls supply, maintains price, protects family farmers and gives farmers and their communities both short term and long term stability. And three, provide economic development assistance to tobacco communities.

We also support as part of a buyout providing to farmers who decide to use the buyout as an opportunity to stop growing tobacco, a payment larger than the payment made to farmers who elect to continue to grow tobacco. The rationale for that is in my written testimony.

The testimony before the Commission also indicated that the buyout and any new production system will lead to a more stable economically viable situation for those farmers who remain. An economist from Teamley told us that approximately 50 percent of all farmers would take the opportunity to leave tobacco growing. That is why it is important that they have sufficient money either for retirement purposes or to make the necessary transition.

Under the proposal we have endorsed and Congressman Fletcher's meets it, the proposed changes will cut the long term Federal financial cord between the Federal Government and tobacco growing. As you have heard already, tobacco is in transition. The question is not whether a transition will take place, it is under what circumstances.

We think it is important that any proposal contain substantial funds for economic development assistance, because it will be communities as well as individual farmers who should be affected.

And lastly on this issue, our Commission recommended, and we support, that a buyout be fully funded and paid out over no more than 5 years, with the equivalent of a 17 cents per pack user fee or excise tax based on 1998 quota. This was the recommendation of the economists from every academic institution who testified, as well as the Department of Agriculture. It is odd, an additional user fee needed to pay the difference between the lowest proposal that you have heard and the one that we adopted is really only about 4 cents per pack, an amount far too small to affect consumption whatsoever, according to every economist, but the impact on the farmers in receiving the smaller payment is absolutely dramatic. It is particularly odd that I as a public health advocate am standing before this committee advocating a stronger proposal than many others. If there is something that has surprised us, subsequent to the Commission, it has been the lack of support from tobacco-State Members of Congress for a proposal that virtually every farmer and every farm group agreed upon. For years, farmers were told agree on a proposal, agree on a consensus, and we will support you.

Mr. Chairman, virtually every major farmer, every farm group endorsed this proposal. Now, I need to make one more point before I finish, and I understand my time is up, but it is a very important one.

Candor and the trust built up between the partnership and the public health community require me to say clearly today, as I have many times to my tobacco growing friends, that while we are prepared to support legislation, in fact, work hard for legislation that is consistent with the principles laid out by the President's Commission, we will and will have to oppose any legislation that either

contains provisions or could serve as a vehicle for legislation granting FDA with authority weaker than that which we endorse.

It is our view, and I know this may not be popular in this committee, that granting FDA weak authority over manufactured tobacco products is worse than granting it no authority over manufactured tobacco products. Thus, given what we have been told by many Members, that this bill can only pass with a linkage to FDA, it is important to understand we support good buyout legislation being married to legislation that provides FDA with authority over manufactured products, but we will be forced to oppose any effort to move grower legislation, including grower legislation that we otherwise support, if it could turn into a vehicle for weak FDA legislation.

Mr. Chairman, this is truly a unique opportunity. Our community is prepared to work night and day with tobacco growers and the tobacco growing community to accomplish a buyout and meaningful FDA legislation. We hope that that opportunity will be seized.

[The prepared statement of Mr. Myers appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Mr. Myers. You did go a little bit over, but I have been married to a Myers for many, many years, and I have learned never to try to stop them in speaking at any point.

Mr. MYERS. And I am the shortest-winded one in my family.

The CHAIRMAN. And now we will hear from Dr. Alfred Munzer, past president of the American Lung Association. Dr. Munzer.

**STATEMENT OF ALFRED MUNZER, PAST PRESIDENT,  
AMERICAN LUNG ASSOCIATION, WASHINGTON, DC**

Dr. MUNZER. Thank you. Good afternoon, Mr. Chairman and members of the committee. Thank you for the opportunity to appear before you today. I am Dr. Alfred Munzer, an American Lung Association volunteer and head of Pulmonary Medicine at Washington Adventist Hospital.

The American Lung Association was founded in 1904 to combat the major public health crisis of that day, tuberculosis, and for over 40 years, we have worked to combat the major public health crisis of the second half of the 20th century and, sadly, into the 21st, tobacco.

Tobacco kills. Each day in my practice, I see its victims and their families, men and women, mothers and fathers, with diseases like emphysema, chronic bronchitis, cancer and heart disease. I have been a physician since 1968, and in spite of all the medical advances, then, as now, I cannot undo the damage that smoking does to the lungs. Over 440,000 Americans die from diseases directly related to cigarette smoking each year at a cost of \$150 billion. About half of all regular cigarette smokers will eventually be killed by their addiction.

The driving force behind today's hearing, I recognize the limitations of this committee's jurisdiction, it is not public health, not preventing children from becoming addicted, but tobacco quota buyout and surrounding issues.

Mr. Chairman, with all due respect, the congressional priority on tobacco continues to be misplaced. For over 20 years, the American Lung Association has advocated strong Federal regulatory oversight over the manufacture, sale, distribution, labeling, marketing and promotion of tobacco products. We strongly support legislation like that balanced, bipartisan compromise bills introduced in the 107th Congress by Mr. Waxman and Mr. Ganske, as well as a bill sponsored by Senator Kennedy and Senator DeWine. These bills provide the FDA with the authority necessary to protect the public health. The House bills regulate tobacco under the Food and Drug Cosmetic Act as a drug and device, while the Senate approach creates a new chapter in the law for tobacco. Both approaches provide the necessary authority.

We strongly oppose the Philip Morris to FDA encompassed in Mr. McIntyre's bill, H.R. 140. There is much work to be done to help addicted smokers quit, prevent children from being addicted and to provide the needed regulatory oversight over tobacco products and eliminate exposure to secondhand smoke. This is where we believe policymakers should focus their attention.

With respect to a potential tobacco buyout, the American Lung Association supports economic transition assistance for tobacco growers, workers and their communities, but the Federal taxpayer should not finance any program that supports tobacco growth, production, marketing, administrative costs, or any other purpose that promotes or facilitates tobacco use here or abroad.

We have empathy for the economic disruption facing those dependent on tobacco growing. It is appropriate to help them exist the tobacco business, but it is wrong for the Federal Government to subsidize tobacco. To those who say that the United States tobacco growers' future lies in the export market, we strongly disagree. It is immoral for the United States to export cancer, emphysema and heart disease.

The sun is setting on tobacco. Yes, we have a long road ahead. Tobacco runs a global scourge. It kills nearly 5 million people annually around the world; but over 40 nations have signed the World Health Organization's first public health treaty, the Framework Convention on Tobacco Control. Progress is being made, despite the efforts of the global tobacco companies to addict children in Asia, Africa, Eastern Europe and Central and South America. The nations of the world are stepping forward to say no to addiction, disease, disability and death for their citizens, no to big tobacco and yes to good public health practice, yes to tobacco control. We hope President Bush will sign this landmark health treaty soon and send it to the Senate for ratification.

To reiterate and to be clear, there should not be any subsidy for continuing to grow tobacco. Buyout legislation should not be used as a vehicle for token and ineffective FDA legislation. The American Lung Association supports economic transition for tobacco growers, workers and communities, but tobacco production ultimately should be phased out.

Thank you.

[The prepared statement of Dr. Munzer appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Dr. Munzer, and now we will hear from Dr. John R. Seffrin, CEO of the American Cancer Society. Welcome, Dr. Seffrin. I have worked with your organization as a district director in times past. Our next witness is from the American Heart Association, and I have worked once with the Heart Association as a Tennessee State chairman. I am sorry, Dr. Munzer, I haven't worked with the Lung Association, but I am sure it is a great health organization, and now we will hear from Dr. John R. Seffrin.

**STATEMENT OF JOHN R. SEFFRIN, CEO, AMERICAN CANCER SOCIETY, ATLANTA, GA**

Dr. SEFFRIN. Thank you, Mr. Chairman. On behalf of the tens of millions of volunteers, of which you are included, and supporters of the American Cancer Society, I thank you, Mr. Chairman, and your committee colleagues for inviting me to testify today. I suspect at no other time has it been more urgent for us to discuss the intertwining issues that link tobacco producers and their livelihood to the public's health. Tobacco is, as you know, Mr. Chairman, highly addictive and causes, as has already been cited, 440,000 deaths each year in the United States, truly public health enemy No. 1. Put another way, we know that one of every three cancer deaths in this country is caused by tobacco use. This is simply an unacceptable fact of life and death that must, perforce, be changed.

The American Cancer Society has long been at the forefront of efforts to educate the public about the dangers of smoking and to advocate on behalf of policies, including regulation, to reduce the disease, suffering and death caused by tobacco use. Recognizing that tobacco growing communities are among the hardest hit in terms of the public health consequences of tobacco use, the American Cancer Society has worked closely with our public health partners, tobacco growers and tobacco growing organizations to develop a common agenda for protecting the public health and ensuring the economic survival of tobacco growing communities in America. While some have attempted over the years to suggest that these two goals are somehow in conflict, we know that they are not and both are achievable outcomes if we do the right thing.

In September of 2000, President Clinton established the President's Commission on Improving Economic Opportunity in Communities Dependent on Tobacco Production While—and I will add the word Also—Protecting Public Health. I was honored to serve as a member of that Commission, alongside leaders in the public health and leaders from tobacco growing communities. The Commission's report is a milestone in our efforts to protect public health and it serves as a roadmap to move forward in the fight against cancer and other tobacco-caused diseases. Simply by sitting down and listening to each other, we have been able to find common ground, most notably, in our joint call for meaningful regulation of tobacco products in this country. Incredibly, despite their deadly properties, tobacco products are not subject to even the most basic health and safety oversight. The tobacco companies are not required to tell consumers what is in their products, or even to remove harmful ingredients or to take any action, for that matter, to make their products less harmful or less addictive. No other industry enjoys this

degree of reckless protection by public policy omission. To address this serious problem, our Commission recommendations provide a specific proposal the Food and Drug Administration regulatory authority.

The unprecedented level of cooperation among the members of the Commission also resulted in a consensus recommendation for a plan to ensure that tobacco growers and their communities can continue to function in an era of reduced tobacco production. As a member of the Commission, I truly believe that we have successfully identified the steps necessary to do this while also protecting the public health.

The American Cancer Society and its public health partners recognize the significant contribution that tobacco farmers and their communities make to America and we will continue to support a buyout plan that assures a fair and equitable level of compensation to all tobacco farmers. As you know, 1998 represents the last year that growers did not experience substantial reductions in their tobacco quota allocations. Supporting payments based on any year after 1980 will greatly reduce the amount of compensation to which tobacco growers would and should, we believe, be entitled. Therefore, we support a buyout proposal that would be based on the production year 1998 or some other similar year.

The Commission's report recommends enhanced Federal support for tobacco prevention and smoking cessation efforts, extremely important part of the report. Tobacco growing communities suffer higher rates of tobacco-related diseases and incur higher health care expenses. The inclusion of smoking cessation programs as a basic Medicare and Medicaid benefit, as suggested in the report, would not only help more people quit smoking, but also would ultimately reduce long term costs associated with tobacco-related illnesses.

The report also proposes the creation of a grant system, providing financial incentives for States that meet minimum standards for prevention and cessation set by the Centers for Disease Control and Prevention. We also support these proposals.

Mr. Chairman, while the cost of this type of buyout package estimated between \$15 and \$17 billion over 5 years is indeed a lot of money, it is small, though, in comparison to what the Federal Government and private industry pays to treat tobacco-related diseases annually. Direct medical expenditures and lost productivity related to smoking costs an estimated \$155 billion per year, almost 10 times the cost of any buyout proposal currently on the table.

The current Tobacco Program should be replaced with a safety net that provides short and long term stability. From a public health perspective, providing a support program after a buyout makes good sense and good public policy. A support program not only guarantees a fair price for producers after a buyout, but also could ensure that tobacco production is limited and closely regulated.

In conclusion, we stand at a crossroads, Mr. Chairman and members of the committee, in terms of what steps can and should be taken to protect the public's health and to reduce preventable deaths from cancer and other diseases caused by tobacco exposure and use. Evidence has shown us what must be done. The Commis-

sion has shown us what should be done, and the United States Supreme Court has spoken about what needs to be done. It is time for Congress to take action to provide strong and meaningful regulation of tobacco products. Every other consumable is regulated by the Federal Government, while the Nation's deadliest consumer product remains free of any Government oversight. What a shame. We must not continue to accept the status quo and let far more than 440,000 Americans die needlessly every year.

Mr. Chairman and members of the committee, the American Cancer Society looks forward to working with you and your colleagues to address a tobacco buyout for tobacco producers, while providing the Food and Drug Administration meaningful regulatory authority over tobacco products.

Thank you.

[The prepared statement of Dr. Seffrin appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Dr. Seffrin. Mr. Wheeler, welcome.

**STATEMENT OF M. CASS WHEELER, CEO, AMERICAN HEART ASSOCIATION, DALLAS, TX**

Mr. WHEELER. Thank you. My name is Cass Wheeler, and I am the chief executive officer of the American Heart Association and I am pleased to be here representing our 22½ million volunteers and supporters. Because tobacco use is a leading risk factor for cardiovascular diseases, we have joined with other public health and tobacco control organizations to work to reduce tobacco use and the illness and premature death associated with that use.

It would seem unlikely that the American Heart Association and other public health organizations would join together with tobacco growers in the pursuit of our mission, but thanks to nearly a decade of open and honest discussions, both sides gradually came to see that in the end, we all want safe, healthy and secure families, goals we can reach with a fair and effective buyout program and FDA regulation of tobacco products. For years, we have been told that differences among growers and between growers and the public health community were the reasons no buyout program has been realized, yet our two sides have been in formal agreement on grower-related and public health provisions for more than 5 years, so who is the holdup?

We certainly understand that tobacco farmers aren't the ones getting rich off their products, and they have families, and are concerned about public health just like the rest of us, but they are locked into the so-called tobacco trap, subsistence farming and not enough resources to quit. While both growers and public health groups are unified in their commitment to sustain growers' incomes, it is imperative that we work to reduce tobacco farmers' and their communities' dependence on tobacco as a crop. We realize that by working as allies, we can help preserve family farms and communities in tobacco producing areas, and at the same time, help advance public health goals.

As a result of relationship initially fostered by the American Heart Association and built upon by the groundbreaking work of the Southern Tobacco Communities Project, the shared goals between public health organizations and tobacco growers were re-



flected in the 1998 Core Principles Between the Public Health Community and the Tobacco Growers Community. Among the basic tenets of these principles are the theories of production and price controls.

The opponents of price and production controls believe the growing and subsequent selling of tobacco should take place in a free market system. To give these corporate giants free rein over the price set by tobacco will simply equal lower prices, higher profits and more funds available for the industry to market and promote its deadly products.

The American Heart Association supports implementation of the recommendations of the President's Commission on Improving Economic Opportunity in Communities Dependent on Tobacco Production While Protecting Public Health. Such recommendations include replacing the current quota system with production permits held only by active growers, including financial incentives for farmers to stop growing tobacco, as included in the legislation sponsored by Representative Fletcher, providing for a system of technical education and economic development assistance, ensuring that imported tobacco is subject to the same standards as U.S. grown tobacco.

Buyout legislation that growers and public health advocates can agree on is a critical and necessary first step to advancing both parties' interests, but not the only step. In addition to limiting the expansion of tobacco and denying the industry even more excessive profits, the Food and Drug Administration must be given the authority to regulate the manufacture, sale, labeling, distribution and advertising of all tobacco products.

Unlike food products or over the counter medications, manufactured tobacco products have effectively escaped Government regulation. Virtually anything can be added to tobacco products, and if I am not mistaken, more information and safeguards are provided on the manufacture and labeling of orange juice than on the addictive and deadly product of tobacco. This simply must change. Tobacco is the only product when used as directed, it kills.

The public health community and tobacco growers are united in support of meaningful legislation that gives FDA full authority. Better the FDA than the manufacturers, as they make the growers contractors. Our organization stands beside growers in support of a fair and equitable buyout plan. However, we must insist that this process not become the vehicle for bad FDA legislation or conference actions that do not accurately represent both the public health concerns and those of the tobacco growers. In this we remain steadfast, we will do what is necessary to minimize the risk of unacceptable FDA legislation. There has been a lot of comments and concern expressed about cost, but we haven't had any discussion about the cost of tobacco-related medical costs that run over \$100 billion each year, about \$30 billion of that from Medicare and Medicaid.

I know my time is out. We appreciate the opportunity to speak before the committee.

[The prepared statement of Mr. Wheeler appears at the conclusion of the hearing.]

The CHAIRMAN. I want to thank all of you for your testimony. I have some very bad news, and that is that we have 10 votes pending. This will take us at least an hour and a half, and so therefore, what I am going to suggest is that we will submit our questions to you in writing, and ask that you respond to those within 10 days. I do, again, want to apologize for that, but given the inordinate amount of time it would be before we could back and the schedules of the Members, it is going to be impossible for us to do anything other than conclude the hearing at this point in time.

I do, before I give my closing comments, want to acknowledge our outstanding assistant clerk, Kellie Rogers, and thank her for her loyal service to the committee. Kellie will be leaving us to join the staff of her hometown Congressman, Mac Thornberry, who is a great Member and his benefit is our great loss, so you will be missed, Kellie. We thank you for your hard work to help make this committee run effectively. You have served it well, and maybe some day, we will get you back again.

And I do have some closing remarks. In conclusion, I want to thank the members of each panel for participating in today's hearing. Your testimony has helped to educate the members of the committee on the various tobacco quota buyout proposals. At the same time, it has proven invaluable in illuminating both the agreement that has been reached thus far and the disagreement that remains. I think it is fair to say that based upon today's hearing, it is clear that there are many hurdles left to overcome for those seeking a tobacco quota buyout. While not impossible, I cannot overstate how difficult a task it will be to achieve a tobacco quota buyout of any from in the U.S. House of Representatives, particularly in light of the uncertainties and divergent views that remain.

First of all, can all companies afford to pay for a tobacco quota buyout? According to today's testimony, apparently not everyone. Do all groups agree on a post-buyout policy? Not enough to settle that issue yet, either, as we have discovered. Have we resolved all differences of opinion regarding possible FDA regulation of tobacco? Producers are clearly concerned about the possible ramifications and there is overwhelming opposition to this among all manufacturers except one. In fact, the only panel unanimously and actively in favor of some form of FDA regulation was the one before us right now, made up of the very health organizations that are committed to curbing the use of tobacco products in the first place, and we certainly understand the position that you have taken.

In a more general sense, there are unresolved issues concerning the actual levels a buyout would reach. How much is too much? How much is too little? At what point does a buyout no longer become acceptable to the individual grower? Is there a solid consensus among producers, companies and health advocates? According to today's hearing, clearly not yet. Without a true consensus that includes all parties, a tobacco buyout of any type will not move forward. The Committee on Agriculture looks forward to working with each panelist and others interested in achieving a tobacco quota buyout in order to help move the debate forward in any way we can.

One thing is for sure. It won't be an easy road. We have learned that from today's hearing, but that shouldn't come as a surprise to

anyone here. After all, it hasn't been an easy road thus far. Does the gentleman from Texas have anything he would like to add?

Mr. STENHOLM. Just to associate myself with the chairman's remarks.

The CHAIRMAN. I thank the gentleman, and would ask, without objection, the record of today's hearing will remain open for 10 days to receive additional material and supplementary written responses from witnesses to any question posed by a member of the panel. This hearing of the House Committee on Agriculture is adjourned, and again, I thank you and apologize to this excellent panel for not being able to ask questions.

[Whereupon, at 2:20 p.m., the committee was adjourned.]

[Material submitted for inclusion in the record follows:]

STATEMENT OF HON. ERNIE FLETCHER, A REPRESENTATIVE IN  
CONGRESS FROM THE COMMONWEALTH OF KENTUCKY

Thank you Chairman Goodlatte, Ranking Member Stenholm, and my esteemed colleagues on the Agriculture Committee for calling and attending this very important hearing today. I would also like to acknowledge Specialty Crops Subcommittee Chairman Bill Jenkins and Ranking Member Mike McIntyre for their leadership on this issue and Rep. Bob Etheridge and Rep. Ken Lucas, who have worked diligently on my specific legislative initiative.

Last September, I had the opportunity to share with you the situation our tobacco farmers are facing that has caused them to ask their Representatives for help. We reviewed how the extreme reduction in the availability of production rights had inflated production costs while reducing revenue. We also described tobacco's two unique characteristics as a commodity that must frame any reform discussion: it is confined in a Federal program that separates the right of production from those who produce the crop, and it is a crop that poses significant health risks for all of its consumers. Similarly, we defined the criteria our reform must meet to address those two unique qualities by ensuring a fair and competitive program for farmers, and protecting the public health:

- It must put the rights of production in the hands of the grower.
- It must maintain a competitive system of protection for those who will continue to produce, and contain some mechanism to keep tobacco production in traditional growing areas.
- It must fairly compensate quota owners for the relief of their equity.
- It must provide assistance for the farmers and communities who must transition to the new program.

Since that time, constructive dialogue has taken place between Members, farmers, farmer organizations, manufacturers and public health groups regarding the development of this legislation, and I greatly appreciate their participation at this hearing today. I look forward to continuing to work with all parties interested in moving buyout legislation forward to ensure a competitive, stable marketplace for tobacco growers, and improve public health.

Today, you will hear from several persons who are nearly unified in the opinion that a buyout is necessary or at least acceptable in some form. However, there will be a diversity of opinions on certain details of the reform.

Producers share some common ideas about what reform elements they would prefer be included in legislation. They certainly agree on \$8 and \$4 based on 1998 pounds, and most are willing to accept some price reduction and reasonable regulation of tobacco products at the right payment level, but they may offer different proposals that they variously view as viable.

Most manufacturers also have an interest in the stability and availability of tobacco produced in this country. They share with the producers a desire for American tobacco to be priced more competitively. They will differ in opinion on how best to provide post-buyout stability for the farmers; how much, if any, they can afford to be assessed for this reform effort; and what regulatory system, if any, can best maintain a fair and competitive market while protecting the public health.

Health groups will explain their historic dialogue with farmers, the need for tobacco product regulation and a stable market for growers to protect public health, and their understanding that our rural communities depend on growing tobacco for

their livelihood. They will offer differing degrees of flexibility on the process necessary to achieve their desired results.

In general, you may already have some points of concern yourselves, and the witnesses today may discuss others. Allow me to briefly address some of the most common questions about a tobacco buyout.

How were \$8 and \$4 derived? Why use 1998 as a base year? The \$8 payment level is the estimated present value of the quota-asset, approximated by compounding the rental-value of the quota-right (40 cents in 1999) over the lifetime of the quota. The \$4 payment adequately compensates producers for the loss of their Phase II payments and helps them transition to the new price levels. The base year of 1998 was chosen because it was the last crop year unaffected by the Master Settlement Agreement, before farm revenues were cut in half.

How do those payments compare to other farm programs? The average individual annual payment in a buyout based on \$8/\$4 and 1998 poundage paid over 5 years is about 12.5 percent less than the average annual farm bill payment to a program participant.

How much will the buyout cost? Any buyout will be drafted to conform to the budget agreement and should score zero. Just as the current tobacco program is not supported with Treasury money, the tobacco buyout should be privately funded. Currently, both H.R. 140 and H.R. 245 assess \$2.3 billion a year over nine years.

What should a post-buyout market look like? Any post-buyout market that eliminates quota will be radically different from the 1940–2003 Federal tobacco program. Putting the right-of-production, unable to be leased or sold, in the hands of producers, makes any system new. The asset value of production is eliminated.

There are some concerns voiced about “selling the truck and driving it home,” but such concerns are misplaced. Not only will any buyout eliminate about 326,000 people from tobacco production, leaving, at most, the 90,000 current producers, the external value of participating in growing tobacco is eliminated, leaving only the value of the crop. To suggest the elimination of the right to sell and lease quota is anything less than a fundamental change to the way tobacco is grown in this country is inaccurate.

At the same time, the stability of tobacco supply is a common concern of producers, manufacturers and public health groups. Our farmers need some form of production control, to keep tobacco grown in traditional growing areas, to prevent disastrous overproduction, and to maintain an adequate supply for the manufacturers. Stability is also in the interest of public health, to maintain standards of quality as well as to avoid the impoverishment of our rural communities that have long depended on tobacco production for their commerce.

While the farm bill continues to provide significant income and price support for other major commodities, this is likely tobacco’s one opportunity to end a controversial program and provide support for current and future tobacco farmers and the rural communities throughout the southeast that depend on them, while protecting health in America.

What are the WTO implications of a buyout? Most buyout proposals make decoupled payments based on historic (as opposed to current) ownership patterns and should be constituted as green box payments under WTO rules. While there is uncertainty as to whether some Master Settlement Agreement Phase II payments may be amber box, such as North Carolina, which has made payments based on each year’s production, a buyout should eliminate such concerns, because a buyout would supercede Phase II payments. The current program is not classified by the WTO because of its no-net-cost structure, which would not change for future production.

What about tobacco product regulation? While this is not an issue in this committee’s jurisdiction, it is related to the buyout question. It is likely that a buyout will need a regulatory component to pass the Senate, and any conference will likely include reasonable FDA regulation of tobacco products. Moving forward on legislation will depend on the degree of commitment to progress of many of those testifying today.

There is no doubt that the Agriculture Committee and its leadership care about tobacco farmers and their plight, and about building a healthier nation. It seems that after several years of stalemate, we have made progress. Our farmers cannot wait. We have a unique window of opportunity to pass meaningful program reform.

I respectfully request of you, and all the parties involved in the process today, to work to build on the developing consensus for a buyout, and above all, work to be ready for action on this critical issue soon after the August recess. Together, with the input from today’s hearing, we must work to improve current proposals, to provide adequate compensation for the relief of quota equity, transition payments, and public health protection while providing a framework to ensure stability for growers after quota is eliminated.

In closing, I would like to especially thank Bill O'Conner and the Agriculture Committee staff for their hard work and dedication to this issue.

My gratitude to everyone here today for honoring my request to testify.

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STATEMENT OF HON. JACK KINGSTON, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF GEORGIA

Mr. Chairman, I would like to thank you for your time today and for your leadership in allowing me to testify before your committee. I appreciate the interest that the committee members have shown in a proposed tobacco buyout and I hope a result of this hearing the proposed buyout will become a reality.

Mr. Chairman, I represent a large portion of rural South Georgia encompassing 29 counties. Tobacco is grown in 22 of these counties and had a total farm gate value of over \$69 million last year alone. This goes to show how extremely important tobacco production has been, and continues to be, in my district.

Tobacco farmers in these rural counties are the economic stimulus in most of the local communities. When these farmers have a bad year, much like the last 5 years, every man, woman, and child in the county suffers from the impact. Therefore, obtaining a tobacco buyout has become one of my top priorities.

Many have asked why these farmers and quota owners deserve a buyout—why should the Federal Government pay them? Let me share with the committee a few of their stories.

In 1998, Rocky Thompson, a farmer in south Georgia, had 700,000 quota pounds that he bought and he rented an additional 300,000 pounds. When the 1998 quota cut came about, the quota pounds purchased by Mr. Thompson declined greatly. This year, he has 342,000 of the pounds that he bought and rents an additional 288,000. Today he is still paying for quota pounds that he purchased back in 1998 that no longer exist. In addition, he had purchased equipment to mechanically harvest a tobacco crop. This equipment is extremely specialized and used only for tobacco crops. With the quota cuts and the decrease in his poundage, Mr. Thompson is still paying for equipment not utilized and of no resale value because everyone else faces the same problem. The same scenario applies to tobacco barns, which were retrofitted in 2001 at a cost of \$1,800 to \$5,500 per barn, at the request of tobacco companies. Many of those barns are no longer in use, but again, there is no other use for them and Mr. Thompson is still paying for them. Every time quotas are cut, income is slashed while expenses stay the same. Those farmers who invested their earnings in additional quota and equipment to become more successful and efficient watched their operations become inefficient.

To get an operating loan from the bank, Junior McGee, a farmer in Berrien County, must have a large amount of quota pounds. With the continuing quota cuts, he has to plant tobacco in four different counties and travel long distances to produce a crop. This makes his production cost increase more and more but he has no other alternative if he requires an operating loan from the bank to keep farming. To add to the frustration, farmers must scramble to rent quota poundage by outbidding their neighbors. With such reduced amounts of quota available, someone loses every time and has no other option except to quit growing.

Mr. Chairmen, I could tell the stories of numerous farmers in my district, but they would all be strikingly similar to Mr. Thompson and Mr. McGee. To many the difference in a buyout on 1998 quota and 2002 quota is just a bunch of numbers. To these men, and their families, 1998 and 2002 represent the difference in being able to support their families or having to sell the farm and still be in debt.

We all know there are several tobacco buyout bills offered by some of my colleagues. There are portions of each bill that I support. I would like to emphasize first and foremost, it is vital that we give our quota holders and growers a \$8/\$4 buyout. This is in every bill offered thus far and I think all interested parties agree on these numbers. The next issue that is of great concern is which quota level to use for the buyout.

Continuous importing of tobacco and quota cuts simply crushes the American farmer. Last year alone, Flue-cured tobacco acreage in Georgia was 26,500 acres—down from 43,000 acres in 1997. The acreage decreases were due to another decline in basic Flue-cured quota and represent a significant reduction in farm income.

Tobacco ranks third in single crop income in Georgia. With the value of the Flue-cured leaf declining approximately 50 percent in the last 6 years, I am committed to do everything in my power to help our tobacco farmers recover from the quota cuts that they have had to deal with through no fault of their own.

I strongly support a buyout based on the 1998 quota. In 1998, Georgia total tobacco quota was 85 million pounds. As of 2002, quota has been cut to 60 million pounds. This is a reduction of 25 million pounds. Based on a \$8/\$4 buyout, this represents a difference of \$200 million for quota owners, and a difference of \$100 million for growers in Georgia. As you can see, the 1998 buyout represents a difference in the livelihood of these tobacco growers and the communities that depend on them. I have made a commitment to the tobacco growers in Georgia that I will strongly support a buyout based on 1998 quota. I stand by that statement and I hope that the members of this committee and the U.S. House of Representatives as a whole will support it.

I would also like to focus the committee's attention on another matter to which I have pledged my support. The tobacco quota owners and producers are not the only individuals directly affected during the 1998 quota cuts. Tobacco warehousemen, who depended solely upon the sale of tobacco for their income, and who receive their income based on a commission, suffered a loss of revenue. These warehouses are only used for the sale of tobacco and must undergo an inspection each year to make sure they meet all of the physical qualifications necessary to be allowed to market tobacco. Because they are specialized to meet the needs of tobacco, they ran into big financial problems when the product they marketed suddenly disappeared.

In addition to dealing with a reduced tobacco supply, warehousemen have also had to compete with national tobacco companies. Many farmers are contracting directly with the companies and bypassing the tobacco warehouse. These warehouses created and performed an essential marketing service for both tobacco growers and tobacco companies in the past. They served as the middleman who bargained to guarantee a higher price for the farmer through an auction system. However, since the major tobacco companies began directly offering growers contracts 3 to 4 years ago, most auction markets have closed or have cut back dramatically on their services to farmers. Now these once prosperous facilities stand empty, with many located just off the town square.

In 1998, Georgia had 23 tobacco warehouses. That number is now down to four. The owners of tobacco warehouses have also been directly affected by the quota cuts and should be given full consideration.

Mr. Chairman and members of the committee, in closing, I would like to stress the importance of providing a future for the tobacco industry. Immediate action is needed for our farmers, quota owners, and warehousemen who deserve a tobacco buyout based on the 1998 quota, in the year 2003. They have been treated unfairly because of decisions made by government bureaucrats and I am asking the members of the House Agriculture Committee to step up to the plate. My colleagues know that I am a fiscal conservative and there are very few things I dislike more than wasteful government spending. This would not be a waste of government money. I firmly believe that this is a worthy cause. By passing a tobacco buyout we are not only helping to make our farmers whole, we are making our rural communities whole. They need assistance soon and it is time we offered it.

Mr. Chairman, I thank you again for your time and I look forward to working with the committee to make a tobacco buyout a reality this year.

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#### STATEMENT OF HON. RON LEWIS, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF KENTUCKY

Mr. Chairman, I would like to thank you and the committee for holding this hearing that is essential to the future vitality of the agricultural community in Kentucky. For over a decade, we have seen a dramatic decline in tobacco quotas, causing significant loss for the family farmers in my district. It is time for Congress to act, to move forward with a buyout bill, and help farmers whose livelihoods depend on tobacco. This hearing is essential to that process.

Currently, there are over 40,000 tobacco farms in Kentucky alone. Many families in my district rely on tobacco as a primary source of income. Tobacco money also filters into many local economies and accounts for a significant portion of Kentucky's overall economic strength. Every tobacco dollar is said to turn over six to seven times in its community. Tobacco farming directly accounts for over 3 percent of the State's economy. Tobacco itself accounts for over 16 percent of the state's farm commodities. Clearly, the livelihoods of these families and communities depend on the future vitality of tobacco.

The quota system has served family farmers well since the 1930's, but it has not been overhauled since 1986. Since the late 1990's, burley tobacco quotas have been cut in half allowing farmers to earn less than half the amount they could have

earned only 5 years ago. Farmers throughout the second district agree that a buyout is the best option Congress can provide to protect their futures and ensure the prosperity of State and local economies.

With buyout funds, Kentucky farmers can move beyond tobacco. There are many options for those who seek a new crop to sustain themselves. Once a buyout is achieved, Kentucky's farmers will be given the ability to move into a new age of agriculture.

Those of us who represent tobacco production areas of the country are working hard to craft the best buyout we can by evaluating the issues and options that will move a plan forward. There are several good options presently on the table in this Congress and I am pleased that this hearing will evaluate them in detail.

This is the time to enact a tobacco buyout. Tobacco farmers across the country are seeing their livelihoods diminish as tobacco quotas decrease and it is time for Congress to act. We must support our farmers and our communities by passing a tobacco quota buyout bill. Thank you, Mr. Chairman, for holding this hearing and moving this effort forward.

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#### STATEMENT OF JEFF AIKEN

Thank you for the opportunity to share my views on an issue of vital importance to myself and my fellow producers in Tennessee. Times are tough on the farm for any commodity but there are some unique issues in the tobacco industry. We have invested in a program, operated under the restrictions and benefits of that same program and now find it crumbling due to necessary changes not being addressed. It is the question of how to address those changes that brings us here today.

I am a producer of Burley tobacco and rely on that crop for a profitable diversified farming operation. We also produce corn and hay, on our dairy and beef cattle farm. My 45 acre Burley production is larger than average in Tennessee but there are many larger growers across the state. While size of operation may affect the opinion toward buyout proposals, I believe I can include the concerns of both the larger and smaller growers and quota owners in my comments. In considering the range of concerns, many about our future, it is necessary and wise to look at our past. As a young man in a strong tobacco community of East Tennessee, I had a career decision to make. The opportunities for a career change today are limited.

I know of no other legal crop that can provide the level of income that tobacco has traditionally afforded the farming operations in our state. Producers have made an investment in the production of tobacco through the no-net-cost program and its related expenses. In addition to the grading fees, no-net-cost assessments, marketing costs and normal production expenses there is another major non value-added expense I have to pay—the cost of acquiring quota to maintain sufficient levels of production to sustain my farming operation. The quota cuts over the past few years have greatly inflated this cost.

In 1998 the basic quota for Burley tobacco production in Tennessee was 110,782,722 pounds. In 2001 the basic quota for Tennessee Burley was 56,931,773 pounds. Obviously, since quota determines the ability to produce and sell, our earning capability has been essentially cut in half since 1998. At a time when production costs continue to rise, our production is reduced and quota availability is limited resulting in increased quota lease costs. Added to the economics of this situation is the quota buyout debate. The continuing discussion about a "buyout" and the inability to plan ahead because of that discussion has greatly complicated efficient production or the orderly transfer of growing rights from historical quota owners to current tobacco growers. As a state board member of the Tennessee Farm Bureau Federation, I am contacted by various producer and quota owner interests and hopefully have a broader viewpoint of the buyout discussion as a result of that contact. There is little argument that quota owners have an asset, one that has affected land values in our state historically. And growers have a valid argument that without their production of that asset it would no longer have a value. The argument makes very evident the need for a "buyout" or financed transition from what we now have in a program to whatever follows. The "whatever follows" needs to receive adequate attention or we might achieve something far worse than we can now only imagine. The current program is not serving the needs of the producer or the buying segment of the industry. The general public and particularly the health advocacy groups apparently want some type of verifiable controls on tobacco production. It would seem production controls could serve the risk management needs of the industry better than becoming an economic burden to government support. I can not in a very short statement outline a suitable replacement for the existing tobacco program, although I think H.R. 245 has made an adequate attempt at describing a suitable framework.

I would expect some changes will need to be made to H.R. 245 or to any piece of legislation as it moves through debate; however I ask you to consider my situation and many like mine. I need to be able to produce for the available tobacco market. I ask for your support of the concepts included in H.R. 245.

Thank you again for giving me the opportunity to address you today.

#### STATEMENT OF BILLY CARTER

Mr. Chairman, members of the committee, thank you for the invitation and privilege to testify before you today.

I am Billy Carter, a tobacco farmer from Moore County North Carolina, which is the south central region of our state. In addition to my farm practice, I have had the privilege to serve in the leadership various farm organizations and I am the immediate past president of the Tobacco Growers Association of North Carolina.

One of the first trips I made to Capitol Hill was in 1998 to encourage the passage of an \$8 for quota owner and \$4 for producer per pound buyout of the Federal tobacco program.

As has been the case since 1997 in tobacco producing states, the prospects for the foreseeable future are not as bright as one would want them to be. In fact they are as dim as they have ever been. In this business we have come to use the word "change" so much, that it has almost lost its relevance. But the fact remains that the only apt description for the tobacco industry that has any universal application across all its components is that it is changing and doing so rapidly.

If for a moment as a grower of Flue cured tobacco you could forget the crushing impact of a 50 percent decline in quota; you would still find yourself saddled with more than your share of issues to cause grave concern about your future in this industry. In normal times in this business, if that state ever existed, any one of the problems that producers currently face would seem daunting.

Severe weather, increased costs of production, contractual sales of tobacco, widespread commercial production of genetically modified cultivars, declining exports due to our lack of competitiveness globally, threatened FDA regulation and multi-billion dollar lawsuits are all playing out against the back drop of the most vigorously anti-tobacco political climate in history.

However growers cannot forget the impact of a 50 percent reduction in quota. In the year 2003 our farmers are producing the smallest crop in the history of the Federal program. The devastating results are the same as it would be if any other small business was mandated to produce only one half of its capacity, despite its debt load or its capability to produce a desirable product. Tobacco farms are no less than multiple small businesses interspersed in some of the most economically deprived rural areas in the nation. The pain of our current situation as tobacco farmers is made doubly difficult because it affects not only our families but the larger community as well.

It would be presumptuous to assume that I knew how every participant in the industry feels about a buyout of tobacco quota. One thing that I can assure of is that there is consensus among the vast majority of participants that a sweeping correction needs to be made to our current system of operation, and that a quota buyout is the quickest, most effective vehicle to that end.

I am convinced that the status quo will deliver an even greater blow to the business of tobacco farming in 2004 if a buyout is not achieved. In my home state that correlates to widespread farm foreclosures and many elderly quota owners finding it impossible to sustain their most basic economic needs.

The fear that the trend of the past five years will continue has brought acute pressure on the rental costs of tobacco quota. The situation is delicate to balance. The Federal quota is administered by USDA and since its inception has accrued real value. The program as you know is designed to protect the price of tobacco even at the cost of how much we are permitted to grow.

As each grower and quota owner strives for stable levels of operation we find every form of current mitigating payments, such as TLAP, TOPP and various state programs using MSA moneys being promised or in certain instances demanded as part of the quota rental agreements. To be more succinct, the buck comes to the farm but in today's climate it never stops there.

If done properly, a quota buyout affords the opportunity to address at least three critical areas in the tobacco community. It offers the chance to contend with the issues surrounding a tobacco program that has remained virtually unchanged in 60 years. A quota buyout could largely eliminate the gap that exists in economic opportunity between our rural and urban sectors. And a quota buyout would give us the opportunity to compete in the global tobacco economy again.



There is at present a situation in tobacco production where the natural progression of business cycles has been stymied by declining quotas and the rising expectations of a quota buyout. In times nearer normal, when a grower neared retirement age he rented or sold his quota to a neighbor at a fair price. He disposed of his specialized tobacco equipment for a decent return and left production with a reasonable degree of certainty that his financial situation would be stable for some period of time.

There are also structural issues within our program that are clearly inefficient. However, we are incapable of any major correction for fear of endangering the fragile environment in which our stand-alone commodity program exists. We are afraid to overhaul obvious inadequacies for fear of losing the whole thing. Many people have too great of a financial interest in preserving the status quo for any significant change to occur within the current arrangement. A quota buyout with adequate compensation would allow for most of those financial concerns to be addressed. Recent proposals coming from Congress achieves broad support from such persons.

The second issue that a quota buyout deals with concerns bridging the disparity between our rural and urban sectors and stabilizing the economy of our rural communities. This inequity has received great attention from our elected leaders. Their concern is justified and the need is obvious in most of the rural sectors and small towns of tobacco producing states.

There are many factors that have contributed to this gap including the lack of infrastructure, and the loss of textile and manufacturing jobs. One of the key reasons for this huge imbalance is the ten-year funk that our overall agricultural economy is experiencing. In our state the agricultural issue is doubly compounded by the tremendous quota cuts and the concurrent compression of profit margins in tobacco production. The financial weakness that exists in these rural areas is without question significantly attributable to the decline in tobacco production.

I can think of no one single thing that would revitalize the rural economy of tobacco producing states any more efficiently or thoroughly than a quota buyout.

The third area that a quota buyout offers us an unprecedented opportunity to deal with is our lack of competitiveness at an international level. Despite the complexity of our current situation and the uncertainty that permeates growers reactions to current events, we should never forget that we are, in a global context, undeniably blessed with the best climate, the most efficient infrastructure and the best understanding of how to produce tobacco. In addition we are the safest, most scrutinized, most consistent, and most politically stable producers of tobacco in the world. The question is not will tobacco be grown, but where will it be grown? Absent a buyout the answer will soon be not in the United States.

We need to find ways to make these inherent advantages accrue to our benefit. Our problem is competitiveness and lack of profitability. We produce a product that is the envy of the world, but few can afford it. Our supply control program is the gold standard for all farm programs, but it has failed to change in 60+ years. Quota ownership has created economic stability in many rural areas, but the rent factor in the cost of our tobacco has nearly crushed us in the world market.

It is a given that any viable future in growing tobacco in the U.S. cannot have domestic production as its sole focus. We must find a way to compensate current quota owners for their production rights, offer growers a financial opportunity to make the transition to a new system, transfer production rights into the hands of actual producers and remove the value of those production rights from the cost of our tobacco. We must do this, and soon, if we have any hope of being a supplier of consequence in an enlarging and chaotic global demand situation.

It would be wrong to suggest that anyone's quota be taken without just compensation or that we sell tobacco for what they do in Brazil or Zimbabwe. But to ignore the opportunity that a quota buyout offers us to shake the status quo, revitalize our rural communities and break the death spiral of minute production levels would be an immense mistake.

One of the great results of the buyout will be allowing farmers to service debt and for many to become able to afford a transition to lessen their needs on tobacco production while seeking alternative and diversified farm practices.

Obviously, I am no expert on what is politically possible or practical. I just know that if we do not have buyout legislation passed that we will continue to function for only a short period of time. The industry will continue to atrophy and at some point in time we will be of so little consequence that we very well have an end to the current program without any compensation or methods for transition.

The risk of realizing nothing for all of our efforts to obtain a quota buyout is a distinct possibility. Regardless, it would be a huge error if we as a community do not continue to push for such a resolution.

The future for the U.S. tobacco farm depends on the success of adequate legislation to provide the buyout this committee is considering. Any other effort simply will fall short of the mark. Or, as we describe in farm country, "drowning is inevitable when you try to bail a sinking ship using a bucket full of holes".

#### STATEMENT OF DAVID CHAPPELL

Mr. Chairman, members of the committee, I want to thank you for inviting me to make some brief comments on proposed tobacco buyout legislation. While I understand this is one of many issues Congress faces, it is the only issue back at home. I can't walk through Owenton, my hometown in North Central Kentucky without being asked about it several times.

I farm 2,200 acres in Owen County, Kentucky. I raise 50 acres of tobacco on 12 different farms and off of 17 separate lease agreements. I also have a 200 head cow/calf operation and 90 acres of a cash alfalfa crop.

Owen County ranks third in Kentucky in tobacco dependency. Nearly 10 percent of total personal income in my county is derived from tobacco production. The average tobacco income in Owen County is \$17.9 million per year. Our primary alternative crop is the beef cattle industry.

I want to express to all of you how excited and appreciative I am that you all have taken an interest in the plight of tobacco farmers. I know many others will talk about the hits we have taken, so I won't go into great detail but I will remind you that a 65 percent reduction in quota is an almost equal reduction in tobacco farmer income.

I would like to give you the perspective on the tobacco buyout that, I believe relates the hopes and concerns of the majority of producers in my area of Kentucky. Put simply, a buyout is imperative to recreating a healthy farm economy in Kentucky, but most producers I talk to are also very concerned about what the tobacco market structure would look like when tobacco buyout payments stop coming. Most buyout bills, if passed, would allocate payments over a 5-6 year period. Many in my area wonder what will happen in the 7th year and beyond when Federal assistance ceases.

Row cropping is not an option in my part of the state. Our ground is not flat, rather it is hilly and farther east of me, it is nearly mountainous. Agriculture has only been a viable industry in central and eastern Kentucky because of the profitable tobacco crop. Likewise, farmers in this region do not benefit much from farm bill payments except in the environmental assistance programs.

Because of those geographic hindrances, I believe it is extremely important that tobacco buyout legislation should prevent over production and at least make sure that tobacco growers who work hard to produce a good crop, break even. Without those two components, and most importantly a system that prevents over production, I can assure you that tobacco production will leave my area in just a couple of years and will move to flatter ground west of us. To put that devastation into perspective for you, taking tobacco production out of central and eastern Kentucky would be similar to telling farmers in the mid-west they couldn't grow corn or beans anymore.

I like most farmers around me believe that HR 245 the Tobacco Equity Elimination Act, introduced by Congressman Ernie Fletcher is the best plan for growers. His plan of compensating quota owners and growers based on the 1998 quota years and also creating a new tobacco system that is more in line with the world market while also protecting American tobacco producers, is one that I would hope to see pass.

While HR 245 is not currently married to FDA regulation of tobacco products, most growers in Kentucky would not oppose reasonable regulation of tobacco products if in conjunction with a tobacco buyout. Growers believe a tobacco buyout can only be accomplished if in conjunction with FDA regulation and they are more concerned about getting the buyout than fighting off the FDA. They do hope, however; that FDA language will restrict the FDA from not having authority to regulate components of tobacco products that occur naturally in leaf production. In other words, regulate the manufacturer not the farmer.

I understand there have been some questions raised about the dollar amount of HR 245 and also about the post market structure created in it. While I believe both of the components are vitally important, I want to let you know that I, like most growers am willing to be flexible as we move through the debate. I believe flexibility is the key to passing tobacco buyout legislation. However, if changes must be made, I hope you will continue to consider the challenges I mentioned earlier to many tobacco producers.

Lastly let me say that I believe this is the year to pass tobacco buyout legislation. Recent decisions by a tobacco company to completely forgo the auction market for Flue-cured tobacco will likely be followed up with a similar decision for Burley. By waiting another year or two years, there may be nothing left to buyout. I know Congress has an aggressive agenda and I praise all of you for the work you have done to make this country a safer place for all of us. What a challenge you have faced and I believe you have worked relentlessly and admirably to defend this nation from those who wish to do it harm. I hope you might find some time in the calendar this year to pass a tobacco buyout bill that adequately compensates tobacco quota owners and growers and protects those growers who want to continue to produce tobacco, because I believe if legislation is not passed this year, the devastation in some heavily tobacco dependent regions will be beyond the point of no return.

Again, thank you Mr. Chairman for this opportunity and I look forward to answering any questions you may have.

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#### STATEMENT OF DAVID WINKLES

Thank you Mr. Chairman and other members of the House Agriculture Committee for holding this hearing today to discuss ways to make the active tobacco grower more competitive and more profitable. I am David Winkles, President of the South Carolina Farm Bureau and am speaking today on behalf of tobacco producers nationwide and the American Farm Bureau Federation. It is important to note that Farm Bureau represents tobacco producers in 20 states with the largest quota acreage in North Carolina, Kentucky, Tennessee, South Carolina, Virginia, Georgia and Ohio. According to the 1997 U.S. Census of Agriculture, U.S. tobacco is produced on over 830,000 acres on 90,000 farms. However, tobacco production has declined by 46 percent over the last fifty years and tobacco acreage has declined by 73 percent.

The tobacco program has served farmers for over 60 years. It began as a program intended to control the production of tobacco and stabilize the price, while at the same time, preventing any one company from monopolizing the market. For the most part, the program was successful in achieving those objectives. However, over the last 10 years, market forces have changed and public opinion pressure has decreased domestic cigarette purchases. Over the past seven years, Burley and Flue-cured producers have lost half of their quota. This has resulted in a huge cost to the producer to obtain production rights. As a result, producers are faced with higher input costs, while at the same time compelled to produce less tobacco. Even as prices for cigarettes rise, the tobacco farmer's portion of the retail tobacco dollar falls "from seven cents in 1980 to less than two cents today. As income drops, many growers are simply going out of business. More than half of the tobacco farms that existed 25 years ago are gone.

While American agriculture has faced lean times over the past few years, tobacco farmers have also struggled with massive industry changes. Billion dollar lawsuits, decline in tobacco consumption and a surge in the use of imported tobacco have placed a significant strain on the Federal tobacco program.

As the value of the U.S. tobacco production declines it is imperative that we take into consideration the families that are economically and socially impacted by this loss of income. Numerous communities are strongly dependent on tobacco revenue. The income and revenue generated provides critical assistance for education and health care systems that would otherwise suffer without tobacco production. Tobacco quotas have real economic value for farmers, communities and governments. There simply is not an equitable substitute or alternative means of income to transition to with the loss of tobacco production in so many of these rural economies. Therefore, an important component of a tobacco buyout is to provide compensation to tobacco growers and quota owners who have come to depend on the value derived from tobacco quota.

Recently, tobacco growers have been squeezed by big drops in demand for U.S. tobacco here and abroad, by aggressive competition from cheaper foreign-grown tobacco, by high costs to modernize equipment demanded by manufacturers, and by modest price increases for their crops. The future of tobacco and the communities who have come to depend on the income generated from tobacco farming is very important to Farm Bureau. As tobacco quotas continue to shrink each year and the right to grow tobacco becomes more expensive, farmers and their families are desperate for a new direction for the tobacco program. It is imperative that we develop a program that provides an orderly transition away from the current price support system, compensate growers and quota owners for the equity they have built in the program and do it at no net cost to the taxpayers.

Farm Bureau suggests that any buy out meet the following basic principles:

First and foremost, provide tobacco quota holders with fair and equitable compensation for their quotas. Tobacco quota owners should be compensated at \$8 per pound. Quota is a government-backed asset that many people rely on for income. Elimination of quota warrants compensation for this asset. This will allow quota owners who are dependent on the income generated by their quota be compensated. Growers would no longer have to pay to lease quota from owners who do not want to grow or are not able to grow the crop.

Provide tobacco growers transition payments at \$4 per pound of tobacco produced. Producers must receive fair compensation so they can access the capital necessary to diversify their operations.

Second, the right to grow should be put in the hands of active growers. This will remove non-essential costs from the production of tobacco. The current program should be replaced with a new system that eliminates the leasing and selling of quotas. Such a system would effectively eliminate the equity value involved with the leasing and selling of quota while preventing oversupply of tobacco and allowing tobacco production to remain in the communities that currently produce the crop. Removing non-productive quota cost will make U.S. tobacco farmers more competitive with imports and in the export market.

Third, just as the 2002 farm bill provided a safety net for producers of other agricultural commodities, there needs to be an adequate safety net for tobacco producers.

And the final basic principle is to keep tobacco production in traditional growing areas. If tobacco production is permitted to move out of the traditional growing counties, concentration in production will occur resulting in the loss of crop income from the areas that rely on the income from the crop. Communities dependent on the income generated from the production and sale of tobacco must remain economically viable.

AFBF supports H.R. 245, the Tobacco Equity Elimination Act of 2003 as a good starting point. H.R. 245 is bipartisan legislation introduced by Representative Fletcher and currently has fourteen cosponsors. Farm Bureau believes it is the most comprehensive and fairest of the House bills that have been introduced. However, we look forward to continuing to work on this issue with the committee to find the best possible resolution to the problem. We understand the need for flexibility to ensure legislation is crafted that can pass the House and Senate and be signed into law.

The crisis facing tobacco producers and their communities requires decisive action to address the complex array of problems and needs associated with reducing economic dependence on tobacco and diversifying farming operations and local economies. Due to the dire needs of tobacco quota holders, farmers and communities, I respectfully request the committee report a tobacco buyout bill to the House of Representatives for consideration as quickly as possible.

Thank you for the opportunity to testify.

#### STATEMENT OF BRENNAN M. DAWSON

Mr. Chairman and members of the committee, my name is Brennan Dawson and on behalf of my colleagues at Brown & Williamson Tobacco Corporation (B&W), thank you for the opportunity to share our views on a potential buy-out of tobacco growers in the United States.

Today, I would like to briefly cover several areas:

- Brown & Williamson's conceptual support for a buy-out of quota holders and tobacco growers;
- A brief discussion of what, if any, Federal programs should replace the Federal tobacco program;
- The fundamental imperatives for financing a buy-out; and
- Our firm view that buy-out legislation must be considered separately from other tobacco regulatory proposals.

Brown & Williamson is the third largest U.S. manufacturer of cigarettes with about ten percent of the U.S. market. We are headquartered in Louisville, KY with our manufacturing plant located in Macon, GA and a leaf operation in Wilson, NC. Our major brands include KOOL, Pall Mall, Misty, Lucky Strike and GPC.

We are proud of our longstanding commitment to the U.S. market and to U.S. tobacco growers. B&W is the only domestic tobacco manufacturer to staff a full-time leaf buying operation. Our leaf buyers buy about twice our domestic market share of U.S. leaf. We actively export leaf to more than 18 countries directly and 40 indirectly, assisting to open foreign markets to U.S. growers.

In our manufacturing plant in Macon about half of our production is for export. We buy domestic leaf and manufacture double our U.S. market share as B&W is wholly owned by British American Tobacco (BAT), which is made up of a world-wide group of companies.

B&W's plans are to stay in the business of producing and selling quality products for adult smokers. We plan to buy U.S. tobacco for use in those products well into the future. It is our firm belief that our interests are woven tightly with those of the U.S. tobacco grower.

Because we plan to continue buying U.S. tobacco for the long-term, we must caution that changes to the system must be designed to serve the future of agricultural interests. We believe that change should not replicate, much less exacerbate, flaws in the current system. We also believe that a realistic funding mechanism must be established. In short, we believe that a true buy-out of tobacco quota owners and growers makes sense only under certain conditions.

B&W clearly recognizes that quota holders and tobacco growers in the U.S. are clamoring for a buy-out. Buffeted by steep declines in quota, the agricultural side of the tobacco industry is virtually unanimous in the desire to change the system.

B&W agrees that the system can and should be changed. We would like to see tobacco farmers who want out of the business freed to do so. We also applaud efforts to assist active growers—those who are interested in taking the business forward—find a way to grow tobacco without the prohibitively high rental costs now in place because of the quota system.

The sharp drop in tobacco quota that has generated the renewed interest for a buy-out is due to several factors. Certainly, fewer cigarettes are being sold domestically and that downward trend is predicted to continue. New entrants to the U.S. market—those small companies selling deeply discounted cigarettes—are also a factor. These companies do not share our commitment to the U.S. grower. They do not follow the U.S. auctions; they have no leaf buyers and have no growers under contract. Because they have no presence in the U.S. leaf market, we believe their tobacco purchases are largely or entirely foreign. The major companies, B&W included, that buy U.S. leaf have lost more than one tenth of our market to these companies. Every market share we lose to these companies is a loss to the U.S. grower.

The largest contributor to the decline of quota, however, is the high price for U.S. leaf; domestic leaf is not competitive on the world market. Burley tobacco, for example, can be purchased in Brazil for 40 percent of the price of a comparable U.S. grade. The portion of the world's tobacco that is grown in the U.S. has been on a steep decline for some thirty years. The significant price premium for U.S. leaf has driven the U.S. market share of world tobacco exports to its current level of less than 10 percent. While unique in many positive ways, domestic leaf is not exempt from the market force of price. Any change to the Federal tobacco support program must not perpetuate the system that now inflates the price of domestic leaf and prevents American farmers from being competitive. A free-market would, in our view, be the single best alternative to the current Federal program. Short of a free-market, it is difficult to envision a regime that does not artificially raise price and restrict production. We would be happy, though, to continue to explore licensing or other options with any serious parties to this debate.

We agree that a true buy-out could be in the best interests of the tobacco agricultural community. That brings us to the fundamentals of the cost and financing of a buy-out.

Congressman Fletcher's bill, H.R. 245, is one of the buy-out bills introduced. It also is the measure receiving the most attention; several members of this committee are co-sponsors of the proposal. H.R. 245 calls for \$8 a pound for the quota owner, \$4 a pound for tobacco growers and an additional \$2 a pound for growers who opt to permanently forgo production rights in the future. Based on the 1998 quota, the measure is estimated to demand funding of some \$19 to \$20 billion with payout over five years. Importantly, H.R. 245 sends this \$19 to \$20 billion bill for the buy-out directly to B&W and the other tobacco companies.

Even before any discussion of the funding mechanism, it is worth noting the richness of the Fletcher proposal. The first part of the equation is the base year; the Fletcher bill uses 1998 as the base year. The 1998 quota year was close to the high water mark for both Flue-cured and Burley. While one can understand choosing a high base year to start the multiplication process, it is not justified.

Since 1998, tobacco growers have indeed suffered steep declines in tobacco quotas. Recognizing this disruption, several funding sources have been put in place to offset the declines. The largest single source of income replacement flows from the \$5 billion Phase II agreement of the Master Settlement Agreement (MSA). Phase II of the MSA is, of course, the settlement that B&W and three other major tobacco manufacturers reached with tobacco-producing states to put money directly in the hands of

agricultural interests. According to prominent economist Dr. Blake Brown of North Carolina State, these Phase II funds, along with infusions of Federal funds, have compensated growers and quota holders for their loss of equity. Additionally, many of the tobacco-growing states have devoted substantial amounts of their MSA payments to tobacco growers and their communities.

Another concern is the second set of numbers that drive the equation to arrive at the price of the buy-out proposals. Pending bills would pay \$8 per pound for quota owners and \$4 per pound for growers (the Fletcher bill also adds \$2 per pound for those who choose not to grow in the future). Some have questioned the bullishness of these prices; the Congressional Research Service, for example, noted that such amounts are well above that currently being paid on the open market. It should also be clear that these funds would be paid, and would generate a huge windfall, to growers who choose to continue to grow tobacco.

We raise these uncomfortable issues only because we are being asked to pay the bill. Under a very aggressive scenario in a recent Congressional Research Service report, a scenario where leaf prices are assumed to drop by 50 cents a pound, it would take at least 55 years to for any benefit from lower tobacco prices to offset the costs of the proposal. Let me be clear, it is not reasonable to pay tobacco growers and quota holders off in five years what it would take the companies 55 years to offset. This is neither a sustainable nor a rational funding mechanism.

If Congress is to ask our company to provide such massive amounts of funding, it would also be realistic to ask if we have the ability to meet this demand. The simple fact is that we do not. The staggering sums that the Fletcher bill proposes are not within the realm of possibility. Those considering assessing tobacco companies for a grower buy-out must understand that they are asking for the impossible.

The current environment for major tobacco companies is challenging. I am not speaking of the legal or political environment, although those difficulties remain and are persistent. Since the Master Settlement Agreement (MSA) with the states, the dynamics of the cigarette industry have changed dramatically. Price once again comes into the discussion as a dominant factor.

The industry has seen the explosion of the "deep discount brands." These brands, produced by small companies buying little if any domestic leaf as noted earlier, sell for \$2.17 a pack on average compared to \$3.56 a pack for a premium brand. The price gap of nearly \$1.40 per pack has many consumers down trading. While these deep discount brands accounted for about 2.5 percent of the cigarette market in 1998, they are estimated by analysts and others to account for some 13 percent of cigarette sales today.

This major shift of the big four cigarette companies losing market share to the deep discounters was initiated by payments we must make to the states for the MSA. The growth of the discounters has been further exacerbated by the record increases in state excise taxes on cigarettes. As these payments and taxes have increased price, consumers have increasingly questioned whether they can afford a premium brand.

The result is a war on price and a squeeze on the major tobacco companies. This month, Moody's Investors Service said that the operating performance of the big-4 cigarette manufacturers has been significantly impacted by the rise of a new group of manufacturers.

We are in the midst of a vicious cycle; our prices have gone up due to obligations incurred in the MSA and rising state taxes—those price increases made room for low-priced competition—the competition is substantial enough that now we have to provide our consumers with price promotions to be competitive. The price promotions we offer to consumers come directly from our bottom-line.

While this price competition affects us and the other major manufacturers, government revenues from cigarette sales are skyrocketing. In fact, the government is claiming an ever larger share of the price. State excise taxes have increased at a record pace in the recent years. The average state tax of 32 cents a pack in 1996 went to 47 cents a pack in 2001 and is, today, closer to 80 cents a pack on a weighted average.

In 1996, state and Federal Governments received about 30 percent—56 cents—for each pack of cigarette sold. Today, that percentage is 46 percent—or \$1.64 for each pack sold. While our operations are being squeezed and cost-cutting is becoming a way of life, the share government demands continues to climb.

Imposing additional costs, in the form of so-called "assessments" or "user fees" on the tobacco manufacturers is unsustainable and unfair. We cannot pay these fees and our consumers already pay a premium in taxes on our products. Our consumers also already pay for the current tobacco program in the form of higher prices because of the price-support program.

In addition, imposing buy-out costs would exacerbate the very problems that have created the need for the buy-out in the first place. Further damaging the cigarette companies, those who are committed to domestic tobacco, will simply reduce the amount of tobacco purchased. Additional assessments on the tobacco industry will further reduce the demand for tobacco and simply add to the farmers' problems.

Any funding mechanism for a grower buy-out must be fair. The mechanism must not distort the already disrupted marketplace. If, like other agricultural buyouts, a tobacco buy-out reflects compensation for the historical effects of the program that benefited society as a whole, it is fair to spread the costs by paying from general revenues.

The funding problem does not appear to be one of a lack of tobacco-related revenues with the government already receiving some 46 percent of the price of our product—a sum that adds up to a staggering \$120 million each day. Instead, the problem would appear to be one of priorities.

The committee also has asked for our comments on proposals to provide the Food and Drug Administration (FDA) with authority to regulate tobacco products. B&W could support efforts to create additional Federal regulation if that regulation was sensible and created a level playing field for the marketing and selling of our products to adults.

Currently introduced proposals do not meet these criteria. They are not sensible. They would put B&W at a competitive disadvantage. These proposals also would place the future of our industry at risk.

The proposals we have seen continue along the path the Supreme Court recognized doomed to failure. They basically take the regulatory regime from pharmaceuticals and medical devices and apply it to tobacco. The agency's core mission for pharmaceuticals and medical devices is to ensure the "safety and effectiveness" of the products it regulates. As the Supreme Court has observed, tobacco products "simply do not fit" in this regulatory scheme. Tobacco products are inherently dangerous.

Any statute authorizing the FDA to regulate tobacco would have to rewrite the agency's existing mission. And the FDA would have to develop an entire new agency-within-the-agency to deal with tobacco issues, straining resources and distracting from its existing duties.

Current proposals apply numerous provisions of food and drug law inappropriately to tobacco. In applying the drug and device model to tobacco products, for example, FDA would have authority to mandate changes to virtually any product dimension or characteristic. The FDA would be authorized to regulate how we make our cigarettes and what we make them with.

Any regulatory scheme for tobacco must provide for balancing the risks and the benefits of the products. The FDA is not equipped to make those decisions. FDA is an agency whose whole institutional culture is driven by the quest for safety and effectiveness. That makes sense for foods, medicines and medical devices. It does not make sense for tobacco.

Supporters of FDA legislation seek discretion to take whatever action is "appropriate for the protection of the public health." Such a delegation of authority is not only beyond the agency's competence, it is unwise and potentially unconstitutional. Congress cannot simply delegate legislative decisions to unelected bureaucrats; it must provide specific standards for agencies to carry out. If Congress decides that additional regulation is appropriate, it should spell out specifically what the agency should do and articulate clear standards for regulatory action.

Despite some promises to the contrary, it is unrealistic to believe the sweeping authority to regulate tobacco products that the FDA proposals mandate would not affect tobacco growers. Do not be misled. These proposals allow FDA to regulate tobacco leaf as a constituent of cigarettes. Manufacturers would have no choice but to pass on any requirements to growers.

The FDA proposals also would put B&W at a competitive disadvantage. The huge regulatory burden alone would be difficult—if not impossible—to sustain for all but the largest companies. The sales and marketing restrictions in the FDA bills, in addition to raising substantial constitutional questions, would provide a distinct advantage to the largest brands. Smaller brands, like those sold by B&W, would find it difficult to attract attention, tending to entrench all but the dominant, well-known brands. It is no coincidence that these proposals are known as the "Marlboro Monopoly Act" by many. By reducing our ability to communicate with adult smokers, a huge competitive advantage would be gained by Philip Morris. That we will oppose.

One other item, youth smoking prevention, deserves discussion as some proponents of FDA authority claim it is necessary to prevent children from smoking. While B&W shares the laudable goal of continuing the progress that is being made in reducing underage smoking, it is important to note that such issues are far from

the core competency of the FDA. Further, of the hundreds of pages of legislative proposals, it is not readily apparent which provisions are aimed at protecting children.

Tobacco advertising is, of course, already sharply restricted. Most recently, the MSA provided for a ban on tobacco billboards, transit ads, use of cartoon characters, free samples where children may be present, and product placement in television shows or movies are already banned under the MSA with the states. Additionally, B&W takes voluntary steps to reduce any exposure and appeal of our advertising for those underage. We limit, for example, the placement of our brand advertising to certain publications. We also place voluntary constraints on the content of our advertising.

B&W also supports programs to help keep children from smoking. We provide materials that assist parents in discussing this important issue with their children and we participate in programs that encourage and aid retailers in abiding by the laws that prohibit them from selling cigarettes to children. We believe that, while a societal issue, we are doing our part in reducing youth smoking. To that end, it should be recognized that the Federal Government, the states and localities, and private organizations all have a range of extensive programs towards the same goal.

Less than one year ago, a press conference at the National Press Club was held to release the latest Federal data on youth smoking and other youth behavior. It is gratifying to be able to conclude this testimony with good news. The report reads, "American young people are turning away from cigarette smoking at a pace that should bring cheer to parents, educators, and health professionals alike. Teen use of cigarettes has been dropping steadily and substantially since the peak rates in 1996 and 1997. Between 2001 and 2002, the proportion of teens saying that they had ever smoked cigarettes fell by 4 or 5 percentage points in each grade surveyed (8, 10 and 12)—more than in any recent year.

Mr. Chairman, thank you for this opportunity. We look forward to working with the committee and its individual members to address all of these important issues.

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### EVERETT W. GEE, III

Thank you Mr. Chairman and members of the committee for allowing me this opportunity to testify before you today. My name is Everett Gee and I am here on behalf of my family's small tobacco manufacturing business, S&M Brands, Inc., located in Keysville, Virginia. I am honored to sit before you and speak about the importance of protecting small manufacturers during the formulation of any Federal legislation regarding the buyout of tobacco quota, my opinions on how post tobacco buyout policy should be shaped and my thoughts about the possibility of the Food and Drug Administration (FDA) being given regulatory authority over the tobacco industry and the manufacturing and sales of cigarettes.

#### COMPANY HISTORY

S&M Brands, Inc. is a family-owned business that was founded by father and son Mac and Steven Bailey. The Baileys represent fourth and fifth generation of tobacco farmers from Southern Virginia. In 1994 the Baileys decided to enter into the business side of the tobacco world, and founded S&M Brands, Inc., the maker of Bailey's and Tahoe Cigarettes (Bailey's). And today, the Baileys still raise tobacco and their experience as farmers and small tobacco manufacturers give them a unique perspective with regard to the issues being discussed here today.

Bailey's had been a lifelong dream of Mac Bailey. Mac was tired of the American tobacco farmer bearing the financial burden of misdeeds by the large cigarette manufacturers. Each year the Baileys saw a decrease in the amount of American-grown tobacco that the large tobacco companies like Philip Morris, RJR and the rest of "Big Tobacco" purchased. Big Tobacco was purchasing increased amounts of foreign tobacco, abandoning the U.S. grower to save a few pennies.

Mac and Steven Bailey were determined from the beginning never to engage in such activity. It is the sole reason that the company has kept its commitment to the American tobacco farmer and purchases only 100 percent American-grown Flue and Burley tobaccos. Our mission statement has always been to sell an honest smoke at an honest price.

Bailey's has grown from a start-up company that sold its cigarettes to small country stores in the Keysville, Virginia area to a company that sells cigarettes to retailers and wholesalers in Virginia, Delaware, North Carolina, West Virginia, South Carolina, Kentucky, Tennessee, and Georgia. Since 2000, Bailey's has paid over \$100 million dollars in Federal, state, and local taxes. The company gives generously in charitable contributions annually. It has become a vital employer in the



Keysville area, an economically depressed area in the Commonwealth, maintaining approximately 200 jobs in that rural area. Recently, two large and one small manufacturer closed in our area, taking away hundreds of jobs. This unfortunate event has made the company even further dedicated to continuing to grow and provide good paying jobs to our citizens.

#### RESPONSIBLE MARKETING AND DISCLOSURES

Bailey's complies with all marketing laws applicable to its products. Bailey's does not market to youth. Tobacco is an adult product and the adult consumer is our consumer. Bailey's markets to adult consumers who love the outdoors.

Bailey's advertising features the trademarked Bailey's tobacco barn, symbolic of the fact that Mac is a tobacco farmer and his tobacco is used in the cigarettes. Bailey's ads appeal to the working man and woman who choose to smoke. Our information shows our smokers are middle-aged working Americans who appreciate a quality product at an affordable price.

Bailey's has always been open about the adverse effects of smoking. Although we were not required to do so, Bailey's lists cigarette additives on the internet. We believe in full disclosure so that adults can make an informed decision about smoking.

#### MASTER SETTLEMENT AGREEMENT

In 1998, Big Tobacco announced a global settlement with 46 states and various territories known as the Master Settlement Agreement (MSA). In exchange for billions of dollars and some voluntary marketing restrictions, Big Tobacco received a release from its past conduct that had brought about suits for fraud, punitive damages, RICO, and attorneys' fees.

Before the ink was dry on the settlement, an attorney for Big Tobacco called Bailey's demanding that the company sign on to the MSA and gave us 48 hours to decide. At that time, Bailey's had not even seen the document. However, upon reading the MSA, the decision not to join was an easy one.

Of course, new manufacturers such as Bailey's were not sued by the states, having no part in Big Tobacco's defrauding of the American public. Even existing smaller companies were not at the settlement table. If Bailey's had signed the MSA, it would have effectively admitted to fraudulent conduct that it did not commit and would pay damages for such conduct. Furthermore, Bailey's would have had to forfeit rights guaranteed by the Constitution to advertise its legal product.

Mac and Steven Bailey wondered how Big Tobacco could afford to pay billions of dollars to the states without imposing massive price increases on their cigarettes. With price increases, Bailey's thought it could finally compete with the large companies. However, Big Tobacco had already resolved their problem.

As a part of the MSA, Big Tobacco had the states promise to pass "Model Statutes." If a state did not pass the "Model Statute" it would receive decreased payments. The legislation requires a company that did not sign the MSA, like Bailey's, to escrow a significant amount of money per cigarette sold (thus artificially increasing the cost of a pack) so that Big Tobacco would not lose their market share. This is not supposition the MSA expressly states that the escrow would "level the playing field" so that newer companies, innocent of wrongdoing, cannot compete on the basis of price.

Bailey's worked hard to convince the Virginia legislature to reject this unfair statute, but we were unsuccessful. Now the price of Bailey's cigarettes has been inflated, so that Big Tobacco can pass the costs of the settlement with the states to the innocent smoker. The scheme has worked beautifully and to the detriment of Bailey's. Big Tobacco has lost little market share. Big Tobacco's profits were at record levels last year. Never before have the states sued an industry for massive wrongdoing, and then assisted the same wrongdoers via legislation to make sure that no business is lost to new, innocent competitors. The states have in effect created a tobacco "cartel" made up of Big Tobacco, making new entry almost impossible. It is doubtful that Bailey's could have even started a company in 1999 or 2000, when the escrow requirement came into effect.

Today, Big Tobacco is going back to the states to increase the escrow burden on small manufacturers like Bailey's. This increase is being sought even though the MSA mandates that the escrow statute cannot be changed. Our company is fighting to stay afloat in the aftermath of these statutes being enacted, as they are designed to shut down regional companies that have acted in full compliance with the law.

## TOBACCO QUOTA BUYOUT

Concerning the various tobacco quota buyout proposals, Bailey's has a unique perspective because the company has not only an interest as a manufacturer, but also the longer-term interests of farmers. Certainly, the tobacco growers have suffered greatly with reduced quota in the past few years. So with mixed feelings about a buyout, Bailey's will comment on what a buyout enacted by Congress should look like.

We also would like to express our concern regarding using a tax increase as the solution to this issue. If you are looking for steady revenue streams to fund the tobacco quota buyout, increasing the excise tax is one way; however, we certainly are not advocating that we support higher taxes as a way to stabilize small business or the economy.

Indeed, there have been discussions about the tobacco manufacturing industry funding a buyout. If this is the law, small tobacco companies have three main interests: (1) that the funding be

fairly and equitably charged, meaning each company, large and small, pays the same per cigarette charge; (2) that the payment collection mechanism ensures that all companies pay; and (3) that the quota buyout is a Federal issue and should not be tied in any way to the multi-state Master Settlement Agreement with big tobacco.

If an increase in the excise tax becomes the law, we must ensure that the payment is fair and that all manufacturers pay an amount determined based on a per stick charge and then added to the current Federal Excise tax. This method would guarantee that all companies would pay equitably based on their respective market share, and it would protect small companies from being drained by inflated payments.

As for the payment mechanism, Congress should avoid setting up the collection of any industry assessment that does not guarantee payment up front. The states have a very difficult time collecting MSA monies due particularly from foreign manufacturers that can come and go at will. These companies can undercut legitimate U.S. companies large and small because the price of their cigarettes does not reflect the escrow payments legally required. Sending such a company a bill at the end of the year for its market share will result in an unpaid bill, again shorting the farmer of the monies promised for the buyout.

Congress already has in place an up-front payment mechanism, the Federal Excise tax on cigarettes. Imported cigarettes must pay this tax up front before being released into commerce. The necessary increase with a sunset provision will make everyone pay their fair share.

Finally, the buyout of the tobacco quota system is under the jurisdiction of the Federal Government and it should not be tied into the MSA with the states. More importantly, Big Tobacco should not receive credit for paying state litigation settlement partly based on its decades of misconduct when the issue is the buyout of the Federal quota system. Any credit given Big Tobacco would jeopardize the ability to pay the farmers at all. A price disparity would drive little tobacco companies to the brink of ruin, and the contribution expected for the farmers would not come about. It is certainly not sound public policy to create legislation that will decide market winners and losers thereby favoring the interests of multi-conglomerate international companies over family-owned small businesses.

## FDA REGULATION

In the area of FDA regulation of tobacco, Bailey's recognizes that FDA regulation has not been necessary since the beginning of cigarette manufacturing and therefore, it should not start now. Bailey's also believes that the FDA and a quota buyout are wholly separate issues that should not be intermingled. We believe that the only benefit that would be brought about by FDA regulation is the protection of market share by big tobacco companies that favor such regulation as it would be cost prohibitive to other current and future big and small tobacco companies thereby creating a Federal barrier to entry for current and future competitors of those that favor FDA. In particular, Bailey's does not support FDA regulation as proposed by Philip Morris or by numerous Congressmen and Senators because:

1. Almost everything that is being called for can be done by agencies that already regulate tobacco or through the enforcement of existing state law:

- (a) Youth smoking prevention—The FTC, the MSA, and enforcement of existing state laws.
- (b) Design and regulation of ingredient and constituent testing and disclosure—The FTC and HHS.

- (c) Design and regulation of the text of health warnings on cigarette packages and in advertisements—The FTC.
- (d) Definition and regulation of the use of terms like “light” and “ultra light”—The FTC.
- (e) Definition and regulation of standards for, and responsible marketing of, any reduced risk cigarettes—The FTC.

2. FDA regulation of the scope proposed by some (product performance standards testing beyond what is proposed in 1.(b) above) is designed to be or will have the effect of being cost prohibitive for the small manufacturer and therefore lock in market share of the leading major tobacco company that favors this new regulation.

3. Philip Morris is calling for FDA regulation because by doing so they advance their own public relations efforts. The government should not be a vehicle for Philip Morris to achieve its competitive agenda.

4. The MSA put the states in the tobacco business. They now have a financial interest in preserving the market share of the signatories to that document, Big Tobacco, because reduced market share means reduced payments to the states. The Federal Government should not compound the problem by allowing itself—through the FDA—to be used as a vehicle to further cement any company’s market share and protect the states’ “investment. It is not a legitimate governmental purpose to lock in a tobacco cartel of favored, large companies, making competition by new, small companies impossible.

5. The FDA should focus on its primary business. It is widely acknowledged that the FDA approval process for new drugs is not as fast as it could or should be.

6. Once the FDA has regulatory authority, regulation over smoking is most removed from the people, as represented by Congress, and given to nameless, faceless regulators. Rarely does a governmental agency resist the temptation to expand its power. Once the proverbial genie is out of the bottle, so to speak, the tobacco industry will be subject to ever changing restrictions dictated by future political considerations. Yes, Bailey’s wants to stay in business. But no rational person wants to create a black market for cigarettes, or make our consumers turn to foreign cigarette companies where no quality control can be assured.

7. Philip Morris claims to want to “level the playing field” in advertising. This is a crass attempt to impose on new, innocent companies, the marketing restrictions Big Tobacco was forced to concede to escape jury trials in the 50 states. Big Tobacco voluntarily waived constitutional rights to advertise to settle litigation, a choice it made. However, Congress should not bail Big Tobacco out, and lock in its market share, as the states have done by passing escrow statutes to inflate the price of cigarettes made by new companies like Bailey’s.

If there must be FDA regulation, Bailey’s believes that it should take the following provisions into consideration as it is formulated:

1. The rationale behind FDA regulation should be to ensure safer cigarettes only through accommodating companies that want to sell a “reduced risk” product. However, companies marketing traditional tobacco cigarettes should not have to pay for chemical analysis of products that have been tested and studied for years. The mandated warnings already put the smoker on notice of the danger. Allowing the FDA or any agency to start adjusting ingredients on traditional cigarettes will mean that only the largest will survive, because it is those companies that can pay the exorbitant costs associated with these procedures;

2. There must be an exemption for small companies under 2 percent of the market share;

3. There must be regulation for foreign companies, as American companies cannot compete fairly with those who are allowed to sell their tobacco to our companies yet are not subject to our laws and regulation;

4. Companies shall be given a reasonable timeframe in which they can implement any necessary changes;

5. The Government should offer grants to offset the costs of the requirements, as such cost would put most of the small businesses out of business;

6. Small manufacturers should receive assistance from the Government via specialists to ensure that we are compliant with any new regulations; and

7. Small manufacturers should have input in the standards as they are formulated and written into regulation.

Cigarettes are a legal product. It is un-American to stifle legitimate competition from the small company to satisfy the desires of the largest companies.

In conclusion, Bailey’s is a small business. We are regular folks, small farmers, trying to keep our business afloat here in Southern Virginia. Our voice is not strong compared to those of multi-conglomerate international companies, but our cause is just. We are respectfully asking Congress and the state legislatures to treat small tobacco fairly. We don’t believe a smoking cartel in America dominated by three or

four big companies is the right or the fair solution. You have got to keep room for small businesses in America. Your decisions over the next few years will determine if the American dream continues for the folks at Bailey's.

Thank you, Mr. Chairman. And thank you to all of the committee and the committee staff for the opportunity to share with you my observations on this important issue today.

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#### STATEMENT OF NORMAN SHARP

Mr. Chairman and members of the committee, my name is Norman Sharp and I am President of the Cigar Association of America, Inc. (CAA). I am also here today in my capacity as President of the Pipe Tobacco Council, Inc. (PTC).

The CAA is the national trade organization of domestic and foreign cigar manufacturers, importers, leaf dealers, and other major suppliers to the industry. It was established in New York State in 1937 as the Cigar Manufacturers Association. Today, the members of CAA account for almost 98 percent of the cigars sold in the United States. According to the Department of Agriculture, the cigar industry has annual sales of about two billion dollars.

The PTC consists of manufacturers and importers of pipe tobacco, representing 98 percent of the pipe tobacco sold in the United States, and associate members who are suppliers to the industry. Pipe tobacco sales are too small to be included in any Federal publications, but we estimate annual sales for the industry at about \$150 million.

While I appreciate the opportunity to testify before this committee on the issue of the buyout, we regret the circumstances that have brought us here. Let me explain. We cannot understand how the cigar and pipe tobacco industries came to be included in the pending buyout bills, and we certainly cannot fathom where the numbers in these bills came from.

First, both H.R. 140 and H.R. 245 are extremely unfair to the cigar and pipe tobacco industries. Unlike the cigarette companies, the cigar and pipe tobacco industries use little to no domestic quota tobacco or imported quota-type tobacco. In fact, our use of quota tobacco is so minimal that the USDA doesn't even bother asking our industries for their purchase intentions.

It makes no sense to require our industries to pay taxes for the buyout of a system in which we do not participate and from which we have derived no benefit. Indeed, we believe that the amount of quota tobacco we use is similar to the amount used by medical research programs. Should they also be included as a funding source? Despite this minimal use, H.R. 140 and H.R. 245 propose to hit our combined industries with over \$165 million per year in increased taxes—an amount that may well be more than the annual net profit after taxes of the domestic cigar and pipe tobacco industries.

Second, under H.R. 140 and H.R. 245, our industries would be forced to contribute to the buyout in an amount far out of proportion to our share of the overall tobacco industry, however it might be measured. Based on total revenues, total taxes paid, total tobacco used—you name it—we are being taxed under these bills at a punitive rate.

We do not concede that basing the buyout taxes on sales data would be rational, since the buyout benefits only the growers of domestic quota tobacco. However, even if it were rational, the level of taxes on cigars would make no sense. Sales of cigars, according to information based on TTB collections data, make up between 1.6 and 1.7 percent of the total domestic sales of tobacco products. However, under H.R. 140 and H.R. 245, the cigar industry would be required to pay over seven percent of the total user fees imposed. At the same time, cigarette sales make up roughly 97.5 percent of domestic tobacco sales, but the cigarette industry would only pay about 92 percent of the total user fees. The irony of the cigar and pipe tobacco industries subsidizing the cigarette industry is striking.

Third, the imposition of a "user fee" on the cigar and pipe tobacco industries is illogical, inappropriate, and possibly unconstitutional because we use virtually no quota tobacco. I know the committee would prefer to consider buyout legislation independent of the Ways and Means Committee. However, user fees require a benefit to, or at least a nexus with, the user. There is no such link between cigar manufacturers and quota tobacco. The pending buyout bills would impose new excise taxes on my members, pure and simple.

Finally, the FDA regulation that will be the inevitable result of this buyout effort makes no sense for the cigar and pipe tobacco industries. The proponents of FDA authority base their arguments on the need to reduce youth usage of tobacco prod-

ucts. Yet there is virtually no youth issue for the cigar industry—nor for the pipe tobacco industry, whose typical consumer is over fifty.

The FDA recognized this fact when it released its final rule regulating certain tobacco products in 1996 (which was later vacated by the Supreme Court). In that rule, the FDA specifically chose not to regulate cigar and pipe tobacco products, most importantly because it found no credible evidence that children and adolescents use these products to any significant degree.

Additionally, our industries do relatively little advertising and promotion of our products. In 2001, they spent less than \$45 million advertising and promoting their products. Compare this to the cigarette industry, which in that same year spent over \$11 billion in domestic advertising and promotion.

Finally, our products do not lend themselves to the type of testing and content-control regulations proposed by the FDA bills pending in Congress. Cigars, unlike cigarettes, are not uniformly manufactured. Some are hand-made and some are machine-manufactured. There are over 300 cigar brands available in the United States, and a single brand may include as many as 20 to 25 different sizes and shapes. This results in over 2,400 different sizes and shapes of cigars being sold in the United States. Similarly, pipe tobacco is produced in many types of blends, and the use of pipe tobacco is highly individualized, depending on pipe shape, composition, and manner of filling by the user.

In conclusion, the cigar and pipe tobacco industries use virtually no quota tobacco, and therefore should not be included as a funding source in any buyout bill. Indeed, including us as a funding source would amount to imposing huge new excises taxes on our industries, which is beyond the authority of this committee. Further, FDA authority over our industries has not been sought by the FDA, and is inappropriate given the unique characteristics of our industries and the absence of youth usage of our products, which is nominally the motivating factor behind granting the FDA authority over the tobacco industry.

Mr. Chairman, our experience and history, as well as our knowledge of our consumers, convinces us that taxes of an amount even approaching this magnitude would decimate our industries. The imposition of these taxes and FDA regulation would be tantamount to forcing us out of business.

Thank you for giving us this opportunity to share our concerns with your committee. I would be happy to answer any questions you may have.

#### STATEMENT OF MICHAEL E. SZYMANCZYK

Mr. Chairman and members of the committee: My name is Mike Szymanczyk, and on behalf of the more than 12,000 employees of Philip Morris USA, it is a privilege and a pleasure to be able to submit these remarks today, and to voice our strong support for passage by the 108th Congress of H.R. 140. This bill, introduced by Reps. Mike McIntyre and Tom Davis, provides a reasonable framework for providing tobacco quota holders and active tobacco farmers with fair compensation. It is a plan that will replace the current Federal tobacco program with a system that without replicating the quotas that are being relinquished or imposing a comparable cost inefficiency on growers—will provide for market stability by limiting the production of tobacco leaf, by type, to counties where it is currently grown.

We also support the provisions of H.R. 140 that would provide for meaningful, effective regulation of tobacco products by the Food and Drug Administration. The convergence between FDA regulation and a tobacco quota buyout embodied in this bill presents an opportunity for all parties to work together to ensure that these complementary goals are reflected in a single piece of Federal legislation that can be enacted into law.

The fact that there are several competing bills relating to a tobacco quota buyout powerfully demonstrates how important this issue has become to our tobacco growing communities. We are convinced that, once it carefully considers the various proposals, this committee will agree that there is a real difference between buyout plans that may sound good because they try to accomplish or promise too much, and the one that makes the hard choices and that many observers believe actually stands a chance of being passed by Congress, and of providing concrete relief to those it is intended to help. We respectfully submit that approaches which are too expensive, include no realistic funding source, no FDA regulation, and subsidies rather than a genuine buyout, will fail to make a tobacco quota buyout a reality. We also believe that crucial time is slipping away rapidly, and that, in order to achieve successful enactment of a buyout for tobacco-growing communities, all parties must come together now in support of a plan that occupies the political center, and that a majority in both the House and the Senate will accept.

We thank this committee for taking a leadership role on this important initiative, and we look forward to working with you and your colleagues in the full House towards the passage of legislation such as H.R. 140, which truly represents the middle ground between proposals that promise growers everything they want but can never be enacted, on the one hand, and those who oppose any buyout at all, on the other. In addition to providing the kind of quota buyout that we believe many growers want, the bill has a sensible funding mechanism—for the buyout and FDA regulation—that is both fiscally responsible and politically feasible.

## II. CRITICAL ISSUES ESSENTIAL TO THE SUCCESS OF BOTH A QUOTA BUYOUT AND FDA REGULATION OF TOBACCO PRODUCTS

The years we have spent actively working on these issues have absolutely convinced us that the issue of a tobacco quota buyout is inextricably linked to FDA regulatory authority of tobacco products. In the current political climate, we strongly believe that a quota buyout without FDA regulation is not feasible. Consequently, all stakeholders who are interested in either issue need to come together to ensure that both the buyout and the regulatory pieces of this package are well-designed in a careful, workable way, that will offer the best chance for both issues to be resolved legislatively and signed by the President. With this objective in mind, we begin our detailed comments with a focus on what we see as the most critical issues that are essential to the ultimate success of both the quota buyout and FDA regulation.

In our opinion, the core issues that must be thoughtfully resolved in order for a buyout to be achieved are (1) ensuring that the payment stream to quota holders and active growers can be funded by a reasonable and equitable manufacturers' user fee; (2) structuring the legislation so that it truly effects a "buyout" of the existing program, as opposed to a subsidy that will further disadvantage American tobacco farmers as compared to their global competitors and (3) maintaining the political feasibility of the legislation by resisting the temptation to create a plan that may be popular with some constituents, but that is impractical or too ambitious and stands little chance of ultimate congressional enactment due to its attempt to treat tobacco growers in ways that are significantly different than farmers of other crops.

Regarding FDA regulation, there are three core issues that, in our opinion, are the most susceptible to unintended consequences if not crafted carefully, and are therefore most critical to ensure that the fundamental objectives of the legislation are not undermined. These are issues where FDA should be broadly empowered, but sensibly directed, by Congress to reduce the harm caused by tobacco consumption, on a truly nationwide basis, in the context of preserving an adult's ability to make his or her own decision about whether or not to smoke. They are: potentially reduced-exposure and reduced-risk products, performance standards and national uniformity. Our perspectives regarding these areas are intended to help Congress craft for the first time a truly effective, coherent national tobacco policy that can achieve the requisite consensus to be enacted into law.

We now turn to each of these core issues in more detail.

### II(A) A Reasonable, Equitable Manufacturers' User Fee

Philip Morris USA is, as we have said, willing to participate in a reasonable and equitable legislatively-established funding mechanism for quota and price support elimination that is coupled with FDA regulation of tobacco products. For us, "reasonable and equitable" means, in part, that no one company should bear a disproportionate amount of the cost of a buyout. We support a funding mechanism that puts no manufacturer at a competitive disadvantage. Moreover, the amount of any proposed user fee must be reasonable and proportionate.

The user fee proposed by H.R. 140 is consistent with these principles. It applies to all manufacturers and importers of tobacco products, from cigarettes and cigars, to smokeless tobacco and snuff. It will be used to fund not only the quota buyout and active grower compensation provisions of the bill, but also the FDA regulation that we believe is so critical for the tobacco industry in this country. And, the aggregate amount of fees proposed is—despite being substantially higher than we would like to see—at least somewhat proportionate to what we believe will be necessary to fund both the buyout and the regulatory provisions of this bill.

Accordingly, we want to make clear to this committee that, although we can support the user fee as proposed today, we will not support anything higher.

### II(B) A True Buyout Rather Than A Subsidy

Philip Morris USA strongly believes that once a quota holder is compensated for his or her quota, that the exclusive right to grow asset" is necessarily eliminated. He or she no longer owns that asset. Similarly, once an active grower receives payments in exchange for the elimination of existing price support mechanisms, that benefit is eliminated, too. To do otherwise would surely result in what would be

deemed to be a “subsidy”, which we believe, as described in more detail below, would effectively scuttle the buyout before it even has a chance to get off the ground.

This is simple common sense. If a person elects to sell his house, he would give the deed to the new owner. He would no longer be allowed to live in that house because he no longer owns the asset. We support either the Federal Tobacco Program or a buyout of that program, but not both. We’re convinced that any proposed post-buyout structure must neither jeopardize the availability of an adequate supply of domestic tobacco, nor result in the creation of an “asset” with economic value based on market restrictions. Accordingly, our support of the funding mechanism that will make any buyout possible is based upon the continued inclusion in H.R. 140 of provisions that eliminate the existing program, and do not replace it with significant new restrictions that would inevitably evolve over time into a new version of the existing system that has just been, for all intents and purposes, paid for and terminated. To do otherwise would be simply unfair both to manufacturers and importers who are ultimately paying for the buyout and to all farmers who grow crops other than tobacco.

Moreover, although any re-creation of a new system with production controls and price supports understandably has surface appeal to many growers when they first hear about it, such a new system would, in practice, serve only to exacerbate the competitive disadvantage that American tobacco farmers increasingly find themselves in as compared to foreign growers. The law of unintended consequences is already at work as one result of the Master Settlement Agreement: as participating manufacturers’ costs have increased due to settlement payments, the market share of brands—both genuine and, in a growing and very serious concern, counterfeit—utilizing primarily foreign tobacco has increased dramatically, at the expense of domestic growers. By the same token, if a post-buyout marketplace includes subsidies that artificially inflate—either through production controls or price supports—the cost of U.S. leaf, there will be even more of a financial incentive for manufacturers around the world to look elsewhere for their tobacco.

We understand the desire by some growers to both receive “buyout” payments and continue to operate under production limits and price controls; it’s only human to be apprehensive of the kind of change that free-market competition would entail, and to desire a safety net of some kind.

And H.R. 140 addresses these “safety net” concerns in several ways. First and foremost, the buyout payments themselves—which represent a substantial multiple of current earnings and permit active growers to stay in the tobacco-growing business—will provide significant security for many years to both growers and quota holders. In addition, and these important provisions are not well known in tobacco communities, the bill contains three important clauses that will provide continued, additional security to growers far into the future:

Tobacco growing in the United States will, as a practical matter, remain strictly limited by geography to the counties where it is grown today. Moreover, this limitation is by type of tobacco, i.e., Flue-cured will only be grown in counties where Flue-cured is grown today, and Burley will only be grown in counties where it is currently produced. So, although there will be no limits on who can take up tobacco farming in those counties or how much tobacco they can elect to grow, there cannot be any exodus of production to areas outside of the traditional tobacco-growing region.

Federal crop insurance will remain fully available to tobacco farmers on the same terms as for growers of other crops around the country.

The integrity of U.S. produced tobacco will be assured through the establishment of a Tobacco Quality Board, administered by the Department of Agriculture and comprised of representatives from both producers and purchasers. With the elimination of the Federal Tobacco Program through the buyout, the need to implement and oversee minimum standards for quality, including pesticides and plant variety, must be maintained. Philip Morris USA believes that the Tobacco Quality Board to be created by this bill will help protect the integrity of the crop and would work to make U.S.-grown tobacco more attractive to buyers on the world market.

These provisions make it clear that, although H.R. 140 will eliminate the tobacco program as it exists today, it does not simply leave growers to face the prospect of a market-oriented system without significant protections to help ease the transition.

Beyond the substantial protections afforded by the bill, we’re pleased to be able to inform this committee that, since I testified before the Specialty Crops Subcommittee last September, an important development has occurred that addresses the desire for a “safety net” that many growers seek even more fully. This past May, Philip Morris USA and other major manufacturers committed, in the spirit of partnership with our most important suppliers, to purchase substantial quantities of do-

mestic leaf for at least the next 10 years; 12 years if buyout legislation is enacted. Our company's commitment is to continue to purchase domestically a substantial percentage of its annual total requirements for Flue-cured and Burley tobacco. In addition, we have agreed to purchase a minimum quantity of 330 million pounds of domestically grown Flue-cured and Burley tobacco leaf each year for at least the next ten years, with adjustments allowed for changes in our production requirements. Philip Morris USA has a long history of supporting American tobacco farmers, and these commitments are another example of the company's willingness to invest in the future of that partnership. Accordingly, in addition to the buyout payments H.R. 140 would provide, and the right to grow as much tobacco as they want in a free-market system, growers are assured of a stable customer base to address any remaining transitional issues.

We are—especially in light of these substantial volume commitments—frankly skeptical of the wisdom of the geographic limitations on the ability to grow tobacco noted above, just as we believe that the buyout payments in H.R. 140 are more generous than current market valuations would suggest. But we accept these provisions as reasonable compromises that clearly were designed in response to concerns that growers have expressed to their leadership and to the bill's sponsors. In addition, we understand that proposals are being considered in the Senate that would make some form of price protection available to tobacco growers through the purchase of insurance contracts with private carriers; we think that this is a promising idea that bears further exploration. We hope, however, that quota holders and growers are not misled into believing that they have a realistic chance of being offered a “buyout” that, despite sizeable payments for the sale of their assets, would re-establish a production control and price support system through a “licensing” scheme or some other variation on a post-buyout production control program.

#### II(C) A Politically Realistic Overall Package

Because H.R. 140 combines a genuine quota buyout, a fair and equitable user fee and, as discussed below, an effective, meaningful FDA regulatory package, we believe that it represents an excellent, realistic chance for successful resolution of the entire package of issues. In contrast, many of the other proposals that have been introduced are also well-intentioned and hope to provide financial security for those who would receive payments. But none of these proposals will do anyone any good unless they are passed by Congress. And there are a number of critically important reasons why we are convinced that these other proposals stand no chance of enactment:

**Too Expensive.** As we indicated above, the buyout costs contained in H.R. 140—which we estimate will amount to \$15–16 billion—are already at the upper limit of what our company can realistically support, consistent with our obligations to our other stakeholders. Proposals that seek an even richer package are simply going too far; they are also out of step with proposals that are gathering momentum in the Senate, which would base quota payments on 2002, rather than 1998, quota levels. H.R. 140's formula represents the middle ground between these two approaches.

**No Realistic Funding Source.** With the Federal budget deficit showing dramatic increases, we simply don't believe that Congress is going to give tobacco growers a \$15–16 billion buyout unless realistic funding is identified, and the funding does not come out of existing revenue streams. Other plans either identify no new funding source at all, or include tax increases, or assessments that no manufacturer supports, and are therefore political non-starters. These approaches are tantamount to conceding that no buyout will be enacted.

**WTO Violation Would Take Money Out of Other Farmers' Pockets.** Because competing proposals would create new production and price control systems to replace the existing tobacco program, they will likely be seen as a subsidy for purposes of our nation's obligations to the World Trade Organization. The amount of the subsidy—perhaps equivalent to the \$15–16 billion cost of the buyout—would be counted against our permissible “caps” under WTO rules—caps that are already under strain because of the recently-enacted farm bill. Because that bill requires the Secretary of Agriculture to reduce commodity benefits to all farmers if the caps are violated, payments to farmers of other crops would need to be reduced in order to accommodate these subsidies. We do not believe that Congress will have an interest in doing this.

**Buyout Payments Would Need to be Limited so Tobacco Farmers are Not Treated Better than Others.** Another provision of the farm bill puts an annual ceiling on direct subsidies to farmers of \$40,000. Because the other buyout plans are in reality subsidy payments, we believe that some will undoubtedly demand that payments under these other plans be subject to the same ceiling. We doubt that there is a national mood to treat tobacco farmers more favorably than growers of wheat, corn, peanuts, cotton or other crops. Because the McIntyre/Davis plan actually “buys out”



the tobacco program without establishing a new one, it will not be seen as a subsidy and will not be open to the argument that payment ceilings should apply.

No FDA Regulation. Experience has shown that only a minority in Congress are active advocates of a tobacco quota buyout—even one that is not too expensive, has a realistic funding source, does not violate the WTO and does not treat tobacco farmers more generously than growers of other crops. However, there is a large constituency in both the House and the Senate—including many members from States where no tobacco is grown—for the enactment of FDA regulation of tobacco products. We respectfully submit that it is only by combining the votes of those members who are advocates of the buyout, on the one hand, with those who seek FDA regulation, on the other, that a congressional majority can be obtained.

Of all the bills that are before this committee, only H.R. 140 combines an acceptable cost, a realistic user fee, a true “buyout” of today’s tobacco program that arguably will not be seen as a subsidy, and FDA regulation into a balanced and comprehensive plan that has the potential to actually be enacted by Congress. On every key issue, this is the bill that occupies the middle ground of the debate: (i) its \$15–16 billion price tag falls right in between the \$11–12 billion being discussed in the Senate and the \$19 billion contemplated by the least realistic House proposal; (ii) its post-buyout geographical restrictions on growing tobacco—which could be augmented by a price protection mechanism based on private insurance—is a compromise between the view that there should be no limitations on the free market, and proposals that would create a new “licensing” scheme that would effectively resurrect all the problems with today’s quota system and (iii) it contains comprehensive, effective FDA regulation of tobacco products that is not so radical that it would result in Prohibition or other serious unintended consequences.

We respectfully urge all those who truly want a quota buyout to occur to consider the only realistic path forward, and to coalesce around the McIntyre/Davis plan.

#### II(D) Reduced-Risk and Reduced-Exposure Products

Just as Philip Morris USA is committed to developing and marketing products that may be less harmful to smokers than today’s conventional cigarettes, we believe that tobacco farmers should be supportive of an evolving marketplace that would result in less tobacco-related disease. However, the government and the public health community should play an integral role in this process. We are particularly mindful of the critical need for manufacturers to work with the public health community to emphasize the fact that all smoking is dangerous, and that the best option from a health perspective is to quit or not to start in the first place.

For these reasons, we are convinced that the authority Congress grants to FDA in this area is of critical importance. H.R. 140 makes an excellent start in this area, but in our opinion would benefit from a few changes so as to better encourage the development and introduction of products that may truly reduce harm, and to better reflect the principles articulated by the recent report (Clearing the Smoke) of the Institute of Medicine (IOM) on reducing the harm caused by tobacco, which was commissioned by FDA itself. We hope that everyone can agree that the agency should not inadvertently be directed to actually inhibit the development of these products, and in the process to deny millions of consumers a genuine opportunity to reduce their chance of contracting tobacco-related disease.

#### II(E) Performance Standards

We support a grant of authority, such as that contained in section 907 of H.R. 140, to FDA to reduce harm by imposing mandatory design changes on tobacco products, even including changes that consumers might not like. By the same token, we think that tobacco growers support our view that these design changes should not make tobacco products unpalatable for adult consumers; clearly, to the extent that smokers reject an FDA-mandated cigarette and seek illicit or counterfeit products, they will be gravitating away from products that utilize American tobacco. This unintended negative consequence has actually arisen: The recent dramatic increase in state excise taxes has generated a growing demand for foreign-made counterfeits of American cigarette brands, which likely contain no domestic tobacco. We believe that this trend would intensify if legitimate U.S.-made products were, in addition to being more expensive, unable to meet adult consumers’ taste expectations. No one would benefit from performance standards so radical that they further increase the demand for counterfeit or other illicit products.

We believe that FDA should have the authority to ensure that ingredients added to tobacco products do not increase their inherent health risk or addictiveness; because added ingredients are under the manufacturers’ control, this authority should, in our view, include the power to prohibit any added ingredient shown to increase health risks even if the ban would impact the product’s taste. Apart from added ingredients, we also support authority for FDA to impose changes to the other design or inherent characteristics of a tobacco product—including the inherent properties

of tobacco leaf itself—that it believes will protect public health, so long as the changes are technically feasible and would not negatively impact adult consumers’ enjoyment of the product in a significant way. There is no public consensus for FDA actions that force radical changes on the design or inherent characteristics of today’s tobacco products that adult smokers may not be prepared to accept. We believe that instead, FDA should use its enormous persuasive powers and regulatory tools to encourage consumers to quit, or to switch to products whose design and composition the agency favors from a public health perspective.

#### II(F) National Uniformity

We support the principle embodied in section 913 that State and local authority should be preserved for such issues as taxation and access restrictions designed to prevent minors from purchasing tobacco products. We also support the portions of that section providing that on key issues relating to the product, such as performance standards and good manufacturing practices, there should be uniform, nationwide standards that apply equally to all tobacco products sold in the United States. Avoiding the chaos that could result from 50 potentially conflicting State product standards will also benefit American tobacco growers, who have already seen enormous costs imposed on the domestic cigarette industry, and would only stand to lose if the regulatory regime for manufacturers becomes impossible to deal with from a logistical standpoint.

### III. OTHER PROVISIONS OF PARTICULAR INTEREST TO GROWERS

Next we highlight four clauses that have been consistently raised in our consultations with tobacco growers: the payments that quota holders and active growers will receive in the buyout, FDA being kept “off the farm”, fair treatment of tobacco exports, and the domestic leaf-content disclosure requirement.

#### III(A) PAYMENTS TO QUOTA HOLDERS AND ACTIVE GROWERS

H.R. 140 requires the Commodity Credit Corporation (CCC) to make aggregate payments to quota holders and active growers in excess of \$15 billion over a five-year period, using a formula that has gained tremendous popularity in tobacco-growing communities: \$8 per pound for quota holders, and \$4 per pound for active producers; for those who happen to be both, these figures are added together for a total of \$12 per pound. Moreover, the quota-based payments are calculated with reference to the 1998 marketing year; this means that, when compared to existing levels of quota, the real value of these payments is \$12.38 per pound for Flue-cured and \$17.66 per pound for Burley—and these figures are just for the quota payments; holders that are also active growers would receive these amounts in addition to the \$4 per pound the bill provides to active producers.

Philip Morris USA. has made it clear that, if the tobacco growing community supports a quota buyout, the company believes that quota holders should receive fair compensation for the value of their quota. For decades, owning quota has bestowed an “exclusive right to grow” asset, which can be bought or sold, and therefore has financial value. As such, it is reasonable that quota holders be fairly compensated for the relinquishment of their quota rights. H.R. 140 would also eliminate the price support provisions of the current Federal tobacco program. We favor fair compensation to active growers in exchange for loss of these protections, which have provided some degree of security to farmers even as they have increasingly placed them at a competitive disadvantage with their fellow growers around the world.

Philip Morris USA. can support the levels of compensation provided to quota holders and active growers by H.R. 140, notwithstanding our belief that the payments exceed the current fair market value of the assets for which they are being exchanged. We deeply value the strong relationships that we have built with the grower community over decades of mutual hard work and cooperation, and are proud to be the largest purchaser and user of U.S.-grown tobacco. Our nation’s farmers produce high-quality tobacco, and—because our consumers demand the quality associated with American-grown tobacco—we want American growers to have the means and the incentive to continue to do so for as long as we continue to manufacture tobacco products; this is why we had the confidence to make the enormous long-term purchase commitments described earlier in this statement. It’s also why our support of these payments is subject to the bill’s maintenance of an economically reasonable funding mechanism, and a sensible post-buyout marketplace structure, also as described above.

Finally, we believe that growers can take comfort from the way that the sponsors have structured the payment mechanism for their benefit and protection. The CCC will make the payments under the bill irrespective of the amount of user fees collected during the payment period, and irrespective of the financial soundness of any

of the manufacturers. The government will be paid back according to the schedule in the bill, but quota holders and growers will not be dependent upon the manufacturers for the assurance of timely payments.

#### III(B) FDA Will Remain "Off the Farm"

Opponents of this bill have inaccurately asserted that H.R. 140 will result in direct FDA regulation of growers. The legislation specifically provides that the regulatory provisions

shall not apply to...the producers of tobacco leaf, including tobacco growers, tobacco warehouses, and tobacco grower cooperatives, nor shall any employee of the Food and Drug Administration have any authority whatsoever to enter onto a farm owned by a producer of tobacco leaf without the written consent of such producer.

There is simply no basis to say, for example, that the legislation would impose new recordkeeping or inspection obligations on growers. Moreover, farmers are facing new requirements today relating to such things as product quality and curing processes, imposed not by the government, but by individual purchasers. Growers do, and will continue to need to, respond to the demands of the marketplace; nothing about H.R. 140 would change this fundamental fact.

#### III(C) Fair Treatment of Tobacco Exports

The bill's sponsors have been careful to ensure that, in connection with the anticipated elimination of quota and price supports, nothing is done that would inhibit American growers' ability to compete with foreign producers. Although other FDA bills that have been introduced in this Congress would apply U.S. domestic regulatory requirements to exported tobacco products, H.R. 140 specifically ensures that exports are required to comply only with the regulatory requirements of the country to which they are being shipped. Philip Morris USA strongly supports this approach; the only effect imposing FDA standards on exports would be to curtail them, hurting American tobacco growers, and H.R. 140 wisely takes care of this potential problem.

#### III(D) Domestic Leaf Content Disclosure

The bill also requires all tobacco products sold in this country to be labeled so as to clearly disclose the percentages of domestic and foreign tobacco that they utilize. Philip Morris USA is proud, as American tobacco growers' largest customer, to support this provision, which we believe will encourage all manufacturers to purchase as much high-quality domestic leaf as they possibly can.

### IV THE "NUTS AND BOLTS" OF FDA REGULATION; OUR SUPPORT OF A COMPREHENSIVE REGIME AND SOME TECHNICAL SUGGESTIONS FOR IMPROVING THE BILL

Consistent with our belief that the time has come for meaningful, effective oversight of tobacco products by FDA, our support of the overall package of proposals contained in the McIntyre/Davis bill, and our conviction that a tobacco quota buyout and FDA authority are inextricably linked from a political standpoint, we also support, and have offered respectful suggestions regarding the additional regulatory provisions of H.R. 140. These provisions are described in detail in the statement we submitted to the Specialty Crops subcommittee last September, and to the Government Reform Committee this past June. We'd be pleased to provide copies of this material to the full committee upon its request.

### V. CONCLUSION

We believe that the Congress has the opportunity to forge a new national tobacco policy, that—while providing a fair and equitable buyout for quota holders and active tobacco farmers—will impose meaningful, effective new regulations on tobacco products, as it continues to permit adults who wish to use them to do so. H.R. 140 could make a substantial contribution to making progress towards that goal. We hope this statement provides you with helpful input. Thank you for this opportunity to present our views, and thank you for your consideration.

### STATEMENT OF ASHLEY L. TAYLOR, JR.

Good morning Mr. Chairman and members of the committee. I serve as legal counsel to the Council of Independent Tobacco Manufacturers of America, a national trade association better known as (CITMA). Thank you for allowing me the opportunity to testify before you today.

#### CITMA

CITMA consists of more than a dozen small tobacco manufacturers that have elected not to become signatories to the Master Settlement Agreement between the

Big Four tobacco manufacturers and the state Attorneys General. As non-signatories to the MSA, CITMA members are required under state law enacted as part of the MSA to make certain escrow deposits based upon the number of sticks sold in the MSA states.

To become a CITMA member, a tobacco manufacturer must not only be duly authorized to conduct business in the United States, but must also be in compliance with the state escrow obligations imposed pursuant to the MSA as well as other applicable state and Federal laws governing tobacco manufacturers and the manufacturing process, including, but not limited to Federal and state licensing and bonding requirements, Center for Disease Control ingredients reporting mandates, Federal Trade Commission health label warning, etcetera.

CITMA was formed for a single purpose, which is to advocate for consistent treatment of all tobacco manufacturers. CITMA was not formed for the purpose of obtaining any competitive advantage through the legislative process, but rather to ensure that when other manufacturers sought to do so, a contrary voice would be present articulating the inequity of their efforts. Unfortunately, certain forces have sought to enact policies designed to place CITMA members at a competitive disadvantage in the marketplace. Let me again re-emphasize that CITMA is not opposed to legislation regulating the tobacco industry—provided such measures are applied equally and not targeted solely upon our members.

Because CITMA members are, in many cases, former tobacco farmers and long-standing members of the local business community, they are sensitive to the plight of their local communities and the small tobacco growers from whom they purchase their leaf. Like the small tobacco farmer, CITMA members must battle the same forces facing all small businesses in this uncertain and constantly changing tobacco industry. CITMA members' experiences as small business owners are often reflected in their business practices.

For example, CITMA members, more often than not, have located their manufacturing facilities in economically depressed areas, which are the same tobacco-producing communities experiencing the loss of tobacco farms. Their factories employ members of the local communities and are, in many cases, the best paying jobs in the local community. CITMA members have facilities all over the country, including factories in Arizona, Florida, New York, North Carolina, Tennessee, Oregon, Virginia, Oklahoma, South Carolina and Kentucky, communities where such high-paying manufacturing jobs are important. Another member of CITMA has a facility in Miami, Florida, with a workforce that is more than ninety-five percent (95 percent) Hispanic.

#### TOBACCO QUOTA BUYOUT

With regard to the formulation of tobacco quota buyout legislation, CITMA supports your efforts to provide assistance to tobacco-dependent communities, particularly those comprised of small family farms. CITMA further supports legislation that seeks to lend such assistance by making payments to tobacco quota holders as compensation for the loss of the tobacco quota asset.

Turning to certain specific measures that must be addressed in any legislation, CITMA makes the following observations. First, CITMA supports the concept that the fund from which quota holders would be paid should be created, in part, by assessments on manufacturers and importers who sell tobacco products in domestic commerce in the United States, with each class of tobacco product assigned a base payment. However, CITMA strongly urges this committee to consider a payment schedule based upon a company's volume of domestic sales rather than any proportional market share formula. The latter approach is fraught with difficulties, which would make such a collection system less effective than a straight volume based calculation. The system should be designed to make monetary collection workable over the life of the program. This can be accomplished by tying the system to reports that manufacturers are currently required to make to the Federal agencies and not creating a new reporting system, which will needlessly add another level of bureaucracy.

Any form of buyout should be funded through the Federal excise tax. This is the only way to ensure collection of the money from importers, and in any case, any fee paid direct by manufacturers would simply be passed through to the consumer. This makes the scheme equitable and fair to all manufacturers and suggests the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) should have regulatory control over tobacco products as it does for liquor.

Regarding the administrative costs associated with administering a program, CITMA believes the most cost-effective method would be to fund it through the private sector, as demonstrated by the many private payment programs that have con-

tracted with states to provide similar services. One of the current buyout proposals, HR 245, includes a provision whereby each tobacco producer will be assessed a fee of no more than one-cent for each pound of tobacco produced. While a one-cent per pound assessment may not sound onerous, it could be a significant expense for small companies, and CITMA opposes it.

In addition, CITMA does not want to connect payment for the buyout to payments made under the Master Settlement Agreement. The various designations such as Original Participating Manufacturer, Non-Participating Manufacturer and Subsequent Participating Manufacturer, which are relevant for some purposes, should be ignored relative to this proposal. There should be no discriminatory fees based upon Master Settlement Agreement participation or lack thereof and CITMA strongly objects to the buy-out program becoming a mechanism through which certain companies seek to obtain an off-set or "credit" for their MSA payments to the states.

Lastly, CITMA is opposed to the placement of tobacco products under the jurisdiction of the Federal Drug Administration. As we see the two issues, there is no need to connect the two issues, particularly given the tobacco industry's numerous positions on expanding FDA's authority. If however the FDA regulation is raised, CITMA asks that the regulatory field remain equal and small manufacturers be given an adequate time to change product aspects based upon a government standard and not a standard advocated by any company or group of companies.

#### MASTER SETTLEMENT AGREEMENT

The fact that CITMA members elected not to join the MSA should not be misconstrued to suggest that our members are all new to the tobacco business. As you all know, the tobacco market is divided into essentially four tiers and most assume that CITMA members are confined to tiers three and four, the "discount cigarette market". However, while the third and fourth tier of the tobacco industry has grown considerably in the past three years due to the consumers' desire for a quality product at a reasonable price, the tobacco products sold by our members are not limited to the so-called discount cigarette market. CITMA members sell a variety of tobacco products including smokeless tobacco, roll-your-own or make-your-own product and of course cigarettes and in all tiers of the tobacco market. One of our founding members North Atlantic Trading Company, Inc. owns Beechnut brand, a chewing tobacco product sold for over one-hundred and fifty years.

Unlike Big Tobacco, CITMA member companies have bucked the industry trend of depending more and more on foreign tobacco leaf for its products. CITMA members like using American tobacco in their products. The majority of our members use more than 90 percent American Flue and Burley tobacco in their products. At a time when Big Tobacco is becoming less supportive of the American farmer, CITMA members are standing by the small American tobacco farmer.

In sum, CITMA members believe in the free market system and ask for no special favors or dispensation. Instead, we only ask that rules apply with equal force to all tobacco manufacturers, small and large alike.

Thank you again, Mr. Chairman and members of the committee, for allowing us to share our concerns with you all this morning. With that, I conclude my remarks and I would be pleased to answer any questions.

#### STATEMENT OF STEVE WATSON

Mr. Chairman, my name is Steve Watson. I am Vice President of External Affairs for Lorillard Tobacco Company, the nation's fourth-largest tobacco company. Lorillard has its headquarters and major operations in Greensboro, North Carolina. Lorillard's biggest brand is Newport, which is the second-largest brand of cigarettes sold in the United States. Lorillard only sells cigarettes in the United States, and our company has a long history of supporting U.S. tobacco growers.

I welcome the opportunity to discuss the issue of a tobacco grower buyout with this committee and to share some of our concerns. The buyout issue is extremely complex, and there are a number of issues that must be explored in depth before determining whether and how to pursue such a course.

Lorillard supports a buyout of the tobacco quota program; however, we see several major issues that must be resolved prior to the passage of any buyout bill. First, any buyout legislation must preserve some type of Federal supply management program. In our view, any buyout that fails to maintain such a program would devastate family tobacco farms and hasten the movement of tobacco production overseas. Second, we oppose any buyout paid for with federally-imposed user fees, excise taxes, or assessments. In addition, the bills proposed thus far are funded at an exor-

bitant price that will make them quite difficult to fund and will almost certainly be a lightning rod for potential opposition from non-tobacco-farm state representatives. Third, there are apparent concerns at the Department of Agriculture that the proposed payments may trigger “amber box” trade problems that could affect significant other segments of the U.S. agricultural system. Finally, we oppose tying a buyout to FDA regulation. In addition to needlessly complicating an already complex issue, FDA regulation will threaten the viability of Lorillard and those farmers who want to continue growing tobacco.

Lorillard believes strongly that any buyout must provide farmers who want to continue growing tobacco with the opportunity to do so. Lorillard believes that the only way to protect the interests of these farmers is to guarantee the continued existence of a Federal supply management program. The bills introduced by Congressman Coble, Congressman Goode, and Congressman Fletcher all satisfy this objective by transferring growing rights to active farmers—eliminating the quota system while maintaining a supply management program that will promote stability for both growers and manufacturers.

Second, the proponents of a tobacco quota buyout have unfairly raised the expectations of farmer groups by indicating that a buyout can be accomplished at eight dollars a pound for quota owners, and four dollars a pound for growers, at 1998 crop levels—which would cost approximately \$19 billion. This is unrealistic given that today, quota is half of what it was in 1998. Additionally, \$19 billion in new taxes will have disastrous effect on our business and ultimately farmers.

The \$8/\$4 buyout formula would result in payouts that are many times those given to other commodities in the farm bill passed just last year. According to the Congressional Budget Office, new spending in the farm bill for all commodities will total \$37.6 billion over the next 5 years. A \$19 billion tobacco buyout, paying 43 percent of what all commodities combined received under the farm bill, seems unrealistic at best.

The proposed bills also suggest funding either through additional excise taxes or new user fees. We are opposed to any increase in the already substantial excise taxes to which cigarettes are subjected. The Federal Government collected over \$7.5 billion in excise taxes on cigarettes in 2002—an increase of almost \$2 billion since 1998. In addition, cigarettes were subject to over \$8.5 billion in state excise taxes in 2002—an increase of over a billion since 1998. Indeed, 34 states have increased taxes on cigarettes in the last 15 months.

Let me be clear: in today’s market, Lorillard’s ability to pass through these increased costs is doubtful. The “user fees” being suggested will cost high-paying manufacturing jobs in Greensboro—jobs that are unlikely to be replaced. And our lost volume would be replaced by cigarettes containing virtually no domestically-grown tobacco.

Third, payments to farmers as part of the buyout may qualify as “amber box” payments under WTO provisions, which would have far-reaching effects on other U.S. agricultural programs. These provisions qualify certain agricultural support programs as “trade distorting,” and therefore limit the total support each nation may give its farmers. We understand that the U.S. Trade Representative and the Department of Agriculture recently reviewed the Phase II payments made to tobacco growers over the last several years and provisionally determined that those payments may be “amber box.” If this is found to be the case with buyout payments, these payments would count against the amber-box total, and would have an impact not only tobacco payments, but payments to all commodities. Even if the USTR and USDA conclude that these payments are not amber-box payments, other nations may not agree. This could lead to a trade action in a forum in which the United States historically has not been particularly successful.

If buyout payments eventually were found to fall into the amber box category, the amber-box caps would be exceeded, triggering across-the-board cuts in support programs for all commodities—including corn, wheat, soy, and more. Clearly, this committee must carefully explore this possibility.

Finally, tobacco growers are being told that politically a buyout cannot be accomplished without linking it to legislation authorizing the Federal Food and Drug Administration to regulate the tobacco industry. We wholeheartedly disagree with the premise that a buyout must be linked to FDA regulation—in fact, trying to link buyout to FDA needlessly complicates an already complex issue and could have the effect of indefinitely delaying any buyout. Additionally, we believe that growers are not being fully informed about the risks of FDA legislation as it has been introduced in bills in the House and the Senate.

Tobacco growers have been assured by proponents of FDA regulation that such regulation will not affect tobacco on the farm. This is just not the case.

Every FDA regulatory bill currently pending in Congress would permit the FDA to regulate the “components” of tobacco. “Components” are not simply limited to nicotine and tar; this would extend to any substance occurring in tobacco leaf, including those that occur naturally, and those that come from the soil in which tobacco is grown. The only standard that the FDA would be required to meet in dramatically altering any component of tobacco is whether the change is “appropriate for the public health.” We are not being alarmist; Matt Myers, the president of the Campaign for Tobacco-Free Kids, stated last year that, “[c]hemical additives are not likely to be the main cause of tobacco’s health problems . . . The natural components are the major causes.”

None of the bills require the FDA to take into consideration the cost or technological feasibility of reducing any component that it chooses to regulate. Thus, regulators may choose to limit components that can only be adjusted by changing growing practices, changing the soil, changing the curing process, or even genetically modifying tobacco seed. If that is the case, then the only practical way to abide by FDA regulations would be to make changes at the farm level whether the FDA is actually “on the farm” or not.

If the FDA is not “permitted” on the farms, that burden will naturally shift to the manufacturers, who will have to satisfy themselves and the FDA regulators that the tobacco they buy meets all the standards set by the FDA. Lorillard objects to being forced to play this role on the farm. We object to granting the FDA unlimited new authority to reengineer tobacco plants with almost no regard to what such changes might do to leaf and taste quality. These kinds of changes will make the marketplace for U.S. tobacco leaf less competitive or eliminate leaf exports altogether.

Clearly, as the record-keeping and testing requirements become more rigorous and complex, it will be increasingly difficult for manufacturers to deal with numerous farms and sellers. It is axiomatic that dealing with fewer farms will make the process simpler, which would encourage consolidation of farms and increase contract buying. There is no question that this will have an effect on family farms.

FDA regulation as proposed by these bills would also adversely impact the competitiveness of the U.S. tobacco industry, and make U.S. tobacco less competitive on the world market. While some have portrayed the pending bills as merely codifying the marketing restrictions in the Master Settlement Agreement, several provisions—such as a ban on self-service displays, new restrictions on retail advertising, corporate sponsorship bans, and others—go well beyond the MSA, and favor the largest manufacturers. FDA regulation will also drive up the cost of manufacturing cigarettes in the United States, which is likely to have an adverse affect on exports and make U.S. tobacco products less competitive on the world market. This could put additional downward pressure on U.S. production. In short, we believe farmers are not getting the full story on FDA regulation.

Lastly, as noted before, proponents of a tobacco buyout have been encouraging farmers that a buyout of \$8/\$4 should be based not on current production, but production from the 1998 crop year. We would consider supporting such a proposal if we could all go back to 1998 this would require reducing Federal excise taxes by \$2 billion a year, reducing state excise taxes by almost a billion dollars a year, rolling back New York’s increase in excise taxes to sixty-four cents a pack from the current \$3.00 a pack, and reversing indoor smoking bans that have been instituted in California, New York, Florida, Connecticut, and other locales. We would also have to take back the \$7 billion in subsidies that already have been granted to farmers since 1998, including more than \$5 billion provided by tobacco manufacturers. More than 7,000 tobacco manufacturing jobs have been lost since 1998, yet no one is talking about special subsidies for them, or returning them to their status in 1998. Going back to 1998 also means eliminating the unfair competition that manufacturers have been subject to from non-participating tobacco manufacturers, third-tier cigarette manufacturers, cigarette importers, and cigarette counterfeiters.

We appreciate the problems that tobacco farmers face in this new environment. But many of the bills pending in Congress fail to appreciate that all of us are living in that new environment. If legislation is passed that puts new and undue burdens on manufacturers, our problems will fall upon farmers, farm equipment suppliers, warehousemen, leaf dealers, and our employees as well.

There are alternatives to a legislatively mandated buyout. Implementing the Phase II trust fund did not require Congress to raise taxes, or require Congress to expand the regulatory power of the Federal Government. We believe that a buyout of the program could be accomplished without new excise taxes and without FDA legislation by bringing all the interested parties to the table to negotiate a buyout that adequately compensates quota holders and farmers. We would welcome the opportunity to discuss this proposal in more detail with members of the committee.

Thank you again for allowing me to share some of the views of Lorillard Tobacco Company in this important policy debate. I would be happy to answer any questions you may have.

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#### STATEMENT OF MATTHEW MYERS

Good morning Mr. Chairman and members of the committee. My name is Matthew Myers. I am the President of the National Center for Tobacco-Free Kids, a national organization created to protect children from tobacco by raising awareness that tobacco use is a pediatric disease, by changing public policies and by actively countering the special interest influence of the tobacco industry.

Mr. Chairman, I want to thank you for inviting the National Center to testify on the question of a tobacco quota buyout and surrounding issues. I was privileged to serve as the Co-Chair of the President's Commission on Improving Economic Opportunity in Communities Dependent on Tobacco Production While Protecting Public Health. Two critical factors led to the formation of the Commission. The first factor was the unprecedented economic hardship that faced, and continues to face, tobacco farmers and their communities. The second factor was the recognition that more needs to be done to reduce the harms to public health that are caused by use of tobacco products.

I want to quote from the opening page of the Commission's Final Report that described the situation at the time of the report in May 2001. Sadly, more than two years later, nothing has changed.

Tobacco farmers and their communities are in the midst of an unprecedented economic crisis. At the same time, public concern over the health hazards of using tobacco products is at an all-time high. Resolving these two crises will require new, visionary tobacco policy in this country. Can we help tobacco farmers, strengthen their communities and at the same time protect the public from the health hazards of smoking? The answer of this Commission is a definite "yes."

Mr. Chairman, it may surprise some that representatives of the public health community are concerned about the plight of tobacco farmers and their communities, but we are. Tobacco farmers are not the problem. We understand that they are the mainstay of numerous rural communities. Some are the great or great-great grandchildren of farmers who raised a crop that goes back to the founding of this country. They are hardworking, and tobacco is their livelihood. The crisis facing tobacco farmers and their communities requires decisive Federal action to reduce economic dependence on tobacco, to assist tobacco farmers in diversifying farming operations and local economies, and to create a new system that allows farmers who wish to continue to grow tobacco to compete fairly. At the same time, the crisis facing our nation's public health requires decisive Federal action to regulate manufactured tobacco products.

We support good buyout legislation being married to good legislation providing the Food and Drug Administration (FDA) with effective authority over manufactured tobacco products. We oppose any effort to move buyout legislation, including legislation that we otherwise support, absent an agreement that prevents it from serving as a vehicle for weak FDA legislation.

Our position on these two complex, intertwined issues has a long history and a complicated context. The Commission on which I served found that huge drops in demand for U.S. tobacco here and abroad are squeezing tobacco farmers. The cause is less the gradual drop in tobacco use in the United States because of public health concerns than the increasing use of foreign-grown tobacco by U.S. manufacturers in the cigarettes they make here and overseas, the increasing costs facing tobacco growers, and the payments many active growers have to make to quota holders for the right to grow tobacco.

While the farmers have suffered, the tobacco manufacturers have continued to make a substantial profit on the sale of their products. The tobacco farmer's portion of the retail tobacco dollar has fallen from seven cents in 1980 to two cents in 1998. As their income drops, many tobacco farmers are simply going out of business. More than half of the tobacco farms existing 25 years ago are gone. The future for tens of thousands of tobacco farmers and their communities across more than 20 states is bleak.

At the same time, many people in this country suffer every day and ultimately die from tobacco-caused diseases. Smoking is the leading preventable cause of death in the United States, killing more than 400,000 Americans every year. Tobacco-caused diseases are also a major factor in the skyrocketing costs of health care, especially in the tobacco-growing states themselves where the risk of tobacco-caused diseases and deaths is higher than the national average.



As surprising as it may seem, we believe that the health and safety of the American people and that of tobacco farming communities are linked. A stable tobacco-growing industry that operates through price and quality controls and under health and safety standards is in the best economic and health interests of this country. The current tobacco program needs to be significantly restructured, but not eliminated. Its elimination would in the opinion of the farmers and economists who testified before the President's Commission make it impossible for small family farms that are the backbone of so many communities to survive, and with the demise of these farms would come the economic strangulation of the communities in which they live.

Without meaningful price and production controls and continued restrictions on where tobacco can be grown, the price of tobacco would drop over the long run and thousands of family farms would be replaced by a few very large farms. Jobs, communities and a way of life would be lost; poverty in current tobacco growing regions would increase; and with an increase in poverty comes a decrease in health status. The elimination rather than the restructuring of the tobacco program could also impact quality standards, such as keeping U.S.-grown tobacco free of unapproved pesticides. It would also violate a cardinal principle adopted by the Commission: any changes in the tobacco program should focus on long-term solutions to the problems facing tobacco farmers, not on short-term quick fixes.

As a result of these findings, we have joined with tobacco farmers in urging Congress to:

- provide tobacco growers and quota holders with fair and equitable compensation for their quota funded through a user fee on the tobacco companies or other source of new revenue
- replace the current program with a new system of licensing that controls supply, maintains price, protects family farmers and gives farmers and their communities both short term and long term stability
- provide economic development assistance to tobacco communities

Tobacco quotas should be replaced with a new system of productions permits. Only active tobacco growers should hold these permits so that they will not become marketable assets that add to the production costs of tobacco. Quota is part of the retirement arrangements of some quota owners. It is the inheritance of others. It is only fair that these individuals be adequately compensated.

We also support, as part of the buyout, providing to farmers who decide to use the buyout as an opportunity to stop growing tobacco a payment larger than the payment made to farmers who elect to continue to grow tobacco. While we support a payment to both categories of growers, many of these farmers have poured all of their available funds into their farms and have not been able to save either for retirement or to make a transition into growing other crops or another profession. To enable those who wish either to retire or to make a transition into earning their income without growing tobacco, they should receive enough of a buyout to enable them to do so.

The testimony before the Commission indicated that the buyout and new production permit system will lead to a more stable, economically viable situation for those farmers who remain and will be able to operate free of Federal financial support. We were informed that many farmers would stop growing tobacco, resulting in fewer people growing tobacco, and that the elimination of quotas will lower the cost of production. The proposed changes will cut the financial cord between the Federal Government and tobacco growing.

Tobacco growing communities are already in transition. It is a transition caused by the dramatic drop in recent years in tobacco quota. The issue is not whether tobacco communities are facing a transition, it is what help they will receive during this transition. Any buyout should take into account the need to help farmers and communities make an orderly transition. Economic development assistance is critical for both individual farmers and tobacco growing communities. It is also important that small family farmers receive their pay out more quickly—we recommend over one year—if they are to have the funds needed either to retire or make a transition.

Finally, at a time of fierce competition for Federal dollars, no one seriously thinks that the funds for a tobacco buyout can come from the general revenue where every dollar for a tobacco buyout must compete with other agricultural needs and other pressing national priorities. The Commission recognized this problem and recommended that the buyout be funded through an increase in the tax on manufactured tobacco products. Reflecting our desire to be flexible, those of us in the public health community who support the farmers' cause have indicated that we would support a proposal that was financed through a user fee.

The Commission proposal could be fully funded and paid out over five years from a 17-cent excise tax or user fee based on a 1998 quota year according to economists from various academic institutions and the Department of Agriculture. We would hope that any program that is adopted would be funded at this level and would not be based on a later quota year when tobacco quotas had already dropped because of the buying patterns of the major cigarette manufacturers. Many farmers went into debt based on false expectations that were generated by pre-1998 tobacco manufacturer buying decisions and protections that they thought the Federal program offered them. The additional user fee needed to pay out farmers based on 1998 quota is only a few pennies per pack—too small an amount to impact consumption—but the impact of a far smaller payment to farmers and their communities would be significant.

The farm leaders and the public health leaders on the Commission also reached a consensus on a number of public health measures. Most prominently, this included congressional authorization for the Food and Drug Administration (FDA) to establish fair and effective regulatory mechanisms for the manufacture, sale, marketing, distribution and labeling of manufactured tobacco products, comparable to regulations established for other products that the FDA regulates. We agreed that the regulations should aim to protect public health. In addition, the U.S. Department of Agriculture (USDA) and the Environmental Protection Agency (EPA) should retain authority to set safety standards governing tobacco farms and tobacco growing. Our proposal will not put FDA on the farm. In the long run, both the framers and the public health community agreed that effective FDA regulation of tobacco products benefits everyone.

Granting FDA authority over manufactured tobacco products will save lives and protect the public health. It also will directly benefit U.S. tobacco farmers, who are better able and better equipped than tobacco growers in other countries to respond positively to both domestic and international actions designed to address health concerns. In addition, FDA rules provide tobacco farmers an opportunity to be heard as part of the regulatory process. This will prevent farmers from having to change what they are doing on short notice when manufacturers demand new production techniques or leaf characteristics based on corporate decisions with no public or farmer input.

The Commission included leaders from the tobacco growing community, public health community and economic development experts. Its recommendations are the continuation of a remarkable dialogue that began when approximately 80 public health and agricultural organizations, including major tobacco grower associations, first gathered in the mid-1980's for face-to-face discussions about the plight of tobacco farming communities and the need to protect public health.

The consensus reflected by the Commission report has been widely accepted. It has been endorsed by the Burley Tobacco Growers Cooperative Association, the Flue-Cured Tobacco Cooperative Stabilization Corporation, the Kentucky Growers Association, Concerned Friends of Tobacco from Virginia, the North Carolina Growers Association, the National Tobacco Growers Association, the South Carolina Tobacco Growers Association, the Florida Growers Association, the Tobacco Growers Association of Georgia, the Virginia Tobacco Growers Association, the National Farm Union, the American Heart Association, the American Cancer Society, the National Center for Tobacco-Free Kids, Kentucky Action, Tobacco Free Ohio, and many others.

For years members of Congress from tobacco growing states have said to tobacco farmers—if you all could only agree on a single fair proposal, we will move it forward. The endorsement of the principles and plan laid out in the Commission report reflects just such a consensus. We heard not a single voice of opposition to the principles laid out above from any tobacco growers or any organization representing tobacco growers.

Mr. Chairman, there is a strong linkage between all the recommendations adopted by consensus of the farming community and the public health community. All are essential to forming sound public policy that can make a real difference in the economic crisis facing tobacco farmers and in the public health crisis stemming from tobacco use. We have been flexible in evaluating how different proposals accomplish these goals, but remain firm in our commitment to the principles we all agreed upon. These principles will guide our evaluation of any proposals for a tobacco buyout and for FDA regulation of manufactured tobacco products. We have attached the Guiding Principles adopted by the Commission as an Appendix to our testimony.

Mr. Chairman, The National Center for Tobacco-Free Kids has endorsed tobacco quota buyout legislation, introduced by Rep. Fletcher, that would provide growers with compensation and a continuing tobacco program. Last year we endorsed legislation introduced by Senator Hollings that also was consistent with the needs of to-

bacco growers and the principles adopted by the Commission. Other members of Congress, including Senators Edward Kennedy, Tom Harkin, and Richard Durbin, have endorsed the goals of the public health community on buyout legislation in a letter last year to the Flue-Cured Tobacco Cooperative Stabilization Corporation and the Burley Growers Cooperative Association.

Some cigarette manufacturers and some in Congress say that Congressman Fletcher's proposal is unrealistic. We disagree. It is not the public health community, or its allies in Congress, that are standing in the way of a fair buyout supported by growers. Only the tobacco manufacturers have voiced their opposition. If the public health community is standing with tobacco growers, it is hard to understand why so few members of Congress from tobacco growing states have endorsed bills consistent with these principles. If there is a surprise in what has happened since the Commission issued its report more than 2 years ago with broad public health community support, it is that so little has been done by those who traditionally support tobacco growers to address their needs. The choice for this committee and the Congress is between those family farmers and the tobacco manufacturers.

The dialogue between tobacco growers and the public health community has indeed become a partnership to prevent long-term suffering in tobacco-growing communities and to protect the public health. In the two plus years since the report was issued we have done everything we can to demonstrate our support. We continue to support that partnership and the policies it has produced.

However, candor, and the trust built by this partnership, require me to say today, as I have many times before to my tobacco grower friends, that while we are prepared to support legislation that is consistent with the principles laid out by the Commission, we will oppose any legislation or any legislative process which serves as a vehicle or potential vehicle for enactment of weak FDA legislation that in our view does more to protect tobacco manufacturers than the public health.

The public health community would prefer no FDA legislation to weak, ineffective legislation. Ineffective FDA legislation would likely close the door for years to efforts to fashion appropriate FDA regulations and would usher in a new generation of tobacco products for which unproven health claims could mislead consumers worried about their health into switching rather than quitting. We cannot allow that to happen. Over the last two years we have supported a number of proposals in both houses of Congress to grant the FDA jurisdiction over manufactured tobacco products and have opposed several that fell below the minimum standards upon which we have agreed. Last year the leading tobacco grower organizations voiced their support as well for a bill that we also support—the bill introduced in the Senate by Senators Kennedy and DeWine.

Mr. Chairman, there are not many legislative days left this year. It is still possible to reach the kind of agreement that will be necessary to bring together the broad coalition that will be needed to pass legislation consistent with the goals we have set forth, but it will only happen if members of Congress concerned about the buyout and members of Congress who have traditionally urged the enactment of legislation granting FDA authority over manufactured tobacco products come together to attempt to reach agreement on both the substance of legislation and a process to assure each other that any agreement will be reflected in the ultimate legislation. This needs to happen before any legislation moves through either the House or the Senate and before any attempt to link buyout legislation with legislation granting FDA authority over manufactured tobacco products. That is a tall order, but in the absence of an agreement, the regular legislative process will not provide any of the parties involved with sufficient assurances of an acceptable outcome given the traditional disagreements concerning these controversial issues.

We are prepared to work full time to accomplish our mutually agreed upon goals but we want our position to be clear: 1) we support good buyout legislation being married to legislation we support that provides FDA with authority over manufactured tobacco products; 2) we oppose any effort to move grower legislation, including grower legislation that we otherwise support, through the House absent an agreement that prevents it from serving as a vehicle for weak FDA legislation. With very few exceptions the necessary dialogue between members of Congress to make all of this happen has not even begun although we are seven full months into this legislative session. We urge Members of Congress to begin those conversations today.

Mr. Chairman, strong action is urgently required to prevent long-term economic suffering for tobacco farmers and their communities. Unless action is taken, tens of thousands of farmers will struggle to survive and many, including whole communities, will not make it. Equally strong action is needed to protect the public health from the harms caused by tobacco products. Inaction and posturing should not be options. We stand ready to do whatever is necessary to be a good partner in this

undertaking, and to make sure it does not fail because of a lack of effort or sincerity on the part of the public health community.

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#### STATEMENT OF ALFRED MUNZER, M.D.

Good Morning, Mr. Chairman, members of the committee, thank you for the opportunity to appear before you today. I am Dr. Alfred Munzer. I am an American Lung Association volunteer and had the privilege of serving as President of the national organization in 1993–1994. I am also head of Pulmonary Medicine at Washington Adventist Hospital in Takoma Park, Maryland.

The American Lung Association was founded in 1904 to combat the major public health crisis of that day—tuberculosis. For over 40 years we have worked to combat the major public health crisis of the second half of the 20th century and sadly into the 21st.

Tobacco is a killer. Each day in my practice I see the victims and their families, men and women, mothers and fathers with diseases like emphysema, chronic bronchitis, cancer and heart disease. I have been a physician since 1968. With today's technology and pharmaceutical interventions I can help patients in ways I could only imagine as a young intern in Brooklyn. But, then as now, I can't undo the damage that smoking does to the lungs.

The evidence that smoking kills is overwhelming. Over 440,000 Americans die from diseases directly related to cigarette smoking each year. Smoking is responsible for one in five U.S. deaths. About half of all regular cigarette smokers will eventually be killed by their addiction.

The economic costs are astronomical. Smoking-related diseases are conservatively estimated to cost the United States at least \$150 billion each year in direct health care costs (hospital care, physician and other professional care, and medications) and lost productivity. These estimates do not include such smoking-related conditions as burns suffered in smoking-related fires, low birthweight and prematurity related to smoking by pregnant women, or illnesses traceable to secondhand exposure to smoke.

Smoking is directly responsible for 87 percent of lung cancer and causes most emphysema and chronic bronchitis. Smoking is also a major factor in coronary heart disease and stroke, causes malignancies in other parts of the body, including the esophagus, has been associated with other cancers of the gastrointestinal tract, urinary tract, and cervix; and has been linked to a variety of other conditions and disorders, including slowed wound healing, impotence, infertility, peptic ulcer disease, ectopic pregnancy, and bone-density deficits in women.

Smoking in pregnancy accounts for an estimated 20 to 30 percent of low-birthweight babies, up to 14 percent of preterm deliveries, and 10 percent of all infant deaths. One in 10 preterm infants suffer from respiratory distress syndrome. Smoking presents risks to the fetus throughout pregnancy. Studies also have found maternal smoking during pregnancy associated with childhood lags in physical growth. Researchers have found that the most significant impact of prenatal smoking on physical growth influence on birthweight occurs during the third trimester, the last three months of pregnancy.

Smoking by parents has also been associated with a wide range of adverse effects in their children, including exacerbation of asthma, increased frequency of colds and ear infections, and sudden infant death syndrome. Exposure to secondhand smoke increases the severity and frequency of asthma episodes; in the United States, 200,000 to 1 million children with asthma have experienced aggravated symptoms due to secondhand smoke. Exposure to secondhand smoke also causes 150,000 to 300,000 lower respiratory tract infections (pneumonia and bronchitis) annually in children 18 months and younger; these infections result in 7,500 to 15,000 hospitalizations each year. In addition, secondhand smoke exposure causes a buildup of fluid in the middle ear, resulting in 700,000 to 1.6 million physician office visits. Middle ear infections are the most common cause of childhood operations and of childhood hearing loss. A California Environmental Protection Agency study estimated 1,900 to 2,700 sudden infant death syndrome (SIDS) deaths annually are associated with secondhand smoke exposure.

Secondhand smoke also can be lethal to adults. Secondhand smoke is estimated to cause 3,000 lung cancer deaths and 35,000 heart disease deaths each year. The Environmental Protection Agency (EPA) has classified secondhand smoke as a known human (Group A) carcinogen (cause of cancer).

Ninety percent of adults who smoke started by the age of 21, and half of them became regular smokers by their 18th birthday. An estimated 4.5 million adoles-

cents smoke, with 2,000 teens ages 11–17 becoming established smokers each day. One third of these will die from a disease caused by smoking.

Current cigarette smoking among high school students is beginning to decline after increasing throughout the first half of the 1990's. In 2001, 28.5 percent of high school students currently smoke cigarettes, down from 36.4 percent in 1997 and 34.8 percent in 1999. Lifetime cigarette use among high school students is 63.9 percent, down from 70.4 percent in 1999. Current frequent smoking, defined as smoking on at least 20 of the 30 days preceding the survey, decreased from 16.8 percent in 1999 to 13.8 percent in 2001.

In summary, smoking kills. Yet what is driving today's hearing, and I recognize the limitations of this committee's jurisdiction, is not public health, not preventing our children from becoming addicted but "tobacco quota buyout and surrounding issues." Mr. Chairman, with all due respect, the congressional priority with respect to tobacco continues to be misplaced.

Earlier this year, the Subcommittee on Cessation of the Interagency Committee on Smoking and Health, a Federal panel of experts convened by Health and Human Services Secretary Thompson that included a former Surgeon General and Dr. Seffrin of the American Cancer Society, proposed a bold set of recommendations on how best to promote tobacco use cessation and identify specific action steps. The panel's goals were to reduce the prevalence of tobacco use by 10 percent, prevent 3 million deaths, help 5 million smokers quit within the first year and address disparities. The interagency panel chaired by current Surgeon General Richard Carmona endorsed the recommendations. The plan included Federal initiatives and public private partnerships. The key Federal elements are:

- A national tobacco quitline network
- A national paid media campaign
- Coverage for evidence-based tobacco cessation counseling and medications for all Federal beneficiaries and in all federally-funded healthcare programs
- Invest in a new, broad, and balanced research agenda
- Educate clinicians-in-training and practicing clinicians
- Establish a Smokers' Health Fund by increasing the Federal Excise Tax on cigarettes by \$2.00 per pack

The administration shot down the proposal immediately and rejected the opportunity to prevent 6 million children from smoking. The plan would help 4.6 million adults quit in the first year. Also the tax increase would raise \$28 billion in Federal revenue. A significant opportunity to have a dramatic impact on public health was lost.

For over 20 years, the American Lung Association has advocated for strong Federal regulatory oversight over tobacco products. We support adequately funded, full Food and Drug Administration regulatory authority over the manufacture, sale, distribution, labeling, marketing and promotion of tobacco. We strongly support legislation like the balanced, bipartisan, compromise bills introduced in the 107th Congress (H.R. 1043, and H.R. 1044) by Mr. Waxman, H.R. 1097 by Mr. Ganske as well as S. 2626 sponsored by Senator Kennedy and Senator DeWine. These bills provide the FDA with the authority necessary to protect public health. The House bills regulate tobacco under the Food Drug and Cosmetic Act as a drug and device, while the Senate approach creates a new chapter in the law for tobacco. Both approaches provide the necessary authority. We strongly oppose the Philip Morris approach to FDA encompassed in Mr. McIntyre's HR 140. Effective FDA legislation must address the following:

**Youth Access and Marketing.** Legislation should grant FDA authority regarding the sale and distribution of tobacco products, including access, advertising, and promotion.

**Adoption of Youth Access and Marketing Restrictions of the 1996 Rule to Help Reduce Youth Tobacco Use.** Legislation should incorporate the substance of the youth access and youth marketing restrictions adopted by the FDA so that the agency would not need to go through a new rulemaking process to implement them.

**Health Information Disclosure.** Legislation should entitle FDA to receive all documents and information in the tobacco industry's possession relating to health effects of all tobacco products, nicotine and its effects on the body, addiction, marketing to children and its effects, and such other information that the HHS Secretary deems necessary to enable the FDA to protect the public health.

**Public Health Standard.** The existing FDA standard for approving drugs and devices is whether there is a "reasonable assurance that a product is safe and effective." Because there is no such thing as a safe cigarette, legislation should create a new protection of the public health standard for all tobacco products that refers to reducing health risks to the American public. This standard would require consid-

eration of whether a product change or new rule will reduce or increase tobacco use, including increasing the number of new users or decreasing the number who quit.

**Disclosure of Ingredients.** Legislation should grant FDA authority to require the tobacco industry to provide a complete list of all tobacco ingredients and additives, by brand and by quantity, and the authority to require that this information be given to the public in a manner that does not disclose legitimate trade secrets. It should further provide FDA with authority to regulate the use of any ingredient or additive that is harmful or which contributes to the harmfulness of the product. Also, the burden should be placed on tobacco manufacturers to demonstrate that each ingredient and additive is safe in the quantity used under the conditions of intended use.

**Health Warnings.** Legislation should grant FDA authority over health warnings on tobacco product packages and advertisements, including the power to revise and add health warnings and to alter their format, including, but not limited to changing their size, location, and color.

**Authority to Reduce or Eliminate Harmful Components.** Legislation should grant FDA the authority to evaluate scientifically, and then through a rulemaking process, to decide whether to reduce or, where appropriate, eliminate the harmful and addictive components of all tobacco products in order to protect the public health.

**Health Claims and "Reduced Risk" Products.** Legislation should grant FDA authority to encourage the development of products that reduce consumer health risks or serve as less harmful alternatives and the authority to evaluate scientifically whether new products are actually "less harmful." It also should provide FDA authority to prohibit or restrict directly or indirectly made: (1) unsubstantiated health claims; and (2) health claims that discourage people from quitting or encourage them to start using tobacco.

**Preemption.** FDA authority should pre-empt state and local authority over tobacco products only to the extent that FDA authority with regard to other products it regulates is preemptive.

**FDA Authority over Tobacco Farms or Tobacco Growers.** Legislation should make clear that FDA would not have authority over tobacco farms or tobacco growing.

**Routine Regulatory and Procedural Fairness.** Legislation should subject tobacco products to the same standards or procedures that are applied to other FDA-regulated "drugs" or "devices."

There is much work to be done to help addicted smokers quit, prevent children from becoming addicted and to provide the needed regulatory oversight over tobacco products and eliminate exposure to secondhand smoke. Our nation needs to address these pressing public health issues. This is where policy makers at the local, state and national level should focus their attention.

With respect to a potential tobacco buyout, the American Lung Association supports economic transition assistance for tobacco growers, workers and their communities. But, the Federal taxpayer should not finance any program that supports tobacco growth, production, marketing, administrative costs or any other purpose that promotes or facilitates tobacco use, either in the United States or abroad. We have empathy for the economic disruption facing those dependent on tobacco growing. It is appropriate to help tobacco growers and workers exit the tobacco business. It is wrong for the Federal taxpayer to subsidize tobacco.

To those who say that the United States tobacco grower's future lies in the export market, we strongly disagree. It is immoral for the United States to export cancer, emphysema and heart disease.

It is time to recognize that the sun is setting on tobacco. Yes, we have a long road ahead. Tobacco remains a global scourge. Tobacco still kills nearly 5 million people annually around the world. But, in the United States, adult smoking prevalence rates have declined significantly since the landmark 1964 Surgeon General's report. Over 40 nations have signed the World Health Organizations' first public health treaty, the Framework Convention on Tobacco Control. The progress is being made, despite the best efforts of the global tobacco companies to addict children in Asia, Africa, Eastern Europe and Central and South America, the nations of the world are stepping forward and saying "no" to addiction, disease, disability and death for their citizens, "no" to big tobacco and "yes" to good public health practice and "yes" to tobacco control. We hope President Bush will sign this landmark public health treaty soon and send it to the Senate for ratification.

To reiterate and be clear, there should not be any subsidy for continuing to grow tobacco. Buyout legislation should not be used as catalyst to pass weak and ineffective FDA legislation. The American Lung Association supports economic transition assistance for tobacco growers, workers and communities but tobacco production should be phased out.

## AMERICAN LUNG ASSOCIATION—ANSWERS TO SUBMITTED QUESTIONS

**1. The standard buyout scheme tossed around is an \$8 per pound payment to quota owners and a \$4 per pound payment to growers (as a transition payment) based on quota years from 1998 to 2002:**

**What, if any, are your organization's thoughts on this?**

With respect to a potential tobacco buyout, the American Lung Association supports economic transition assistance for tobacco growers, workers and their communities. But, the Federal taxpayer should not finance any program that supports tobacco growth, production, marketing, administrative costs or any other purpose that promotes or facilitates tobacco use, either in the United States or abroad. It is appropriate to help tobacco growers and workers exit the tobacco business.

**2. Some buyout proposals include strong, supply-control, price support policy for a post-buyout tobacco world. Others prefer a more free-market approach that would provide very little post-buyout structure.**

**Would your organization support a tobacco quota buyout that did not include any significant post-buyout program? Please explain.**

We support an approach that will facilitate growers' exit from the tobacco business.

**Would your organization support a tobacco quota buyout that did include a significant post-buyout program, such as a supply-control and/or price-support program? Please explain.**

We support an approach that will facilitate growers' exit from the tobacco business.

**3. The popular consensus seems to be that in order to achieve a tobacco quota buyout, producers and manufacturers must agree to some form of Food and Drug Administration (FDA) regulation over tobacco products. Some proposals directly tie a tobacco quota buyout to FDA regulation, others do not but are constructed with the notion that such regulation will be married to a buyout during the legislative process.**

**In general, please explain what type of FDA regulation you endorse.**

The American Lung Association supports adequately funded, full Food and Drug Administration regulatory authority over the manufacture, sale, distribution, labeling, marketing and promotion of tobacco. We strongly support legislation like the balanced, bipartisan, compromise bills introduced in the 107th Congress (H.R. 1043, and H.R. 1044) by Mr. Waxman, HR 1097 by Mr. Ganske as well as S. 2626 sponsored by Senator Kennedy and Senator DeWine.

**What do you consider acceptable FDA regulation? Please respond as specifically as possible.**

Effective FDA legislation must address the following:

- Youth Access and Marketing. Legislation should grant FDA authority regarding the sale and distribution of tobacco products, including access, advertising and promotion.

- Adoption of Youth Access and Marketing Restrictions of the 1996 Rule to Help Reduce Youth Tobacco Use. Legislation should incorporate the substance of the youth access and youth marketing restrictions adopted by the FDA so that the agency would not need to go through a new rulemaking process to implement them.

- Health Information Disclosure. Legislation should entitle FDA to receive all documents and information in the tobacco industry's possession relating to health effects of all tobacco products, nicotine and its effects on the body, addiction, marketing to children and its effects, and such other information that the HHS Secretary deems necessary to enable the FDA to protect the public health.

- "Public Health" Standard. The existing FDA standard for approving drugs and devices is whether there is a "reasonable assurance that a product is safe and effective." Because there is no such thing as a safe cigarette, legislation should create a new "protection of the public health" standard for all tobacco products that refers to reducing health risks to the American public. This standard would require consideration of whether a product change or new rule will reduce or increase tobacco use, including increasing the number of new users or decreasing the number who quit.

- Disclosure of Ingredients. Legislation should grant FDA authority to require the tobacco industry to provide a complete list of all tobacco ingredients and additives, by brand and by quantity, and the authority to require that this information be given to the public in a manner that does not disclose legitimate trade secrets. It should further provide FDA with authority to regulate the use of any ingredient or additive that is harmful or which contributes to the harmfulness of the product.

Also, the burden should be placed on tobacco manufacturers to demonstrate that each ingredient and additive is safe in the quantity used under the conditions of intended use.

- **Health Warnings.** Legislation should grant FDA authority over health warnings on tobacco product packages and advertisements, including the power to revise and add health warnings and to alter their format, including, but not limited to changing their size, location and color.

- **Authority to Reduce or Eliminate Harmful Components.** Legislation should grant FDA the authority to evaluate scientifically, and then through a rulemaking process, to decide whether to reduce or, where appropriate, eliminate the harmful and additive components of all tobacco products in order to protect the public health.

- **Health Claims and “Reduced Risk” Products.** Legislation should grant FDA authority to encourage the development of products that reduce consumer health risks or serve as less harmful alternatives and the authority to evaluate scientifically whether new products are actually “less harmful.” It also should provide FDA authority to prohibit or restrict directly or indirectly made: (1) unsubstantiated health claims; and (2) health claims that discourage people from quitting or encourage them to start using tobacco.

- **Preemption.** FDA authority should pre-empt state and local authority over tobacco products only to the extent that FDA authority with regard to other products it regulates is preemptive.

- **FDA Authority over Tobacco Farms or Tobacco Growers.** Legislation should make clear that FDA would not have authority over tobacco farms or tobacco growing.

- **Routine Regulatory and Procedural Fairness.** Legislation should subject tobacco products to the same standards or procedures that are applied to other FDA-regulated “drugs” or “devices.”

**What do you consider unacceptable FDA regulation? Please respond as specifically as possible.**

FDA must have the authority to protect public health. Unacceptable FDA regulation could take on many forms. In general, any approach that does not grant the FDA the full authority to regulate tobacco products comparable to the authority the FDA has over other drugs and devices would be unacceptable. For example, HR 140 is an unacceptable approach.

**Do you support limiting FDA regulatory authority to tobacco products only, or do you support a broader scope?**

The American Lung Association supports FDA regulatory authority over the manufacture, sale, distribution, labeling, marketing and promotion of all tobacco products.

**Does your organization support the banning of any or all tobacco products by the FDA now or in the future?**

The American Lung Association does not have any policy position that supports a ban on tobacco. The American Lung Association’s goal is to eliminate tobacco-related lung disease. Any decision to reduce or eliminate any of the harmful components of tobacco products, including nicotine, should be public health decisions based on the best available science and, therefore, should be made by the FDA, just as it does for other products.

**Would your organization agree to legislative language prohibiting FDA regulation of tobacco production on the farm?**

The American Lung Association supported in H.R. 1097, introduced in the last Congress, which stated:

The provisions of this Act relating to tobacco products shall not apply to tobacco leaf that is not in the possession of the manufacturer, or to the producers of tobacco leaf, including tobacco growers, tobacco warehouses, and tobacco grower cooperatives, nor shall any employee of the Food and Drug Administration have any authority whatsoever to enter onto a farm owned by a producer of tobacco leaf without the written consent of such producer. Notwithstanding any other provision of this subparagraph, if a producer of tobacco leaf is also a tobacco product manufacturer, the producer shall be subject to this chapter in the producer’s capacity as a manufacturer. Nothing in this chapter shall be construed to grant the Secretary authority to promulgate regulations on any matter that involves the production of tobacco leaf or a producer thereof, other than activities by a manufacturer affecting production.



**Would your organization agree to legislative language prohibiting the FDA from acting administratively or through regulation to ban tobacco products or the production of tobacco now or in the future?**

The Constitution gives Congress the authority to change or block any regulatory decision. Because of the sensitivity surrounding this issue, the American Lung Association has supported the consensus approach that explicitly provides a two-year opportunity for Congress to reverse any proposed final regulation banning any class of tobacco products, or any proposed final regulation reducing to zero the nicotine yield of a tobacco product.

**Would your organization agree to legislative language that did not classify tobacco or tobacco products as a drug or drug delivery system?**

The American Lung Association has supported legislation that creates a separate chapter in the Food, Drug and Cosmetic Act for tobacco products as well as approaches that regulate tobacco products as a drug or drug delivery system.

**If FDA regulation were limited to tobacco products only, what are your thoughts on the likelihood of that regulation being passed down to the farm? For example, if the FDA decided to rid product of a certain chemical, could such a change be made at the factory, or would it have to be made on the farm?**

The American Lung Association supports adequately funded, full Food and Drug Administration regulatory authority over the manufacture, sale, distribution, labeling, marketing and promotion of tobacco products. Further we support legislation like H.R. 1097 that addresses this issue.

**Do you have any other comments regarding a tobacco quota buyout, or requirement of it, apart from FDA regulation for your organization to be agreeable to its passing?**

The American Lung Association believes the focus should be on economic transition assistance for tobacco growers, workers and communities and to help the growers and workers exit the tobacco business.

The American Lung Association appreciates this opportunity to share our views.

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#### STATEMENT OF M. CASS WHEELER

Good morning. My name is Cass Wheeler, and I am the chief executive officer of the American Heart Association, representing its 22½ million volunteers and supporters. I am very pleased to be here before you this morning to share our association's position on the tobacco buyout and to offer some insight into our relationship with tobacco growers.

The American Heart Association's mission is to reduce disability and death from cardiovascular diseases—diseases like coronary heart disease and stroke. Cardiovascular diseases are the No. 1 killer in the United States, resulting in more deaths than the next five causes of death combined. In addition to being a leading risk factor for these cardiovascular diseases, tobacco use is the world's number one preventable cause of premature death. Because of this, we have joined with other public health and tobacco control organizations to do all that is in our power to reduce tobacco use and the illness and premature death associated with that use.

For these reasons, it would seem unlikely that the American Heart Association, along with many other public health organizations, would join together with tobacco growers in the pursuit of our mission. Indeed, several years ago, few people in either the public health community or on the tobacco farm would have recognized that this was possible. Only through years of intense and frank discussions, beginning more than a decade ago, did both sides gradually come to see that while some of our immediate objectives are different, in the end we all want safe, healthy and secure families.

Over time, we began to see the clear delineation between the interests of America's tobacco growers and those of the tobacco companies. We understand that most of America's tobacco farms are small, family-run businesses. Most of these small farms are facing declining profits as American tobacco companies increasingly turn to foreign growers for their supplies. Tobacco farmers aren't the ones getting rich off their products, and the majority clearly understand the dangers posed by manufactured tobacco products, and most certainly do not want to see kids smoking. They have families and are concerned about public health, just like the rest of us. But, they are locked into the so-called "Tobacco Trap" financially bound to growing tobacco and unable to afford switching to another crop—while they do all in their de-

clining power to maintain their family incomes and help keep their communities sustainable. While both parties are unified in their commitment to sustain growers' incomes, it is imperative that any proposed buyout legislation ultimately seeks the goal of reducing tobacco farmers' and their communities' dependence on tobacco as a crop.

As discussions between the American Heart Association, our coalition partners, and tobacco growers, began in earnest some years ago, both sides came to realize the importance of working together to achieve our goals. By working as allies, we could help preserve family farms and communities in tobacco-producing areas, and work for the goals of the public health community by controlling the spread of tobacco farming to other states and controlling the quantity of tobacco produced domestically. Only in this way could we deny the stranglehold the tobacco industry wields, from stalk to carton, over cigarettes. Without this cooperation, tobacco companies would control tobacco farms by manipulating pricing—further impoverishing small-time farmers—and allowing tobacco to spread to other states.

The problem posed by tobacco is not a new one. Since 1964, when the first U.S. Surgeon General's report on smoking and health linked smoking to chronic diseases, our country has known of the many dangers associated with smoking and other forms of tobacco use. As the leading preventable cause of death, smoking-related illnesses are responsible for more than 400,000 deaths each year, nearly half from cardiovascular diseases, such as heart attacks and stroke. Smoking costs our country more than \$157 billion each year in medical care. Most alarming, however, are the numbers of children still smoking. 80 percent of adult smokers begin this deadly addiction before age 18, so we must find ways to keep tobacco from getting to our youth. Two of the best ways to do this are halting the spread of tobacco as a crop and controlling its price.

And, just as the health of our children, and the Nation as a whole, is precious, for these farm communities, the livelihood of tobacco farmers is also crucial. Over the past 50 years the number of tobacco farmers has dropped dramatically, from over 500,000 in 1954 to well under 90,000 in 2003. And as these numbers have declined, so too has the revenue farmers earn on the tobacco they grow, as well as the percentage of domestic tobacco U.S. tobacco companies purchase. Today's tobacco farmers are being driven out, driven into debt, and forced into contractual buying completely relinquishing control of the price of their crops. Families and whole communities that depend on tobacco are disappearing without the actual disappearance of tobacco as a crop.

Based on our shared goals, and even some that seem far apart, tobacco growers and public health organizations worked together, and in 1998, developed the Core Principles Between the Public Health Community and the Tobacco Producers (Growers) Community. The two most basic tenets to these principles revolve around setting controls on both the price and production of tobacco.

By controlling the price of tobacco, the typical supply and demand situation is avoided. Given the current oversupply of tobacco and the economic leverage tobacco companies possess in the market, the real price would continue to fall. Without controlled prices, cigarette manufacturers would earn windfall profits, simply providing more money to direct towards marketing their products to children. More money would simply shift from the growers to the tobacco industry's wallets.

By issuing production permits, this insures that both more tobacco isn't grown, which would further drive down the price by creating more surplus tobacco, and that its growth cannot spread to other areas of the country where tobacco has not typically been grown. Expansion of tobacco into other states does not benefit the current farmers, their families or their communities, and certainly does not help the overall health of the nation.

The argument against these price and production controls is that the growing and subsequent selling of the product should take place in a free-market system. Typically, the aim of a free market is to benefit the consumer and the efficient producer. The only winner of a free market system for tobacco is the tobacco industry. To give these corporate giants free reign over the price set for tobacco would only result in declining tobacco prices and more farmers switching to contractual growing—selling straight to tobacco manufacturers rather than at an open market—where they lose the ability to negotiate price.

As for the general parameters of the legislative proposals under consideration, from our perspective a few important principles must be addressed. Overall, the American Heart Association supports legislation to implement the recommendations of the President's Commission on Improving Economic Opportunity in Communities Dependent on Tobacco Production while Protecting Public Health, including the adoption of a system replacing the current quota system with production permits to be held by active growers. It would be ludicrous to completely deregulate the

growth of tobacco at a time when consideration of the regulation of the manufactured products is under consideration. In addition, any such legislation should include financial incentives for farmers to stop growing tobacco, as included in the legislation sponsored by Representatives Virgil Goode and Ernest Fletcher. Legislation should also provide for a system of technical, education and economic development assistance, such as the Center for Tobacco Dependent Communities in Representative Fletcher's legislation. Further, proposals should also ensure that imported foreign-grown tobacco is subject to the same standards as U.S. grown tobacco.

The basic agreements established between the public health community and tobacco growers is why we are here today, to address the need for fair compensation and assistance to small tobacco farmers. Buyout legislation that growers and public health advocates can agree on is a critical and necessary first step to advancing both parties interests, but not the only step. In addition to limiting the expansion of tobacco and denying the industry even more excessive profits, the Food and Drug Administration (FDA) must be given the authority to regulate the manufacture, sale, labeling, distribution and advertising of all tobacco products.

Unlike food products or prescription and over-the-counter medications, tobacco products have escaped significant government regulation. Virtually anything can be added to tobacco products. And, it remains the only legal product sold in the United States that, when used exactly according to the manufacturers instructions, can cause death and disability. More information and safeguards are provided on the manufacture and labeling of orange juice than on this addictive and deadly product. This simply must change.

As with price and production controls, the public health community and tobacco growers are united in support of meaningful legislation, that gives the FDA full authority and oversight of tobacco manufacture, sale, labeling, distribution and advertising. The marketing and promotion of tobacco are of special concern, as the continuing covert marketing to children must be stopped. In this, both parties unanimously agree. Farmers do not want children smoking. They care about their children, and about other parents children too.

Tobacco growers can rest assured that our organization, like many others in the field of public health, stand beside them in support of a fair and equitable buyout for farmers. However, we must insist that this process not become the vehicle for weak FDA legislation or a conference process that is not committed to accurately representing both the public health concerns and those of tobacco growers. In this we remain steadfast—we will do what is necessary to minimize the risk of unacceptable FDA legislation.

On behalf of the American Heart Association, I appreciate the committee taking time to study this issue in depth, and allowing me to provide some insight into the very positive relationship between the tobacco growers and the public health community. I sincerely hope the members of the committee support both an equitable buyout plan for the sake of tobacco farmers and America's health, as well as future efforts on granting FDA meaningful authority over tobacco.

#### ANSWERS TO SUBMITTED QUESTIONS

On behalf of the American Heart Association, I sincerely appreciated the opportunity to testify during your July 24 hearing about tobacco quota buyout and the regulation of tobacco products. We also appreciate the continuing opportunity to address the Committee regarding the prospects of a buyout of tobacco quota. We hope the information below will answer the questions you posed.

##### **What are the American Heart Association's thoughts about the proposed buyout?**

Along with a significant coalition of organizations interested in tobacco issues, the American Heart Association supports the recommendation for \$8 payments to quota owners and \$4 payments to growers. We believe that the payments should be based on the 1998 quota year. In any event, however the buyout is structured, we believe that such legislation should include a financial incentive for farmers to stop growing tobacco.

##### **Would the American Heart Association support a tobacco quota buyout that includes any significant post-buyout program?**

Again, in cooperation with our other public health partners, we support meaningful production controls based on poundage, and price controls that assure farmers will earn more than the cost of production. A new system should prevent the "right" to grow tobacco from becoming a marketable asset.

**In general, please explain the type of FDA regulation that the American Heart Association endorses.**

The Food and Drug Administration should have the necessary oversight authority over the manufacture, sale, distribution, and labeling of tobacco products, similar to the regulatory authority already established for other food and drug products. Generally, the American Heart Association supports the regulatory scheme proposed in the 1996 FDA rule, which includes authority over the sale and distribution of tobacco products, including access, advertising, and promotion; young access and marketing restrictions; disclosure of industry documents relating to the health effects of tobacco products; creation of a public health standard for tobacco products; ingredient disclosure, with authority to reduce or eliminate harmful ingredients; health warnings, with authority to review and approve or deny any "reduced risk" health claims; and authority to subject tobacco products to the same standards or procedures applied to other FDA-regulated products. Unacceptable FDA regulation would include any scheme that prevented the FDA from exercising effective oversight of tobacco products in the same manner as they exercise over other food and drug products.

The American Heart Association does not support a ban on tobacco products. Though there is currently no safe way to use tobacco products, we recognize the history of tobacco and the many issues surrounding that history. We have concluded that a total ban on tobacco products would not achieve our public health goals. Nevertheless, we recognize the evolution of science and public opinion, and we believe that the decision to reduce or eliminate specific harmful components in tobacco products should rest with the FDA, which operates under the oversight of Congress. Furthermore, we do not support FDA authority over tobacco farms or tobacco growing, nor do we support any pre-emption of state and local laws that would be more extensive than the FDA exercises with respect to other products.

**Would the American Heart Association agree to legislative language that did not classify tobacco or tobacco products as a drug or drug delivery system?**

There is no doubt that nicotine is a drug and has specific pharmacological effects on the body. Tobacco products, we believe, are designed to deliver doses of nicotine to tobacco users. Nevertheless, the American Heart Association recognizes the unique nature of tobacco and supports the creation of a separate chapter within the Food, Drug, and Cosmetic Act to regulate tobacco and tobacco products.

We sincerely hope that our insight and opinion will give the committee a perspective on the tobacco buyout that will help you during your deliberations. Again, thank you for the opportunity to respond to these issues.

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STATEMENT OF THE ALLIANCE FOR HEALTH ECONOMIC AND AGRICULTURE

The Alliance for Health Economic and Agriculture Development (AHEAD) appreciates the opportunity to submit this testimony to the House Committee on Agriculture concerning tobacco buyout legislation before the United States Congress.

The Alliance grew out of the work of the Southern Tobacco Communities Project that first brought tobacco growers and public health groups together in an effort to find common ground in dealing with complex, controversial and seemingly irreconcilable positions on tobacco. The Alliance is a coalition of more than 25 organizations and individuals dedicated to enactment of a set of recommendations contained in the Core Principles Statement Between the Public Health Community and the Tobacco Producers Community, and the commission report, Tobacco at a Crossroad. More than 100 organizations and individuals have embraced the recommendations of those two documents. (see attached). As the commission report concluded:

This Commission embraces the notion that health and safety of the American people and that of tobacco communities are linked, however unlikely that might seem. A stable tobacco-growing industry that operates through price and quality controls and under health and safety standards is in the best economic interest and health interests of this country.

It (ensuring a future for tobacco producers and their communities) requires a new system that allows farmers who wish to continue to grow tobacco to compete fairly.

We hope that the committee, both tobacco and non-tobacco state Members, will recognize that the views and positions of the Alliance represent nine (9) years of open and honest dialogue and discussion by many diverse organizations and individuals. We hope that the work that has already been accomplished will facilitate action by Congress to move forward in establishing what we believe is an urgently

needed new national tobacco policy in this country. A new national tobacco policy must include looking at production, manufacturing, distribution, sales, labeling and marketing of both tobacco and tobacco products.

Tobacco is a unique agricultural commodity with a unique history. It is different than other commodities like corn, wheat or soybeans. It contains nicotine an addictive substance and causes a significant number of health risks. A burning cigarette for example produces more than 4,000 chemical constituents many of which are carcinogenic or can cause other health related problems such as cardiovascular disease. Tobacco is produced in more than 100 countries, many which have no regulatory controls and in some cases use child labor. Members from tobacco states and non-tobacco states, republicans and democrats must work together to move new national tobacco policy legislation forward.

#### THE 1938 TOBACCO PROGRAM AND THE NEED FOR A BUYOUT

The 1938 tobacco quota program was designed to protect the American tobacco grower from what were predatory practices of the tobacco manufacturers. The program has served the tobacco farmer well over the years but the environment in which tobacco is grown, manufactured and marketed has changed significantly over the last 60 years. For years the quality of tobacco leaf was based primarily on taste and color. Today issues relating to health and safety are becoming increasingly important and will continue to be so both domestically and globally. In May, the World Health Assembly, with the support of the United States, approved the Framework Convention on Tobacco Control (FCTC) which will have significant ramifications on not only manufactured products but the production of tobacco leaf as well.

To establish an effective, more coordinated national policy it is accepted that the current tobacco program, as we know it, should be eliminated. In order to do that, growers and quota owners should have a one-time opportunity to receive fair compensation for the asset that they own. The Alliance is on record in support of 8 and 4 and using 1998 as the base year.

What may be most important for tobacco producing communities, as well as public health, is what kind of system takes the place of the current tobacco program. How can tobacco producing communities be best served while at the same time recognizing and accepting the fact that tobacco is an addictive substance that carries certain health risks?

The buyout and the elimination of the tobacco program should not be viewed as the "means to an end" but as a prerequisite to what we do in the future and how production and manufacturing, and marketing of tobacco products will be conducted in the coming years.

#### THE NEED FOR A NEW SUPPLY MANAGEMENT AND PRODUCTION CONTROL SYSTEM

As noted above, tobacco is unique in our society and is not like any other agricultural commodity. Because of this, the way in which the raw leaf is produced, processed, sold and marketed is of critical importance. To that end,

- We need a system that can test and certify tobacco for quality and grades including pesticides and other toxins and chemicals.
- We need to ensure that tobacco production is kept in traditional growing areas.
- We need a system that encourages the development new technologies that will enhance the quality and health and safety of the leaf.
- To curtail illegal manufacturing, distribution of bootleg cigarettes, we need a system that can track and certify where the tobacco was grown, who processed it and how it was distributed.
- We need a system that will ensure and enforce requirements that all foreign tobacco being imported into the U.S. is held to the same standards as U.S. tobacco.
- We need a system that ensures greater cooperation and coordination between USDA, EPA, FDA, USTR, HHS, and other agencies that have some role in how tobacco is produced, manufactured, sold, and marketed.

We find it interesting that Philip Morris has been a strong advocate for some form of FDA regulation of manufactured tobacco products including requirements for manufacturers to register with the FDA. In addition they have been big proponents of cracking down on the illegal manufacture and distribution of tobacco products. Yet when it comes to the issue of production, they advocate a production system with few to any controls—a system that actually will make product regulation and being able to track the production and sale of illicit tobacco products much more difficult. We can only guess that their goal is to control the system themselves and to set up their own rules. The further irony about their position is that year after year PM has said that they will "go along with whatever the farmers wanted. Only

last week, without the support of most of the farm organizations, PM announced that it would not buy tobacco at the auctions this year.

Philip Morris makes the argument when talking about the buyout and the tobacco program that: You can't sell the house and live in it too.

Philip Morris is conveniently clouding the issue and missing the point. Many growers will exit the system. Those who stay in will do so under a completely new set of circumstances including no longer having tobacco production as an "asset" to buy or sell.

There are many instances in our society where we have licensing systems and controls over the production of products. We have controlled substances laws where manufacturers and the products they manufacture and market are strictly regulated. We have controls and standards and licensing systems on how pharmaceuticals are made in this country. People who drive tractor trailers or transport hazardous materials have licensing requirements and have to meet certain standards and requirements.

Tobacco Companies Have Profited While Tobacco Growers and Public Health have Suffered. It is anticipated that most of the Big Tobacco companies will come before the Congress and argue in opposition to the buyout as well as implementation of fair but effective FDA legislation. Congress should remember and consider a few things:

- Tobacco use remains this nation's leading cause of disease and death—accounting for over 400,000 premature deaths each year.
- Tobacco use costs this country billions of dollars in health care costs and lost productivity.
- The U.S. tobacco farmer has seen the amount of U.S. tobacco that U.S. companies buy steadily decline while the U.S. major companies have increased their purchases of cheaper foreign leaf and moved manufacturing operations overseas as well. For example, evidence would suggest that RJR, which has 25 percent of the cigarette market, buys less than 5 percent of the U.S. tobacco sold.
- Big Tobacco has profited for decades at the expense of tobacco growers and public health.
- According to USDA data, the portion of the tobacco dollar that goes to the manufacturers has remained stable or increased while that going to the tobacco growers has decreased.

Regulation of Manufactured Tobacco Products By the FDA is Long Overdue. Although not a part of the House Agriculture Committee's jurisdiction, a national tobacco policy must also involve giving the Food and Drug Administration (under a separate Chapter) the authority to establish rules and standards governing the manufacturing sale, distribution, labeling and marketing of manufactured tobacco products. We do not accept arguments by some of the major manufacturers that FDA authority means the banning of tobacco products and we believe that ample protections can be provided in legislation that keeps FDA off the farm. A copy of the Alliance's Core Principles on FDA Regulation is attached as part of this testimony.

The U.S. Congress has an opportunity and a responsibility to establish a new national tobacco policy in this country—one that will serve the interests of growers, public health and even industry. Preserving the "status quo", whether its on the part of manufacturers, tobacco growers or even public health is in the best interests of no one. Providing fair and equitable compensation to tobacco quota owners is an essential prerequisite for ending the current tobacco program and replacing it with a new system that brings tobacco production into the 21st century, serves the interests of growers and protects public health.

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Dear Representative Goodlatte:

As the chief agriculture spokesperson for our respective states, we heretofore request immediate congressional assistance in the 108th United States Congress to address the concerns of the tobacco Flue-cured and Burley quota industry. We are also appreciative of the U.S. House Committee on Agriculture allowing a hearing to address the issues facing our Nation's tobacco industry.

WHEREAS, the current system of growing and marketing Burley and Flue-cured tobacco in the United States is facing changes due to contracting, lawsuits, government regulation and foreign competition; and

WHEREAS, meetings have been held with tobacco leaders and organizations from tobacco-producing states; and

WHEREAS, there is now a consensus for a transition from the current system of growing and marketing tobacco in the United States; and

WHEREAS, a successful transition will depend upon adherence to certain basic principles in order to provide stability, uniformity and certainty for growers, quota owners and the tobacco industry;

NOW, THEREFORE, BE IT RESOLVED by the undersigned state commissioners, directors and secretaries of agriculture, that a national transition plan for Burley and Flue-cured tobacco should incorporate the following principles:

Congressional legislation addressing the buyout and achieve passage in the year 2003 effective for the 2004 crop;

- Establishment of a quota buyout based on 2002 ownership eligibility at \$8.00 per lb. formulated on the 1998 tobacco quota with payment completed in 5 years;
- Establishment of a grower transition payment at \$4.00 per lb. formulated on the 1998 tobacco quota, with payment completed in 5 years;
- Institute a post buyout marketplace with the intent to develop a supply management program that will ensure producer profitability, maintain traditional Burley and Flue-cured production areas with preferences given to county and then state, and address both domestic and export market supply issues;
- Provide sufficient provisions to prevent the 2003 tobacco crop from becoming a liability for the grower;
- Institute an assessment program on all types of manufactured tobaccos for both domestic and import sources based upon annual market shares payable to CCC Corporation;
- Support reasonable FDA regulation of tobacco products contingent upon the satisfactory resolution of buyout.

Respectfully,

NC Interim Commissioner W. Britt Cobb, Jr,  
 KY Commissioner Billy Ray Smith VA Commissioner J. Carlton Courter, III  
 TN Commissioner Ken Givens  
 SC Commissioner Charles R. Sharpe  
 FL Commissioner Charles Bronson  
 AR Director Darryl Little, GA Commissioner Tommy Irvin  
 cc: U.S. House Agriculture Committee Representatives

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Good morning. Mr. Chairman and members of the committee, my name is Donnie Moore and I am from Chatham, VA. Thank you for the opportunity to speak to you today. I am 46 years old and farm the land my grandfather and father worked before me. My wife, who works full-time off the farm, and I have twin 14 year old daughters and an 18 year old son who just graduated from high school. Our operation consists of 25 acres or approximately 75,000 pounds of flu-cured tobacco, 90 brood cows, 85 acres of wheat, and 30 acres of corn.

In 2002 we entered a contract with Perdue and constructed a poultry house holding 17,000 pullets. We raise these birds from one day old to 22 weeks. Even though we are considered diversified, we are still a relatively small family operation.

However, we have something in common with larger diversified operations – that tobacco generates the vast majority of our income. In my case approximately 70 percent is derived from tobacco.

Over half of the quota I produce is rented from primarily retired farmers or widowed farm wives who consider this quota a retirement asset. I have purchased the rest of the quota and consider it as an asset acquisition. In the last six years we have seen our quotas or production opportunity reduced by 46 percent. Both their income and mine have been reduced dramatically.



Many of my non-farm neighbors can relate to these reductions in quota values with the value losses in their stocks, bonds, or 401K plans over the past three years. Remember, quota is part of our retirement plan.

We, in the tobacco producing community, see no sustainable way out of the 50 year old program except for quota compensation and producer transition payments or simply stated a "buy-out." We are trying to compete in a world market with a product that is partly over priced because of rent. If the cost of quota could be eliminated with compensation, our product would be more in line with world prices. Since we have a better product than the rest of the world, reduced cost of production should result in an improved production opportunity for the U.S. producer.

I am not here to debate whether the rest of the world should be smoking our tobacco or any tobacco. But if people wish to consume a legal product, we want it to be ours! Tobacco quota is an asset tied to our land. I don't believe it is right to take it away without compensation. If allotment holders could be compensated for quota that they own and producers provided transition payments with production remaining in current growing areas with proper risk management, we could move forward and again participate in the global tobacco market. Younger farmers could then plan for the future and

older farmers could either continue to raise tobacco or make plans for retirement.

Now the farming community is almost in a state of panic wondering if another cut is coming and how much it could be along with having a crop in the field that could go down as one of the worst in recent history due to the excessive rainfall.

My son has expressed a desire to return to the family farm after college. At this point I don't know what to advise him to do. We ventured into the poultry business as a way he could possibly return to the farm full-time. But this would only be possible if we continue to raise tobacco also. Southside Virginia, an area which relies heavily on agriculture, is reeling from the loss of jobs, especially in the textile industry and our factories. Very few young people are finding employment in our area and are seeking employment elsewhere. I want my children to have the opportunity to stay in Southside Virginia if they so desire. I hope my son will be able to choose to be a fourth generation farmer and not have outside circumstances dictate for him his career choice.

I thank you for your time and your consideration of the tobacco farmers of this country.

### **Introduction**

I am Tommy J. Payne, Executive Vice President for External Relations at R. J. Reynolds Tobacco Holdings, Inc. (RJR). I appreciate the opportunity to testify and would like to thank the Agriculture Committee for holding this hearing to review federal tobacco quota buyout proposals. I would ask that my statement, including the attachments, be made part of the official record.

The one constant in any review or discussion of a "buyout" is lack of consensus on the general idea much less the specifics of any given proposal.

There are differing opinions between manufacturers, between grower groups, between quota-holders and actual tobacco farmers. It covers a range of issues including:

- the appropriate base year;
- the amount of payment per pound;
- who should receive payments;
- viability of the price support program, and
- imposition and impact of additional regulation.

Most notably, there is a lack of consensus on how to fund the multi-billion dollar payments at a time of record state and federal budget deficits and a much-changed financial picture for the major manufacturers.

The lack of consensus has persisted since the Clinton Tobacco Commission suggested an 8 and 4 buyout combined with broad FDA regulatory authority. It was evident in the opinions offered to the Subcommittee on Specialty Crops last year, the various bills introduced in Congress and public comments by a range of interested parties. As consideration of a federal buyout of tobacco quota continues, I want to ensure that the Committee is aware of RJR's opinion on the range of proposals and some other relevant considerations.

RJR has not taken a formal position on whether a buyout should be adopted. We have repeatedly stated that our concerns are centered on: 1) the mechanism for paying for the buyout 2) combining a buyout with adoption of anti-competitive federal regulation; and 3) the competitiveness of remaining tobacco growers.

### **Financial Outlook**

The first major concern we have regarding the buyout is how it is funded. We adamantly oppose an increase in any form of government-mandated payments.

The financial position of the industry is much different today than it was prior to the signing of the state settlements and the imposition of enormous state excise tax increases over the past several years to pay for state deficits.

Simply put, there are only two groups in the tobacco business finding their way to the bank these days: governments and low-end manufacturers that aren't making settlement payments.

It is critical to recognize the changed financial dynamics as you consider whether or how to fund a buyout. It is imperative in order to better understand how simplistic suggestions that manufacturers raise the price per pack a few pennies to create a multi-billion dollar pot really are.

The reason for the changed dynamic is the earnings impact of the absolute price increases on the major manufacturers required by the state settlements and increased federal and state excise taxes. The majors have lost significant market share and volume resulting in decreased annual earnings.

At the same time, the volume of the low-end manufacturers that do not make settlement payments have grown over 1000 (13 times) percent (from 2 billion cigarettes annually in 1998 to over 28 billion cigarettes in 2002) in just four years. Their share of shipments has grown 283 percent in the same time period from 3.5 to 13.4. Many of the low-end manufacturers are importers whose volume has grown from 4 billion cigarettes annually in 1999 to 18.7 billion in 2002.

The growth of these manufacturers has not only hurt the major U.S. manufacturers but it has also significantly contributed to lower quotas for U.S. growers because most of these importers use little or no U.S. leaf. Moreover, to the extent that excise taxes or other costs on U.S. manufacturers are further increased, market share of the major manufacturers can be expected to decline, further driving down quota levels.

Five years ago, when the MSA was signed, many believed that there was very little elasticity to overall cigarette demand or to brand loyalty. After five years of continual state excise tax increases and price increases required to make MSA payments, we now know this assumption was incorrect. Increased prices have not only driven down overall cigarette consumption but perhaps most importantly, have created a growing market for low-end manufacturers that are taking increasing market share from the major brands. The buyout and regulatory proposals that we have seen would only accelerate these trends.

RJR provides a rather stark example of the impact of funding the buyout and our current projected earnings. Earlier this year, we provided guidance to our investors and Wall Street that we anticipated \$500 million in operating income this year. This is down from \$1.2 billion in 2001 and \$1 billion in 2002.

According to a staff budget analysis of one legislative proposal being considered, the first year costs would be \$2.1 billion of which, RJR would be required to pay \$400 million. In other words, four-fifths of our projected operating income would be mandated to pay for the first year buy-out fund.

In addition to low-end manufacturers, governments are profiting quite handsomely from the tobacco business.

Federal, state and local governments already have a virtual monopoly on tobacco profits. With total collections on cigarettes from 1998 to 2002 amounting to \$135 billion, governments have made more money from the sale of cigarettes than retailers, wholesalers, farmers and manufacturers combined. Let me give you a few examples of the exorbitant levels of tobacco taxes and payments:

- In 2002 adult smokers paid \$1.67 per pack, or 47% of the cost of the pack of cigarettes, for government tax profits and settlement payments.
- From 1998 to 2002, government pocketed over \$74 million a day from smokers, more tobacco tax revenue per minute than the average working family brings home in a year (\$51,334 per minute vs. \$42,228 per year median household income in 2001).
- From 1998 to 2002, government tobacco revenue from taxing smokers has increased by more than 60%. Adult smokers make up 23 percent of the population, yet they are the only group singled out for more and more "sin" taxes.

Clearly, adult smokers and the tobacco industry are already paying more than their fair share through excise taxes and settlement payments. We must find a resource to finance a tobacco quota buyout which will equitably distribute the cost across the population, not further burden adult smokers simply because they have chosen to use a legal product.

Attached is a chart showing who profits from the sale of cigarettes. As you can see, in 2002, federal and state governments made approximately 14 times as much per pack (\$1.67) than RJR makes (\$0.12).

It is not a question of insufficient "tobacco money" being available, but rather one of priorities on how the money is spent.

In addition to existing federal and state revenues from taxing cigarettes, the MSA Phase II payments of \$5.15 billion were designed to offset any economic loss to growers and tobacco communities resulting from the signing of the MSA. A June 11, 2002 report by Drs. A. Blake Brown and Jonathan Perry of N. C. State University concluded that these payments are more than offsetting any economic harm caused by the MSA.

A certain consequence of increased excise taxes, user fees or other "forms" of payments by the manufacturers will be to offset, dollar-for-dollar, the Phase II payments to tobacco growers and their communities. This offset is a specific provision in the trust agreements with each participating state.

An analysis of Phase II payments demonstrates the distribution inequity that would result among tobacco farmers depending on whether they owned large or small amounts of quota. The top one percent of the growers with the most quota will receive 26% of the funds, and the top 10 percent of tobacco growers with the

most quota will receive 67% of the funds. The bottom 50 percent of tobacco growers who own the least amount of quota will receive only 4% of the buyout funds. A buyout program which basically neglects half of the tobacco growers is misguided and useless.

With an \$8/\$4 buyout, the average payout for quota holders would be approximately \$32,940 per acre based on 2000 acreage. When compared to the peanut quota buyout or recently approved commodity program payments, these levels of payments will dwarf what other growers are scheduled to receive. For example, the peanut quota buyout will pay \$1,687 per acre; rice will pay \$569 and soybeans, \$14.08.

#### **Linkage to Regulation**

We are adamantly opposed to any form of federal regulation, regardless of the agency of jurisdiction, which at the end of the day, further restricts our already limited ability to legitimately compete for the business of adult smokers.

There have been a number of regulatory bills introduced over the past few years that have the consequence of imposing serious, if not unconstitutional limitations on legitimate competition within our industry. Because of its dominant position in the U.S. market, many of these measures would significantly benefit Philip Morris. Philip Morris enjoys approximately 50% of the domestic market, with Marlboro alone accounting for approximately 38% of the market. The brand is approximately five times larger than its closest competitor – Newport.

The ability to compete within the tobacco industry has already been significantly inhibited by the Master Settlement Agreement (MSA), signed by the major tobacco companies and the state Attorneys General in 1998. The agreement included significant marketing prohibitions, restrictions, and enforcements to the point that the only remaining forms of advertising are at retail stores where the product is purchased, direct to the consumer through the mail or in age-restricted venues, a limited number of adult oriented magazines or newspapers, and one brand sponsorship per year.

When combined with the restrictions imposed by the MSA and the cumulative effect of the thousands of state and local laws restricting the marketing and advertising of cigarettes, additional regulation that further restricts legal communications with adult consumers will disproportionately affect RJR, Lorillard, Brown and Williamson, as well as the hundreds of other smaller manufacturers in the U.S.

A bill introduced in the Senate last year, for example, requires all retail/convenience store advertising to be black content on a white background.

It bans sampling of product by adult smokers in age-restricted venues such as bars.

If you applied the same restrictions to your own political campaigns and experience, the immediate and long-term impact is readily apparent. If you could only advertise your candidacy to voters at the polls (retail stores), rally's (age-restricted venues and sponsorships) and selected newspapers (magazines), who is likely to derive the most benefit: an incumbent with high levels of name identification or the challenger?

It also grants the agency broad discretionary authority to impose new or additional regulations over a wide range of areas if the agency determines that it is in "the best interests of public health." Many could argue that despite the prohibition of "going on the farm," it is only a matter of time before the FDA would impose directives related to the production of tobacco.

It is interesting to note that since the Subcommittee hearing last year, the Surgeon General has testified to Congress that his preference to additional regulation would be to actually ban all tobacco products. Despite the voluminous press releases by the Campaign for Tobacco Free Kids and other groups declaring their opposition to banning the product and loyalty to tobacco farmers, this statement by the Surgeon General is the most direct confirmation to date of the likely impact of granting broad authority to the FDA. It will adversely affect all areas of the industry, not just manufacturers and consumers.

Our specific opposition to regulatory bills introduced does not mean that we oppose additional regulation per se. But all of the bills introduced to date have direct competitive consequences that only benefit Philip Morris and other proponents of FDA regulation who want to significantly reduce, if not eliminate, smoking by adults.

### **After the Buyout**

Our third area of concern is how any plan will affect the domestic tobacco grower after the buyout and the elimination of the tobacco price support program. Will growers be more or less competitive?

In a recent presentation, Dr. Will Snell of the University of Kentucky said, "Put simply, the masses of current growers will not likely be able to survive in a non-program environment."

He went on to note, "Without production controls, farmers typically will overproduce, prices will plummet, marginal growers will eventually have to depend on government payments to survive -- something that tobacco farmers cannot expect to see in the future." He also raised additional concerns

particularly "when you see peanut contracts, now without a program, being signed at well below the cost of production."

The viability of those who continue to actually produce tobacco has been all but lost in all the discussion about a buyout. Instead, efforts are focused exclusively on when and how much the non-growing quota holder is going to get paid.

By best estimates, only about 10-15% of those paid Phase II or any buyout funds are actual growers who put their money at risk to produce the crop.

We think the competitiveness of the grower, domestically and abroad, should be the primary issue in any discussion of a buyout or elimination of the price support program. That is currently not the case. Under the current proposals, an actual grower as compared to a quota holder will basically be left on his own. There will be no underlying price support program. They will be operating in a system more and more dictated by contract purchasing that will establish lower and lower purchase prices.

No issue involving the tobacco price support program is simple. However, giving serious consideration to changes in the existing program to improve the competitiveness of active growers should be on the table for discussion.

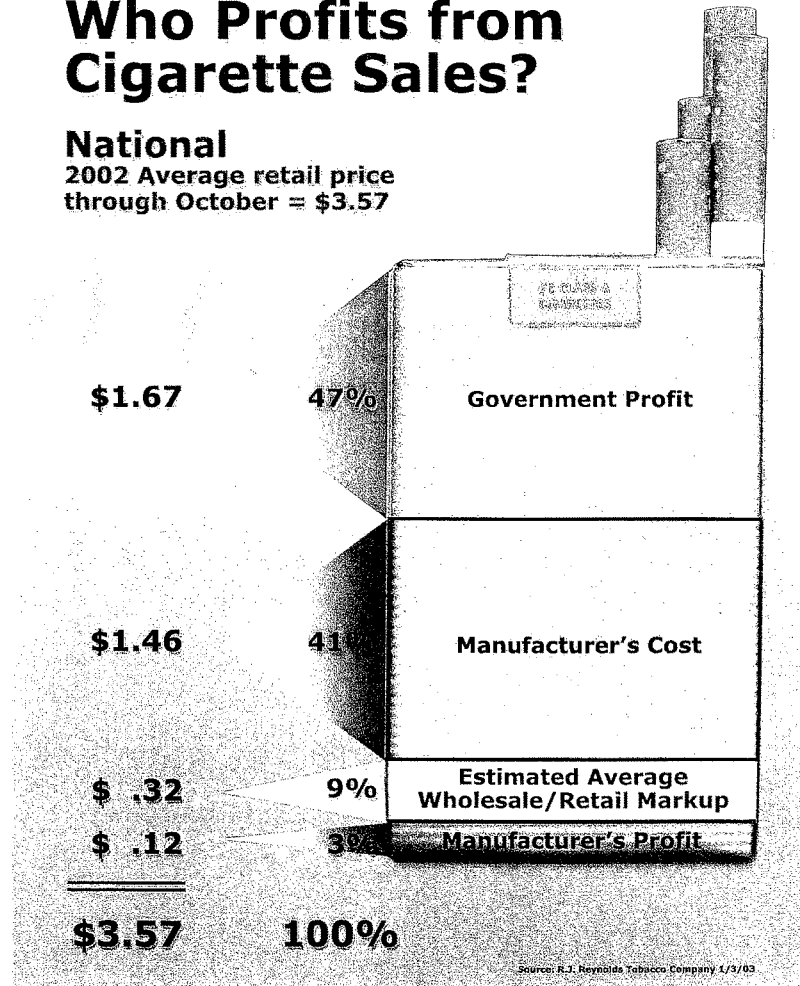
Mr. Chairman, thank you for holding this hearing today.



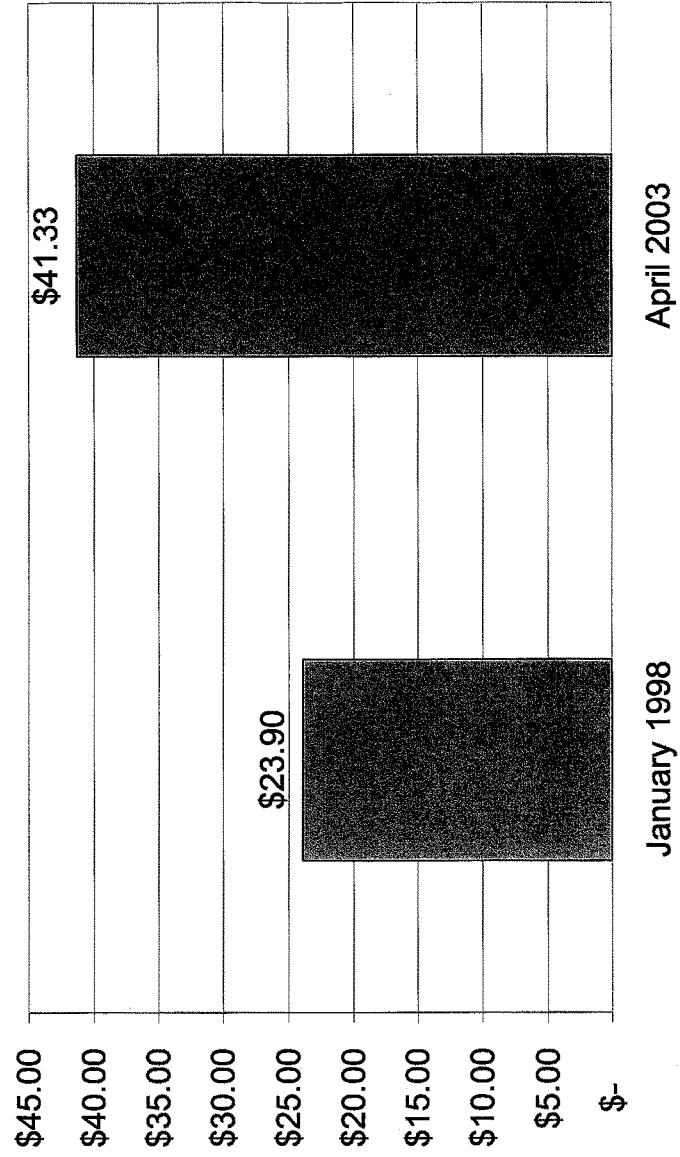
# Who Profits from Cigarette Sales?

## National

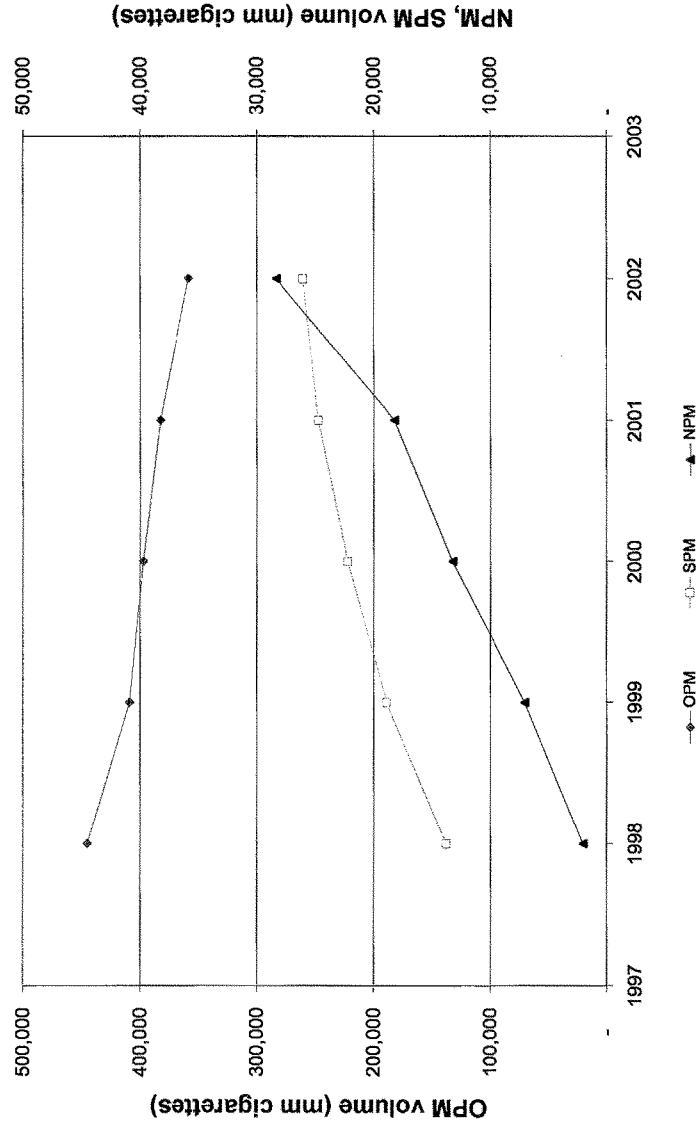
2002 Average retail price  
through October = \$3.57



**Retail Price of a carton of premium brand  
cigarettes**



# NPM brands have grown over 1,250% since 1998



Source: ATFE Audited Tax Return data

**Settlement and tax increases have increased the price of  
cigarettes since 1998.**

	<u>Increase, per carton</u>
Settlement costs	\$ 4.80
State Excise Taxes	\$ 2.54
Federal Excise Taxes	\$ 1.50
Sales taxes	\$ 0.83
Total	\$ 9.67

Mr. Chairman and members of the committee, thank you for the opportunity to address you and to share with you some positions and concerns about a tobacco buy-out. I am D.L. "Don" Wright, a burley tobacco producer from Southwest Virginia where I serve as Chairman of the Southwest Virginia Agriculture Association's Burley Tobacco Committee. I am also a member of Virginia's Working Tobacco Group and Virginia Farm Bureau's Burley Tobacco Committee.

**FIRST**, make no mistake, we are in favor of a tobacco buy-out that includes \$8.00 a pound for quota holders and \$4.00 a pound for producers based on a year most advantageous to the farmer. This will allow non-producing quota holders to get out of the tobacco business with dignity. At the same time, this will allow producers a fair return on their investment and labor in an already tight market and will also bring some competition on the world market.

**SECOND**, we realize that the tobacco program, as we know it today, will probably not continue. The program is not completely broken but is in a sad state of repair. However, we can ill afford to abandon the intent of the program and throw production open to anyone and everyone as so many are advocating. If this occurs, a huge surplus would soon be on our hands. Therefore, we adamantly request that you incorporate into legislation a plan that controls supply and demand based on company buying intentions. This plan could be in the form of a licensing agreement with current producers who desire to continue producing tobacco.

Further, the license would be transferable only to an immediate family member who wishes to continue in the business and restricted to the confines of the current tobacco producing areas.

**THIRD**, some type of a safety net must be integrated into legislation, as is already the case with other agricultural commodities. This will help to defray the cost of production in the event of a natural disaster.

**FOURTH**, if the buy-out comes to fruition, we can and will work with the FDA if the FDA regulates tobacco as a tobacco product and not as a drug. Yes, we too want a safer product. We strongly support current research efforts by several universities and private industries that work to reduce tobacco specific nitrosamine levels.

**FIFTH**, Southwest Virginia has suffered a loss of 59% in basic quota from the 1997-growing season until the present time. This translates into a loss of approximately 30 million dollars annually of gross income in mainly 6 counties of Appalachia. We, in Southwest Virginia, are small in comparison to the rest of the nation; but based on this data, you can imagine the impact in lost dollars to our already economically depressed region.

For your information, I have attached copies of both the "Core Principles Statement Between The Public Health Community and The Tobacco Producers

Community" and the "Statement by the Virginia Tobacco Working Group to the U.S. House Committee on Agriculture, Subcommittee on Specialty Crops and Agriculture Programs". We support both of these documents.

We do not want to be a part of the problem but rather a part of the solution. We hope to be able to work together to protect our children's health and the family farm as well as to strengthen the economy of all tobacco producing regions of our country. The future of the hard working family farmers in our region of Virginia critically depend upon your decision.

Thank you for your time and attention to this vastly important matter.

**CORE PRINCIPLES STATEMENT**  
**BETWEEN**  
**THE PUBLIC HEALTH COMMUNITY**  
**AND**  
**THE TOBACCO PRODUCERS COMMUNITY**

In the spirit of cooperation and with a commitment towards -

- Reducing disease caused by tobacco products, and
- Ensuring the future prosperity and stability of the American tobacco farmer, the tobacco farm family, and tobacco farming communities, and
- the undersigned organizations and individuals call on the President of the United States, the Congress of the United States and all States Attorneys General to commit to supporting and enacting effective legislation and policies that include the following points of agreement:



That on issues related to public health there is agreement.

1. That it is in the best interest of the public health community and the tobacco producer community that FDA should have authority to establish fair and equitable regulatory controls over the manufacture, sale, Distribution, labeling (including country of origin) and marketing of tobacco products, both domestic and imported, comparable to regulations established for other products regulated by the FDA. Such regulations shall have as their goal the protection of public health and the assurance that users of tobacco products are provided with full and complete information about the products they are using. In order to accomplish this goal industry information and research should be made available for public review.
2. That there should be strong complementary federal, state, and local laws which guarantee that tobacco products are not marketed, advertised, sold or otherwise made available to anyone under the age of 18.
3. That prohibition of the use of tobacco products by informed adults of legal age is not a goal of public health advocates or tobacco producers.
4. That there should be mechanisms in place to prevent the importation of foreign, tobacco, whether in raw agricultural leaf, reconstituted or homogenized leaf, tobacco by-products, or any other form or alteration of tobacco that does not meet pesticide residue requirements and other quality controls required for domestically grown and produced tobacco.
5. That if there is an increase in the federal excise tax in any legislative proposal a portion of the tax would be used for carrying out public health initiatives and a portion of the tax would be used to assist farmers and their communities in addressing their economic dependence on tobacco.

That on issues related to agricultural production of tobacco there is agreement:

1. That a tobacco production control program which limits supply and which sets minimum purchase price is the in the best interest of the public health community and the tobacco producer community. From a harm reduction standpoint, it is in the best interest of the public health community to support enhanced assurance of quota stability for domestic production of tobacco.
2. That any costs associated with the administration or operation of a tobacco control program be guaranteed to be paid under any legislative proposal, and that the federal government no longer bear the costs for the administration or operation of such a program.
3. That there be greater cooperation between the tobacco growing community and the public health community to ensure that quality control and health and safety standards are maintained in the production of tobacco, both domestically and abroad, and that industry information and research should be made available for public review. Agencies with public health responsibility, including the FDA (whose authority over manufactured tobacco products should not extend to on-farm tobacco production) should work cooperatively through structures already in place in the Department of Agriculture and Environmental Protection Agency so as not to extend any additional control and bureaucracy over the on-farm production of tobacco.
4. That tobacco quota holders and tobacco lease holders should be given the opportunity to have their quota compensated for at a fair and equitable level, and that the protection of tenant farmers should be given special consideration as part of this process to ensure that they are not adversely affected.
5. That a significant amount of money be allocated so that tobacco growing states and , communities have options and opportunities to ensure their economic viability into the 21<sup>st</sup> century.. There must be significant involvement of tobacco growing communities in determining the allocation of these funds. Decision making for plans to enhance the economic infrastructures of the communities should be governed ; primarily through community based input. Agricultural-based development in particular ought to be given a high priority.

**Signatories**

Burley Tobacco Growers Cooperative, Inc.  
 Flue-Cured Tobacco Cooperative Stabilization Corporation  
 Concerned Friends for Tobacco  
 Virginia Farm Bureau  
 Burley Stabilization Corporation  
 Allies for Tobacco, Inc.  
 Commodity Growers Cooperative Association  
 Virginia Tobacco Growers Association  
 Halifax County (VA) Board of Supervisors  
 Center for Sustainable Systems  
 Virginia Agriculture Growers Association  
 National Black Farmers Association  
 Virginia Dark-Fired Tobacco Growers Association  
 Virginia Sun-Cured Tobacco Growers Association  
 Rural Advancement Foundation International  
 Virginia State Legislature  
 American Heart Association  
 American Public Health Association  
 American Cancer Society  
 Americans for Nonsmokers Rights  
 American Association for Respiratory Care  
 American College of Cardiology  
 American College of Chest Physicians

American School Health Association  
 American College of Preventive Medicine  
 Association of Schools of Public Health  
 Interreligious Coalition on Smoking OR Health  
 Campaign for Tobacco Free Kids ,  
 Oncology Nursing Society  
 Family Voices  
 Partnership for Prevention  
 National Hispanic Medical Association  
 Coalition for Health and Agriculture Development (KY)  
 Kentucky Action  
     American Cancer Society :  
     American Heart Association  
     American Lung Association  
     Kentucky Dental Association  
     Kentucky Medical Association  
     Kentucky Parent Teachers Association  
     Kentucky Society for Respiratory Care  
     (plus approx, 60 additional KY based organizations)  
 American Heart Association (KY)  
 American Lung Association (KY)  
 Kentucky Smokeless States Project  
 Albemarle County (VA) Medical Society  
 Virginia Public Health Association  
 Georgia Public Health Association

**STATEMENT BY THE  
VIRGINIA TOBACCO WORKING GROUP TO THE  
U.S. HOUSE COMMITTEE ON AGRICULTURE, SUBCOMMITTEE  
ON SPECIALITY CROPS AND AGRICULTURE PROGRAMS**

**PRESENTED BY  
JORDAN M. JENKINS  
SEPTEMBER 26, 2002**

**Mr. Chairman and members of the Subcommittee:**

**I am Jerry Jenkins a tobacco farmer from Lunenburg, Virginia. I represent the interest of the Virginia Tobacco Working Group. The Working Group includes all the tobacco producer policy organizations in the Commonwealth. These organizations include the Virginia Farm Bureau, Virginia Tobacco Growers Association, Concerned Friends for Tobacco, Allies for Tobacco, and the Southwest Virginia Agricultural Association.**

**On their behalf, I will convey our shared observations, concerns, and recommendations to address those areas provided in your letter of invitation that are relative to those of us that grow tobacco.**

**The tobacco program is a personal issue to anyone who makes a living and supports a family as a tobacco farmer. It has protected the producer against severe price fluctuations and provided the industry an adequate and reliable supply of tobacco of world class quality. It has been modified several times in order to provide support to an entire industry for nearly eight decades.**

**However, we must be realistic, the current tobacco program is not sustainable for the future and comprehensive changes in the program are needed. In this regard, I will share with you our thoughts and recommendations concerning the tobacco buyout, modifications to the**

program and other political realities that beset the tobacco program today. Moreover, we have worked with members of the public health community over the past several years and continue an effort to promote public health and at the same time sustain our small family farms.

#### Why A Tobacco Buyout?

First, our production opportunity has dramatically declined as a result of the Master Settlement Agreement whereby manufacturers have been forced to increase prices for tobacco products, reduce inventories, and purchase lower quality imported tobacco in order to pay for this agreement. Also a stated long range goal of the Master Settlement is reduction of tobacco consumption in the United States. In addition to lower domestic demand, we have experienced a decline in our export markets due to price competitiveness. These factors have caused a significant loss in quota equity, loss of income to growers, and carry with it a negative impact on the entire tobacco producing community.

Second, permanent legislation, enacted in the 1930's, has created a quota asset that can be produced, owned, leased, shared, bought, or sold. Its equity value has increased over time and is a major part of a quota owner's retirement. Likewise, producers who own, lease, or sharecrop have a

substantial capital investment in barns, equipment, etc. associated with producing tobacco.

Therefore, to offset the effects of the Master Settlement Agreement, make our tobacco more competitive on the world market (by taking quota value out of the cost of production), and indemnify the asset value of tobacco quota, we recommend quota compensation and producer transition payment, or simply stated a “buyout”. This must include the following:

- Quota owners should be paid \$8.00 per pound for basic quota;
- Producers should receive \$4.00 per pound produced and an additional \$2.00 per pound for those that cease production; and,
- Payments to quota owners and producers should be made in equal payments over a five (5) year period.

#### Why Program Modifications?

We know that the current tobacco program is not sustainable, but it is critical that we maintain some form of supply management and price stability for producers. Without one, history has shown that there will be a massive production shift to large production units that will grow as much tobacco as possible at the cheapest price. This would mean the end of the family farm and many communities where tobacco is grown today would be devastated.

While many commodities have moved away from the supply limiting



approach, I believe it is still appropriate for tobacco. There is no other farm product where the ultimate goal of the government is to increase the cost to the consumer and eventually eliminate the product. The free market is not so free to tobacco farmers when essentially only a few buyers control the market. Tobacco farmers cannot take advantage of price-risk management afforded other commodities by the Chicago Board of Trade and the Chicago Mercantile Exchange. To force individual tobacco growers to contract with multi-national conglomerates can only lead to economic servitude. We believe the program should do the following:

- Maintain production in areas in which it has been traditionally grown;
- Adjust the annual base of production to reflect supply and demand;
- Distribute production rights annually with no individual ownership accrual; and,
- Establish loan values based on cost of production in order to provide an adequate safety net for producers.

#### Unresolved Issues

Our discussion of the issues and the introduction of legislation regarding a buyout is an important first step. However, there are associated issues and questions that must be resolved. These include qualification dates, a funding mechanism, and tax consequences. While positions on these issues

vary with the type of tobacco and individual producers these differences are dwarfed by the overall desire for a buyout. We also recognize that any discussion of a buyout is generally coupled with Food and Drug Administration regulation of tobacco products. Mr. Chairman, the tobacco producers of the Commonwealth of Virginia do not support FDA regulation of tobacco without a buyout.

It has been my pleasure to represent the Virginia Tobacco Working Group before this subcommittee. We as always stand ready to assist you with the favorable development and passage of buyout legislation.

Thank You.

John R. Seffrin, Ph.D.  
Chief Executive Officer  
American Cancer Society  
Before the House Agriculture Committee  
July 24, 2003

On behalf of the millions of volunteers and supporters of the American Cancer Society, I thank you, Mr. Chairman, and your Committee colleagues for inviting me to testify today. At no other time has it been more urgent to discuss the intertwining issues that link tobacco producers and their livelihood to the public health. Tobacco is highly addictive and causes more than 440,000 deaths each year in the United States, including approximately 150,000 cancer deaths. Put another way, we know that one out of every three cancer deaths in this country is caused by tobacco use. That is an unacceptable fact.

The American Cancer Society has long been at the forefront of efforts to educate the public about the dangers of smoking, and to advocate on behalf of policies, including regulation, to reduce the disease, suffering and death caused by tobacco use. Recognizing that tobacco growing communities are among those hardest hit by the public health consequences of tobacco use, the Society has worked closely with our public health partners, tobacco growers and tobacco growing organizations to develop a common agenda for protecting the public health AND insuring the economic survival of tobacco growing communities. While some have attempted over the years to suggest that these two goals are in conflict – we know that they are both achievable outcomes.

In September 2000, President Clinton established the President's Commission on Improving Economic Opportunity in Communities Dependent on Tobacco Production While Protecting Public Health. I was honored to serve as a member of that Commission, alongside leaders in public health and in the tobacco growing community. The Commission's report is a milestone in our efforts to protect public health and it serves as a roadmap to move forward in the fight against cancer. Simply by sitting down

John R. Seffrin, Ph.D.  
Chief Executive Officer  
American Cancer Society  
Before the House Agriculture Committee  
July 24, 2003

and listening to each other, we have been able to find common ground, most notably in our joint call for meaningful regulation of tobacco products. Incredibly, despite their deadly properties, tobacco products are not subject to even the most basic health and safety oversight. The tobacco companies are not required to tell consumers what is in their products, to remove harmful ingredients, or to take *any* action to make their products less harmful or less addictive. No other industry enjoys this degree of special protection. To address this serious problem, our Commission recommendations provided a specific proposal for granting the Food and Drug Administration regulatory authority.

The unprecedented level of cooperation among the members of the Commission also resulted in a consensus recommendation for a plan to ensure that tobacco growers and their communities can continue to function in an era of reduced tobacco production. As a member of the Commission, I truly believe that we have successfully identified the steps necessary to do this while also protecting the public health.

The Society and its public health partners recognize the significant contribution that tobacco farmers and their communities make and we will continue to support a buyout plan that assures a fair level of compensation to all tobacco farmers. As you know, 1998 represents the last year that growers did not experience substantial reductions in their tobacco quota allocations. Supporting payments based on any year after 1998 will greatly reduce the amount of compensation to which tobacco growers would and should be entitled. Therefore, we support a buyout proposal that would be based on the production year 1998 or another similar year. The Commission's report recommends enhanced federal support for tobacco prevention and smoking cessation efforts. Tobacco growing communities suffer higher rates of tobacco-related diseases and incur higher

John R. Seffrin, Ph.D.  
Chief Executive Officer  
American Cancer Society  
Before the House Agriculture Committee  
July 24, 2003

health care expenses. The inclusion of smoking cessation programs as a basic Medicare and Medicaid benefit, as suggested in the report, would not only help more people quit smoking, but also would ultimately reduce long-term costs associated with tobacco-related illnesses. The report also proposes the creation of a grant system providing financial incentives for states that meet minimum standards for prevention and cessation set by the Centers of Disease Control and Prevention. We support these proposals.

While the cost of this type of buyout package — estimated at \$15 to \$17 billion over five years — sounds like a lot of money, it is small in comparison to what the federal government and private industry pays to treat tobacco-related diseases annually. Direct medical expenditures and lost productivity related to smoking costs an estimated \$155 billion per year<sup>1</sup> — almost ten times the cost of any buyout proposal currently on the table.

The current tobacco program should be replaced with a safety net that provides short and long-term stability. From a public health perspective providing a support program after a buyout makes good sense. A support program not only guarantees a fair price for producers after a buyout, but also could insure that tobacco production is limited and closely regulated. Economic development initiatives as well as a restructured federal tobacco program must serve as the cornerstone in efforts to help growers raise other crops and launch new enterprises.

The Commission's report recommended proposals for a buyout plan, alongside specific proposals to provide FDA regulation of tobacco products. While some in

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<sup>1</sup> U. S. Department of Health and Human Services. Centers for Disease Control. *Preventing Chronic Diseases: Investing Wisely in Health*. April 2003.

John R. Seffrin, Ph.D.  
Chief Executive Officer  
American Cancer Society  
Before the House Agriculture Committee  
July 24, 2003

Congress are suggesting a process to link the two issues in one bill, this must be done with the utmost care given the complexity of the FDA issue. The Society is supportive of buyout legislation that meets the needs of the growers and their communities; however we have very specific public health criteria for what constitutes acceptable FDA regulation. We urge the Congress not to link a buyout with flawed FDA legislation, as doing so would endanger the public health as well as jeopardize efforts to help the tobacco growing communities.

There are subtle but critical differences between a good FDA bill and a bill that offers only the illusion of change. Over the years, the American Cancer Society and our partners in the public health community have worked hard with legislators on both sides of the aisle to develop compromises and negotiate meaningful, responsible and workable proposals. Compromise legislation introduced in the 107<sup>th</sup> Congress by Senators Kennedy and DeWine met our criteria. There are a number of bills on this subject that do not – and we have vigorously opposed them.

I would like to highlight briefly the critical elements the public health community seeks in FDA legislation.

**First**, legislation should grant the FDA full authority over the sale and distribution of tobacco products, including youth access, advertising and promotion.

**Second**, legislation should incorporate the substance of the youth access and youth marketing restrictions adopted by the FDA so that the agency will not need to go through another years-long rulemaking process to implement them.

**Third**, because there is no current scientific evidence that there is a safe cigarette, legislation should create a new standard to replace the “safe and effective” standard used

John R. Seffrin, Ph.D.  
Chief Executive Officer  
American Cancer Society  
Before the House Agriculture Committee  
July 24, 2003

by the FDA to regulate tobacco and other products. The new standard should allow the FDA to take regulatory action based on a broad assessment of whether or not a proposed new product or a change to an existing product would protect public health. It is critically important that this standard be based on the overall risk of exposure to environmental tobacco smoke to the American public, not just to current smokers. The overall risk includes the risk that a proposed new product might attract new tobacco users or discourage existing smokers from quitting.

**Fourth**, legislation should grant FDA authority to evaluate scientifically and to decide through notice and comment rulemaking whether to reduce or eliminate harmful or addictive components of tobacco products. As always, FDA's decisions in this area should be based on what is best for public health.

**Fifth**, FDA authority must include the ability to evaluate scientifically whether new products are actually "less harmful" and to regulate claims that are misleading or unsubstantiated, that discourage people from quitting, or that encourage them to start using tobacco products.

Other essential elements that I will mention briefly include the need for full FDA authority over health warning labels on tobacco products; FDA authority to require tobacco companies to reveal all that they know about the health effects of their products and their marketing; and FDA authority to require companies to demonstrate that the ingredients they use do not contribute to the harmfulness of their products.

**In conclusion**, we stand at a crossroads in terms of what steps can and should be taken to protect the public's health and to reduce preventable deaths from cancer and other diseases. Evidence has shown us what must be done. The Commission has shown

John R. Seffrin, Ph.D.  
Chief Executive Officer  
American Cancer Society  
Before the House Agriculture Committee  
July 24, 2003

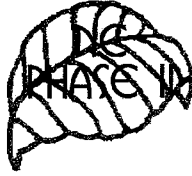
us what should be done and the Supreme Court has spoken about what needs to be done.

It is time for Congress to take action to provide strong and meaningful regulation of tobacco products. Every other consumable is regulated by the federal government while the nation's deadliest consumer product remains free of any governmental oversight. We must not continue to accept the status quo and let more than 440,000 Americans die each year from tobacco use and exposure. We should give the FDA the authority to regulate all tobacco products and to do it now.

Mr. Chairman and Members of the Committee, the American Cancer Society looks forward to working with you and your colleagues to address a tobacco buyout for tobacco producers while providing the Food and Drug Administration with meaningful regulatory authority over tobacco products. We stand ready to join with you to assist tobacco farmers and tobacco-dependent communities while protecting our children from tobacco use and helping those who are currently addicted to quit.

I would be pleased to answer any questions you may have.





**NC PHASE II TOBACCO CERTIFICATION ENTITY, INC.**  
3125 POPLARWOOD COURT, SUITE 112, RALEIGH, NC 27604

JOHN RAY DAVIS, SR.  
EXECUTIVE DIRECTOR

TELEPHONE: 919.790.1936  
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E-MAIL: Jdavis@ncphase2.com  
Bfaulkner@ncphase2.com

July 21, 2003

Representative Mike McIntyre  
228 Cannon House Office Building  
Washington, DC 20515-3307

Dear Representative McIntyre:

I have served as the Executive Director of the North Carolina Phase II Tobacco Certification Entity since Phase II's inception. As you know, North Carolina is the biggest participant in that program. I have become quite familiar with the management of that program, with the importance of fiscally sound management of the Phase II trust fund, and with the importance of the trustee's efficient, sensible cooperation with the Phase II entities and Program Administrators in the fourteen tobacco producing states in order to meet the trust's goals of prompt distribution of payments to the tobacco quota holder and grower beneficiaries.

The North Carolina Phase II program has been fortunate to have the assistance of both an outstanding Program Administrator (Womble Carlyle Sandridge & Rice) and the services of an excellent trustee for the entity of the Phase funds, JP Morgan Chase. Specifically as to the trustee, I have worked closely with JP Morgan Chase throughout the Phase II process. They have been responsive, efficient, thoughtful and always ready to help. They have assisted the North Carolina Phase II Certification Entity in working through plans designed to serve its tobacco growers and quota holders better. I believe the processes that have been developed for distribution of funds during the Phase II program are a model for any similar needs that might arise as a result of any buy-out legislation. JP Morgan Chase's experience as trustee of that program, and its dedication to efficient customer service, have been an integral part of the success of that program. I have every confidence that a similar distribution program, with JP Morgan Chase fulfilling a similar role in fund management, would be a strong predictor for success of a buy-out program.

Thank you for your attention. If I can provide any further information, please let me know.

Sincerely,

John R. Davis  
Executive Director



July 29, 2003

JOHN H. FISH  
Vice President  
Federal Government Affairs

1201 F Street, NW  
Suite 1000  
Washington, DC 20004  
202-626-7210

The Honorable Bob Goodlatte  
Chairman  
House Committee on Agriculture  
U.S. House of Representatives  
1301 Longworth HOB  
Washington, DC 20515

Dear Chairman Goodlatte:

I commend you for holding the recent hearing on the status of the several tobacco buyout proposals pending before the House. R.J. Reynolds appreciated the opportunity to testify and express to the Committee our views on this issue.

During the hearing, Representative McIntyre asked Mr. Tommy Payne, testifying on behalf of R. J. Reynolds, several questions. These questions were ones he had asked at a hearing held by the Specialty Crops last Congress. Shortly after that hearing, I sent a response to both Representative McIntyre and the Subcommittee. I've attached a copy of the letter to this letter.

In responding to a question about the type of regulation we would support, Mr. Payne referenced our website (<http://www.rjrt.com>), I have attached the relevant pages from our website for easy reference. I would ask that my previous letter be included in the hearing transcript.

If you or your staff have any questions, please do not hesitate to call me. Thank you again for holding the hearing.

Sincerely,

A handwritten signature in black ink that reads "John H. Fish".

John Fish  
Vice President, Federal Government Affairs  
R.J. Reynolds Tobacco Co.



October 2, 2002

The Honorable Terry Everett  
U.S. House of Representatives  
House Committee on Agriculture  
Subcommittee on Specialty Crops and Foreign Agriculture Programs  
1301 Longworth HOB  
Washington, DC 20515

JOHN H. FISH  
Vice President  
Federal Government Affairs

1201 F Street, NW  
Suite 1000  
Washington, DC 20004  
202-626-7210

Dear Chairman Everett:

Thank you for holding the recent hearing to review the many differing tobacco buyout proposals pending in Congress. R.J. Reynolds Tobacco Co. was pleased to participate in the hearing and we look forward to working with you and the Committee on this issue.

During the hearing, Congressman McIntyre requested additional information on two subjects and asked that our responses be sent to the Subcommittee for inclusion in the hearing record.

The first question from Representative McIntyre was about the amount of U.S. leaf contained in the cigarettes manufactured by R.J. Reynolds. Excluding Oriental leaf, a variety necessary in our blends, Reynolds uses a majority of US leaf in the manufacturing of our cigarettes.

Representative McIntyre's second question was "would RJR define for the Subcommittee what additional regulatory measures we (RJR) would support." As was stated at the hearing, that information is readily available on our website: <http://www.rjrt.com>. I have printed and attached to this letter a copy of the relevant pages from our website. I would ask that these attached pages also be made a part of the official hearing record.

I hope this letter adequately answers the Subcommittee's questions. If you or other members of your Subcommittee would like additional information, I will be pleased to provide it.

Sincerely,

A handwritten signature in dark ink, appearing to read "John H. Fish".

John H. Fish  
Vice President, Federal Government Affairs  
R.J. Reynolds Tobacco Co.



October 2, 2002

JOHN H. FISH  
Vice President  
Federal Government Affairs

1201 F Street, NW  
Suite 1000  
Washington, DC 20004  
202-626-7210

The Honorable Mike McIntyre  
U.S. House of Representatives  
228 Cannon HOB  
Washington, DC 20515

Dear Representative McIntyre:

Thank you for your participation in the recent Specialty Crops hearing on the differing tobacco buyout proposals introduced in the House. R.J. Reynolds appreciated the opportunity to testify.

Attached is a copy of a letter to Chairman Everett containing our responses to the two questions you posed to Mr. Tommy Payne during the hearing. I've also attached a copy of the relevant pages from our website referenced in the letter.

If you or your staff should have any additional questions, or need clarification on either answer, I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink that reads "John H. Fish".

John Fish  
Vice President, Federal Government Affairs  
R. J. Reynolds Tobacco Co.

### **Our Position on "Tobacco Regulation"**

*R.J. Reynolds Tobacco Company supports additional reasonable regulation over cigarette manufacturing and design that would allow us to continue effectively competing for adult smokers' business.*

We believe there are some areas where additional regulation could serve the public interests. For example, it would be beneficial to establish uniform good manufacturing practices, consistent standards for ingredients and public ingredients disclosure, and rules for communicating "tar" and nicotine yields. In addition, any potential regulatory structure should address not only standards for the design and manufacturing of existing brands, but also encourage industry efforts to develop, test and market cigarettes with the potential to reduce the inherent risks of smoking.

At the same time, any additional regulation must preserve cigarette manufacturers' ability to compete for adult smokers' business. Reasonable regulation would not include restrictions that restrain legitimate competition within the industry for adult smokers' brand choices. Tobacco manufacturers must be able to compete on a level playing field. Manufacturers' intellectual property rights relating to brand formulations should also be protected. And reasonable regulation would not result in back-door or de facto prohibition by rendering cigarettes unacceptable to adult smokers.

Congress is the appropriate forum to determine whether additional tobacco regulation is appropriate – and if so, what it would include and who would be the appropriate regulatory authority. The details of any proposed regulations are more important than the question of what agency is deemed appropriate to oversee the regulations.

Click below for more information on:

- o [Principles of reasonable regulation](#)
- o [Should the FDA regulate cigarettes?](#)

### Principles of Reasonable Regulation

What would constitute additional reasonable regulation? There are some areas where additional regulation could serve significant public interests. R.J. Reynolds Tobacco Company believes that reasonable regulation would:

- Treat cigarettes like cigarettes, instead of trying to force them into some other regulatory category – like drugs and medical devices -- which Congress and the U.S. Supreme Court have determined is not appropriate.
- Establish and enforce Good Manufacturing Practices for the manufacturing process.
- Put appropriate safeguards in place to ensure that cigarette raw materials, components and ingredients do not increase the inherent biological activity of cigarettes.
- Provide useful information about ingredients to the government and the public without compromising any company's proprietary blend recipes or trade secrets.
- Establish and enforce standards for communication of standardized smoke yields, and the use of such product descriptors as "low-tar," "lights," and "milds."
- Preserve the rights of adults to choose and purchase a wide range of cigarette styles that they find acceptable in terms of taste and performance – and would avoid actions that would stimulate cigarette smuggling.
- Maintain the ability of cigarette manufacturers to compete for the business of adult smokers.
- Encourage and establish standards to develop, test, market and accurately communicate about consumer-acceptable cigarettes that have the potential to present less risk than the products currently on the market. It would also establish standards for clear public communication of scientific results.

Click below for more information on:

- [Should the FDA regulate cigarettes?](#)
- [Our position on "Tobacco Regulation"](#)

### Should the FDA regulate cigarettes?

R.J. Reynolds Tobacco Company believes that the details of any proposed regulations considered by Congress are more important than the question of what agency is deemed appropriate by Congress to oversee the regulations.

Ultimately, Congress is the appropriate forum to determine whether additional tobacco regulation is appropriate – and if so, what it would include and who would be the appropriate regulatory authority.

We opposed the tobacco regulations proposed by the Food and Drug Administration (FDA) in 1996 and the McCain bill in 1998 because they unduly restricted or eliminated our ability to compete for adult smokers' business. Cigarettes are clearly not foods, drugs or medical-delivery devices, the product categories over which FDA currently has regulatory authority. The food and drug laws governing the FDA make it very clear that unless food, drugs and medical devices are safe, they cannot be sold – a standard that cigarettes cannot meet. If cigarettes are to be further regulated by the federal government, they should be regulated as cigarettes – not forced into a regulatory category they do not fit.

In March 2000, the U.S. Supreme Court ruled that Congress did not intend for the FDA to regulate cigarettes as a drug or medical device. The Supreme Court was unequivocal in its ruling: Congress specifically excluded cigarettes from the Food, Drug and Cosmetic Act (FDCA).

#### **Excerpts from Supreme Court Ruling on FDA & Tobacco** (bold emphasis added)

**"If tobacco products were 'devices' under the FDCA, the FDA would be required to remove them from the market."**

**"Once the FDA fulfilled its statutory obligation to classify tobacco products, it could not allow them to be marketed."**

**"The FDCA's misbranding and device classification provisions therefore make evident that were the FDA to regulate cigarettes and smokeless tobacco, the Act would require the Agency to ban them."**

**"In fact, the FDA itself had previously taken the position that if tobacco products were within its jurisdiction, they would have to be removed from the market."**

Click below for more information on:

- o [Principles of reasonable regulation](#)
- o [Our position on "Tobacco Regulation"](#)

AUG. 4. 2003 2:56PM

NO. 9769 P. 2/4

**Smokeless  
Tobacco  
Council, Inc.**

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August 4, 2003



The Honorable Bob Goodlatte  
Chairman, House Committee on Agriculture  
1301 Longworth House Office Building  
Independence & New Jersey Avenues, SE  
Washington, DC 20515

**Re: Review of the Tobacco Quota Buyout (Hearing Held July  
24<sup>th</sup> 2003); Comments of the Smokeless Tobacco Council,  
Inc.**

Dear Chairman Goodlatte:

On behalf of the Smokeless Tobacco Council, Inc., a trade association representing the smaller U.S. manufacturers of smokeless tobacco products, we write today to submit our views for the "Review of the Tobacco Quota Buyout" hearing record.

The STC member companies have a close working relationship with the tobacco farmers that supply our tobacco leaf. Because of this relationship that has existed for many generations we would like to be supportive of a tobacco buyout. Unfortunately we do not support the current proposals for a number of reasons.

As you indicated at the end of this hearing, there is a lack of consensus on a number of key issues related to the current proposals.

- Will there be a post buy-out program?
- Can the companies pay for the buy-out given the changes in the economics of the industry in recent years?
- Should FDA regulation be a part of a tobacco buy-out?

In addition to the lack of consensus that was evident at the hearing, we have some specific concerns with the current proposals.

Unlike the cigarette industry, smokeless tobacco is not a uniform industry. There are five categories of smokeless tobacco: moist snuff, dry snuff, loose leaf chewing tobacco, plug chewing tobacco, and twist chewing tobacco. All categories, except moist snuff, have been declining consistently for a decade. Some of the STC member companies are only making products in the declining categories and others are heavily dependent on them as well. This makes the tax (in the form of the annual assessment) particularly onerous.



AUG. 4. 2003 2:57PM

NO. 9769 P. 3/4

August 4, 2003  
Page Two

Unlike an excise tax, the assessment is fixed rather than being based on the amount of product sold. Should the declines we have seen in certain categories of smokeless tobacco continue, our manufacturers would be faced with an ever-increasing tax burden without the revenue to pay for it.

Add to this equation the challenging state budgetary situations that are driving state excise taxes to historic levels; we are faced with challenges to the survival of our industry. Last year alone, more than 20 states proposed raising state tobacco taxes and many did.

We also must emphasize that the buyout discussion is not occurring in a vacuum. One House bill and discussions in the Senate contemplate "linking" buyout legislation with FDA regulation of tobacco products. We oppose this "linkage" in the context of the current FDA regulatory proposals because there is no effort to distinguish between different types of tobacco products, notwithstanding that the smokeless tobacco category is much smaller than cigarettes, that smokeless tobacco products already occupy a dwindling portion of the tobacco outlets, and that the products themselves involve vastly different manufacturing processes and components than cigarettes. FDA regulatory proposals in their current form do not, in our view, contribute to modernization of the tobacco program and would lead to such severe regulations as to make the issue of a buyout moot, as many may end up seeking to be bought out!

Many advocate FDA regulation to prevent illegal youth usage of smokeless tobacco products. This is a false premise when considering smokeless tobacco. According to leading government reports, **illegal youth usage has dramatically dropped to historic lows.**

Illegal youth usage at any monitored age for smokeless tobacco is lowest of all tobacco categories. It is down dramatically over the last decade. We will not be satisfied until all illegal youth usage is eliminated. We, the STC, were the pioneers in responsible tobacco retailing with Under 18- No Tobacco, now called Under 18- No Tobacco/We Card, and with our newest strategic initiative, Compliance thru Collaboration®.

We continue to advocate an ID Culture™ wherein commercial access of age-restricted products by underage persons is eliminated.

Smokeless tobacco products have been commercially available in the U.S. since 1782. We have faced and continue to face challenging times. We value and recognize our unique and cooperative relationship with our grower groups and wish to be constructive partners with this Committee in this debate and your efforts to modernize and to maintain a competitive marketplace for the U.S. tobacco program.

AUG. 4. 2003 2:57PM

NO. 9769 P. 4/4

August 4, 2003  
Page Three

In conclusion, we respectfully request that the Committee consider the following questions as it continues to evaluate tobacco buy-out proposals:

1. A tobacco buyout is the answer to **what problem?**
2. What are the **implications for continued domestic tobacco production?**
3. What happens to an industry that faces the **loss of its supply chain?**
4. What are the **short-term and long-term** implications of a buyout?
5. Are all **tobacco types** being considered **fairly?**
6. What are the **trade implications** of a tobacco buyout and will buyout payments count toward the so-called "**amber box?**"
7. Will a buyout also mean **burdensome FDA regulation** that sacrifices economic opportunities for future growers?
8. Will a buyout also mean permanent **tax increases?**

We appreciate your considerations of these comments.

Sincerely,



Robert Y. Maples  
President

**Statement of  
North Carolina Farm Bureau Federation  
to the  
U.S. House Agriculture Committee  
Regarding the Tobacco Quota Buyout**

**July 24, 2003**

The North Carolina Farm Bureau is pleased to offer this statement for the hearing record.

As the largest general farm organization in North Carolina, we represent diversified farm families from all 100 counties in our state. Many of our members depend on tobacco for their livelihoods, but many more are reliant upon this crop to help sustain the economic viability of their local communities.

On September 26, 2002, Larry Wooten, President of North Carolina Farm Bureau, testified before the House Agriculture subcommittee on Specialty Crops and Foreign Agriculture Programs regarding the federal tobacco program. All of the concerns he expressed in his testimony are still relevant today for tobacco farmers in North Carolina. However, an additional sense of urgency exists because of changes that have occurred since September 2002.

On December 16, 2002, USDA announced a 9.5% quota reduction for flue-cured tobacco and on January 31, 2003 USDA announced a 11.1% quota reduction for burley tobacco. These cuts come on the heels of several years of substantial decline in tobacco quota levels. For growers and quota owners cuts represent a real loss of income. In 2003, farmers in North Carolina will plant fewer acres of tobacco than any year since 1874.

The economic forces of supply and demand have driven up quota rent prices to a level that threatens the viability of tobacco farming operations. Due to declining quotas, landowners have been forced to increase their quota leases 10 to 15 percent. Increased rental rates result in higher costs of production on smaller acreages for our farmers.

On July 10, 2003, the largest domestic tobacco manufacturer announced that they would not participate in the flue-cured tobacco auction market for this year. They also indicated similar intentions for burley auction market. The tobacco auction has been one of the cornerstones of the federal tobacco program since its inception. The structure of the federal tobacco program depends on a viable auction market. The health of the auction market system is obviously poor when the largest domestic manufacturer will not participate.

Time is of the essence. For the previously mentioned reasons and many others, farmers and quota owners need immediate action on this issue. The legislative schedule facing the House of Representatives also illustrates time is of the essence.

North Carolina Farm Bureau has spent countless hours working with our members on developing the future direction of the tobacco program. Extensive discussions have focused on how to remove quota equity from the cost of tobacco production. We have also looked at how to make our tobacco more competitive on the world market, while ensuring the stability of our tobacco growing communities.

We believe H.R. 245 is a good vehicle to move this process forward. Fair and equitable compensation to growers and quota owners is the most important element of H.R. 245. This legislation also provides for an adequate structure in the industry post buyout. It has been endorsed by the American Farm Bureau and has broad support from organizations such as the American Cancer Society, the American Lung Association and The Campaign for Tobacco Free Kids.

The farmers in North Carolina have made one point loud and clear! The number one priority of our growers in this whole debate is a solution that provides economic stability and allows them to plan for the future. Our belief is that the future can only be assured by providing adequate compensation to quota owners and growers.

Thank you for the opportunity to voice our support for the House Agriculture Committee's efforts to craft appropriate language to secure a successful tobacco buyout. As we have illustrated the timing of this issue is very critical. Farmers and quota owners need relief from pressures created by industry changes. Huge quota cuts, increased quota rents, and the poor health of the auction market are all issues that will confront us moving forward. We look forward to working with the committee to resolve these issues as soon as possible.



**NORTH CAROLINA  
FARM BUREAU FEDERATION**

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July 25, 2003

The Honorable Mike McIntyre  
U.S. House of Representatives  
228 Cannon House Office Building  
Washington, D.C. 20515

Dear Mike:

During the House Agriculture Committee hearing on the tobacco buyout this week, you requested suggestions for changes that will need to occur to the federal tobacco program in the absence of a buyout.

First, I suggest it will be necessary to consider lowering the price support level to allow domestic tobacco to be price competitive in the world market. Second, we need to develop a plan that will allow actual growers of tobacco to have possession of tobacco quota, which may include a mandatory sale of quota. This will insulate growers from huge fluctuations in quota rent prices and allow them to make long-range plans for their farming operations.

Based on market trends, I predict that in 2004 we will have another significant tobacco quota cut. In recent years, a large amount of tobacco has gone under loan, thus raising concerns about increases in the no net cost assessment. In addition, the largest tobacco manufacturer has indicated that they will not participate in the flue-cured tobacco auction market this year, further complicating the tobacco marketing situation.

Thank you for the opportunity to bring these issues to your attention. If you have any questions or concerns, please let me know.

Sincerely,

Larry B. Wooten  
President

## CAMPAIGN for TOBACCO-FREE Kids®

August 7, 2003

The Honorable Bob Goodlatte  
Chairman  
Committee on Agriculture  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your invitation to testify on July 24 before the House Committee on Agriculture. I deeply appreciate your having given me the opportunity to address the Committee regarding a buyout of tobacco quota and surrounding issues.

Below are my answers to the questions you submitted:

1. The standard buyout scheme tossed around is an \$8 per pound payment to quota owners and a \$4 per pound payment to growers (as a transition payment) based on quota years from 1998 to 2002:

- What, if any, are your organization's thoughts on this?

*We support the recommendation for \$8 per pound payments to quota owners and \$4 per pound payments to growers, but we recognize that those numbers only have real meaning once you attach them to a specific quota year. We support the payments being based on the 1998 quota year, prior to drastic quota cuts, because 1998 quotas are more reflective of what typical production was before severe quota cuts. Tobacco growers believe a buyout based on 1998 is necessary to provide adequate compensation and we support that position. A buyout based on 2002 quota year provides farmers dramatically less than they say they need. It is for that reason that we have supported buyout bills introduced in the House this year (H.R. 245) by U.S. Rep. Ernie Fletcher (R-KY) and last year in the Senate (S. 2995) by U.S. Sen. Ernest Hollings (D-SC) that meet those standards and have been endorsed by numerous public health and tobacco grower organizations and have opposed bills that provide farmers far less.*

2. Some buyout proposals include strong, supply-control, price support policy for a post-buyout tobacco world. Others prefer a more free-market approach that would provide very little post-buyout structure.

- Would your organization support a tobacco quota buyout that did not include any significant post-buyout program? Please explain.

*Meaningful price and production controls are essential if family farmers are to survive and for our support. The Fletcher bill has such controls as did the Hollings bill last year. The other bills that have been introduced to address this issue so far do not. Production controls have to be based on poundage if they are to be meaningful and price controls have to assure farmers that they can earn more than the cost of production.*

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*Yes. As stated above, we support a revamped tobacco program with continued controls on price, supply and quality but believe that the existing quota system should be replaced as we described in our testimony. A new system would prevent the right to grow tobacco from becoming a marketable asset, thus eliminating economic dependence on tobacco for many who are not directly involved in production.*

3. The popular consensus seems to be that in order to achieve a tobacco quota buyout, producers and manufacturers must agree to some form of Food and Drug Administration (FDA) regulation over tobacco products. Some proposals directly tie a tobacco quota buyout to FDA regulation, others do not but are constructed with the notion that such regulation will be married to a buyout during the legislative process.

- In general, please explain what type of FDA regulation you endorse.

*The National Center for Tobacco-Free Kids supports giving FDA the authority to establish fair and equitable regulatory controls over the manufacture, sale, distribution and labeling of tobacco products comparable to regulations established for other products FDA regulates. The authority should be comparable to the FDA's authority over other products and should be adequate to permit the FDA to protect the public health.*

- What do you consider *acceptable* FDA regulation? Please respond as specifically as possible.

*Acceptable legislation establishing FDA regulation of tobacco products includes, but is not limited to, the following critical elements: FDA authority to regulate the sale and distribution of tobacco products, including access, advertising and promotion; adoption of the youth access and marketing restrictions of the 1996 FDA rule; disclosure of all documents in the industry's possession relating to the health effects of tobacco products; creation of a "protection of the public health" standard for all tobacco products; authority to require ingredient disclosure; authority to require, add, and revise health warnings on tobacco packages and advertisements; authority to reduce or eliminate harmful components; authority to review and approve or deny reduced risk claims; pre-emption no more extensive than that FDA exercises with respect to other products; no authority over tobacco farms or tobacco growing; authority to subject tobacco products to the same standards or procedures applied to other FDA-regulated products.*

*The best way to understand more specifically what we consider acceptable FDA regulation is to review the bills on this topic that we have endorsed and those that we have opposed. The National Center for Tobacco-Free Kids believes legislation introduced in the last Congress, including H.R. 1097, H.R. 1043, H.R. 1044 and S. 2626, would provide for acceptable FDA regulation of tobacco products.*

- What do you consider *unacceptable* FDA regulation? Please respond as specifically as possible.

*Unacceptable legislative proposals for FDA regulation would include, but not be limited to legislation that contained loopholes and/or constraints and other provisions that would prevent FDA from establishing effective regulatory controls over tobacco products. Such provisions include: limiting the FDA's authority over tobacco marketing to marketing that allegedly targets children; preventing FDA from prohibiting misleading claims such as "light" and "low tar;" imposing seemingly innocuous sounding but difficult to prove standards for FDA's authority over marketing, such as;*

- *requiring FDA to first prove a causal link between a specific advertisement and the increased use of tobacco products by children (It should be noted that the tobacco*

industry still incredibly claims that it has never targeted children in its advertising and that its advertising does not lead to increased use of tobacco by children);

- prohibiting FDA from requiring the reduction or elimination of harmful substances in tobacco products even where the technology exists to do so easily unless FDA can prove that the product change will not impact its consumer acceptability, a subjective standard that would allow the tobacco industry to tie up the FDA whenever it did not want to make a product change;
- establishing the deadly risks posed by today's products as the standard against which new products are judged;
- unduly constraining the FDA's authority to restrict how products it has found have the potential to be less hazardous than other tobacco products are marketed to prevent the public from being misled about the relative risk of these products and to prevent the marketing of these products from unduly discouraging people from stop using tobacco products altogether.

*The National Center for Tobacco-Free Kids has found legislation including H.R. 3940, H.R. 2180 and S. 190 introduced in the last Congress, and H.R. 140 introduced in the current Congress, to be unacceptable proposals for FDA regulation of tobacco products.*

- Do you support limiting FDA regulatory authority to tobacco products only, or do you support a broader scope?

*The National Center for Tobacco-Free Kids supports legislation giving FDA authority over manufactured tobacco products; it does not support giving FDA authority over tobacco farms or tobacco growing.*

- Does your organization support the banning of any or all tobacco products by the FDA now or in the future?

*The National Center for Tobacco-Free Kids agrees with the conclusion reached by the FDA itself in 1996 that based on the circumstances that exist now and based on what we know today it would be bad public health policy for the government to ban or prohibit the use of tobacco products among adults. The National Center believes that any decision to reduce or eliminate any of the harmful components of tobacco products, including nicotine, should be scientific decisions based on the best available science and, therefore, should be made by the FDA, just as it does for other products. It is impossible to predict what scientific information may become available in the future or how the technology that governs the production of manufactured tobacco products or alternatives to traditional tobacco products may evolve in the future. Therefore, the National Center believes that decisions about what action should be taken with regard to the components of tobacco products or any class of tobacco products should be governed by the circumstances at the time and should be based on the best available science at that time by the FDA. Because we understand the importance of any decision to ban any class of tobacco products, we have supported in the past, and continue to support legislation that would provide a two-year opportunity for Congress to reverse any proposed final regulation banning any class of tobacco products, or any proposed final regulation reducing to zero the nicotine yield of a tobacco product.*

- Would your organization agree to legislative language prohibiting FDA regulation of tobacco production on the farm?

*The National Center for Tobacco-Free Kids would agree to legislative language prohibiting FDA regulation of tobacco production on the farm and has agreed to it in the past. We agreed to the following language in H.R. 1097, introduced in the last Congress:*



*"The provisions of this Act relating to tobacco products shall not apply to tobacco leaf that is not in the possession of the manufacturer, or to the producers of tobacco leaf, including tobacco growers, tobacco warehouses, and tobacco grower cooperatives, nor shall any employee of the Food and Drug Administration have any authority whatsoever to enter onto a farm owned by a producer of tobacco leaf without the written consent of such producer. Notwithstanding any other provision of this subparagraph, if a producer of tobacco leaf is also a tobacco product manufacturer, the producer shall be subject to this chapter in the producer's capacity as a manufacturer. Nothing in this chapter shall be construed to grant the Secretary authority to promulgate regulations on any matter that involves the production of tobacco leaf or a producer thereof, other than activities by a manufacturer affecting production."*

- Would your organization agree to legislative language *prohibiting* the FDA from acting administratively or through regulation to ban tobacco products or the production of tobacco now or in the future?

*Please see our answer above. The National Center for Tobacco-Free Kids believes a decision to restrict a class of tobacco products would be inappropriate today based on the current circumstances and the current science. We believe, however, that all decisions concerning manufactured tobacco products, including product performance standards, the reduction and/or elimination of specific harmful components found in tobacco products, including nicotine, and the broader consideration of restricting classes of tobacco products should be scientific decisions based on sound science, including a consideration of the overall real world health impacts of any such action. Therefore, we believe FDA, in the first instance, should make decisions about tobacco products, just as it does for other products, and we have supported legislation to give it that authority. We do not support the prohibition of all tobacco products because we believe that would lead many people currently addicted to tobacco products to seek tobacco products in a black market with all the attendant dangers.*

- Would your organization agree to legislative language that did *not* classify tobacco or tobacco products as a drug or drug delivery system?

*Though we believe that nicotine is a drug and that manufactured tobacco products are drug delivery systems as the terms are used in the Food, Drug and Cosmetic Act, the National Center for Tobacco-Free Kids would agree to legislative language that did not classify tobacco or tobacco products as a drug or drug delivery system as long as the authority granted to FDA was adequate. We have done so in the past, most recently in our support in the last Congress for S. 2626, legislation that would have established FDA regulation of tobacco products through the creation of a separate chapter within the Food, Drug and Cosmetic Act.*

- If FDA regulation were limited to tobacco products *only*, what are your thoughts on the likelihood of that regulation being passed down to the farm? For example, if the FDA decided to rid product of a certain chemical, could such a change be made at the factory, or would it have to be made on the farm?

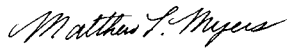
*The forms of FDA regulation that we have supported have limited FDA's authority to manufactured tobacco products. Our goal is to protect the public health, not intrude on the activities of farmers. We believe tobacco product manufacturers have it within their control to make the changes to manufactured tobacco products that might result from FDA regulation. It is not possible for us to know, however, whether manufacturers might pass down to growers the responsibility for making some changes required by FDA regulation.*

- Do you have any other comments regarding a tobacco quota buyout, or requirement of it, apart from FDA regulation for your organization to be agreeable to its passing?

*As noted in my testimony before the Committee on July 24, the National Center for Tobacco-Free Kids will evaluate any proposal for a tobacco quota buyout according to the principles for such laid out in the Final Report of the President's Commission on Improving Economic Opportunity in Communities Dependent on Tobacco Production While Protecting Public Health. In that regard, we have endorsed H.R. 245 in the current Congress.*

Mr. Chairman, thank you again for the opportunity to address these important issues.

Respectfully,



Matthew L. Myers  
President  
National Center for Tobacco-Free Kids

## STATEMENT OF KEITH PARRISH

Mr. Chairman, members of the Agriculture Committee, my name is Keith Parrish. I am a tobacco farmer and quota holder from Benson, North Carolina. I thank the committee for holding this hearing on legislation that is critical to the future of tobacco growers, quota holders, consumers and manufacturers in the American tobacco industry.

Tobacco growers and quota holders have lived under the nation's tobacco quota and price support system since the 1930's. The system, invented for a different time, worked well for many years but now it clearly is broken. It is imperative that we work together to create a landmark national initiative on tobacco. American tobacco farmers support a buyout of historic tobacco farm quotas and reasonable FDA regulation of tobacco consumer products. The goal is a healthy future and the path is fairness.

Tobacco farming was the historical economic backbone of the colonies and was the only means of support for the family. In fact, tobacco was America's first export and was used as a trade commodity back when our country was in its early development stage. Tobacco remains built on these traditional roots since the creation of tobacco quota has inherent value to its holder. Indeed, tobacco quota is a property right in most tobacco producing states. Strong dependence on income generated from tobacco production is a fact of life for farmers and their communities in tobacco growing states. Entire communities and counties have been built on the concept and value of the tobacco quota.

Although it is a product at the economic core of many communities, today, tobacco farmers are planting the smallest crop since Ulysses S. Grant was president. The value of U.S. tobacco production declined 46 percent from 1997 to 2002. The Agriculture Department expects it to be just 413,710 acres this year, 3 percent lower than last year and the smallest since 1874.

Due to the decline in tobacco production and the rising costs associated with production, tobacco growers have farmed our equity away. While operating under the current tobacco program, the only thing allowing us to stay on our farm land is to renew our bank notes, and use our equity as collateral to borrow against. Tobacco farmers are forced to get their debt load down to a manageable level. For example, many of the farmers have been forced to sell timber before maturity and road front lots from their property to make ends meet while they are hoping and praying for a buyout.

A lot of us farm small grains, cotton, soy beans, beef cattle, tobacco and other commodities. However, the most management intensive crop we grow and the most stable is tobacco. Despite the low tobacco prices, which are the subject of a class action antitrust case in Federal court in Greensboro, tobacco is still the one commodity where, because of the quota protection, we can take it to the bank and use it to get a loan for the next year's crop. Now, due to the cuts in quota, we are unable to do this.

Today, thousands of farmers are going out of business. Over the past 20 years more than 100,000 tobacco farms have been lost. Barring selling more land, bankers will not lend money unless you can pay the debt back which is increasing impossible due to the drastic quota cuts and low prices. As a result, we have little or no equity left in our farms to obtain funds to continue our tobacco farming operations. To makes matters even worse, we are unable to pledge our quota for collateral since we don't know if or when the buyout will occur.

Farming, in general, has changed along with the economic difficulties facing tobacco growers. Farmers have always worked together and depended on each other throughout our history. When one is down, others pick him up. Each farmer recognizes that it may be him who is down the next season, and cooperation among farmers is something we have always lived by. The fabric of farming communities has been like this since the Mayflower landed.

Now, however, the critical changes that have taken place in how quota is held and used are tearing the fabric of solidarity apart. Instead of helping a quota holder who has had a rough growing season, some farmers who have bigger or more efficient operations silently stand by, perhaps hoping to be the first to offer to take up the quota when the owner folds. I am reminded of an image of vultures in dead oak trees, waiting to sweep down on their prey.

Two aspects of the buyout are important to help address this point. First we need the buyout to occur now, without delay. Second, we need to phase the impact of the buyout on farmers who may be the smallest, the oldest, or the ones who were unfortunate in the last growing season.

The buyout compensation needs to be handled by putting the money into the hands of the farmers. It is farmers and their families who largely populate most ag-

ricultural towns and counties. They support retail businesses, services, schools and church activities. If you want an engine to generate a recovery and stabilize these communities as we go forward from the buyout, the compensation needs to be paid to the people who make their living there, who raise their kids there, who shop there, who farm there.

It is also important to offer the farmer the chance to diversify his farming operation. Whether he wants to continue to farm tobacco or another commodity should be his choice. A buyout will provide us with the opportunity to transition from tobacco to other commodities. Diversification has always been a part of our farming operations. The tobacco income allowed for this opportunity to occur. The farmer does not want to be forced to sell off his farming operation and move to the city where virtually no jobs exist for him, therefore it makes sense to give him the option of farming. When diversification is allowed, the community stays intact.

Although tobacco auctions have not been competitive for a very long time, the current quota aspect of the tobacco system most drastically started to fail after the Master Settlement Agreement was entered into in 1998. Manufacturers began to purchase large amounts of foreign tobacco. This created a lack of demand for domestic tobacco leaf and quotas were drastically cut.

After the quota cuts started to occur in 1998, tobacco farmers began anticipating a buyout. Today, farmers are dealing with 60 percent of the quota that we had in 1998. Even with the drastic cuts in quota, tobacco farmers are paying more for production due to the increased cost of quota rents. Some farmers are paying about 60 cents/lb for quota rent. We repeatedly told the banks, that we have equity, we have it on the \$8/4 per pound. Since tobacco is such a special commodity and quota has value on its own like no other crop, the banks treated it differently. Now, we are faced with whether the quota system will even exist or when a buyout will occur.

If the buyout does not occur it is suicide (and not by choice) for the tobacco farmer. My family has had five generations of farming, this is my last crop if we don't get the buyout. I will not be able to financially continue my farming operations under the current scheme.

The real issue is a health issue, and it faces all the communities in the states that grow tobacco today. A friend of mine, who is a native American, said his "people were standing on the shoreline smoking when the Mayflower came in." Tobacco is a legal commodity. The demand for tobacco leaf is not going to disappear. Increasingly, manufacturers are turning to imports of uncertified tobacco.

We can choose to regulate tobacco and make it a safe product and have it be produced here in USA, or we can have it produced uncertified, and imported in from Zimbabwe, Brazil or China.

The focus is on how do we want to proceed in the future? How do you want us to grow this commodity? Our nation has moved far down the road in understanding health risks of tobacco use. The decline in tobacco consumption, and the search for harm reduction, are things we applaud. Tobacco farmers believe we can continue to accomplish this goal of growing the safest crop in the world. This will only occur with a buyout and accompanying FDA legislation.

Tobacco should be trackable and accountable. Every other commodity under the 2002 farm bill has accountability. Tobacco should not be different, why regulate every other aspect of the industry and not the most important part—production.

You are embarking on a new set of national tobacco policies and you need us. Tobacco production is unique. It is unlike any other commodity crop, and the policy covering it needs to reflect its uniqueness while simultaneously addressing the health concerns. There is special knowledge required in the handling of the chemicals and there are details in the growth process that are unlike any other crop. We have the know-how, the technology, and the USDA and EPA compliance programs necessary to carry harm reduction discoveries into our tobacco crops.

Reasonable FDA regulation of tobacco consumer products is a non-grower issue. U.S. tobacco growers are willing to accept any form of safety or health check. Tobacco growers understand the Farm Service Agency's (FSA) system for the tracking of tobacco which is now in place. The point today is that the purpose of tracking will not disappear, it will change. Instead of tracking for quota, a new health policy on tobacco products will require tracking for health. We make a living growing tobacco, and as a business person, we would welcome the checks and balances that would enable us to grow a premier crop.

We are fortunate in this country not to need a new bureaucracy to accomplish our new health goals in the tobacco growing sector. In fact, growers already register and certify our crops with the FSA. Because a governing organization already exists any new legislation would not need to invent a new entity to register our crops and oversee their certification.

With hundreds of thousands of class members, never in history has there been such a large group of growers that have the capability to speak as one voice. Tobacco growers were not invited to the table for the MSA, now there is a unity of positions which has never happened before. The path of fairness allows us to reach our goal for a healthy future of tobacco production.

I would invite the Members to think about this the way we have for years. This is a rare moment for you to accomplish a difficult task, putting together a bipartisan coalition, including health organizations, in a singular direction without political risks. You can get it done.

Mr. Chairman and the members of the committee, thank you for focusing attention on these very important issues that threaten the future of America's tobacco growers. On behalf the American tobacco growers and quota holders, I appreciate this opportunity to testify and present our views to the members of the committee.

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AMERICAN CANCER SOCIETY—ANSWERS TO SUBMITTED QUESTIONS

**1. The standard buyout scheme tossed around is an \$8 per pound payment to quota owners and a \$4 per pound payment to growers (as a transition payment) based on quota years from 1998 to 2002:**

**What, if any, are your organization's thoughts on this?**

The American Cancer Society supports the \$8 per pound payment to quota owners and \$4 per pound to tobacco growers based on the 1998 quota year allotments. We are concerned that payments based on any other year would significantly reduce the payments to tobacco quota owners and tobacco growers because quota levels were significantly reduced after 1998. Tobacco quota owners and tobacco farmers have told us that a buyout based upon later year quota levels will not provide them with adequate compensation to continue to survive in farming or to transition to other crops. Therefore the Society supports legislation, the Tobacco Equity Elimination Act of 2003 (H.R. 245), introduced this year by Rep. Ernie Fletcher (R-KY) because it reflects the critical components of a buyout proposal to ensure that tobacco farmers' businesses can continue to be viable. This legislation has been enthusiastically endorsed by public health groups, including the American Heart Association and the Campaign for Tobacco Free Kids.

**2. Some buyout proposals include strong, supply-control, price support policy for post-buyout tobacco world. Others prefer a more free-market approach that would provide very little post-buyout structure.**

**Would your organization support a tobacco quota buyout that did not include any significant post-buyout program? Please explain**

No. Any tobacco quota buyout that the Society supports would have to include a post-buyout program that guarantees the economic stability of tobacco farmers and tobacco growing communities. Production and price controls are the only way to guarantee that there will not be a glut of tobacco in the market and that a consistent and fair market price is offered to tobacco farmers. We believe that a reasonable post-buyout program is both highly desirable and attainable.

**Would your organization support a tobacco quota buyout that did include a significant post-buyout program such as a supply-control and/or price-support program? Please explain.**

Yes. We believe that the current tobacco program no longer addresses the needs of tobacco farmers and tobacco growing communities and therefore must be restructured to respond to the changing demands of tobacco farming. Supply control and price support programs not only guarantee that a quality product will be produced but also are necessary for the economic survival of tobacco farmers and tobacco producing communities. We would be pleased to work with the Committee to achieve this goal.

**3. The popular consensus seems to be that in order to achieve a tobacco quota buyout, producers and manufacturers must agree to some form of Food and Drug Administration (FDA) regulation over tobacco products. Some proposals directly tie a tobacco quota buyout to FDA regulation; others do not but are constructed with the notion that such regulation will be married to a buyout during the legislative process.**

**In general, please explain what type of FDA regulation you endorse.**

The American Cancer Society endorses regulations that would provide the FDA with meaningful authority over all manufactured tobacco products including their marketing, sale, distribution, and labeling. This authority should be consistent with other products regulated by the agency while protecting the public health.

One issue of concern for us is that the current “safe” and “effective” standard applied by the FDA in evaluating and approving consumable products cannot be applied to manufactured tobacco products as they have been shown to be neither “safe” nor “effective”. In recognition of the unique qualities of tobacco products the Society supports legislation that would regulate manufactured tobacco products under a separate chapter established under the Food, Drug, and Cosmetic Act that would evaluate manufactured tobacco products based upon a “public health” standard. The Society has worked on a bi-partisan and bi-cameral basis for the last several years on this issue. We were very supportive of legislation introduced in the 107th Congress, the “Youth Smoking Prevention and Public Health Protection Act” (S. 2626), and are pleased that similar legislation will be re-introduced this year. We are hopeful that proposed language in a bill pending introduction by Sen. Judd Gregg (R-NH) can be the starting place for any future discussions and look forward to working with Members of Congress on this issue.

**What do you consider acceptable FDA regulation? Please respond as specifically as possible.**

- There are several key components that the Society feels are necessary to guarantee that the FDA has the kind of authority it needs to appropriately and responsibly regulate tobacco:

- FDA should have jurisdiction over the sale and distribution of tobacco products, including youth access, advertising and promotion;

- Youth access and youth marketing restrictions should be the same as those incorporated in the 1996 FDA rule;

- The “safe and effective” standard should be replaced by a new standard that protects the public health;

- FDA should have the authority to evaluate products and decide, based upon scientific evidence, whether to reduce or eliminate harmful or addictive components of tobacco products; and

- FDA must have the authority to scientifically evaluate products to determine if they are less harmful. Attached is a document that outlines the components required in the type of bill that the Society could support as well as those that we would oppose.

**What do you consider unacceptable FDA regulation? Please respond as specifically as possible.**

Unacceptable FDA regulation would contain loopholes that give the appearance of providing the FDA with authority without truly providing this authority in a meaningful way. For example, the FDA should have the authority to determine prior to market introduction whether new products designated by tobacco manufacturers as “reduced risk” actually reduce risk to the consumer. Those who want weak regulation would allow new products to be marketed as “reduced risk” prior to any scientific evaluation of the validity of these claims by the FDA.

In addition, legislation that would replace a public health standard with a more narrowly defined standard protecting the interests of the industry over that of public health would also be unacceptable. Examples of weak or unacceptable FDA regulation include, but are not limited to, language that (1) restricts the FDA’s ability to prohibit the use of terms such as “light” and “low-tar”; (2) allows the tobacco industry to market a product as “reduced-risk” if the product substantially reduces toxicity; (3) would give the FDA the authority to require changes in tobacco products only if the changes do not render the product “unacceptable for adult consumption”; (4) limits or prohibits the FDA’s authority to require pre-market approval of new products; and/or (5) limits public disclosure of ingredients by tobacco manufacturers.

**Do you support limiting FDA regulatory authority to tobacco products only, or do you support a broader scope?**

The American Cancer Society believes that FDA authority should be limited to manufactured products only. The Society does not support extending this authority to a broader scope such as leaf tobacco and tobacco farming primarily because the authority to regulate leaf tobacco and tobacco farming is currently assigned to the agencies best suited to make determinations regarding tobacco farming—the Department of Agriculture and the Environmental Protection Agency.

**Does your organization support the banning of any or all tobacco products of the FDA now or in the future?**

The American Cancer Society has never advocated for the banning of any tobacco product. We recognize that there are approximately 48 million tobacco users in this country and banning a legal product would not prevent the continued use of tobacco by these consumers and would not be a responsible public health solution to the se-

rious problem of tobacco use and addiction. In fact, any attempts to ban tobacco could possibly result in a “black market” that could further exacerbate the smoking epidemic.

The Society believes strongly that the FDA is the only scientific body with the expertise to effectively evaluate manufactured tobacco products to determine the harmfulness of constituents and to make judgments regarding the safety of the public’s health. As technology is developed to evaluate products and their claims, the FDA should have the flexibility to make future decisions about the elimination of manufactured product constituents or class of products based upon prevailing scientific evidence.

**Would your organization agree to legislative language prohibiting FDA regulation of tobacco production on the farm?**

Yes, the American Cancer Society would agree to legislative language expressly prohibiting regulation of tobacco production on the farm. Language in legislation (H.R. 1097) introduced last year by Rep. Greg Ganske and endorsed by the Society specifically prohibited the FDA from regulating tobacco leaf not in the possession of a tobacco manufacturer including tobacco leaf in tobacco warehouses, held by tobacco cooperatives or on tobacco farms.

**Would your organization agree to legislative language prohibiting the FDA from acting administratively or through regulation to ban tobacco products or the production of tobacco now or in the future?**

It would be difficult to support legislative language prohibiting the FDA from acting administratively or through regulation to ban certain constituents or class of tobacco products because tobacco research and technology development has and continues to change. We have learned through documents released by the industry under the terms of the Master Settlement Agreement that the industry had extensive scientific knowledge of the effects of constituents either naturally occurring in tobacco or added to manufactured tobacco products much earlier than they had previously admitted.

Given that there is much that will be learned as the scientific community continues to research and evaluate tobacco leaf and tobacco products, it would be premature to agree to such language at this time.

**Would your organization agree to legislative language that did not classify tobacco or tobacco products as a drug or drug delivery device?**

While the Society believes that nicotine is a drug as currently defined by FDA regulations and that cigarettes are drug delivery devices, we could support legislative language that did not specifically classify tobacco or tobacco products as a drug or a drug delivery device. In fact, the “Youth Smoking Prevention and Public Health Protection Act” (S. 2626) introduced last year by Senators DeWine and Kennedy created a separate chapter exclusively for the regulation of tobacco products recognizing that they are neither “safe” nor “effective” as defined under FDA regulations.

**If FDA regulation were limited to tobacco products only, what are your thoughts on the likelihood of that regulation being passed down to the farm? For example, if the FDA decided to rid product of a certain chemical, could such a change be made at the factory, or would it have to be made on the farm?**

The Society strongly believes that FDA regulatory authority should be limited to manufactured products only. Our interest is in the protection of the public health and not intended to interfere with the right of tobacco farmers to make a living. We do not, however, have the insight to predict the kinds of demands that the industry might attempt to pass on to tobacco farmers. For example, tobacco farmers were forced to retrofit tobacco barns or lose the ability to sell their product at market when the industry decided that nitrosamines levels—one of the major cancer causing agents found in tobacco—had to be reduced in the tobacco that they were purchasing.

**Do you have any other comments regarding a tobacco quota buyout, or requirements of it, apart from FDA regulation for your organization to be agreeable to its passage?**

The American Cancer Society will evaluate any proposed legislation based upon the recommendations included in the President’s Commission Report. At this time, legislation introduced by Rep. Ernie Fletcher (H.R. 245) most closely represents the proposals for a buyout found in that report. While as of yet, no bill has been introduced in this Congress that meets our criteria, we look forward to evaluating any

legislative proposals that would provide the FDA with meaningful regulatory authority.

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ANSWERS TO SUBMITTED QUESTIONS FROM MR. GRAVES TO THE AMERICAN CANCER SOCIETY, AMERICAN HEART ASSOCIATION, AND CAMPAIGN FOR TOBACCO-FREE KIDS

Dear Representative Graves:

Thank you for the opportunity to respond to your questions regarding our position on these very important issues. We appreciate your having given us the opportunity to respond further regarding a buyout of tobacco quota and FDA regulatory authority over tobacco products.

Below is our joint response to your questions.

**(1) In New York City, a pack of cigarettes costs \$7, thanks to recent city and State excise tax hikes. The result is that smuggling is soaring, people are lining up to buy cigarettes at Indian reservations, and Internet sales are increasing. Don't you feel that this will repeat itself across the country if we increase Federal cigarette taxes, and legitimate retailers who depend on tobacco revenues (especially those who sell primarily gasoline, newspapers and magazines) will suffer?**

A modest Federal tax increase would not have a measurable impact on tobacco tax evasion. Unlike the New York City and State taxes, Federal tobacco taxes apply to all States, all imports, all Indian Reservations, and all Internet sales alike, thus limiting the opportunity for tax evasion. Scores of substantial tobacco tax increases have been implemented across the United States in recent years. All of them have resulted in public health gains and revenue increases, and none have created the massive smuggling problems predicted by the tobacco industry. Even in New York City, tobacco taxes are having their intended effect: smoking rates are lower, revenue is higher, and tobacco tax evasion appears to be within the predicted range.

**(2) Many have suggested that the minimum age to purchase tobacco products should be increased from 18, as is currently required for a State to be eligible for SAMHSA grants, up to 21, the legal age for alcohol purchase. Do you agree that the minimum age should be increased to 21?**

We support the right of States to implement age restrictions above the age of 18.

**(3) Under current law, it is illegal for individuals under age 18 to purchase tobacco, but it is not illegal for them to possess it. Do you believe that underage possession should be outlawed?**

There is no reliable, scientific evidence that laws penalizing minors for the purchase, possession and use of tobacco are effective. Possession laws that inhibit the use of minors in compliance checks are detrimental to tobacco control efforts. Moreover, passage and enforcement of possession laws can divert attention away from tobacco control strategies that have been proven effective. Laws penalizing minors for the purchase, possession and use of tobacco should not be considered until effective regulation and enforcement at the retail level are in place and there is reputable scientific evidence that such laws effectively reduce tobacco use by minors.

**(4) Does any tobacco buyout bill need to include FDA regulation over the sale of tobacco in order for the public health to support it?**

Yes. The public health community has worked closely with tobacco producers over the last several years in an effort to reach agreement on the most appropriate response to their economic crisis and the public health crisis that has been created by the use of tobacco. The final report of the President's Commission on Improving Economic Opportunity in Communities Dependent on Tobacco Production While Protecting Public Health calls for a comprehensive approach to the solution to tobacco production and consumption combining a program that reduces farmers' economic dependence on tobacco while initiating safety and health standards that protect the public health. The public health community and major organizations representing the interests of tobacco growers remain committed to working together to see the legislative approach proposed by the President's Commission enacted into law.

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AMERICAN LUNG ASSOCIATION

**In New York City, a pack of cigarettes costs \$7, thanks to recent city and State excise tax hikes. The result is that smuggling is soaring, people are lining up to buy cigarettes at Indian reservations, and Internet sales are**



**increasing. Don't you feel that this will repeat itself across the country if we increase Federal cigarette taxes, and legitimate retailers who depend on tobacco revenues (especially those who sell primarily gasoline, newspapers and magazines) will suffer?**

No. If cigarette taxes are being evaded, that is an issue for law enforcement. We do support legislation giving law enforcement more tools to enforce the laws to limit excise tax evasion over the Internet and smuggling.

**Many have suggested that the minimum age to purchase tobacco products should be increased from 18, as is currently required for a State to be eligible for SAMHSA grants, up to 21, the legal age for alcohol purchase. Do you agree that the minimum age should be increased to 21?**

States should retain their authority over minimum age laws. We support increasing the minimum age for the sale of tobacco products; however, further research to determine the efficacy of these measures is needed.

**Under current law, it is illegal for individuals under age 18 to purchase tobacco, but it is not illegal for them to possess it. Do you believe that underage possession should be outlawed?**

The American Lung Association opposes laws that punish children. Civil or criminal penalties on youth possession or purchase of tobacco products have not been demonstrated to be an effective tobacco control strategy. The focus of youth access laws should be on the retailers who profit from such sales.

**Does any tobacco buyout bill need to include FDA regulation over the sale of tobacco in order for the public health to support it?**

The American Lung Association supports effective FDA regulation. We strongly support legislation like the balanced, bipartisan, compromise bills introduced in the 107th Congress (H.R. 1043, and H.R. 1044) by Mr. Waxman, H.R. 1097 by Mr. Ganske as well as S. 2626 sponsored by Senator Kennedy and Senator DeWine. These bills provide the FDA with the authority necessary to protect public health. We do not support any of the buyout bills that have been introduced in the 108th Congress.

The American Lung Association supports economic transition assistance for tobacco growers, workers and their communities. But, the Federal taxpayer should not finance any program that supports tobacco growth, production, marketing, administrative costs or any other purpose that promotes or facilitates tobacco use, either in the United States or abroad. It is appropriate to help tobacco growers and workers exit the tobacco business.

The American Lung Association appreciates this opportunity to share its views.

