

114TH CONGRESS
1ST SESSION

H. R. 985

To enable concrete masonry products manufacturers to establish, finance, and carry out a coordinated program of research, education, and promotion to improve, maintain, and develop markets for concrete masonry products.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 13, 2015

Mr. GUTHRIE (for himself and Ms. CASTOR of Florida) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To enable concrete masonry products manufacturers to establish, finance, and carry out a coordinated program of research, education, and promotion to improve, maintain, and develop markets for concrete masonry products.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Concrete Masonry
5 Products Research, Education, and Promotion Act of
6 2015”.

7 **SEC. 2. FINDINGS AND DECLARATION OF POLICY.**

8 (a) FINDINGS.—Congress finds the following:

1 (1) The production of concrete masonry prod-
2 ucts plays a significant role in the economy of the
3 United States.

4 (2) Concrete masonry products are produced by
5 hundreds of concrete manufacturers and utilized
6 throughout the United States and foreign countries.

7 (3) Concrete masonry products move in the
8 channels of interstate and foreign commerce, and
9 concrete masonry products that do not move in such
10 channels of commerce directly burden or affect inter-
11 state commerce of concrete masonry products.

12 (4) The concrete masonry products industry
13 employs thousands of workers and positively impacts
14 economic stability throughout the United States.

15 (5) The maintenance and expansion of existing
16 markets for concrete masonry products and the de-
17 velopment of new markets are vital to the welfare of
18 concrete manufacturers in the United States and
19 those concerned with marketing and using concrete
20 masonry products as well as the general economic
21 welfare of the United States.

22 (6) The concrete masonry products industry
23 plays a vital role in providing safe, environmentally
24 sustainable, and economical construction for citizens
25 of the United States and abroad.

1 (7) Concrete masonry products are used for the
2 construction of structures that protect and provide
3 shelter for citizens during disasters (earthquakes,
4 floods, hurricanes, tornados, fire, et cetera).

5 (8) Concrete masonry structures provide energy
6 efficiencies to reduce American energy demands.

7 (9) Concrete masonry provides for durable
8 structures that support sustainability objectives, re-
9 ducing long-term demands on natural resources.

10 (10) Concrete masonry products are made
11 using locally available resources throughout the
12 United States, reducing transportation and infra-
13 structure demands.

14 (11) Concrete masonry products are used to
15 support the construction of durable and cost-effi-
16 cient, low-income housing.

17 (b) PURPOSE.—The purpose of this Act is to author-
18 ize the establishment of an orderly program for devel-
19 oping, financing, and carrying out an effective, contin-
20 uous, and coordinated program of research, education, and
21 promotion, including funds for marketing and market re-
22 search activities, that is designed to—

23 (1) strengthen the position of the concrete ma-
24 sonry products industry in the domestic market-
25 place;

1 (2) maintain, develop, and expand markets and
2 uses for concrete masonry products in the domestic
3 and foreign marketplaces; and

4 (3) promote the use of concrete masonry prod-
5 ucts in environmentally sustainable construction and
6 building.

7 (c) LIMITATION.—Nothing in this Act may be con-
8 strued to provide for the control of production or otherwise
9 limit the right of any person to manufacture concrete ma-
10 sonry products.

11 **SEC. 3. DEFINITIONS.**

12 For the purposes of this Act:

13 (1) BLOCK MACHINE.—The term “block ma-
14 chine” means a piece of equipment that utilizes vi-
15 bration and compaction to form concrete masonry
16 products.

17 (2) BOARD.—The term “Board” means the
18 Concrete Masonry Products Board established under
19 section 5.

20 (3) CAVITY.—The term “cavity” means the
21 open space in the mold of a block machine capable
22 of forming a single concrete masonry unit having
23 nominal plan dimensions of 8 inches by 16 inches.

24 (4) COMMERCE.—The term “commerce” in-
25 cludes interstate, foreign, and intrastate commerce.

1 (5) CONCRETE MASONRY PRODUCTS.—The
2 term “concrete masonry products” refers to a broad-
3 er class of products, including concrete masonry
4 units as well as hardscape products such as concrete
5 pavers and segmental retaining wall units, manufac-
6 tured on a block machine using dry-cast concrete.

7 (6) CONCRETE MASONRY UNIT.—The term
8 “concrete masonry unit” means a concrete masonry
9 product that is a manmade masonry unit having an
10 actual width of 3 inches or greater and manufac-
11 tured from dry-cast concrete using a block machine.
12 Such term includes concrete block and related con-
13 crete units used in masonry applications.

14 (7) DEPARTMENT.—The term “Department”
15 means the Department of Commerce.

16 (8) DRY-CAST CONCRETE.—The term “dry-cast
17 concrete” means a composite material that is com-
18 posed essentially of aggregates embedded in a bind-
19 ing medium composed of a mixture of cementitious
20 materials (including hydraulic cement, pozzolans, or
21 other cementitious materials) and water of such a
22 consistency to maintain its shape after forming in a
23 block machine.

24 (9) EDUCATION.—The term “education” means
25 programs that will educate or communicate the ben-

1 efits of concrete masonry products in safe and envi-
2 ronmentally sustainable development, advancements
3 in concrete masonry product technology and develop-
4 ment, and other information and programs designed
5 to generate increased demand for commercial, resi-
6 dential, multi-family, and institutional projects using
7 concrete masonry products and to generally enhance
8 the image of concrete masonry products.

9 (10) MACHINE CAVITIES.—The term “machine
10 cavities” means the cavities with which a block ma-
11 chine could be equipped.

12 (11) MACHINE CAVITIES IN OPERATION.—The
13 term “machine cavities in operation” means those
14 machine cavities associated with a block machine
15 that have produced concrete masonry units within
16 the last 6 months of the date set for determining eli-
17 gibility and is fully operable and capable of pro-
18 ducing concrete masonry units.

19 (12) MANUFACTURER.—The term “manufac-
20 turer” means any person engaged in the manufac-
21 turing of commercial concrete masonry products.

22 (13) MASONRY UNIT.—The term “masonry
23 unit” means a noncombustible building product in-
24 tended to be laid by hand or joined using mortar,

1 grout, surface bonding, post-tensioning or some com-
2 bination of these methods.

3 (14) ORDER.—The term “order” means an
4 order issued under section 4.

5 (15) PERSON.—The term “person” means any
6 individual, group of individuals, partnership, cor-
7 poration, association, cooperative, or any other enti-
8 ty.

9 (16) PROMOTION.—The term “promotion”
10 means any action, including paid advertising, to ad-
11 vance the image and desirability of concrete masonry
12 products with the express intent of improving the
13 competitive position and stimulating sales of con-
14 crete masonry products in the marketplace.

15 (17) RESEARCH.—The term “research” means
16 studies testing the effectiveness of market develop-
17 ment and promotion efforts, studies relating to the
18 improvement of concrete masonry products and new
19 product development, and studies documenting the
20 performance of concrete masonry.

21 (18) SECRETARY.—The term “Secretary”
22 means the Secretary of Commerce.

23 (19) UNITED STATES.—The term “United
24 States” means the several States and the District of
25 Columbia.

1 **SEC. 4. ISSUANCE OF ORDERS.**

2 (a) IN GENERAL.—

3 (1) ISSUANCE.—The Secretary, subject to the
4 procedures provided in subsection (b), shall issue or-
5 ders under this Act applicable to manufacturers of
6 concrete masonry products.

7 (2) SCOPE.—Any order shall be national in
8 scope.

9 (3) ONE ORDER.—Not more than one order
10 shall be in effect at any one time.

11 (b) PROCEDURES.—

12 (1) DEVELOPMENT OR RECEIPT OF PROPOSED
13 ORDER.—A proposed order with respect to concrete
14 masonry products may be—

15 (A) prepared by the Secretary at any time;

16 or

17 (B) requested by or submitted to the Sec-
18 retary by—

19 (i) an existing national organization of
20 concrete masonry product manufacturers;

21 or

22 (ii) any person that may be affected
23 by the issuance of an order with respect to
24 concrete masonry products.

25 (2) PUBLICATION OF PROPOSED ORDER.—Not
26 later than 60 days after receiving a proposed order

1 or a request for a proposed order in accordance with
2 subparagraph (B) of paragraph (1), the Secretary
3 shall publish a proposed order in the Federal Reg-
4 ister and give 30 days notice and opportunity for
5 public comment on the proposed order.

6 (3) ISSUANCE OF ORDER.—

7 (A) IN GENERAL.—After notice and oppor-
8 tunity for public comment are provided in ac-
9 cordance with paragraph (2), the Secretary
10 shall issue the order, taking into consideration
11 the comments received and including in the
12 order such provisions as are necessary to ensure
13 that the order is in conformity with this Act.

14 (B) EFFECTIVE DATE.—The order shall be
15 issued and become effective only after an af-
16 firmative vote in a referendum as provided in
17 section 7, but not later than 120 days after
18 publication of the proposed order.

19 (c) AMENDMENTS.—The Secretary may, from time to
20 time, amend an order. The provisions of this Act applica-
21 ble to an order shall be applicable to any amendment to
22 an order.

1 **SEC. 5. REQUIRED TERMS IN ORDERS.**

2 (a) IN GENERAL.—Any order issued under this Act
3 shall contain the terms and provisions specified in this sec-
4 tion.

5 (b) CONCRETE MASONRY PRODUCTS BOARD.—

6 (1) ESTABLISHMENT AND MEMBERSHIP.—

7 (A) ESTABLISHMENT.—The order shall
8 provide for the establishment of a Concrete Ma-
9 sonry Products Board to carry out a program
10 of generic promotion, research, and information
11 regarding concrete masonry products.

12 (B) MEMBERSHIP.—

13 (i) NUMBER OF MEMBERS.—The
14 board shall consist of not more than 25
15 members.

16 (ii) APPOINTMENT.—The members of
17 the Board shall be appointed by the Sec-
18 retary from nominations submitted as pro-
19 vided in this subsection.

20 (iii) COMPOSITION.—The Board shall
21 consist of manufacturers.

22 (2) DISTRIBUTION OF APPOINTMENTS.—

23 (A) GEOGRAPHICAL REPRESENTATION.—

24 To ensure fair and equitable representation of
25 the concrete masonry products industry, the
26 composition of the Board shall reflect the geo-

1 graphical distribution of the manufacture of
2 concrete masonry products in the United States
3 and the types of concrete masonry products
4 manufactured.

5 (B) ADJUSTMENT IN BOARD REPRESENTA-
6 TION.—Three years after the assessment of
7 concrete masonry products commences pursuant
8 to an order, and at the end of each 3-year pe-
9 riod thereafter, the Board, subject to the review
10 and approval of the Secretary, shall, if war-
11 ranted, recommend to the Secretary the re-
12 apportionment of the Board membership to re-
13 flect changes in the geographical distribution of
14 the manufacture of concrete masonry products
15 and the types of concrete masonry products
16 manufactured.

17 (3) NOMINATIONS PROCESS.—The order shall
18 provide the following:

19 (A) NUMBER OF NOMINATIONS.—Two
20 nominees shall be submitted for each appoint-
21 ment to the Board.

22 (B) PROCEDURE.—Nominations for each
23 appointment of a manufacturer shall be made
24 by manufacturers in accordance with proce-
25 dures specified in the order.

1 (C) FAILURE TO NOMINATE.—In any case
2 in which manufacturers fail to nominate indi-
3 viduals for an appointment to the Board, the
4 Secretary may appoint an individual to fill the
5 vacancy on a basis provided in the order or
6 other regulations of the Secretary.

7 (D) FAILURE TO APPOINT.—If the Sec-
8 retary fails to make an appointment to the
9 Board within 30 days of receiving nominations
10 for such appointment, the first nominee for
11 such appointment shall be deemed appointed.

12 (4) ALTERNATES.—The order shall provide for
13 the selection of alternate members of the Board by
14 the Secretary in accordance with procedures speci-
15 fied in the order.

16 (5) TERMS.—

17 (A) IN GENERAL.—The members and any
18 alternates of the Board shall each serve for a
19 term of 3 years, except that members and any
20 alternates initially appointed to the Board shall
21 serve for terms of not more than 2, 3, and 4
22 years, as specified by the order.

23 (B) LIMITATION ON CONSECUTIVE
24 TERMS.—A member or an alternate may serve
25 not more than 2 consecutive terms.

1 (C) CONTINUATION OF TERM.—Notwith-
2 standing subparagraph (B), each member or al-
3 ternate shall continue to serve until a successor
4 is appointed by the Secretary.

5 (D) VACANCIES.—A vacancy arising before
6 the expiration of a term of office of an incum-
7 bent member or alternate of the Board shall be
8 filled in a manner provided for in the order.

9 (6) DISQUALIFICATION FROM BOARD SERV-
10 ICE.—The order shall provide that if a member or
11 alternate of the Board who was appointed as a man-
12 ufacturer ceases to qualify as a manufacturer, such
13 member or alternate shall be disqualified from serv-
14 ing on the Board.

15 (7) COMPENSATION.—

16 (A) IN GENERAL.—Members and any al-
17 ternates of the Board shall serve without com-
18 pensation.

19 (B) TRAVEL EXPENSES.—If approved by
20 the Board, members or alternates shall be reim-
21 bursed for reasonable travel expenses, which
22 may include per diem allowance or actual sub-
23 sistence incurred while away from their homes
24 or regular places of business in the performance
25 of services for the Board.

1 (c) POWERS AND DUTIES OF THE BOARD.—The
2 order shall specify the powers and duties of the Board,
3 which shall include the power and duty—

4 (1) to administer the order in accordance with
5 its terms and conditions and to collect assessments;

6 (2) to develop and recommend to the Secretary
7 for approval such bylaws as may be necessary for
8 the functioning of the Board and such rules as may
9 be necessary to administer the order, including ac-
10 tivities authorized to be carried out under the order;

11 (3) to meet, organize, and select from among
12 members of the Board a chairperson, other officers,
13 and committees and subcommittees, as the Board
14 determines appropriate;

15 (4) to establish regional organizations or com-
16 mittees to administer regional initiatives;

17 (5) to establish working committees of persons
18 other than Board members;

19 (6) to employ such persons, other than the
20 members, as the board considers necessary, and to
21 determine the compensation and specify the duties
22 of the persons;

23 (7) to prepare and submit for the approval of
24 the Secretary, before the beginning of each fiscal
25 year, rates of assessment under section 6 and an an-

1 nual budget of the anticipated expenses to be in-
2 curred in the administration of the order, including
3 the probable cost of each promotion, research, and
4 information activity proposed to be developed or car-
5 ried out by the Board;

6 (8) to borrow funds necessary for the startup
7 expenses of the order;

8 (9) to carry out research, education, and pro-
9 motion programs and projects, and to pay the costs
10 of such programs and projects with assessments col-
11 lected under section 6;

12 (10) subject to subsection (e), to enter into con-
13 tracts or agreements to develop and carry out pro-
14 grams or projects of research, education, and pro-
15 motion relating to concrete masonry products;

16 (11) to keep minutes, books, and records that
17 reflect the actions and transactions of the Board,
18 and promptly report minutes of each Board meeting
19 to the Secretary;

20 (12) to receive, investigate, and report to the
21 Secretary complaints of violations of the order;

22 (13) to furnish the Secretary with such infor-
23 mation as the Secretary may request;

1 (14) to recommend to the Secretary such
2 amendments to the order as the Board considers ap-
3 propriate; and

4 (15) to provide the Secretary with advance no-
5 tice of meetings.

6 (d) PROGRAMS AND PROJECTS; BUDGETS; EX-
7 PENSES.—

8 (1) PROGRAMS AND PROJECTS.—The order
9 shall require the Board to submit to the Secretary
10 for approval any program or project of research,
11 education, or promotion.

12 (2) BUDGETS.—

13 (A) SUBMISSION.—The order shall require
14 the Board to submit to the Secretary for ap-
15 proval a budget of the anticipated expenses and
16 disbursements of the Board in the implementa-
17 tion of the order, including the projected costs
18 of concrete masonry products research, edu-
19 cation, and promotion programs and projects.

20 (B) TIMING.—The budget shall be sub-
21 mitted before the beginning of a fiscal year and
22 as frequently as may be necessary after the be-
23 ginning of the fiscal year.

1 (C) APPROVAL.—If the Secretary fails to
2 approve or reject a budget within 30 days of re-
3 ceipt, such budget shall be deemed approved.

4 (3) ADMINISTRATIVE EXPENSES.—

5 (A) INCURRING EXPENSES.—A board may
6 incur the expenses described in paragraph (2)
7 and other expenses for the administration,
8 maintenance, and functioning of the Board as
9 authorized by the Secretary.

10 (B) PAYMENT OF EXPENSES.—Expenses
11 incurred under subparagraph (A) shall be paid
12 by the Board using assessments collected under
13 section 6, earnings obtained from assessments,
14 and other income of the Board. Any funds bor-
15 rowed by the Board shall be expended only for
16 startup costs and capital outlays.

17 (C) LIMITATION ON SPENDING.—For fiscal
18 years beginning 3 or more years after the date
19 of the establishment of the Board, the Board
20 may not expend for administration (except for
21 reimbursement to the Secretary required under
22 subparagraph (D)), maintenance, and func-
23 tioning of the Board in a fiscal year an amount
24 that exceeds 10 percent of the assessment and

1 other income received by the Board for the fis-
2 cal year.

3 (D) REIMBURSEMENT OF SECRETARY.—

4 The order shall require that the Secretary be
5 reimbursed from assessments for all expenses
6 incurred by the Secretary in the implementa-
7 tion, administration, and supervision of the
8 order, including all referenda costs incurred in
9 connection with the order.

10 (e) CONTRACTS AND AGREEMENTS.—

11 (1) IN GENERAL.—The order shall provide that,
12 with the approval of the Secretary, the Board may—

13 (A) enter into contracts and agreements to
14 carry out programs and projects of research,
15 education, and promotion activities relating to
16 concrete masonry products, including contracts
17 and agreements with manufacturer associations
18 or other entities as considered appropriate by
19 the Secretary;

20 (B) enter into contracts and agreements
21 for administrative services; and

22 (C) pay the cost of approved research, edu-
23 cation, and promotion programs and projects
24 using assessments collected under section 6,

1 earnings obtained from assessments, and other
2 income of the Board.

3 (2) REQUIREMENTS.—Each contract or agree-
4 ment shall provide that any person who enters into
5 the contract or agreement with the Board shall—

6 (A) develop and submit to the Board a
7 proposed activity together with a budget that
8 specifies the cost to be incurred to carry out the
9 activity;

10 (B) keep accurate records of all of trans-
11 actions relating to the contract or agreement;

12 (C) account for funds received and ex-
13 pended in connection with the contract or
14 agreement;

15 (D) make periodic reports to the Board of
16 activities conducted under the contract or
17 agreement; and

18 (E) make such other reports as the Board
19 or the Secretary considers relevant.

20 (3) FAILURE TO APPROVE.—If the Secretary
21 fails to approve or reject a contract or agreement
22 entered into under paragraph (1) within 30 days of
23 receipt, the contract or agreement shall be deemed
24 approved.

25 (f) BOOKS AND RECORDS OF BOARD.—

1 (1) IN GENERAL.—The order shall require the
2 Board to—

3 (A) maintain such books and records
4 (which shall be available to the Secretary for in-
5 spection and audit) as the Secretary may re-
6 quire;

7 (B) collect and submit to the Secretary, at
8 any time the Secretary may specify, any infor-
9 mation the Secretary may request; and

10 (C) account for the receipt and disburse-
11 ment of all funds in the possession, or under
12 the control, of the Board.

13 (2) AUDITS.—The order shall require the Board
14 to have—

15 (A) the books and records of the Board au-
16 dited by an independent auditor at the end of
17 each fiscal year; and

18 (B) a report of the audit submitted di-
19 rectly to the Secretary.

20 (g) PROHIBITED ACTIVITIES.—

21 (1) IN GENERAL.—Subject to paragraph (2),
22 the Board shall not engage in any action to, nor
23 shall any funds received by the Board under this Act
24 be used to—

1 (A) influence legislation or governmental
2 action;

3 (B) engage in an action that would be a
4 conflict of interest; or

5 (C) engage in advertising that is false or
6 misleading.

7 (2) EXCEPTIONS.—Paragraph (1) does not pre-
8 clude—

9 (A) the development and recommendation
10 of amendments to the order;

11 (B) the communication to appropriate gov-
12 ernment officials of information relating to the
13 conduct, implementation, or results of research,
14 education, and promotion activities under the
15 order; or

16 (C) any action designed to market concrete
17 masonry products directly to a foreign govern-
18 ment or political subdivision of a foreign gov-
19 ernment.

20 (h) PERIODIC EVALUATION.—The order shall require
21 the Board to provide for the independent evaluation of all
22 research, education, and promotion activities undertaken
23 under the order.

24 (i) BOOKS AND RECORDS OF PERSONS COVERED BY
25 ORDER.—

1 (1) IN GENERAL.—The order shall require that
2 manufacturers of concrete masonry products shall—

3 (A) maintain records sufficient to ensure
4 compliance with the order and regulations;

5 (B) submit to the Board any information
6 required by the Board to carry out its respon-
7 sibilities; and

8 (C) make the records described in subpara-
9 graph (A) available, during normal business
10 hours, for inspection by employees or agents of
11 the Board or the Department, including any
12 records necessary to verify information required
13 under subparagraph (B).

14 (2) TIME REQUIREMENT.—Any record required
15 to be maintained under paragraph (1) shall be main-
16 tained for such time period as the Secretary may
17 prescribe.

18 (3) CONFIDENTIALITY OF INFORMATION.—

19 (A) IN GENERAL.—Except as otherwise
20 provided in this Act, all information obtained
21 under paragraph (1) or as part of a referendum
22 under section 7 shall be kept confidential by all
23 officers, employees, and agents of the Depart-
24 ment and of the Board.

1 (B) SUITS AND HEARINGS.—Information
2 referred to in subparagraph (A) may be dis-
3 closed only if—

4 (i) the Secretary considers the infor-
5 mation relevant; and

6 (ii) the information is revealed in a
7 judicial proceeding or administrative hear-
8 ing brought at the direction or on the re-
9 quest of the Secretary or to which the Sec-
10 retary or any officer of the Department is
11 a party.

12 (C) GENERAL STATEMENTS AND PUBLICA-
13 TIONS.—This paragraph does not prohibit—

14 (i) the issuance of general statements
15 based on reports or on information relating
16 to a number of persons subject to an order
17 if the statements do not identify the infor-
18 mation furnished by any person; or

19 (ii) the publication, by direction of the
20 Secretary, of the name of any person vio-
21 lating any order and a statement of the
22 particular provisions of the order violated
23 by the person.

24 (D) PENALTY.—Any person who willfully
25 violates this subsection shall be fined not more

1 than \$5,000, imprisoned not more than 1 year,
2 or both.

3 (4) WITHHOLDING INFORMATION.—This sub-
4 section does not authorize the withholding of infor-
5 mation from Congress.

6 **SEC. 6. ASSESSMENTS.**

7 (a) ASSESSMENTS.—The order shall provide that as-
8 sessments shall be paid by manufacturers with respect to
9 concrete masonry products manufactured and marketed in
10 the United States.

11 (b) COLLECTION.—

12 (1) IN GENERAL.—Assessments required under
13 the order shall be remitted by the manufacturer to
14 the Board in the manner prescribed by the order.

15 (2) TIMING.—The order shall provide that as-
16 sessments required under the order shall be remitted
17 to the Board not less frequently than quarterly.

18 (3) RECORDS.—As part of the remittance of as-
19 sessments, manufacturers shall identify the total
20 amount due in assessments on all sales receipts, in-
21 voices or other commercial documents of sale as a
22 result of the sale of concrete masonry units in a
23 manner as prescribed by the Board to ensure com-
24 pliance with the order.

1 (c) ASSESSMENT RATES.—With respect to assess-
2 ment rates, the order shall contain the following terms:

3 (1) INITIAL RATE.—The assessment rate on
4 concrete masonry products shall be \$0.01 per con-
5 crete masonry unit sold.

6 (2) CHANGES IN THE RATE.—

7 (A) AUTHORITY TO CHANGE RATE.—The
8 Board shall have the authority to change the
9 assessment rate. A two-thirds majority of voting
10 members of the Board shall be required to ap-
11 prove a change in the assessment rate.

12 (B) LIMITATION ON INCREASES.—An in-
13 crease or decrease in the assessment rate with
14 respect to concrete masonry products may not
15 exceed \$0.01 per concrete masonry unit sold.

16 (C) MAXIMUM RATE.—The assessment
17 rate shall not be in excess of \$0.05 per concrete
18 masonry unit.

19 (D) LIMITATION ON FREQUENCY OF
20 CHANGES.—The assessment rate may not be in-
21 creased or decreased more than once annually.

22 (d) LATE-PAYMENT AND INTEREST CHARGES.—

23 (1) IN GENERAL.—Late-payment and interest
24 charges may be levied on each person subject to the

1 order who fails to remit an assessment in accordance
2 with subsection (b).

3 (2) RATE.—The rate for late-payment and in-
4 terest charges shall be specified by the Secretary.

5 (e) INVESTMENT OF ASSESSMENTS.—Pending dis-
6 bursement of assessments under a budget approved by the
7 Secretary, a board may invest assessments collected under
8 this section in—

9 (1) obligations of the United States or any
10 agency of the United States;

11 (2) general obligations of any State or any po-
12 litical subdivision of a State;

13 (3) interest-bearing accounts or certificates of
14 deposit of financial institutions that are members of
15 the Federal Reserve System; or

16 (4) obligations fully guaranteed as to principal
17 and interest by the United States.

18 (f) ASSESSMENT FUNDS FOR REGIONAL INITIA-
19 TIVES.—

20 (1) IN GENERAL.—The order shall provide that
21 no less than 50 percent of the assessments (less ad-
22 ministration expenses) paid by a manufacturer shall
23 be used to support research, education, and pro-
24 motion plans and projects in support of the geo-
25 graphic region of the manufacturer.

1 (2) GEOGRAPHIC REGIONS.—The order shall
2 provide for the following geographic regions:

3 (A) Region I shall comprise Connecticut,
4 Delaware, Maine, Maryland, Massachusetts,
5 New Hampshire, New Jersey, New York, Penn-
6 sylvania, Rhode Island, Vermont, and West Vir-
7 ginia.

8 (B) Region II shall comprise Alabama,
9 Florida, Georgia, Mississippi, North Carolina,
10 South Carolina, Tennessee, and Virginia.

11 (C) Region III shall comprise Illinois, Indi-
12 ana, Iowa, Kentucky, Michigan, Minnesota, Ne-
13 braska, North Dakota, Ohio, South Dakota,
14 and Wisconsin.

15 (D) Region IV shall comprise Arizona, Ar-
16 kansas, Kansas, Louisiana, Missouri, New Mex-
17 ico, Oklahoma, and Texas.

18 (E) Region V shall comprise Alaska, Cali-
19 fornia, Colorado, Hawaii, Idaho, Montana, Ne-
20 vada, Oregon, Utah, Washington, and Wyo-
21 ming.

22 (3) ADJUSTMENT OF GEOGRAPHIC REGIONS.—
23 The order shall provide that the Secretary may,
24 upon recommendation of the Board, modify the com-

1 position of the geographic regions described in para-
2 graph (2).

3 **SEC. 7. REFERENDA.**

4 (a) INITIAL REFERENDUM.—

5 (1) REFERENDUM REQUIRED.—During the 60-
6 day period immediately preceding the proposed effec-
7 tive date of the order issued under section 4, the
8 Secretary shall conduct a referendum among manu-
9 facturers required to pay assessments under the
10 order, as provided in section 6.

11 (2) APPROVAL OF ORDER NEEDED.—The order
12 shall become effective only if the Secretary deter-
13 mines that the order has been approved by a simple
14 majority of all votes cast in the referendum.

15 (b) VOTES PERMITTED.—

16 (1) IN GENERAL.—Each manufacturer eligible
17 to vote in a referendum conducted under this section
18 shall be entitled to cast one vote for each machine
19 cavity in operation that is operated by such manu-
20 facturer if they satisfy the eligibility requirements as
21 defined in paragraph (2).

22 (2) ELIGIBILITY.—For purposes of paragraph
23 (1), manufacturers shall be considered to be eligible
24 to vote if they have manufactured concrete masonry

1 products during a period of at least 180 days prior
2 to the referendum.

3 (c) MANNER OF CONDUCTING REFERENDA.—

4 (1) IN GENERAL.—Referenda conducted pursu-
5 ant to this section shall be conducted in a manner
6 determined by the Secretary.

7 (2) ADVANCE REGISTRATION.—A manufacturer
8 who chooses to vote in any referendum conducted
9 under this section shall register with the Secretary
10 prior to the voting period, after receiving notice from
11 the Secretary concerning the referendum under
12 paragraph (4).

13 (3) VOTING.—The Secretary shall establish pro-
14 cedures for voting in any referendum conducted
15 under this section. The ballots and other information
16 or reports that reveal or tend to reveal the identity
17 or vote of voters shall be strictly confidential.

18 (4) NOTICE.—Not later than 30 days before a
19 referendum is conducted under this section with re-
20 spect to an order, the Secretary shall notify all man-
21 ufacturers, in such a manner as determined by the
22 Secretary, of the period during which voting in the
23 referendum will occur. The notice shall explain any
24 registration and voting procedures established under
25 this subsection.

1 (d) SUBSEQUENT REFERENDA.—If an order is ap-
2 proved in a referendum conducted under subsection (a),
3 the Secretary shall conduct a subsequent referendum—

4 (1) at the request of the Board, subject to the
5 voting requirements of subsections (b) and (c), to
6 ascertain whether eligible manufacturers favor sus-
7 pension, termination, or continuance of the order; or

8 (2) effective beginning on the date that is 5
9 years after the date of the approval of the order, and
10 at 5-year intervals thereafter, at the request of 25
11 percent or more of the number of persons eligible to
12 vote under subsection (b).

13 (e) SUSPENSION OR TERMINATION.—If, as a result
14 of a referendum conducted under subsection (d), the Sec-
15 retary determines that suspension or termination of the
16 order is favored by a simple majority of all votes cast in
17 the referendum, the Secretary shall—

18 (1) not later than 180 days after the ref-
19 erendum, suspend or terminate, as appropriate, col-
20 lection of assessments under the order; and

21 (2) suspend or terminate, as appropriate, activi-
22 ties under the order as soon as practicable and in
23 an orderly manner.

24 (f) COSTS OF REFERENDA.—The Board established
25 under an order with respect to which a referendum is con-

1 ducted under this section shall reimburse the Secretary
2 from assessments for any expenses incurred by the Sec-
3 retary to conduct the referendum.

4 **SEC. 8. PETITION AND REVIEW.**

5 (a) PETITION.—

6 (1) IN GENERAL.—A person subject to an order
7 issued under this Act may file with the Secretary a
8 petition—

9 (A) stating that the order, any provision of
10 the order, or any obligation imposed in connec-
11 tion with the order, is not established in accord-
12 ance with law; and

13 (B) requesting a modification of the order
14 or an exemption from the order.

15 (2) HEARING.—The Secretary shall give the pe-
16 titioner an opportunity for a hearing on the petition,
17 in accordance with regulations issued by the Sec-
18 retary.

19 (3) RULING.—After the hearing, the Secretary
20 shall make a ruling on the petition. The ruling shall
21 be final, subject to review as set forth in subsection

22 (b).

23 (4) LIMITATION ON PETITION.—Any petition
24 filed under this subsection challenging an order, any
25 provision of the order, or any obligation imposed in

1 connection with the order, shall be filed within 2
2 years after the effective date of the order, provision,
3 or obligation subject to challenge in the petition.

4 (b) REVIEW.—

5 (1) COMMENCEMENT OF ACTION.—The district
6 courts of the United States in any district in which
7 a person who is a petitioner under subsection (a) re-
8 sides or conducts business shall have jurisdiction to
9 review the ruling of the Secretary on the petition of
10 the person, if a complaint requesting the review is
11 filed no later than 20 days after the date of the
12 entry of the ruling by the Secretary.

13 (2) PROCESS.—Service of process in pro-
14 ceedings under this subsection shall be conducted in
15 accordance with the Federal Rules of Civil Proce-
16 dure.

17 (3) REMANDS.—If the court in a proceeding
18 under this subsection determines that the ruling of
19 the Secretary on the petition of the person is not in
20 accordance with law, the court shall remand the
21 matter to the Secretary with directions—

22 (A) to make such ruling as the court shall
23 determine to be in accordance with law; or

24 (B) to take such further action as, in the
25 opinion the court, the law requires.

1 (c) ENFORCEMENT.—The pendency of proceedings
2 instituted under this section shall not impede, hinder, or
3 delay the Attorney General or the Secretary from obtain-
4 ing relief under section 9.

5 **SEC. 9. ENFORCEMENT.**

6 (a) JURISDICTION.—A district court of the United
7 States shall have jurisdiction to enforce, and to prevent
8 and restrain any person from violating, this Act or an
9 order or regulation issued by the Secretary under this Act.

10 (b) REFERRAL TO ATTORNEY GENERAL.—A civil ac-
11 tion authorized to be brought under this section shall be
12 referred to the Attorney General of the United States for
13 appropriate action.

14 (c) CIVIL PENALTIES AND ORDERS.—

15 (1) CIVIL PENALTIES.—A person who willfully
16 violates an order or regulation issued by the Sec-
17 retary under this Act may be assessed by the Sec-
18 retary a civil penalty of not more than \$5,000 for
19 each violation.

20 (2) SEPARATE OFFENSE.—Each violation and
21 each day during which there is a failure to comply
22 with an order or regulation issued by the Secretary
23 shall be considered to be a separate offense.

24 (3) CEASE-AND-DESIST ORDERS.—In addition
25 to, or in lieu of, a civil penalty, the Secretary may

1 issue an order requiring a person to cease and desist
2 from violating the order or regulation.

3 (4) NOTICE AND HEARING.—No order assessing
4 a penalty or cease-and-desist order may be issued by
5 the Secretary under this subsection unless the Sec-
6 retary provides notice and an opportunity for a hear-
7 ing on the record with respect to the violation.

8 (5) FINALITY.—An order assessing a penalty or
9 a cease-and-desist order issued under this subsection
10 by the Secretary shall be final and conclusive unless
11 the person against whom the order is issued files an
12 appeal from the order with the appropriate district
13 court of the United States, as provided in subsection
14 (d).

15 (d) ADDITIONAL REMEDIES.—The remedies provided
16 in this Act shall be in addition to, and not exclusive of,
17 other remedies that may be available.

18 **SEC. 10. INVESTIGATION AND POWER TO SUBPOENA.**

19 (a) INVESTIGATIONS.—The Secretary may conduct
20 such investigations as the Secretary considers necessary
21 for the effective administration of this Act, or to determine
22 whether any person has engaged or is engaging in any
23 act that constitutes a violation of this Act or any order
24 or regulation issued under this Act.

25 (b) SUBPOENAS, OATHS, AND AFFIRMATIONS.—

1 (1) INVESTIGATIONS.—For the purpose of con-
2 ducting an investigation under subsection (a), the
3 Secretary may administer oaths and affirmations,
4 subpoena witnesses, compel the attendance of wit-
5 nesses, take evidence, and require the production of
6 any records that are relevant to the inquiry. The
7 production of the records may be required from any
8 place in the United States.

9 (2) ADMINISTRATIVE HEARINGS.—For the pur-
10 pose of an administrative hearing held under section
11 8(a)(2) or section 9(c)(4), the presiding officer may
12 administer oaths and affirmations, subpoena wit-
13 nesses, compel the attendance of witnesses, take evi-
14 dence, and require the production of any records
15 that are relevant to the inquiry. The attendance of
16 witnesses and the production of the records may be
17 required from any place in the United States.

18 (c) AID OF COURTS.—

19 (1) IN GENERAL.—In the case of contumacy by,
20 or refusal to obey a subpoena issued under sub-
21 section (b) to, any person, the Secretary may invoke
22 the aid of any court of the United States within the
23 jurisdiction of which the investigation or proceeding
24 is conducted, or where the person resides or con-

1 ducts business, in order to enforce a subpoena issued
2 under subsection (b).

3 (2) ORDER.—The court may issue an order re-
4 quiring the person referred to in paragraph (1) to
5 comply with a subpoena referred to in paragraph
6 (1).

7 (3) FAILURE TO OBEY.—Any failure to obey
8 the order of the court may be punished by the court
9 as a contempt of court.

10 (4) PROCESS.—Process in any proceeding
11 under this subsection may be served in the United
12 States judicial district in which the person being
13 proceeded against resides or conducts business, or
14 wherever the person may be found.

15 **SEC. 11. SUSPENSION OR TERMINATION.**

16 (a) MANDATORY SUSPENSION OR TERMINATION.—
17 The Secretary shall suspend or terminate an order or a
18 provision of an order if the Secretary finds that an order
19 or provision of an order obstructs or does not tend to ef-
20 fectuate the purpose of this Act, or if the Secretary deter-
21 mines that the order or a provision of an order is not fa-
22 vored by persons voting in a referendum conducted under
23 section 7.

24 (b) IMPLEMENTATION OF SUSPENSION OR TERMI-
25 NATION.—If, as a result of a referendum conducted under

1 section 7, the Secretary determines that the order is not
2 approved, the Secretary shall—

3 (1) not later than 180 days after making the
4 determination, suspend or terminate, as the case
5 may be, collection of assessments under the order;
6 and

7 (2) as soon as practicable, suspend or termi-
8 nate, as the case may be, activities under the order
9 in an orderly manner.

10 **SEC. 12. CONFIDENTIALITY.**

11 Nothing in this Act shall be construed to require the
12 Board to disclose information or records under section 552
13 of title 5, United States Code.

14 **SEC. 13. AMENDMENTS TO ORDERS.**

15 The provisions of this Act applicable to the order
16 shall be applicable to any amendment to the order, except
17 that section 8 shall not apply to an amendment.

18 **SEC. 14. EFFECT ON OTHER LAWS.**

19 This Act shall not affect or preempt any other Fed-
20 eral or State law authorizing research, education, and pro-
21 motion relating to concrete masonry products.

22 **SEC. 15. REGULATIONS.**

23 The Secretary may issue such regulations as may be
24 necessary to carry out this Act and the power vested in
25 the Secretary under this Act.

1 **SEC. 16. LIMITATION ON EXPENDITURES FOR ADMINISTRA-**
2 **TIVE EXPENSES.**

3 Funds appropriated to carry out this Act may not
4 be used for the payment of the expenses or expenditures
5 of the Board in administering the order.

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