

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—113th Cong., 2d Sess.

S. 429

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.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. NELSON

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Concrete Masonry
5 Products Research, Education, and Promotion Act of
6 2013”.

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 is 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 (a) BLOCK MACHINE.—The term “block machine”
14 means a piece of equipment that utilizes vibration and
15 compaction to form concrete masonry products.

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

18 (c) CAVITY.—The term “cavity” means the open
19 space in the mold of a block machine capable of forming
20 a single concrete masonry unit having nominal plan di-
21 mensions of 8 inches by 16 inches.

22 (d) COMMERCE.—The term “commerce” includes
23 interstate, foreign, and intrastate commerce.

24 (e) CONCRETE MASONRY PRODUCTS.—The term
25 “concrete masonry products” refers to a broader class of

1 products, including concrete masonry units as well as
2 hardscape products such as concrete pavers and segmental
3 retaining wall units, manufactured on a block machine
4 using dry-cast concrete.

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

12 (g) DEPARTMENT.—The term “Department” means
13 the Department of Commerce.

14 (h) DRY-CAST CONCRETE.—The term “dry-cast con-
15 crete” means a composite material that is composed essen-
16 tially of aggregates embedded in a binding medium com-
17 posed of a mixture of cementitious materials (including
18 hydraulic cement, pozzolans, or other cementitious mate-
19 rials) and water of such a consistency to maintain its
20 shape after forming in a block machine.

21 (i) EDUCATION.—The term “education” means pro-
22 grams that will educate or communicate the benefits of
23 concrete masonry products in safe and environmentally
24 sustainable development, advancements in concrete ma-
25 sonry product technology and development, and other in-

1 formation and programs designed to generate increased
2 demand for commercial, residential, multi-family, and in-
3 stitutional projects using concrete masonry products and
4 to generally enhance the image of concrete masonry prod-
5 ucts.

6 (j) MACHINE CAVITIES.—The term “machine cav-
7 ities” means the cavities with which a block machine could
8 be equipped.

9 (k) MACHINE CAVITIES IN OPERATION.—The term
10 “machine cavities in operation” means those machine cav-
11 ities associated with a block machine that have produced
12 concrete masonry units within the last 6 months of the
13 date set for determining eligibility and is fully operable
14 and capable of producing concrete masonry units.

15 (l) MASONRY UNIT.—The term “masonry unit”
16 means a noncombustible building product intended to be
17 laid by hand or joined using mortar, grout, surface bond-
18 ing, post-tensioning or some combination of these meth-
19 ods.

20 (m) MANUFACTURER.—The term “manufacturer”
21 means any person engaged in the manufacturing of com-
22 mercial concrete masonry products.

23 (n) ORDER.—The term “order” means an order
24 issued under section 4.

1 (o) PERSON.—The term “person” means any indi-
2 vidual, group of individuals, partnership, corporation, as-
3 sociation, cooperative, or any other entity.

4 (p) PROMOTION.—The term “promotion” means any
5 action, including paid advertising, to advance the image
6 and desirability of concrete masonry products with the ex-
7 press intent of improving the competitive position and
8 stimulating sales of concrete masonry products in the mar-
9 ketplace.

10 (q) RESEARCH.—The term “research” means studies
11 testing the effectiveness of market development and pro-
12 motion efforts, studies relating to the improvement of con-
13 crete masonry products and new product development, and
14 studies documenting the performance of concrete ma-
15 sonry.

16 (r) SECRETARY.—The term “Secretary” means the
17 Secretary of Commerce.

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

20 **SEC. 4. ISSUANCE OF ORDERS.**

21 (a) IN GENERAL.—

22 (1) ISSUANCE.—The Secretary, subject to the
23 procedures provided in subsection (b), shall issue or-
24 ders under this Act applicable to manufacturers of
25 concrete masonry products.

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

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

5 (b) PROCEDURES.—

6 (1) DEVELOPMENT OR RECEIPT OF PROPOSED
7 ORDER.—A proposed order with respect to concrete
8 masonry products may be—

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

10 or

11 (B) requested by or submitted to the Sec-
12 retary by—

13 (i) an existing national organization of
14 concrete masonry product manufacturers;

15 or

16 (ii) any person that may be affected
17 by the issuance of an order with respect to
18 concrete masonry products.

19 (2) PUBLICATION OF PROPOSED ORDER.—Not
20 later than 60 days after receiving a proposed order
21 or a request for a proposed order in accordance with
22 subparagraph (B) of paragraph (1), the Secretary
23 shall publish a proposed order in the Federal Reg-
24 ister and give 30 days notice and opportunity for
25 public comment on the proposed order.

1 (3) ISSUANCE OF ORDER.—

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

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

14 (c) AMENDMENTS.—The Secretary may, from time to
15 time, amend an order. The provisions of this Act applica-
16 ble to an order shall be applicable to any amendment to
17 an order.

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

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

22 (b) CONCRETE MASONRY PRODUCTS BOARD.—

23 (1) ESTABLISHMENT AND MEMBERSHIP.—

24 (A) ESTABLISHMENT.—The order shall
25 provide for the establishment of a Concrete Ma-

1 sonry Products Board to carry out a program
2 of generic promotion, research, and information
3 regarding concrete masonry products.

4 (B) MEMBERSHIP.—

5 (i) NUMBER OF MEMBERS.—The
6 board shall consist of not more than 25
7 members.

8 (ii) APPOINTMENT.—The members of
9 the Board shall be appointed by the Sec-
10 retary from nominations submitted as pro-
11 vided in this subsection.

12 (iii) COMPOSITION.—The Board shall
13 consist of manufacturers.

14 (2) DISTRIBUTION OF APPOINTMENTS.—

15 (A) GEOGRAPHICAL REPRESENTATION.—

16 To ensure fair and equitable representation of
17 the concrete masonry products industry, the
18 composition of the Board shall reflect the geo-
19 graphical distribution of the manufacture of
20 concrete masonry products in the United States
21 and the types of concrete masonry products
22 manufactured.

23 (B) ADJUSTMENT IN BOARD REPRESENTA-
24 TION.—Three years after the assessment of
25 concrete masonry products commences pursuant

1 to an order, and at the end of each 3-year pe-
2 riod thereafter, the Board, subject to the review
3 and approval of the Secretary, shall, if war-
4 ranted, recommend to the Secretary the re-
5 apportionment of the Board membership to re-
6 flect changes in the geographical distribution of
7 the manufacture of concrete masonry products
8 and the types of concrete masonry products
9 manufactured.

10 (3) NOMINATIONS PROCESS.—The order shall
11 provide the following:

12 (A) NUMBER OF NOMINATIONS.—Two
13 nominees shall be submitted for each appoint-
14 ment to the Board.

15 (B) PROCEDURE.—Nominations for each
16 appointment of a manufacturer shall be made
17 by manufacturers in accordance with proce-
18 dures specified in the order.

19 (C) FAILURE TO NOMINATE.—In any case
20 in which manufacturers fail to nominate indi-
21 viduals for an appointment to the Board, the
22 Secretary may appoint an individual to fill the
23 vacancy on a basis provided in the order or
24 other regulations of the Secretary.

1 (D) FAILURE TO APPOINT.—If the Sec-
2 retary fails to make an appointment to the
3 Board within 30 days of receiving nominations
4 for such appointment, the first nominee for
5 such appointment shall be deemed appointed.

6 (4) ALTERNATES.—The order shall provide for
7 the selection of alternate members of the Board by
8 the Secretary in accordance with procedures speci-
9 fied in the order.

10 (5) TERMS.—

11 (A) IN GENERAL.—The members and any
12 alternates of the Board shall each serve for a
13 term of 3 years, except that members and any
14 alternates initially appointed to the Board shall
15 serve for terms of not more than 2, 3, and 4
16 years, as specified by the order.

17 (B) LIMITATION ON CONSECUTIVE
18 TERMS.—A member or alternate may serve not
19 more than 2 consecutive terms.

20 (C) CONTINUATION OF TERM.—Notwith-
21 standing subparagraph (B), each member or al-
22 ternate shall continue to serve until a successor
23 is appointed by the Secretary.

24 (D) VACANCIES.—A vacancy arising before
25 the expiration of a term of office of an incum-

1 bent member or alternate of the Board shall be
2 filled in a manner provided for in the order.

3 (6) DISQUALIFICATION FROM BOARD SERV-
4 ICE.—The order shall provide that if a member or
5 alternate of the Board who was appointed as a man-
6 ufacturer ceases to qualify as a manufacturer, such
7 member or alternate shall be disqualified from serv-
8 ing on the Board.

9 (7) COMPENSATION.—

10 (A) IN GENERAL.—Members and any al-
11 ternates of the Board shall serve without com-
12 pensation.

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

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

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

1 (2) to develop and recommend to the Secretary
2 for approval such bylaws as may be necessary for
3 the functioning of the board and such rules as may
4 be necessary to administer the order, including ac-
5 tivities authorized to be carried out under the order;

6 (3) to meet, organize, and select from among
7 members of the Board a chairperson, other officers,
8 and committees and subcommittees, as the Board
9 determines appropriate;

10 (4) to establish regional organizations or com-
11 mittees to administer regional initiatives;

12 (5) to establish working committees of persons
13 other than Board members;

14 (6) to employ such persons, other than the
15 members, as the board considers necessary, and to
16 determine the compensation and specify the duties
17 of the persons;

18 (7) to prepare and submit for the approval of
19 the Secretary, before the beginning of each fiscal
20 year, rates of assessment under section 6 and an an-
21 nual budget of the anticipated expenses to be in-
22 curred in the administration of the order, including
23 the probable cost of each promotion, research, and
24 information activity proposed to be developed or car-
25 ried out by the Board;

1 (8) to borrow funds necessary for the startup
2 expenses of the order;

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

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

11 (11) to keep minutes, books, and records that
12 reflect the actions and transactions of the Board,
13 and promptly report minutes of each Board meeting
14 to the Secretary;

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

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

19 (14) to recommend to the Secretary such
20 amendments to the order as the Board considers ap-
21 propriate; and

22 (15) to provide the Secretary with advance no-
23 tice of meetings.

24 (d) PROGRAMS AND PROJECTS; BUDGETS; EX-
25 PENSES.—

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

5 (2) BUDGETS.—

6 (A) SUBMISSION.—The order shall require
7 the Board to submit to the Secretary for ap-
8 proval a budget of the anticipated expenses and
9 disbursements of the Board in the implementa-
10 tion of the order, including the projected costs
11 of concrete masonry products research, edu-
12 cation, and promotion programs and projects.

13 (B) TIMING.—The budget shall be sub-
14 mitted before the beginning of a fiscal year and
15 as frequently as may be necessary after the be-
16 ginning of the fiscal year.

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

20 (3) ADMINISTRATIVE EXPENSES.—

21 (A) INCURRING EXPENSES.—A board may
22 incur the expenses described in paragraph (2)
23 and other expenses for the administration,
24 maintenance, and functioning of the Board as
25 authorized by the Secretary.

1 (B) PAYMENT OF EXPENSES.—Expenses
2 incurred under subparagraph (A) shall be paid
3 by the Board using assessments collected under
4 section 6, earnings obtained from assessments,
5 and other income of the Board. Any funds bor-
6 rowed by the Board shall be expended only for
7 startup costs and capital outlays.

8 (C) LIMITATION ON SPENDING.—For fiscal
9 years beginning 3 or more years after the date
10 of the establishment of the Board, the Board
11 may not expend for administration (except for
12 reimbursement to the Secretary required under
13 subparagraph (D)), maintenance, and func-
14 tioning of the Board in a fiscal year an amount
15 that exceeds 10 percent of the assessment and
16 other income received by the Board for the fis-
17 cal year.

18 (D) REIMBURSEMENT OF SECRETARY.—
19 The order shall require that the Secretary be
20 reimbursed from assessments for all expenses
21 incurred by the Secretary in the implementa-
22 tion, administration, and supervision of the
23 order, including all referenda costs incurred in
24 connection with the order.

25 (e) CONTRACTS AND AGREEMENTS.—

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

3 (A) enter into contracts and agreements to
4 carry programs and projects of research, edu-
5 cation, and promotion activities relating to con-
6 crete masonry products, including contracts and
7 agreements with manufacturer associations or
8 other entities as considered appropriate by the
9 Secretary;

10 (B) enter into contracts and agreements
11 for administrative services; and

12 (C) pay the cost of approved research, edu-
13 cation, and promotion programs and projects
14 using assessments collected under section 6,
15 earnings obtained from assessments, and other
16 income of the Board.

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

20 (A) develop and submit to the Board a
21 proposed activity together with a budget that
22 specifies the cost to be incurred to carry out the
23 activity;

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

1 (C) account for funds received and ex-
2 pended in connection with the contract or
3 agreement;

4 (D) make periodic reports to the Board of
5 activities conducted under the contract or
6 agreement; and

7 (E) make such other reports as the Board
8 or the Secretary considers relevant.

9 (3) FAILURE TO APPROVE.—If the Secretary
10 fails to approve or reject a contract or agreement
11 entered into under paragraph (1) within 30 days of
12 receipt, the contract or agreement shall be deemed
13 approved.

14 (f) BOOKS AND RECORDS OF BOARD.—

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

17 (A) maintain such books and records
18 (which shall be available to the Secretary for in-
19 spection and audit) as the Secretary may re-
20 quire;

21 (B) collect and submit to the Secretary, at
22 any time the Secretary may specify, any infor-
23 mation the Secretary may request; and

1 (C) account for the receipt and disburse-
2 ment of all funds in the possession, or under
3 the control, of the Board.

4 (2) AUDITS.—The order shall require the Board
5 to have—

6 (A) the books and records of the Board au-
7 dited by an independent auditor at the end of
8 each fiscal year; and

9 (B) a report of the audit submitted di-
10 rectly to the Secretary.

11 (g) PROHIBITED ACTIVITIES.—

12 (1) IN GENERAL.—Subject to paragraph (2),
13 the Board shall not engage in any action to, nor
14 shall any funds received by the Board under this Act
15 be used to—

16 (A) influence legislation or governmental
17 action;

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

20 (C) engage in advertising that is false or
21 misleading.

22 (2) EXCEPTIONS.—Paragraph (1) does not pre-
23 clude—

24 (A) the development and recommendation
25 of amendments to the order;

1 (B) the communication to appropriate gov-
2 ernment officials of information relating to the
3 conduct, implementation, or results of research,
4 education, and promotion activities under the
5 order; or

6 (C) any action designed to market concrete
7 masonry products directly to a foreign govern-
8 ment or political subdivision of a foreign gov-
9 ernment.

10 (h) PERIODIC EVALUATION.—The order shall require
11 the Board to provide for the independent evaluation of all
12 research, education, and promotion activities undertaken
13 under the order.

14 (i) BOOKS AND RECORDS OF PERSONS COVERED BY
15 ORDER.—

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

18 (A) maintain records sufficient to ensure
19 compliance with the order and regulations;

20 (B) submit to the Board any information
21 required by the Board to carry out its respon-
22 sibilities; and

23 (C) make the records described in subpara-
24 graph (A) available, during normal business
25 hours, for inspection by employees or agents of

1 the Board or the Department, including any
2 records necessary to verify information required
3 under subparagraph (B).

4 (2) TIME REQUIREMENT.—Any record required
5 to be maintained under paragraph (1) shall be main-
6 tained for such time period as the Secretary may
7 prescribe.

8 (3) CONFIDENTIALITY OF INFORMATION.—

9 (A) IN GENERAL.—Except as otherwise
10 provided in this Act, all information obtained
11 under paragraph (1) or as part of a referendum
12 under section 7 shall be kept confidential by all
13 officers, employees, and agents of the Depart-
14 ment and of the Board.

15 (B) SUITS AND HEARINGS.—Information
16 referred to in subparagraph (A) may be dis-
17 closed only if—

18 (i) the Secretary considers the infor-
19 mation relevant; and

20 (ii) the information is revealed in a
21 judicial proceeding or administrative hear-
22 ing brought at the direction or on the re-
23 quest of the Secretary or to which the Sec-
24 retary or any officer of the Department is
25 a party.

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

3 (i) the issuance of general statements
4 based on reports or on information relating
5 to a number of persons subject to an order
6 if the statements do not identify the infor-
7 mation furnished by any person; or

8 (ii) the publication, by direction of the
9 Secretary, of the name of any person vio-
10 lating any order and a statement of the
11 particular provisions of the order violated
12 by the person.

13 (D) PENALTY.—Any person who willfully
14 violates this subsection shall be fined not more
15 than \$5,000, imprisoned not more than 1 year,
16 or both.

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

20 **SEC. 6. ASSESSMENTS.**

21 (a) ASSESSMENTS.—The order shall provide that as-
22 sessments shall be paid by manufacturers with respect to
23 concrete masonry products manufactured and marketed in
24 the United States.

25 (b) COLLECTION.—

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

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

7 (3) RECORDS.—As part of the remittance of as-
8 sessments, manufacturers shall identify the total
9 amount due in assessments on all sales receipts, in-
10 voices or other commercial documents of sale as a
11 result of the sale of concrete masonry units in a
12 manner as prescribed by the Board to ensure com-
13 pliance with the order.

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

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

19 (2) CHANGES IN THE RATE.—

20 (A) AUTHORITY TO CHANGE RATE.—The
21 Board shall have the authority to change the
22 assessment rate. A two-thirds majority of voting
23 members of the Board shall be required to ap-
24 prove a change in the assessment rate.

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

5 (C) MAXIMUM RATE.—The assessment
6 rate shall not be in excess of \$0.05 per concrete
7 masonry unit.

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

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

12 (1) IN GENERAL.—Late-payment and interest
13 charges may be levied on each person subject to the
14 order who fails to remit an assessment in accordance
15 with subsection (b).

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

18 (e) INVESTMENT OF ASSESSMENTS.—Pending dis-
19 bursement of assessments under a budget approved by the
20 Secretary, a board may invest assessments collected under
21 this section in—

22 (1) obligations of the United States or any
23 agency of the United States;

24 (2) general obligations of any State or any po-
25 litical subdivision of a State;

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

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

6 (f) ASSESSMENT FUNDS FOR REGIONAL INITIA-
7 TIVES.—

8 (1) IN GENERAL.—The order shall provide that
9 no less than 50 percent of the assessments (less ad-
10 ministration expenses) paid by a manufacturer shall
11 be used to support research, education, and pro-
12 motion plans and projects in support of the geo-
13 graphic region of the manufacturer.

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

16 (A) Region I shall comprise Connecticut,
17 Delaware, Maine, Maryland, Massachusetts,
18 New Hampshire, New Jersey, New York, Penn-
19 sylvania, Rhode Island, Vermont, and West Vir-
20 ginia.

21 (B) Region II shall comprise Alabama,
22 Florida, Georgia, Mississippi, North Carolina,
23 South Carolina, Tennessee, and Virginia.

24 (C) Region III shall comprise Illinois, Indi-
25 ana, Iowa, Kentucky, Michigan, Minnesota, Ne-

1 braska, North Dakota, Ohio, South Dakota,
2 and Wisconsin.

3 (D) Region IV shall comprise Arizona, Ar-
4 kansas, Kansas, Louisiana, Missouri, New Mex-
5 ico, Oklahoma, and Texas.

6 (E) Region V shall comprise Alaska, Cali-
7 fornia, Colorado, Hawaii, Idaho, Montana, Ne-
8 vada, Oregon, Utah, Washington, and Wyo-
9 ming.

10 (3) ADJUSTMENT OF GEOGRAPHIC REGIONS.—

11 The order shall provide that the Secretary may,
12 upon recommendation of the Board, modify the com-
13 position of the geographic regions described in para-
14 graph (2).

15 **SEC. 7. REFERENDA.**

16 (a) INITIAL REFERENDUM.—

17 (1) REFERENDUM REQUIRED.—During the 60-
18 day period immediately preceding the proposed effec-
19 tive date of the order issued under section 4, the
20 Secretary shall conduct a referendum among manu-
21 facturers required to pay assessments under the
22 order, as provided in section 6.

23 (2) APPROVAL OF ORDER NEEDED.—The order
24 shall become effective only if the Secretary deter-

1 mines that the order has been approved by a simple
2 majority of all votes cast in the referendum.

3 (b) VOTES PERMITTED.—

4 (1) IN GENERAL.—Each manufacturer eligible
5 to vote in a referendum conducted under this section
6 shall be entitled to cast one vote for each machine
7 cavity in operation that is operated by such manu-
8 facturer if they satisfy the eligibility requirements as
9 defined in paragraph (2).

10 (2) ELIGIBILITY.—For purposes of paragraph
11 (1), manufacturers shall be considered to be eligible
12 to vote if they have manufactured concrete masonry
13 products during a period of at least 180 days prior
14 to the referendum.

15 (c) MANNER OF CONDUCTING REFERENDA.—

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

19 (2) ADVANCE REGISTRATION.—A manufacturer
20 who chooses to vote in any referendum conducted
21 under this section shall register with the Secretary
22 prior to the voting period, after receiving notice from
23 the Secretary concerning the referendum under
24 paragraph (4).

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

6 (4) NOTICE.—Not later than 30 days before a
7 referendum is conducted under this section with re-
8 spect to an order, the Secretary shall notify all man-
9 ufacturers, in such a manner as determined by the
10 Secretary, of the period during which voting in the
11 referendum will occur. The notice shall explain any
12 registration and voting procedures established under
13 this subsection.

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

17 (1) at the request of the Board, subject to the
18 voting requirements of subsections (b) and (c), to
19 ascertain whether eligible manufacturers favor sus-
20 pension, termination, or continuance of the order; or

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

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

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

9 (2) suspend or terminate, as appropriate, activi-
10 ties under the order as soon as practicable and in
11 an orderly manner.

12 (f) COSTS OF REFERENDA.—The Board established
13 under an order with respect to which a referendum is con-
14 ducted under this section shall reimburse the Secretary
15 from assessments for any expenses incurred by the Sec-
16 retary to conduct the referendum.

17 **SEC. 8. PETITION AND REVIEW.**

18 (a) PETITION.—

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

22 (A) stating that the order, any provision of
23 the order, or any obligation imposed in connec-
24 tion with the order, is not established in accord-
25 ance with law; and

1 (B) requesting a modification of the order
2 or an exemption from the order.

3 (2) HEARING.—The Secretary shall give the pe-
4 titioner an opportunity for a hearing on the petition,
5 in accordance with regulations issued by the Sec-
6 retary.

7 (3) RULING.—After the hearing, the Secretary
8 shall make a ruling on the petition. The ruling shall
9 be final, subject to review as set forth in subsection
10 (b).

11 (4) LIMITATION ON PETITION.—Any petition
12 filed under this subsection challenging an order, any
13 provision of the order, or any obligation imposed in
14 connection with the order, shall be filed within 2
15 years after the effective date of the order, provision,
16 or obligation subject to challenge in the petition.

17 (b) REVIEW.—

18 (1) COMMENCEMENT OF ACTION.—The district
19 courts of the United States in any district in which
20 a person who is a petitioner under subsection (a) re-
21 sides or conducts business shall have jurisdiction to
22 review the ruling of the Secretary on the petition of
23 the person, if a complaint requesting the review is
24 filed no later than 20 days after the date of the
25 entry of the ruling by the Secretary.

1 (2) PROCESS.—Service of process in pro-
2 ceedings under this subsection shall be conducted in
3 accordance with the Federal Rules of Civil Proce-
4 dure.

5 (3) REMANDS.—If the court in a proceeding
6 under this subsection determines that the ruling of
7 the Secretary on the petition of the person is not in
8 accordance with law, the court shall remand the
9 matter to the Secretary with directions—

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

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

14 (c) ENFORCEMENT.—The pendency of proceedings
15 instituted under this section shall not impede, hinder, or
16 delay the Attorney General or the Secretary from obtain-
17 ing relief under section 9.

18 **SEC. 9. ENFORCEMENT.**

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

23 (b) REFERRAL TO ATTORNEY GENERAL.—A civil ac-
24 tion authorized to be brought under this section shall be

1 referred to the Attorney General of the United States for
2 appropriate action.

3 (c) CIVIL PENALTIES AND ORDERS.—

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

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

13 (3) CEASE-AND-DESIST ORDERS.—In addition
14 to, or in lieu of, a civil penalty, the Secretary may
15 issue an order requiring a person to cease and desist
16 from violating the order or regulation.

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

22 (5) FINALITY.—An order assessing a penalty or
23 a cease-and-desist order issued under this subsection
24 by the Secretary shall be final and conclusive unless
25 the person against whom the order is issued files an

1 appeal from the order with the appropriate district
2 court of the United States, as provided in subsection
3 (d).

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

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

8 (a) INVESTIGATIONS.—The Secretary may conduct
9 such investigations as the Secretary considers necessary
10 for the effective administration of this Act, or to determine
11 whether any person has engaged or is engaging in any
12 act that constitutes a violation of this Act or any order
13 or regulation issued under this Act.

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

15 (1) INVESTIGATIONS.—For the purpose of con-
16 ducting an investigation under subsection (a), the
17 Secretary may administer oaths and affirmations,
18 subpoena witnesses, compel the attendance of wit-
19 nesses, take evidence, and require the production of
20 any records that are relevant to the inquiry. The
21 production of the records may be required from any
22 place in the United States.

23 (2) ADMINISTRATIVE HEARINGS.—For the pur-
24 pose of an administrative hearing held under section
25 8(a)(2) or section 9(c)(4), the presiding officer may

1 administer oaths and affirmations, subpoena wit-
2 nesses, compel the attendance of witnesses, take evi-
3 dence, and require the production of any records
4 that are relevant to the inquiry. The attendance of
5 witnesses and the production of the records may be
6 required from any place in the United States.

7 (c) AID OF COURTS.—

8 (1) IN GENERAL.—In the case of contumacy by,
9 or refusal to obey a subpoena issued under sub-
10 section (b) to, any person, the Secretary may invoke
11 the aid of any court of the United States within the
12 jurisdiction of which the investigation or proceeding
13 is conducted, or where the person resides or con-
14 ducts business, in order to enforce a subpoena issued
15 under subsection (b).

16 (2) ORDER.—The court may issue an order re-
17 quiring the person referred to in a paragraph (1) to
18 comply with a subpoena referred to in paragraph
19 (1).

20 (3) FAILURE TO OBEY.—Any failure to obey
21 the order of the court may be punished by the court
22 as a contempt of court.

23 (4) PROCESS.—Process in any proceeding
24 under this subsection may be served in the United
25 States judicial district in which the person being

1 proceeded against resides or conducts business, or
2 wherever the person may be found.

3 **SEC. 11. SUSPENSION OR TERMINATION.**

4 (a) MANDATORY SUSPENSION OR TERMINATION.—

5 The Secretary shall suspend or terminate an order or a
6 provision of an order if the Secretary finds that an order
7 or provision of an order obstructs or does not tend to ef-
8 fectuate the purpose of this Act, or if the Secretary deter-
9 mines that the order or a provision of an order is not fa-
10 vored by persons voting in a referendum conducted under
11 section 7.

12 (b) IMPLEMENTATION OF SUSPENSION OR TERMI-
13 NATION.—If, as a result of a referendum conducted under
14 section 7, the Secretary determines that the order is not
15 approved, the Secretary shall—

16 (1) not later than 180 days after making the
17 determination, suspend or terminate, as the case
18 may be, collection of assessments under the order;
19 and

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

1 **SEC. 12. CONFIDENTIALITY.**

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

5 **SEC. 13. AMENDMENTS TO ORDERS.**

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

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

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

13 **SEC. 15. REGULATIONS.**

14 The Secretary may issue such regulations as may be
15 necessary to carry out this Act and the power vested in
16 the Secretary under this Act.

17 **SEC. 16. LIMITATION ON EXPENDITURES FOR ADMINISTRA-**
18 **TIVE EXPENSES.**

19 Funds appropriated to carry out this Act may not
20 be used for the payment of the expenses or expenditures
21 of the Board in administering the order.