

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 985
OFFERED BY MR. GUTHRIE AND MR.
BUTTERFIELD**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

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

5 SEC. 2. DECLARATION OF POLICY.

6 (a) PURPOSE.—The purpose of this Act is to author-
7 ize the establishment of an orderly program for devel-
8 oping, financing, and carrying out an effective, contin-
9 uous, and coordinated program of research, education, and
10 promotion, including funds for marketing and market re-
11 search activities, that is designed to—

12 (1) strengthen the position of the concrete ma-
13 sonry products industry in the domestic market-
14 place;

15 (2) maintain, develop, and expand markets and
16 uses for concrete masonry products in the domestic
17 marketplace; and

1 (3) promote the use of concrete masonry prod-
2 ucts in construction and building.

3 (c) **LIMITATION.**—Nothing in this Act may be con-
4 strued to provide for the control of production or otherwise
5 limit the right of any person to manufacture concrete ma-
6 sonry products.

7 **SEC. 3. DEFINITIONS.**

8 For the purposes of this Act:

9 (1) **BLOCK MACHINE.**—The term “block ma-
10 chine” means a piece of equipment that utilizes vi-
11 bration and compaction to form concrete masonry
12 products.

13 (2) **BOARD.**—The term “Board” means the
14 Concrete Masonry Products Board established under
15 section 5.

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

20 (4) **COMMERCE.**—The term “commerce” in-
21 cludes interstate, foreign, and intrastate commerce.

22 (5) **CONCRETE MASONRY PRODUCTS.**—The
23 term “concrete masonry products” refers to a broad-
24 er class of products, including concrete masonry
25 units as well as hardscape products such as concrete

1 pavers and segmental retaining wall units, manufac-
2 tured on a block machine using dry-cast concrete.

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

10 (7) CONFLICT OF INTEREST.—The term “con-
11 flict of interest” means, with respect to a member
12 or employee of the Board, a situation in which such
13 member or employee has a direct or indirect finan-
14 cial or other interest in a person that performs a
15 service for, or enters into a contract with, for any-
16 thing of economic value.

17 (8) DEPARTMENT.—The term “Department”
18 means the Department of Commerce.

19 (9) DRY-CAST CONCRETE.—The term “dry-cast
20 concrete” means a composite material that is com-
21 posed essentially of aggregates embedded in a bind-
22 ing medium composed of a mixture of cementitious
23 materials (including hydraulic cement, pozzolans, or
24 other cementitious materials) and water of such a

1 consistency to maintain its shape after forming in a
2 block machine.

3 (10) EDUCATION.—The term “education”
4 means programs that will educate or communicate
5 the benefits of concrete masonry products in safe
6 and environmentally sustainable development, ad-
7 vancements in concrete masonry product technology
8 and development, and other information and pro-
9 grams designed to generate increased demand for
10 commercial, residential, multi-family, and institu-
11 tional projects using concrete masonry products and
12 to generally enhance the image of concrete masonry
13 products.

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

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

24 (13) MANUFACTURER.—The term “manufac-
25 turer” means any person engaged in the manufac-

1 turing of commercial concrete masonry products in
2 the United States.

3 (14) MASONRY UNIT.—The term “masonry
4 unit” means a noncombustible building product in-
5 tended to be laid by hand or joined using mortar,
6 grout, surface bonding, post-tensioning or some com-
7 bination of these methods.

8 (15) ORDER.—The term “order” means an
9 order issued under section 4.

10 (16) PERSON.—The term “person” means any
11 individual, group of individuals, partnership, cor-
12 poration, association, cooperative, or any other enti-
13 ty.

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

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

1 (19) SECRETARY.—The term “Secretary”
2 means the Secretary of Commerce.

3 (20) UNITED STATES.—The term “United
4 States” means the several States and the District of
5 Columbia.

6 **SEC. 4. ISSUANCE OF ORDERS.**

7 (a) IN GENERAL.—

8 (1) ISSUANCE.—The Secretary, subject to the
9 procedures provided in subsection (b), shall issue or-
10 ders under this Act applicable to manufacturers of
11 concrete masonry products.

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

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

16 (b) PROCEDURES.—

17 (1) DEVELOPMENT OR RECEIPT OF PROPOSED
18 ORDER.—A proposed order with respect to the ge-
19 neric research, education, and promotion with re-
20 gards to concrete masonry products may be—

21 (A) proposed by the Secretary at any time;

22 or

23 (B) requested by or submitted to the Sec-
24 retary by—

1 (i) an existing national organization of
2 concrete masonry product manufacturers;

3 or

4 (ii) any person that may be affected
5 by the issuance of an order.

6 (2) PUBLICATION OF PROPOSED ORDER.—If
7 the Secretary determines that a proposed order re-
8 ceived in accordance with paragraph (1)(B) is con-
9 sistent with and will effectuate the purpose of this
10 Act, the Secretary shall publish such proposed order
11 in the Federal Register not later than 90 days after
12 receiving the order, and give not less than 30 days
13 notice and opportunity for public comment on the
14 proposed order.

15 (3) ISSUANCE OF ORDER.—

16 (A) IN GENERAL.—After notice and oppor-
17 tunity for public comment are provided in ac-
18 cordance with paragraph (2), the Secretary
19 shall issue the order, taking into consideration
20 the comments received and including in the
21 order such provisions as are necessary to ensure
22 that the order is in conformity with this Act.

23 (B) EFFECTIVE DATE.—If there is an af-
24 firmative vote in a referendum as provided in
25 section 7, the Secretary shall issue the order

1 and such order shall be effective not later than
2 140 days after publication of the proposed
3 order.

4 (c) AMENDMENTS.—The Secretary may, from time to
5 time, amend an order. The provisions of this Act applica-
6 ble to an order shall be applicable to any amendment to
7 an order.

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

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

12 (b) CONCRETE MASONRY PRODUCTS BOARD.—

13 (1) ESTABLISHMENT AND MEMBERSHIP.—

14 (A) ESTABLISHMENT.—The order shall
15 provide for the establishment of a Concrete Ma-
16 sonry Products Board to carry out a program
17 of generic promotion, research, and education
18 regarding concrete masonry products.

19 (B) MEMBERSHIP.—

20 (i) NUMBER OF MEMBERS.—The
21 board shall consist of not less than 15 and
22 not more than 25 members.

23 (ii) APPOINTMENT.—The members of
24 the Board shall be appointed by the Sec-

1 retary from nominations submitted as pro-
2 vided in the order.

3 (iii) COMPOSITION.—The Board shall
4 consist of manufacturers. No employee of
5 an industry trade organization exempt
6 from tax under paragraphs (3) or (6) of
7 section 501(c) of the Internal Revenue
8 Code of 1986 (26 U.S.C. 501(c)) rep-
9 resenting the concrete masonry industry or
10 related industries shall serve as a member
11 of the Board and no member of the Board
12 may serve concurrently as an officer of the
13 board of directors of a national concrete
14 masonry products industry trade associa-
15 tion. Only two individuals from any single
16 company or its affiliates may serve on the
17 Board at any one time.

18 (2) DISTRIBUTION OF APPOINTMENTS.—

19 (A) REPRESENTATION.—To ensure fair
20 and equitable representation of the concrete
21 masonry products industry, the composition of
22 the Board shall reflect the geographical dis-
23 tribution of the manufacture of concrete ma-
24 sonry products in the United States, the types
25 of concrete masonry products manufactured,

1 and the range in size of manufacturers in the
2 United States.

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

15 (3) NOMINATIONS PROCESS.—The Secretary
16 may make appointments from nominations by manu-
17 facturers pursuant to the method set forth in the
18 order.

19 (4) FAILURE TO APPOINT.—If the Secretary
20 fails to make an appointment to the Board within
21 60 days of receiving nominations for such appoint-
22 ment, the first nominee for such appointment shall
23 be deemed appointed, unless the Secretary provides
24 reasonable justification for the delay to the Board

1 and to Congress and provides a reasonable date by
2 which approval or disapproval will be made.

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

7 (6) TERMS.—

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

14 (B) LIMITATION ON CONSECUTIVE
15 TERMS.—A member or an alternate may serve
16 not more than 2 consecutive terms.

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

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

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

7 (8) COMPENSATION.—

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

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

18 (c) POWERS AND DUTIES OF THE BOARD.—The
19 order shall specify the powers and duties of the Board,
20 including the power and duty—

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

23 (2) to develop and recommend to the Secretary
24 for approval such bylaws as may be necessary for
25 the functioning of the Board and such rules as may

1 be necessary to administer the order, including ac-
2 tivities authorized to be carried out under the order;

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

7 (4) to establish regional organizations or com-
8 mittees to administer regional initiatives;

9 (5) to establish working committees of persons
10 other than Board members;

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

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

23 (8) to borrow funds necessary for the startup
24 expenses of the order;

1 (9) to carry out generic research, education,
2 and promotion programs and projects relating to
3 concrete masonry products, and to pay the costs of
4 such programs and projects with assessments col-
5 lected under section 6;

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

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

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

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

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

21 (15) to provide the Secretary with advance no-
22 tice of meetings to permit the Secretary or the Sec-
23 retary's representative to attend the meetings.

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

1 (1) PROGRAMS AND PROJECTS.—

2 (A) IN GENERAL.—The order shall require
3 the Board to submit to the Secretary for ap-
4 proval any program or project of research, edu-
5 cation, or promotion relating to concrete ma-
6 sonry products.

7 (B) STATEMENT REQUIRED.—Any edu-
8 cational or promotional activity undertaken with
9 funds provided by the Board shall include a
10 statement that such activities were supported in
11 whole or in part by the Board.

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.

24 (C) APPROVAL.—If the Secretary fails to
25 approve or reject a budget within 60 days of re-

1 ceipt, such budget shall be deemed approved,
2 unless the Secretary provides to the Board and
3 to Congress, in writing, reasonable justification
4 for the delay and provides a reasonable date by
5 which approval or disapproval will be made.

6 (3) ADMINISTRATIVE EXPENSES.—

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

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

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

1 that exceeds 10 percent of the assessment and
2 other income received by the Board for the fis-
3 cal year.

4 (D) REIMBURSEMENT OF SECRETARY.—

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

11 (e) CONTRACTS AND AGREEMENTS.—

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

14 (A) enter into contracts and agreements to
15 carry out generic research, education, and pro-
16 motion programs and projects relating to con-
17 crete masonry products, including contracts and
18 agreements with manufacturer associations or
19 other entities as considered appropriate by the
20 Secretary;

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

23 (C) pay the cost of approved generic re-
24 search, education, and promotion programs and
25 projects using assessments collected under sec-

1 tion 6, earnings obtained from assessments, and
2 other 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 program or project together with a
8 budget that specifies the cost to be incurred to
9 carry out the program or project;

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 60 days of
23 receipt, the contract or agreement shall be deemed
24 approved, unless the Secretary provides to the Board
25 and to Congress, in writing, reasonable justification

1 for the delay and provides a reasonable date by
2 which approval or disapproval will be made.

3 (f) BOOKS AND RECORDS OF BOARD.—

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

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

10 (B) collect and submit to the Secretary, at
11 any time the Secretary may specify, any infor-
12 mation the Secretary may request; and

13 (C) account for the receipt and disburse-
14 ment of all funds in the possession, or under
15 the control, of the Board.

16 (2) AUDITS.—The order shall require the Board
17 to have—

18 (A) the books and records of the Board au-
19 dited by an independent auditor at the end of
20 each fiscal year; and

21 (B) a report of the audit submitted di-
22 rectly to the Secretary.

23 (g) PROHIBITED ACTIVITIES.—

24 (1) IN GENERAL.—Subject to paragraph (2),
25 the Board shall not engage in any program or

1 project to, nor shall any funds received by the Board
2 under this Act be used to—

3 (A) influence legislation, elections, or gov-
4 ernmental action;

5 (B) engage in an action that would be a
6 conflict of interest;

7 (C) engage in advertising that is false or
8 misleading;

9 (D) engage in any promotion, research, or
10 education that would be disparaging to other
11 construction materials; or

12 (E) engage in any promotion or project
13 that would benefit any individual manufacturer.

14 (2) EXCEPTIONS.—Paragraph (1) does not pre-
15 clude—

16 (A) the development and recommendation
17 of amendments to the order;

18 (B) the communication to appropriate gov-
19 ernment officials of information relating to the
20 conduct, implementation, or results of research,
21 education, and promotion activities under the
22 order except communications described in para-
23 graph(1)(A); or

24 (C) any lawful action designed to market
25 concrete masonry products directly to a foreign

1 government or political subdivision of a foreign
2 government.

3 (h) PERIODIC EVALUATION.—The order shall require
4 the Board to provide for the independent evaluation of all
5 research, education, and promotion programs or projects
6 undertaken under the order, beginning five years after the
7 date of enactment of this Act and every three years there-
8 after. The Board shall submit to the Secretary and make
9 available to the public the results of each such evaluation.

10 (i) OBJECTIVES.—The Board shall establish annual
11 research, education, and promotion objectives and per-
12 formance metrics for each fiscal year subject to approval
13 by the Secretary.

14 (j) BIENNIAL REPORT.—Every two years the Board
15 shall prepare and make publicly available a comprehensive
16 and detailed report that includes an identification and de-
17 scription of all programs and projects undertaken by the
18 Board during the previous two years as well as those
19 planned for the subsequent two years and detail the alloca-
20 tion or planned allocation of Board resources for each
21 such program or project. Such report shall also include—

- 22 (1) the Board's overall financial condition;
23 (2) a summary of the amounts obligated or ex-
24 pended during the two preceding fiscal years; and

1 (3) a description of the extent to which the
2 Board's objectives were met according to the metrics
3 required under subsection (i).

4 (k) BOOKS AND RECORDS OF PERSONS COVERED BY
5 ORDER.—

6 (1) IN GENERAL.—The order shall require that
7 manufacturers shall—

8 (A) maintain records sufficient to ensure
9 compliance with the order and regulations; and

10 (B) make the records described in subpara-
11 graph (A) available, during normal business
12 hours, for inspection by employees or agents of
13 the Board or the Department.

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 subparagraph (B) trade secrets
21 and commercial or financial information that is
22 privileged or confidential reported to, or other-
23 wise obtained by the Board or the Secretary (or
24 any representative of the Board or the Sec-
25 retary) under this Act shall not be disclosed by

1 any officers, employees, and agents of the De-
2 partment or the Board.

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

6 (i) the Secretary considers the infor-
7 mation relevant; and

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

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

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

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

1 (D) PENALTY.—Any officer, employee, or
2 agent of the Department of Commerce or any
3 officer, employee, or agent of the Board who
4 willfully violates this subsection shall be fined
5 not more than \$1,000 and imprisoned for not
6 more than 1 year, or both.

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

10 **SEC. 6. ASSESSMENTS.**

11 (a) ASSESSMENTS.—The order shall provide that as-
12 sessments shall be paid by a manufacturer if the manufac-
13 turer has manufactured concrete masonry products during
14 a period of at least 180 days prior to the date the assess-
15 ment is to be remitted.

16 (b) COLLECTION.—

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

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

23 (3) RECORDS.—As part of the remittance of as-
24 sessments, manufacturers shall identify the total
25 amount due in assessments on all sales receipts, in-

1 voices or other commercial documents of sale as a
2 result of the sale of concrete masonry units in a
3 manner as prescribed by the Board to ensure com-
4 pliance with the order.

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

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

10 (2) CHANGES IN THE RATE.—

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

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

20 (C) MAXIMUM RATE.—The assessment
21 rate shall not be in excess of \$0.05 per concrete
22 masonry unit.

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

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

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

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

8 (e) INVESTMENT OF ASSESSMENTS.—Pending dis-
9 bursement of assessments under a budget approved by the
10 Secretary, the Board may invest assessments collected
11 under this section in—

12 (1) obligations of the United States or any
13 agency of the United States;

14 (2) general obligations of any State or any po-
15 litical subdivision of a State;

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

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

21 (f) ASSESSMENT FUNDS FOR REGIONAL INITIA-
22 TIVES.—

23 (1) IN GENERAL.—The order shall provide that
24 no less than 50 percent of the assessments (less ad-
25 ministration expenses) paid by a manufacturer shall

1 be used to support research, education, and pro-
2 motion programs and projects in support of the geo-
3 graphic region of the manufacturer.

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

6 (A) Region I shall comprise Connecticut,
7 Delaware, the District of Columbia, Maine,
8 Maryland, Massachusetts, New Hampshire,
9 New Jersey, New York, Pennsylvania, Rhode
10 Island, Vermont, and West Virginia.

11 (B) Region II shall comprise Alabama,
12 Florida, Georgia, Mississippi, North Carolina,
13 South Carolina, Tennessee, and Virginia.

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

18 (D) Region IV shall comprise Arizona, Ar-
19 kansas, Kansas, Louisiana, Missouri, New Mex-
20 ico, Oklahoma, and Texas.

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

1 (3) ADJUSTMENT OF GEOGRAPHIC REGIONS.—

2 The order shall provide that the Secretary may,
3 upon recommendation of the Board, modify the com-
4 position of the geographic regions described in para-
5 graph (2).

6 **SEC. 7. REFERENDA.**

7 (a) INITIAL REFERENDUM.—

8 (1) REFERENDUM REQUIRED.—During the 60-
9 day period immediately preceding the proposed effec-
10 tive date of the order issued under section 4, the
11 Secretary shall conduct a referendum among manu-
12 facturers eligible under subsection (b)(2) subject to
13 assessments under section 6.

14 (2) APPROVAL OF ORDER NEEDED.—The order
15 shall become effective only if the Secretary deter-
16 mines that the order has been approved by a major-
17 ity of manufacturers voting who also represent a
18 majority of the machine cavities in operation of
19 those manufacturers voting in the referendum.

20 (b) VOTES PERMITTED.—

21 (1) IN GENERAL.—Each manufacturer eligible
22 to vote in a referendum conducted under this section
23 shall be entitled to cast one vote.

24 (2) ELIGIBILITY.—For purposes of paragraph
25 (1), a manufacturer shall be considered to be eligible

1 to vote if the manufacturer has manufactured con-
2 crete masonry products during a period of at least
3 180 days prior to the first day of the period during
4 which voting in the referendum will occur.

5 (c) MANNER OF CONDUCTING REFERENDA.—

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

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

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

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

1 registration and voting procedures established under
2 this subsection.

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

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

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

15 (e) SUSPENSION OR TERMINATION.—If, as a result
16 of a referendum conducted under subsection (d), the Sec-
17 retary determines that suspension or termination of the
18 order is favored by a majority of all votes cast in the ref-
19 erendum as provided in subsection (a)(2), the Secretary
20 shall—

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

1 (2) suspend or terminate, as appropriate, pro-
2 grams and projects under the order as soon as prac-
3 ticable and in an orderly manner.

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

9 **SEC. 8. PETITION AND REVIEW.**

10 (a) PETITION.—

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

14 (A) stating that the order, any provision of
15 the order, or any obligation imposed in connec-
16 tion with the order, is not established in accord-
17 ance with law; and

18 (B) requesting a modification of the order
19 or an exemption from the order.

20 (2) HEARING.—The Secretary shall give the pe-
21 titioner an opportunity for a hearing on the petition,
22 in accordance with regulations issued by the Sec-
23 retary.

24 (3) RULING.—After the hearing, the Secretary
25 shall make a ruling on the petition. The ruling shall

1 be final, subject to review as set forth in subsection
2 (b).

3 (4) LIMITATION ON PETITION.—Any petition
4 filed under this subsection challenging an order, any
5 provision of the order, or any obligation imposed in
6 connection with the order, shall be filed not less than
7 2 years after the effective date of the order, provi-
8 sion, or obligation subject to challenge in the peti-
9 tion.

10 (b) REVIEW.—

11 (1) COMMENCEMENT OF ACTION.—The district
12 courts of the United States in any district in which
13 a person who is a petitioner under subsection (a) re-
14 sides or conducts business shall have jurisdiction to
15 review the ruling of the Secretary on the petition of
16 the person, if a complaint requesting the review is
17 filed no later than 30 days after the date of the
18 entry of the ruling by the Secretary.

19 (2) PROCESS.—Service of process in pro-
20 ceedings under this subsection shall be conducted in
21 accordance with the Federal Rules of Civil Proce-
22 dure.

23 (3) REMANDS.—If the court in a proceeding
24 under this subsection determines that the ruling of
25 the Secretary on the petition of the person is not in

1 accordance with law, the court shall remand the
2 matter to the Secretary with directions—

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

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

7 (c) **ENFORCEMENT.**—The pendency of proceedings
8 instituted under this section shall not impede, hinder, or
9 delay the Attorney General or the Secretary from obtain-
10 ing relief under section 9.

11 **SEC. 9. ENFORCEMENT.**

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

16 (b) **REFERRAL TO ATTORNEY GENERAL.**—A civil ac-
17 tion authorized to be brought under this section shall be
18 referred to the Attorney General of the United States for
19 appropriate action.

20 (c) **CIVIL PENALTIES AND ORDERS.**—

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

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

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

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

14 (5) FINALITY.—An order assessing a penalty or
15 a cease-and-desist order issued under this subsection
16 by the Secretary shall be final and conclusive unless
17 the person against whom the order is issued files an
18 appeal from the order with the appropriate district
19 court of the United States.

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

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

24 (a) INVESTIGATIONS.—The Secretary may conduct
25 such investigations as the Secretary considers necessary

1 for the effective administration of this Act, or to determine
2 whether any person has engaged or is engaging in any
3 act that constitutes a violation of this Act or any order
4 or regulation issued under this Act.

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

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

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

23 (c) AID OF COURTS.—

24 (1) IN GENERAL.—In the case of contumacy by,
25 or refusal to obey a subpoena issued under sub-

1 section (b) to, any person, the Secretary may invoke
2 the aid of any court of the United States within the
3 jurisdiction of which the investigation or proceeding
4 is conducted, or where the person resides or con-
5 ducts business, in order to enforce a subpoena issued
6 under subsection (b).

7 (2) ORDER.—The court may issue an order re-
8 quiring the person referred to in paragraph (1) to
9 comply with a subpoena referred to in paragraph
10 (1).

11 (3) FAILURE TO OBEY.—Any failure to obey
12 the order of the court may be punished by the court
13 as a contempt of court.

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

19 **SEC. 11. SUSPENSION OR TERMINATION.**

20 (a) MANDATORY SUSPENSION OR TERMINATION.—
21 The Secretary shall suspend or terminate an order or a
22 provision of an order if the Secretary finds that an order
23 or provision of an order obstructs or does not tend to ef-
24 fectuate the purpose of this Act, or if the Secretary deter-
25 mines that the order or a provision of an order is not fa-

1 vored by a majority of all votes cast in the referendum
2 as provided in section 7(a)(2).

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

7 (1) not later than 180 days after making the
8 determination, suspend or terminate, as the case
9 may be, collection of assessments under the order;
10 and

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

14 **SEC. 12. 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. 13. 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. 14. 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. 15. 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.

6 **SEC. 16. STUDY AND REPORT BY THE GOVERNMENT AC-**
7 **COUNTABILITY OFFICE.**

8 Not later than 5 years and 8 years after the date
9 of enactment of this Act, the Comptroller General of the
10 United States shall prepare a study and submit to Con-
11 gress and the Secretary a report examining—

12 (1) how the Board spends assessments col-
13 lected;

14 (2) the extent to which the Board's reported ac-
15 tivities help achieve its annual objectives;

16 (3) any changes in demand for concrete ma-
17 sonry products relative to other building materials;

18 (4) any impact of the Board's activities on the
19 market share of competing products;

20 (5) any impact of the Board's activities on the
21 overall size of the market for building products;

22 (6) any impact of the Board's activities on the
23 total number of concrete masonry related jobs, in-
24 cluding manufacturing, sales, and installation;

25 (7) any significant effects of the Board's activi-
26 ties on downstream purchasers of concrete masonry

1 products and real property into which concrete ma-
2 sonry products are incorporated;

3 (8) effects on prices of concrete masonry prod-
4 ucts as a result of the Board's activities;

5 (9) the cost to the federal government of an in-
6 crease in concrete masonry product prices, if any, as
7 a result of the program established by this Act;

8 (10) the extent to which key statutory require-
9 ments are met;

10 (11) the extent and strength of federal over-
11 sight of the program established by this Act;

12 (12) the appropriateness of administering the
13 program from within the Office of the Secretary of
14 Commerce and the appropriateness of administering
15 the program from within any division of the Depart-
16 ment of Commerce, including whether the Depart-
17 ment has the expertise, knowledge, or other capabili-
18 ties necessary to adequately administer the program;
19 and

20 (13) any other topic that the Comptroller Gen-
21 eral considers appropriate.

22 **SEC. 17. STUDY AND REPORT BY THE DEPARTMENT OF**
23 **COMMERCE.**

24 Not later than 3 years after the date of enactment
25 of this Act, the Secretary shall prepare a study and submit

1 to Congress a report examining the appropriateness and
2 effectiveness of applying the commodity check-off program
3 model (such as those programs established under sub-
4 chapter II of chapter 101 of title 7, United States Code)
5 to a nonagricultural industry, taking into account the pro-
6 gram established by this Act and any other check-off pro-
7 gram involving a nonagricultural industry.

