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S. 3227

To enable concrete masonry products manufacturers and importers 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 SENATE OF THE UNITED STATES

MAY 23, 2012

Mr. NELSON of Florida (for himself and Mr. BLUNT) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To enable concrete masonry products manufacturers and importers 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 2012”.

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

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

3 (1) The production of concrete masonry prod-
4 ucts plays a significant role in the Nation's economy.

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

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

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

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

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

1 products are used for the construction of structures
2 that protect and provide shelter for citizens during
3 disasters (earthquakes, floods, hurricanes, tornados,
4 fire, etc.). Concrete masonry structures provide en-
5 ergy efficiencies to reduce American energy de-
6 mands. Concrete masonry provides for durable struc-
7 tures that support sustainability objectives, reducing
8 long-term demands on natural resources. Concrete
9 masonry products are made using locally available
10 resources throughout the United States, reducing
11 transportation and infrastructure demands. Concrete
12 masonry products are used to support the construc-
13 tion of durable and cost-efficient, low-income hous-
14 ing.

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

21 (1) strengthen the position of the concrete ma-
22 sonry products industry in the domestic market-
23 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 or import
 10 concrete masonry 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) CUSTOMS.—The term “Customs” means United
13 States Customs and Border Protection.

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

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

23 (j) EDUCATION.—The term “education” means pro-
24 grams that will educate or communicate the benefits of
25 concrete masonry products in safe and environmentally

1 sustainable development, advancements in concrete ma-
2 sonry product technology and development, and other in-
3 formation and programs designed to generate increased
4 demand for commercial, residential, multi-family, and in-
5 stitutional projects using concrete masonry products and
6 to generally enhance the image of concrete masonry prod-
7 ucts.

8 (k) IMPORTER.—The term “importer” means a per-
9 son that imports concrete masonry products into the
10 United States.

11 (l) MACHINE CAVITIES.—The term “machine cav-
12 ities” means the cavities with which a block machine could
13 be equipped.

14 (m) MACHINE CAVITIES IN OPERATION.—The term
15 “machine cavities in operation” means those machine cav-
16 ities associated with a block machine that have produced
17 concrete masonry units within the last six months of the
18 date set for determining eligibility and is fully operable
19 and capable of producing concrete masonry units.

20 (n) MASONRY UNIT.—The term “masonry unit”
21 means a noncombustible building product intended to be
22 laid by hand or joined using mortar, grout, surface bond-
23 ing, post-tensioning or some combination of these meth-
24 ods.

1 (o) MANUFACTURER.—The term “manufacturer”
2 means any person engaged in the manufacturing of com-
3 mercial concrete masonry products.

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

6 (q) PERSON.—The term “person” means any indi-
7 vidual, group of individuals, partnership, corporation, as-
8 sociation, cooperative, or any other entity.

9 (r) PROMOTION.—The term “promotion” means any
10 action, including paid advertising, to advance the image
11 and desirability of concrete masonry products with the ex-
12 press intent of improving the competitive position and
13 stimulating sales of concrete masonry products in the mar-
14 ketplace.

15 (s) RESEARCH.—The term “research” means studies
16 testing the effectiveness of market development and pro-
17 motion efforts, studies relating to the improvement of con-
18 crete masonry products and new product development, and
19 studies documenting the performance of concrete ma-
20 sonry.

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

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

6 (A) manufacturers of concrete masonry
7 products; and

8 (B) importers of concrete masonry prod-
9 ucts, if imports of concrete masonry products
10 are subject to assessment under the order.

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

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

15 (b) PROCEDURES.—

16 (1) DEVELOPMENT OR RECEIPT OF PROPOSED
17 ORDER.—A proposed order with respect to concrete
18 masonry products may be—

19 (A) prepared by the Secretary at any time;
20 or

21 (B) requested by or submitted to the Sec-
22 retary by—

23 (i) an existing national organization of
24 concrete masonry product manufacturers
25 or importers; or

1 (ii) any person that may be affected
2 by the issuance of an order with respect to
3 concrete masonry products.

4 (2) PUBLICATION OF PROPOSED ORDER.—Not
5 later than 60 days after receiving a proposed order
6 or a request for a proposed order in accordance with
7 subparagraph (B), the Secretary shall publish a pro-
8 posed order in the Federal Register and give 30
9 days notice and opportunity for public comment on
10 the proposed order.

11 (3) ISSUANCE OF ORDER.—

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

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

24 (c) AMENDMENTS.—The Secretary may, from time to
25 time, amend an order. The provisions of this Act applica-

1 ble to an order shall be applicable to any amendment to
 2 an order.

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

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

7 (b) CONCRETE MASONRY PRODUCTS BOARD.—

8 (1) ESTABLISHMENT AND MEMBERSHIP.—

9 (A) ESTABLISHMENT.—The order shall
 10 provide for the establishment of a Concrete Ma-
 11 sonry Products Board (referred to in this Act
 12 as the “Board”) to carry out a program of ge-
 13 neric promotion, research, and information re-
 14 garding concrete masonry products.

15 (B) MEMBERSHIP.—

16 (i) NUMBER OF MEMBERS.—The
 17 board shall consist of not more than 25
 18 members.

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

23 (iii) COMPOSITION.—The Board shall
 24 consist of manufacturers. If imports of
 25 concrete masonry products are subject to

1 assessment under the order, the Secretary
2 shall also appoint importers as members of
3 the board.

4 (2) DISTRIBUTION OF APPOINTMENTS.—

5 (A) GEOGRAPHICAL REPRESENTATION.—

6 To ensure fair and equitable representation of
7 the concrete masonry products industry, the
8 composition of the Board shall reflect the geo-
9 graphical distribution of the manufacture of
10 concrete masonry products in the United
11 States, the types of concrete masonry products
12 manufactured, and the quantity or value of the
13 concrete masonry products imported into the
14 United States, if imports of concrete masonry
15 products are covered under the order.

16 (B) ADJUSTMENT IN BOARD REPRESENTA-
17 TION.—Three years after the assessment of
18 concrete masonry products commences pursuant
19 to an order, and at the end of each three-year
20 period thereafter, the Board, subject to the re-
21 view and approval of the Secretary, shall, if
22 warranted, recommend to the Secretary the re-
23 apportionment of the Board membership to re-
24 flect changes in the geographical distribution of
25 the manufacture of concrete masonry products,

1 the types of concrete masonry products manu-
2 factured, and the quantity or value of imported
3 concrete masonry products.

4 (3) NOMINATIONS PROCESS.—The order shall
5 provide the following:

6 (A) NUMBER OF NOMINATIONS.—Two
7 nominees shall be submitted for each appoint-
8 ment to the Board.

9 (B) PROCEDURE.—Nominations for each
10 appointment of a manufacturer or an importer
11 shall be made by manufacturers or importers,
12 respectively, in accordance with procedures
13 specified in the order.

14 (C) FAILURE TO NOMINATE.—In any case
15 in which manufacturers or importers fail to
16 nominate individuals for an appointment to the
17 Board, the Secretary may appoint an individual
18 to fill the vacancy on a basis provided in the
19 order or other regulations of the Secretary.

20 (D) FAILURE TO APPOINT.—If the Sec-
21 retary fails to make an appointment to the
22 Board within 30 days of receiving nominations
23 for such appointment, the first nominee for
24 such appointment shall be deemed appointed.

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

5 (5) TERMS.—

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

12 (B) LIMITATION ON CONSECUTIVE
 13 TERMS.—A member or alternate may serve not
 14 more than two consecutive terms.

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

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

23 (6) DISQUALIFICATION FROM BOARD SERV-
 24 ICE.—The order shall provide that if a member or
 25 alternate of the Board who was appointed as a man-

1 manufacturer or importer ceases to qualify as a manu-
2 facturer or importer, respectively, such member or
3 alternate shall be disqualified from serving on the
4 Board.

5 (7) COMPENSATION.—

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

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

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

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

21 (2) to develop and recommend to the Secretary
22 for approval such bylaws as may be necessary for
23 the functioning of the board and such rules as may
24 be necessary to administer the order, including ac-
25 tivities authorized to be carried out under the order;

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

5 (4) to establish regional organizations or com-
6 mittees to administer regional initiatives;

7 (5) to establish working committees of persons
8 other than Board members;

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

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

21 (8) to borrow funds necessary for the startup
22 expenses of the order;

23 (9) to carry out research, education, and pro-
24 motion programs and projects, and to pay the costs

1 of such programs and projects with assessments col-
2 lected under section 6;

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

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

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

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

15 (14) to recommend to the Secretary such
16 amendments to the order as the Board considers ap-
17 propriate; and

18 (15) to provide the Secretary with advance no-
19 tice of meetings.

20 (d) PROGRAMS AND PROJECTS; BUDGETS; EX-
21 PENSES.—

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

1 (2) BUDGETS.—

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

9 (B) TIMING.—The budget shall be sub-
10 mitted before the beginning of a fiscal year and
11 as frequently as may be necessary after the be-
12 ginning of the fiscal year.

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

16 (3) ADMINISTRATIVE EXPENSES.—

17 (A) INCURRING EXPENSES.—A board may
18 incur the expenses described in paragraph (2)
19 and other expenses for the administration,
20 maintenance, and functioning of the Board as
21 authorized by the Secretary.

22 (B) PAYMENT OF EXPENSES.—Expenses
23 incurred under subparagraph (A) shall be paid
24 by the Board using assessments collected under
25 section 6, earnings obtained from assessments,

1 and other income of the Board. Any funds bor-
 2 rowed by the Board shall be expended only for
 3 startup costs and capital outlays.

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

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

21 (e) CONTRACTS AND AGREEMENTS.—

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

24 (A) enter into contracts and agreements to
 25 carry programs and projects of research, edu-

1 cation, and promotion activities relating to con-
2 crete masonry products, including contracts and
3 agreements with manufacturer associations or
4 other entities as considered appropriate by the
5 Secretary;

6 (B) enter into contracts and agreements
7 for administrative services; and

8 (C) pay the cost of approved research, edu-
9 cation, and promotion programs and projects
10 using assessments collected under section 6,
11 earnings obtained from assessments, and other
12 income of the Board.

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

16 (A) develop and submit to the Board a
17 proposed activity together with a budget that
18 specifies the cost to be incurred to carry out the
19 activity;

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

22 (C) account for funds received and ex-
23 pended in connection with the contract or
24 agreement;

1 (D) make periodic reports to the Board of
 2 activities conducted under the contract or
 3 agreement; and

4 (E) make such other reports as the Board
 5 or the Secretary considers relevant.

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

11 (f) BOOKS AND RECORDS OF BOARD.—

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

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

18 (B) collect and submit to the Secretary, at
 19 any time the Secretary may specify, any infor-
 20 mation the Secretary may request; and

21 (C) account for the receipt and disburse-
 22 ment of all funds in the possession, or under
 23 the control, of the Board.

24 (2) AUDITS.—The order shall require the Board
 25 to have—

1 (A) the books and records of the Board au-
2 dited by an independent auditor at the end of
3 each fiscal year; and

4 (B) a report of the audit submitted di-
5 rectly to the Secretary.

6 (g) PROHIBITED ACTIVITIES.—

7 (1) IN GENERAL.—Subject to paragraph (2),
8 the Board shall not engage in any action to, nor
9 shall any funds received by the Board under this Act
10 be used to—

11 (A) influence legislation or governmental
12 action;

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

15 (C) engage in advertising that is false or
16 misleading.

17 (2) EXCEPTIONS.—Paragraph (1) does not pre-
18 clude—

19 (A) the development and recommendation
20 of amendments to the order;

21 (B) the communication to appropriate gov-
22 ernment officials of information relating to the
23 conduct, implementation, or results of research,
24 education, and promotion activities under the
25 order; or

1 (C) any action designed to market concrete
2 masonry products directly to a foreign govern-
3 ment or political subdivision of a foreign gov-
4 ernment.

5 (h) PERIODIC EVALUATION.—The order shall require
6 the Board to provide for the independent evaluation of all
7 research, education, and promotion activities undertaken
8 under the order.

9 (i) BOOKS AND RECORDS OF PERSONS COVERED BY
10 ORDER.—

11 (1) IN GENERAL.—The order shall require that
12 manufacturers and importers of concrete masonry
13 products shall—

14 (A) maintain records sufficient to ensure
15 compliance with the order and regulations;

16 (B) submit to the Board any information
17 required by the Board to carry out its respon-
18 sibilities; and

19 (C) make the records described in subpara-
20 graph (A) available, during normal business
21 hours, for inspection by employees or agents of
22 the Board or the Department, including any
23 records necessary to verify information required
24 under subparagraph (B).

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

5 (3) CONFIDENTIALITY OF INFORMATION.—

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

12 (B) SUITS AND HEARINGS.—Information
13 referred to in subparagraph (A) may be dis-
14 closed only if—

15 (i) the Secretary considers the infor-
16 mation relevant; and

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

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

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

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

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

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

18 **SEC. 6. ASSESSMENTS.**

19 (a) ASSESSMENTS.—

20 (1) MANUFACTURERS.—The order shall provide
 21 that assessments shall be paid by manufacturers
 22 with respect to concrete masonry products manufac-
 23 tured and marketed in the United States.

24 (2) IMPORTERS.—The order may provide that
 25 assessments shall be paid by importers with respect

1 to concrete masonry products imported into the
2 United States.

3 (b) COLLECTION.—

4 (1) MANUFACTURERS.—Except as provided in
5 paragraph (2), assessments required under the order
6 shall be remitted by the manufacturer to the Board
7 in the manner prescribed by the order.

8 (2) IMPORTERS.—An assessment on imported
9 concrete masonry products shall be paid by the im-
10 porter to Customs at the time of entry into the
11 United States and shall be remitted by Customs to
12 the Board in the manner prescribed by the order.

13 (3) TIMING.—The order shall provide that as-
14 sessments required under the order shall be remitted
15 to the Board no less than quarterly.

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

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

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

4 (2) CHANGES IN THE RATE.—

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

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

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

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

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

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

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

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

7 (1) obligations of the United States or any
8 agency of the United States;

9 (2) general obligations of any State or any po-
10 litical subdivision of a State;

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

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

16 (f) ASSESSMENT FUNDS FOR REGIONAL INITIA-
17 TIVES.—

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

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

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

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

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

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

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

20 (3) ADJUSTMENT OF GEOGRAPHIC REGIONS.—
21 The order shall provide that the Secretary may,
22 upon recommendation of the Board, modify the com-
23 position of the geographic regions described in para-
24 graph (2).

1 **SEC. 7. REFERENDA.**

2 (a) INITIAL REFERENDUM.—

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

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

13 (b) VOTES PERMITTED.—

14 (1) MANUFACTURERS.—Each manufacturer eli-
15 gible to vote in a referendum conducted under this
16 section shall be entitled to cast one vote for each
17 machine cavity in operation that is operated by such
18 manufacturer if they satisfy the eligibility require-
19 ments as defined in paragraph (3).

20 (2) IMPORTERS.—Each importer eligible to vote
21 in a referendum conducted under this section shall
22 be entitled to cast one vote if they satisfy the eligi-
23 bility requirements as defined in paragraph (3).

24 (3) ELIGIBILITY.—For purposes of paragraphs
25 (1) and (2), manufacturers and importers shall be
26 considered to be eligible to vote if they have manu-

1 factured or imported concrete masonry products
2 during a period of at least six months prior to the
3 referendum.

4 (c) MANNER OF CONDUCTING REFERENDA.—

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

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

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

19 (4) NOTICE.—Not later than 30 days before a
20 referendum is conducted under this section with re-
21 spect to an order, the Secretary shall notify all man-
22 ufacturers and importers, in such a manner as de-
23 termined by the Secretary, of the period during
24 which voting in the referendum will occur. The no-

1 tice shall explain any registration and voting proce-
2 dures established under 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 and import-
9 ers favor suspension, termination, or continuance of
10 the order; or

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

16 (e) SUSPENSION OR TERMINATION.—If, as a result
17 of a referendum conducted under subsection (d), the Sec-
18 retary determines that suspension or termination of the
19 order is favored by a simple majority of all votes cast in
20 the referendum, the Secretary 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, activi-
 2 ties under the order as soon as practicable and in
 3 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 within 2
7 years after the effective date of the order, provision,
8 or obligation subject to challenge in the petition.

9 (b) REVIEW.—

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

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

22 (3) REMANDS.—If the court in a proceeding
23 under this subsection determines that the ruling of
24 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, as provided in subsection
20 (d).

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

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

2 (a) INVESTIGATIONS.—The Secretary may conduct
3 such investigations as the Secretary considers necessary
4 for the effective administration of this Act, or to determine
5 whether any person has engaged or is engaging in any
6 act that constitutes a violation of this Act or any order
7 or regulation issued under this Act.

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

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

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

26 (c) AID OF COURTS.—

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

9 (2) ORDER.—The court may issue an order re-
10 quiring the person referred to in paragraph (1) to
11 comply with a subpoena referred to in paragraph
12 (1).

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

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

21 **SEC. 11. SUSPENSION OR TERMINATION.**

22 (a) MANDATORY SUSPENSION OR TERMINATION.—
23 The Secretary shall suspend or terminate an order or a
24 provision of an order if the Secretary finds that an order
25 or provision of an order obstructs or does not tend to ef-

1 fectuate the purpose of this Act, or if the Secretary deter-
 2 mines that the order or a provision of an order is not fa-
 3 vored by persons voting in a referendum conducted under
 4 section 7.

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

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

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

16 **SEC. 12. CONFIDENTIALITY.**

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

20 **SEC. 13. AMENDMENTS TO ORDERS.**

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

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

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

5 **SEC. 15. REGULATIONS.**

6 The Secretary may issue such regulations as may be
7 necessary to carry out this Act and the power vested in
8 the Secretary under this Act.

9 **SEC. 16. LIMITATION ON EXPENDITURES FOR ADMINISTRA-**
10 **TIVE EXPENSES.**

11 Funds appropriated to carry out this Act may not
12 be used for the payment of the expenses or expenditures
13 of the Board in administering the order.

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