

112TH CONGRESS  
1ST SESSION

# H. R. 3395

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.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 4, 2011

Mr. SHIMKUS (for himself and Ms. BALDWIN) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## 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 2011”.

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 a 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.

○