

(15) Person

The term “person” means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

(16) Promotion

The term “promotion” means any action, including paid advertising, to advance the image and desirability of concrete masonry products with the express intent of improving the competitive position and stimulating sales of concrete masonry products in the marketplace.

(17) Research

The term “research” means studies testing the effectiveness of market development and promotion efforts, studies relating to the improvement of concrete masonry products and new product development, and studies documenting the performance of concrete masonry.

(18) Secretary

The term “Secretary” means the Secretary of Commerce.

(19) United States

The term “United States” means the several States and the District of Columbia.

(Pub. L. 115–254, div. E, §1303, Oct. 5, 2018, 132 Stat. 3469.)

§ 8703. Issuance of orders**(a) In general****(1) Issuance**

The Secretary, subject to the procedures provided in subsection (b), shall issue orders under this chapter applicable to manufacturers of concrete masonry products.

(2) Scope

Any order shall be national in scope.

(3) One order

Not more than 1 order shall be in effect at any one time.

(b) Procedures**(1) Development or receipt of proposed order**

A proposed order with respect to the generic research, education, and promotion with regards to concrete masonry products may be—

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

(B) requested by or submitted to the Secretary by—

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

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

(2) Publication of proposed order

If the Secretary determines that a proposed order received in accordance with paragraph (1)(B) is consistent with and will effectuate the purpose of this chapter, the Secretary shall publish such proposed order in the Federal Register not later than 90 days after receiving the order, and give not less than 30 days notice and opportunity for public comment on the proposed order.

(3) Issuance of order**(A) In general**

After notice and opportunity for public comment are provided in accordance with paragraph (2), the Secretary shall issue the order, taking into consideration the comments received and including in the order such provisions as are necessary to ensure that the order is in conformity with this chapter.

(B) Effective date

If there is an affirmative vote in a referendum as provided in section 8706 of this title, the Secretary shall issue the order and such order shall be effective not later than 140 days after publication of the proposed order.

(c) Amendments

The Secretary may, from time to time, amend an order. The provisions of this chapter applicable to an order shall be applicable to any amendment to an order.

(Pub. L. 115–254, div. E, §1304, Oct. 5, 2018, 132 Stat. 3471.)

§ 8704. Required terms in orders**(a) In general**

Any order issued under this chapter shall contain the terms and provisions specified in this section.

(b) Concrete Masonry Products Board**(1) Establishment and membership****(A) Establishment**

The order shall provide for the establishment of a Concrete Masonry Products Board to carry out a program of generic promotion, research, and education regarding concrete masonry products.

(B) Membership**(i) Number of members**

The Board shall consist of not fewer than 15 and not more than 25 members.

(ii) Appointment

The members of the Board shall be appointed by the Secretary from nominations submitted as provided in the order.

(iii) Composition

The Board shall consist of manufacturers. No employee of an industry trade organization exempt from tax under paragraph (3) or (6) of section 501(c) of title 26 representing the concrete masonry industry or related industries shall serve as a member of the Board and no member of the Board may serve concurrently as an officer of the board of directors of a national concrete masonry products industry trade association. Only 2 individuals from any single company or its affiliates may serve on the Board at any one time.

(2) Distribution of appointments**(A) Representation**

To ensure fair and equitable representation of the concrete masonry products indus-

try, the composition of the Board shall reflect the geographical distribution of the manufacture of concrete masonry products in the United States, the types of concrete masonry products manufactured, and the range in size of manufacturers in the United States.

(B) Adjustment in Board representation

Three years after the assessment of concrete masonry products commences pursuant to an order, and at the end of each 3-year period thereafter, the Board, subject to the review and approval of the Secretary, shall, if warranted, recommend to the Secretary the reapportionment of the Board membership to reflect changes in the geographical distribution of the manufacture of concrete masonry products and the types of concrete masonry products manufactured.

(3) Nominations process

The Secretary may make appointments from nominations by manufacturers pursuant to the method set forth in the order.

(4) Failure to appoint

If the Secretary fails to make an appointment to the Board within 60 days of receiving nominations for such appointment, the first nominee for such appointment shall be deemed appointed, unless the Secretary provides reasonable justification for the delay to the Board and to Congress and provides a reasonable date by which approval or disapproval will be made.

(5) Alternates

The order shall provide for the selection of alternate members of the Board by the Secretary in accordance with procedures specified in the order.

(6) Terms

(A) In general

The members and any alternates of the Board shall each serve for a term of 3 years, except that members and any alternates initially appointed to the Board shall serve for terms of not more than 2, 3, and 4 years, as specified by the order.

(B) Limitation on consecutive terms

A member or an alternate may serve not more than 2 consecutive terms.

(C) Continuation of term

Notwithstanding subparagraph (B), each member or alternate shall continue to serve until a successor is appointed by the Secretary.

(D) Vacancies

A vacancy arising before the expiration of a term of office of an incumbent member or alternate of the Board shall be filled in a manner provided for in the order.

(7) Disqualification from Board service

The order shall provide that if a member or alternate of the Board who was appointed as a manufacturer ceases to qualify as a manufacturer, such member or alternate shall be disqualified from serving on the Board.

(8) Compensation

(A) In general

Members and any alternates of the Board shall serve without compensation.

(B) Travel expenses

If approved by the Board, members or alternates shall be reimbursed for reasonable travel expenses, which may include per diem allowance or actual subsistence incurred while away from their homes or regular places of business in the performance of services for the Board.

(c) Powers and duties of the Board

The order shall specify the powers and duties of the Board, including the power and duty—

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

(2) to develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board and such rules as may be necessary to administer the order, including activities authorized to be carried out under the order;

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

(4) to establish regional organizations or committees to administer regional initiatives;

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

(6) to employ such persons, other than the members, as the Board considers necessary, and to determine the compensation and specify the duties of the persons;

(7) to prepare and submit for the approval of the Secretary, before the beginning of each fiscal year, rates of assessment under section 8705 of this title and an annual budget of the anticipated expenses to be incurred in the administration of the order, including the probable cost of each promotion, research, and information activity proposed to be developed or carried out by the Board;

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

(9) to carry out generic research, education, and promotion programs and projects relating to concrete masonry products, and to pay the costs of such programs and projects with assessments collected under section 8705 of this title;

(10) subject to subsection (e), to enter into contracts or agreements to develop and carry out programs or projects of research, education, and promotion relating to concrete masonry products;

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

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

(13) to furnish the Secretary with such information as the Secretary may request;

(14) to recommend to the Secretary such amendments to the order as the Board considers appropriate; and

(15) to provide the Secretary with advance notice of meetings to permit the Secretary, or the representative of the Secretary, to attend the meetings.

(d) Programs and projects; budgets; expenses

(1) Programs and projects

(A) In general

The order shall require the Board to submit to the Secretary for approval any program or project of research, education, or promotion relating to concrete masonry products.

(B) Statement required

Any educational or promotional activity undertaken with funds provided by the Board shall include a statement that such activities were supported in whole or in part by the Board.

(2) Budgets

(A) Submission

The order shall require the Board to submit to the Secretary for approval a budget of the anticipated expenses and disbursements of the Board in the implementation of the order, including the projected costs of concrete masonry products research, education, and promotion programs and projects.

(B) Timing

The budget shall be submitted before the beginning of a fiscal year and as frequently as may be necessary after the beginning of the fiscal year.

(C) Approval

If the Secretary fails to approve or reject a budget within 60 days of receipt, such budget shall be deemed approved, unless the Secretary provides to the Board and to Congress, in writing, reasonable justification for the delay and provides a reasonable date by which approval or disapproval will be made.

(3) Administrative expenses

(A) Incurring expenses

The Board may incur the expenses described in paragraph (2) and other expenses for the administration, maintenance, and functioning of the Board as authorized by the Secretary.

(B) Payment of expenses

Expenses incurred under subparagraph (A) shall be paid by the Board using assessments collected under section 8705 of this title, earnings obtained from assessments, and other income of the Board. Any funds borrowed by the Board shall be expended only for startup costs and capital outlays.

(C) Limitation on spending

For fiscal years beginning 3 or more years after the date of the establishment of the Board, the Board may not expend for administration (except for reimbursement to the Secretary required under subparagraph (D)), maintenance, and functioning of the Board in a fiscal year an amount that exceeds 10

percent of the assessment and other income received by the Board for the fiscal year.

(D) Reimbursement of Secretary

The order shall require that the Secretary be reimbursed by the Board from assessments for all expenses incurred by the Secretary in the implementation, administration, and supervision of the order, including all referenda costs incurred in connection with the order.

(e) Contracts and agreements

(1) In general

The order shall provide that, with the approval of the Secretary, the Board may—

(A) enter into contracts and agreements to carry out generic research, education, and promotion programs and projects relating to concrete masonry products, including contracts and agreements with manufacturer associations or other entities as considered appropriate by the Secretary;

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

(C) pay the cost of approved generic research, education, and promotion programs and projects using assessments collected under section 8705 of this title, earnings obtained from assessments, and other income of the Board.

(2) Requirements

Each contract or agreement shall provide that any person who enters into the contract or agreement with the Board shall—

(A) develop and submit to the Board a proposed program or project together with a budget that specifies the cost to be incurred to carry out the program or project;

(B) keep accurate records of all transactions relating to the contract or agreement;

(C) account for funds received and expended in connection with the contract or agreement;

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

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

(3) Failure to approve

If the Secretary fails to approve or reject a contract or agreement entered into under paragraph (1) within 60 days of receipt, the contract or agreement shall be deemed approved, unless the Secretary provides to the Board and to Congress, in writing, reasonable justification for the delay and provides a reasonable date by which approval or disapproval will be made.

(f) Books and records of Board

(1) In general

The order shall require the Board to—

(A) maintain such books and records (which shall be available to the Secretary for inspection and audit) as the Secretary may require;

(B) collect and submit to the Secretary, at any time the Secretary may specify, any information the Secretary may request; and

(C) account for the receipt and disbursement of all funds in the possession, or under the control, of the Board.

(2) Audits

The order shall require the Board to have—

(A) the books and records of the Board audited by an independent auditor at the end of each fiscal year; and

(B) a report of the audit submitted directly to the Secretary.

(g) Prohibited activities

(1) In general

Subject to paragraph (2), the Board shall not engage in any program or project to, nor shall any funds received by the Board under this chapter be used to—

(A) influence legislation, elections, or governmental action;

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

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

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

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

(2) Exceptions

Paragraph (1) does not preclude—

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

(B) the communication to appropriate government officials of information relating to the conduct, implementation, or results of research, education, and promotion activities under the order except communications described in paragraph (1)(A); or

(C) any lawful action designed to market concrete masonry products directly to a foreign government or political subdivision of a foreign government.

(h) Periodic evaluation

The order shall require the Board to provide for the independent evaluation of all research, education, and promotion programs or projects undertaken under the order, beginning 5 years after October 5, 2018, and every 3 years thereafter. The Board shall submit to the Secretary and make available to the public the results of each such evaluation.

(i) Objectives

The Board shall establish annual research, education, and promotion objectives and performance metrics for each fiscal year subject to approval by the Secretary.

(j) Biennial report

Every 2 years the Board shall prepare and make publicly available a comprehensive and detailed report that includes an identification and description of all programs and projects undertaken by the Board during the previous 2 years as well as those planned for the subsequent 2 years and detail the allocation or planned allocation of Board resources for each such program or project. Such report shall also include—

(1) the overall financial condition of the Board;

(2) a summary of the amounts obligated or expended during the 2 preceding fiscal years; and

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

(k) Books and records of persons covered by order

(1) In general

The order shall require that manufacturers shall—

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

(B) make the records described in subparagraph (A) available, during normal business hours, for inspection by employees or agents of the Board or the Department.

(2) Time requirement

Any record required to be maintained under paragraph (1) shall be maintained for such time period as the Secretary may prescribe.

(3) Confidentiality of information

(A) In general

Except as otherwise provided in this paragraph, trade secrets and commercial or financial information that is privileged or confidential reported to, or otherwise obtained by the Board or the Secretary (or any representative of the Board or the Secretary) under this chapter shall not be disclosed by any officers, employees, and agents of the Department or the Board.

(B) Suits and hearings

Information referred to in subparagraph (A) may be disclosed only if—

(i) the Secretary considers the information relevant; and

(ii) the information is revealed in a judicial proceeding or administrative hearing brought at the direction or on the request of the Secretary or to which the Secretary or any officer of the Department is a party.

(C) General statements and publications

This paragraph does not prohibit—

(i) the issuance of general statements based on reports or on information relating to a number of persons subject to an order if the statements do not identify the information furnished by any person; or

(ii) the publication, by direction of the Secretary, of the name of any person violating any order and a statement of the particular provisions of the order violated by the person.

(D) Penalty

Any officer, employee, or agent of the Department of Commerce or any officer, employee, or agent of the Board who willfully violates this paragraph shall be fined not more than \$1,000 and imprisoned for not more than 1 year, or both.

(4) Withholding information

This subsection does not authorize the withholding of information from Congress.

(Pub. L. 115-254, div. E, §1305, Oct. 5, 2018, 132 Stat. 3472.)

§ 8705. Assessments

(a) Assessments

The order shall provide that assessments shall be paid by a manufacturer if the manufacturer has manufactured concrete masonry products during a period of at least 180 days prior to the date the assessment is to be remitted.

(b) Collection

(1) In general

Assessments required under the order shall be remitted by the manufacturer to the Board in the manner prescribed by the order.

(2) Timing

The order shall provide that assessments required under the order shall be remitted to the Board not less frequently than quarterly.

(3) Records

As part of the remittance of assessments, manufacturers shall identify the total amount due in assessments on all sales receipts, invoices or other commercial documents of sale as a result of the sale of concrete masonry units in a manner as prescribed by the Board to ensure compliance with the order.

(c) Assessment rates

With respect to assessment rates, the order shall contain the following terms:

(1) Initial rate

The assessment rate on concrete masonry products shall be \$0.01 per concrete masonry unit sold.

(2) Changes in the rate

(A) Authority to change rate

The Board shall have the authority to change the assessment rate. A two-thirds majority of voting members of the Board shall be required to approve a change in the assessment rate.

(B) Limitation on increases

An increase or decrease in the assessment rate with respect to concrete masonry products may not exceed \$0.01 per concrete masonry unit sold.

(C) Maximum rate

The assessment rate shall not be in excess of \$0.05 per concrete masonry unit.

(D) Limitation on frequency of changes

The assessment rate may not be increased or decreased more than once annually.

(d) Late-payment and interest charges

(1) In general

Late-payment and interest charges may be levied on each person subject to the order who fails to remit an assessment in accordance with subsection (b).

(2) Rate

The rate for late-payment and interest charges shall be specified by the Secretary.

(e) Investment of assessments

Pending disbursement of assessments under a budget approved by the Secretary, the Board

may invest assessments collected under this section in—

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

(2) general obligations of any State or any political subdivision of a State;

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

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

(f) Assessment funds for regional initiatives

(1) In general

The order shall provide that not less than 50 percent of the assessments (less administration expenses) paid by a manufacturer shall be used to support research, education, and promotion programs and projects in support of the geographic region of the manufacturer.

(2) Geographic regions

The order shall provide for the following geographic regions:

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

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

(C) Region III shall comprise Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

(D) Region IV shall comprise Arizona, Arkansas, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, and Texas.

(E) Region V shall comprise Alaska, California, Colorado, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming.

(3) Adjustment of geographic regions

The order shall provide that the Secretary may, upon recommendation of the Board, modify the composition of the geographic regions described in paragraph (2).

(Pub. L. 115-254, div. E, §1306, Oct. 5, 2018, 132 Stat. 3478.)

§ 8706. Referenda

(a) Initial referendum

(1) Referendum required

During the 60-day period immediately preceding the proposed effective date of the order issued under section 8703 of this title, the Secretary shall conduct a referendum among manufacturers eligible under subsection (b)(2) subject to assessments under section 8705 of this title.

(2) Approval of order needed

The order shall become effective only if the Secretary determines that the order has been approved by a majority of manufacturers voting who also represent a majority of the machine cavities in operation of those manufacturers voting in the referendum.