

petition requests that the NRC revise § 50.67 to codify the source term methodologies and recommendations of Sandia National Laboratories report SAND2008-6601 and update and finalize related NRC guidance, Draft Regulatory Guide DG-1199 (Proposed Revision 1 of Regulatory Guide 1.183), “Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors,” dated October 2009 (ADAMS Accession No. ML090960464).

The petition describes the current NRC guidance as “conceptually inaccurate” and “nonconservative” for calculations of radiological release doses, quoting from Sandia Report SAND2008-6601:

. . . these findings conclude that the current regulatory guidelines permitting the use of the fission product concentration in the drywell atmosphere during the first two hours prior to assumed vessel reflood is non-conservative for the purposes of evaluating the dose resulting from MSIV leakage, in addition to being conceptually inaccurate.

The petition also states that, despite the NRC acknowledging the safety significance of accident source terms, the NRC has not yet approved Draft Regulatory Guide DG-1199. As a result, the petitioner believes accident doses have been undercalculated for over 25 years. The petition indicates this would account for the uncertainties that high burnup fuel pellets could be reduced to a powder form and dispersed outside of the fuel rod during clad failure accidents (with or without fuel melt), used by the Radiological Assessment System for Consequence Analysis (RASCAL) calculation described in NUREG-1940, “RASCAL 4: Description of Models and Methods,” available online at <https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1940/>.

#### IV. Conclusion

The NRC determined that the petition meets the requirements for docketing a petition for rulemaking under § 2.803, “Petition for rulemaking—NRC action.” The NRC will examine the merits of the issues raised in PRM-50-122 and any comments received on this document to determine whether these issues should be considered in rulemaking.

Dated: August 7, 2020.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

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## DEPARTMENT OF COMMERCE

### Office of the Under-Secretary for Economic Affairs

#### 15 CFR Chapter XV

[Docket No.: 200803-0204]

RIN 0605-AA53

### Concrete Masonry Products Research, Education and Promotion Order

**AGENCY:** Under Secretary for Economic Affairs, United States Department of Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Commerce (Department) solicits comments on a proposed Concrete Masonry Products Research, Education, and Promotion Order. The purpose of the proposed order is to strengthen the position of the concrete masonry products industry in the domestic marketplace; maintain, develop, and expand markets and uses of concrete masonry products in the domestic marketplace; and promote the use of concrete masonry products in construction and building. The proposed order allows a Concrete Masonry Products Board (Board) made up of industry members appointed by the Secretary of Commerce (Secretary) to develop and implement programs of research, education, and promotion. The funding of the Board’s activities and programs will be through assessments paid by manufacturers of concrete masonry units. The initial assessment will be \$.01 per concrete masonry unit sold. The Secretary will hold a referendum among eligible manufacturers to determine whether they favor the implementation of the proposed order. The order only will go into effect if the referendum results in the affirmative vote of a majority of those voting and also a majority of the block machine cavities in operation by those voting. This proposal also announces the intent of the Department to request approval by the Office of Management and Budget (OMB) of a new information collection request (ICR) to support implementation of the program.

**DATES:** The Department must receive comments by October 8, 2020.

**ADDRESSES:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov/docket?D=DOC-2020-0002>, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments. The supporting economic analysis is also

available for comment on [regulations.gov](https://www.regulations.gov).

You may also submit comments via email at [Checkoff@doc.gov](mailto:Checkoff@doc.gov). All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. The Department reserves the right to publish relevant comments, unedited and in their entirety. Do not include personal information, such as account numbers or Social Security numbers, or names of other individuals. Do not submit confidential business information, or otherwise proprietary, sensitive or protected information. We will not post or consider comments that contain profanity, vulgarity, threats, or other inappropriate language or like content.

Pursuant to the Paperwork Reduction Act (PRA), send to the above address comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information. In addition, send comments concerning the information collection to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or online at <https://www.reginfo.gov/public/do/PRAMain>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Thompson, Communications for the Commerce Checkoff Implementation Program, Office of the Under Secretary for Economic Affairs, telephone: (202) 482-0671 or via electronic mail: [mthompson1@doc.gov](mailto:mthompson1@doc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Overview

Pursuant to the Concrete Masonry Products Research, Education, and Promotion Act of 2018 (Act), 15 U.S.C. 8701 *et seq.*, the Department is enacting a research, education, and promotion program (commonly referred to as a checkoff program) for concrete masonry products. The Act specifically authorizes the Secretary to “issue such regulations as may be necessary to carry out [the Act] and the power vested in the Secretary under [the Act].” 15 U.S.C. 8713.

The Department’s actions to bring the program to fruition will include: (1) Implementing an order that will effectuate the purpose of the Act; (2) conducting a referendum among the industry to determine whether the industry approves of being subject to the implementing order; and, upon an affirmative vote on the order; (3) issuing the order and establishing a Board that will carry out the provisions of the

order; and (4) performing continuing oversight of the Board and program.

This notice is the first step in enacting the concrete checkoff program by proposing an order that would implement the Act. The stated purpose of the proposed order is to strengthen the position of the concrete masonry products industry in the domestic marketplace; maintain, develop, and expand markets and uses for concrete masonry products in the domestic marketplace; and promote the use of concrete masonry products in construction and building. The order would empower the Board to develop and carry out research, education, and promotion programs and projects relating to concrete masonry products and paying the costs of such programs and projects with assessments on domestic producers of concrete masonry units.

Following a period of public comment, the Department will address or incorporate those comments received and initiate a referendum on the final order. If the manufacturers of concrete masonry units, via a referendum, approve the implementing order, the Secretary will appoint a Board to carry out the duties as the order prescribes, including the receiving of the assessment. Under the proposed order, the Secretary would establish a Board that ensures fair and equitable representation of the concrete masonry products industry, specifically 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. An industrywide assessment of \$.01 per concrete masonry unit sold would finance the research, education, and promotion initiatives of the checkoff program. The Secretary would oversee the operations and actions of the Board.

The Act requires the order to address, among other items, establishment and membership of the Board, balancing guidance for appointments, a nomination process, the selection of alternates, Board terms, powers and duties of the Board, programs and projects to carry out the purpose of the Act, budgets, expenses, contracts and agreements, books and records, and reporting requirements.

The Act provides the rate of assessment and that such assessments shall be paid by a manufacturer that has manufactured concrete masonry products during a period of at least 180 days prior to the date they are to pay the assessment. The initial rate of assessment is \$.01 per concrete masonry

unit sold. Such manufacturers will submit their assessments to the Board quarterly. The Act allows for a change in rate if a two-thirds majority of voting members of the Board so vote. An increase or decrease can occur only once per year and the change in rate may not exceed \$.01 per concrete masonry unit sold. Finally, the assessment rate shall not be in excess of \$.05 per concrete masonry unit.

The Act provides that not less than 50 percent of 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 contributing manufacturer. The Act defines five Geographic Regions that generally reflect the northeast, southeast, middle, southwest, and northwest (plus Hawaii and Alaska) of the United States. The Board will work with regional concrete industry groups to allocate funding and coordinate programs that have national and regional impact.

Programs for research, promotion and education will further the following goals:

- Strengthen the position of the concrete masonry industry and products domestically.
- Maintain, develop, and expand markets and uses for concrete masonry domestically.
- Promote the use of concrete masonry in construction and building.

The Act mandates that the Department conduct a referendum among eligible manufacturers of concrete masonry products to determine whether the manufacturers favor implementation of the concrete checkoff program prior to it going into effect. For the order to go into effect, there must be a majority "yes" vote by both: (1) The total number of concrete masonry unit manufacturers voting; and (2) manufacturers who operate a majority of the machine cavities operated by the manufacturers voting in the referendum. Proposed procedures for conducting the referendum will be published in a separate notice in the **Federal Register**.

With this notice, the Secretary invites comments on the proposed order.

## II. Legal Authority and Framework for the Secretary's Implementation of an Effectuating Order

The Act provides that the Secretary, subject to applicable procedures, shall issue orders, national in scope, applicable to concrete masonry products manufactured in the U.S. 15 U.S.C. 8713; *see also* 15 U.S.C. 8702(12,19). If the Secretary determines that a proposed order received, requested by

or submitted to the Secretary, is consistent with and will effectuate the purpose of the Act, 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. An industry group, the *CMU Checkoff Initiative*, submitted the proposed order to the Secretary on April 15, 2020. The Secretary has determined that the proposed order is consistent with and will effectuate the purpose of the Act. The determination that the proposed order is consistent with and will effectuate the purpose of the Act was made on July 20, 2020.

Pursuant to the Act, the Secretary must establish a process for the Board to carry out a program of generic promotion, research, and education regarding concrete masonry products by implementing an effectuating order. 15 U.S.C. 8704(b). In addition, 15 U.S.C. 8706 provides for referenda among eligible manufacturers subject to assessments under section 8705 of the Act to determine whether the order has been approved and will go into effect. As noted above, the proposed procedures for the referendum will be published in a separate **Federal Register** notice.

## III. Industry Background

While the concrete masonry product industry is of moderate size, its manufacturers populate every state in the nation as well as the District of Columbia. The nature of the industry and cost of transportation of the products is such that the customer base for concrete masonry products is very localized. Relatively small producers dominate the industry. Because they produce a commodity that is not easily differentiated by manufacturer, most of the producers acting alone do not have the resources to efficiently market the value of the product or conduct the research and education to promote market growth. Coordinated activity would enable producers to leverage economies of scale in conducting research, education, and promotion of the industry.

Concrete masonry products range from the paver that is of original design and very ornate to the homogenous, non-descript 8-inch x 8-inch x 16-inch concrete block. The Act and the proposed order distinguish between *concrete masonry products* and *concrete masonry units*; the initial rate of assessment applies only to concrete masonry units. The Act defines *concrete masonry products* to include a broader category of products, including concrete

masonry units as well as hardscape products such as concrete pavers and segmental retaining wall units, manufactured on a block machine using dry-cast concrete. *Concrete masonry units* are a type of concrete masonry product with an actual width of 3 inches or greater that are manufactured from dry-cast concrete using a block machine, including concrete block and related concrete units used in masonry applications. The following are examples of products that would fall within the definition of a concrete masonry unit (defined in § 1500.6). The following non-exhaustive list of products are included in the definition of a concrete masonry unit:

(A) Concrete Block, including:

- (1) Gray
  - (2) Architectural
  - (3) Prefaced
  - (4) Those joined by any method in masonry construction:
    - (i) Bed joint mortar or adhesives
    - (ii) Dry-stacked and joined by filling cores solid with grout or joined by other means
    - (iii) Post tensioned
    - (iv) Surfaced bonded
  - (5) Sound wall block
  - (6) Fence block
  - (7) Lintel Block—while lintels designed to span an entire opening are excluded, those concrete masonry units joined to create a lintel are included
  - (8) Chimney, Pilaster, or Column Block
  - (9) Screen Block—these architectural units are included if their widths are greater than 3 inches if they are made on a block machine
  - (10) Concrete Sill Block—these units and related specialty units are included if their widths are greater than 3 inches. If they are made on a block machine
  - (11) Concrete Block formed with concrete masonry face shells and other materials to create a masonry unit used in masonry construction.
- (A) Concrete Brick (Architectural only)
- (B) Concrete Masonry Veneer Units (greater than 3 inches in width)

The Act sets out the assessment rate of one cent per concrete masonry unit sold.

To identify the affected industry, the Department used statistics for the North American Industry Classification System (NAICS) code 327331, concrete block and brick manufacturing. This industry includes the manufacturers of concrete architectural block, concrete and cinder blocks, concrete bricks, concrete patio block, concrete paving block, precast terrazzo plinth blocks,

precast concrete block and brick, prestressed concrete blocks or bricks, and slumped brick.<sup>1</sup> The Department believes this NAICS classification most closely corresponds to manufacturers of the broader category of *concrete masonry products*.

According to estimates from the 2017 Economic Census of the U.S. Census Bureau, the block and brick manufacturing industry had nearly 700 establishments and more than 16,000 employees in 2017. From 2007 to 2017, the number of establishments, number of employees, annual payroll, value added, and value of shipments declined in the industry.<sup>2</sup> There were 690 block and brick manufacturing establishments in 2017, down from 914 in 2007. The number of employees fell by 7,578 to 16,247 in 2017, and annual payroll fell \$152 million to \$841 million. Value added and total value of shipments also fell during this time period, down \$715 million to \$2.86 billion and down \$1.36 billion to \$4.88 billion, respectively.

#### IV. Provisions of the Proposed Order

Many provisions of the proposed order reflect specific requirements as set out in the Act. In instances where the Secretary is exercising the discretion granted under the Act, the basis for the proposed language is explained below.

##### Definitions

Sections 1500.1 through 1500.21 of the proposed order are definitions. Section 1500.1 defines the “Act” as the Concrete Masonry Products Research, Education, and Promotion Act of 2018 (15 U.S.C. 8701 *et seq.*), and any amendments thereto. The other definitions contained in the proposed order are essentially the same as the definitions found in the Act itself, *see* 15 U.S.C. 8702, except for the addition of a definition of “Geographic Regions” in § 1500.11.

Section 1500.11 defines “Geographic Regions” as the groupings of states delineated in § 1500.40(c) of the proposed order, for the purpose of supporting research, education, and promotion plans and project. *See* 15 U.S.C. 8705(f). Specifically, in addition to size and range of products, the Act requires that the Board reflect the geographic distribution, the five delineated regions, of the manufacture

of concrete masonry products. 15 U.S.C. 8704(b)(2)(A). The Act also provides that not less than 50 percent of assessments (less administrative 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. 15 U.S.C. 8705(f)(1).

##### Concrete Masonry Products Board

Sections 1500.40 through 1500.48 of the proposed order would establish the Board and how it would operate.

##### Section 1500.40—Establishment and Membership

Section 1500.40(a) proposes that the Board would consist of not fewer than 15 and not more than 25 members. The Board shall consist of manufacturers. 15 U.S.C. 8704(b)(1)(B)(i) & (iii). Board members will be appointed by the Secretary from nominations submitted as set forth in § 1500.41 of the proposed order. *See* 15 U.S.C. 8704(b)(1)(B)(ii). This subsection also implements provisions of the Act that specify no employee of an industry trade organization exempt from tax under paragraph (3) or (6) of section 501(c) of the Internal Revenue Code of 1986 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. 15 U.S.C. 8704(b)(1)(B)(iii).

Section 1500.40(b) proposes that, in order to ensure to ensure fair and equitable representation of the concrete masonry products industry, 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. These requirements are taken directly from the Act. 15 U.S.C. 8704(b)(2)(A). The Small Business Administration uses the number of employees to characterize a company’s size. Absent additional suggestions, the Department will define company size based on the number of employees. Companies identified as “large” will be those with over 500 employees; companies identified as “medium” will be those with between 100–499 employees; companies identified as small will be those with less than 100 employees. The Department is seeking comments on the best measure of company size (other possibilities, aside from number of employees, could be production

<sup>1</sup> Executive Office of the President, Office of Management and Budget, *North American Industry Classification System: United States, 2017* (Suitland, MD: Census Bureau, 2017); [https://www.census.gov/eos/www/naics/2017NAICS/2017-NAICS\\_Manual.pdf](https://www.census.gov/eos/www/naics/2017NAICS/2017-NAICS_Manual.pdf).

<sup>2</sup> The Economic Census, conducted every 5 years by the U.S. Census Bureau, is the official measure of the nation’s businesses and economy.

capacity, total receipts, number of units produced) and the threshold values to use. Further, this subsection proposes that no company or its affiliates shall have more than two members on the Board. *See* 15 U.S.C. 8704(b)(1)(B)(iii).

Section 1500.40(c) of the proposed order would further implement the requirement that the composition of the Board reflect the geographical distribution of concrete masonry product manufacturers. It divides the United States into five regions consistent with 15 U.S.C. 8705(f)(2) and, although not required in the Act, the order then subdivides these five regions into 15 districts. Dividing the regions into districts will allow the Board to more easily manage the program. This section also proposes that the Secretary will, to the extent possible and depending on the nominees submitted, strive to appoint at least two members from each region and at least one from each district. Finally, § 1500.40(d) proposes that, in accordance with 15 U.S.C. 8704(b)(2)(B), the Board shall, if warranted, recommend reappointment of Board membership every three years, in order to reflect changes in the geographic distribution of the manufacture of concrete masonry products and the types of concrete masonry products manufactured.

#### Section 1500.41—Nominations and Appointments

The Act does not specifically describe how nominations and appointments to the Board should be made, but simply states that the Secretary may make appointments from nominations by manufacturers pursuant to the method set forth in the order. 15 U.S.C. 8704(b)(3). Similarly, the Act states that the order shall provide for the selection of alternate members by the Secretary. *See* 15 U.S.C. 8704(b)(3). At such time as the order goes into effect, the Secretary will solicit nominations for Board membership. Section 1500.41(a) proposes that, for the initial Board, nominations shall be made and submitted to the Secretary by manufacturers. The Secretary would appoint both members and alternate members of the Board. This requirement is the source of the Department's request for approval by OMB of a new ICR. The Department would restrict the information request to that information needed to determine requisite expertise of potential nominees and will include biography, experience, status as a current manufacturer, size of company, type of products produced, statement of interest, and similar background information.

The Act provides that, if the Secretary fails to make an appointment to the Board within 60 days of receiving nominations for an appointment, subject to exceptions, the first nominee would be "deemed" appointed. 15 U.S.C. 8704(b)(4). However, the President issued a signing statement accompanying the Act as follows:

. . . [T]he Act requires the Secretary of Commerce to appoint the members of the Concrete Masonry Products Board (Board), who would be inferior officers, from a list of nominees submitted by concrete masonry product manufacturers. It also provides that, if the Secretary fails to appoint someone from that list within a specified period, "the first nominee for such appointment shall be deemed appointed." The Secretary's failure to make a timely appointment from the list will result in the appointment of an inferior officer by a private party, which would violate the Appointments Clause. Furthermore, the requirement to appoint from a list of nominees, if the list is too limited, may unduly limit the Secretary's constitutional discretion in appointing the members of the Board. In those circumstances, my Administration will treat these requirements as advisory and non-binding.<sup>3</sup>

Hence, the Department will not include in the order those provisions of the Act that are inconsistent with the Presidential signing statement including those related to "deemed" appointment of members and those that may unduly limit the Secretary's discretion in making appointments.

Section 1501.41(b) proposes that, from the nominations, the Secretary will appoint the 15–25 members of the Board and six alternate members within a reasonable time. If one of the voting members vacates the appointment, the Secretary will appoint one of the alternate members to fill the unexpired term. The Secretary will provide the Board an opportunity to offer a nominee as successor to fill the term of the alternate member. If the Board fails to submit a nominee for an open position, the Secretary will appoint a member who meets the criteria described in § 1500.40.

#### Section 1500.42—Term of Office

This section proposes that Board members and alternates would serve three-year terms, except for the initial members. *See* 15 U.S.C. 8704(b)(6)(A). Board members and alternates would be able to serve a maximum of two consecutive three-year terms, but may serve additional terms after rotating off the Board. *See* 15 U.S.C. 8704(b)(6)(B). Initial members would serve staggered

terms of two, three, and four years. *See* 15 U.S.C. 8704(b)(6)(A). Terms would end on December 31, with new terms beginning on January 1. Members serving an initial term of two or three years will be eligible to serve a second consecutive three-year term. Board members and alternates may also continue to serve until a successor is appointed by the Secretary. *See* 15 U.S.C. 8704(b)(6)(C).

#### Section 1500.43—Vacancies

This section proposes that, if a Board member position becomes vacant, the Secretary would appoint an alternate for the remainder of the term. The successor to fill the term of the alternate member would be appointed as described in § 1500.41. *See* 15 U.S.C. 8704(b)(6)(D).

#### Section 1500.44—Disqualification

Section 1500.44(a) proposes that, if a Board member or alternate ceases to qualify as a manufacturer, they would be disqualified from serving on the Board. *See* 15 U.S.C. 8704(b)(7). As set forth in the definitions, a "manufacturer" is "any person engaged in the manufacturing of commercial concrete masonry products in the U.S." Section 1500.44(b) proposes that, if a Board member consistently refuses to perform their duties, or engages in acts of dishonesty or willful misconduct, the Board could recommend to the Secretary that the member be removed. All members would serve at the pleasure of the Secretary.

#### Section 1500.45—Procedure

Section 1500.45(a) proposes that the Board would meet at least annually, and that a meeting would only be conducted when a quorum (a majority of the Board members) is present. If the Board's by-laws permit participation by telephone or other means, such participation would count towards a quorum or other voting requirements.

Section 1500.45(b) proposes that the Board would select a Chair, Vice-Chair, Secretary-Treasurer and other officers as appropriate, at the start of each fiscal period.

Section 1500.45(c) proposes that the Board would provide members and manufacturers a minimum of 14-days advance notice of all Board meetings.

Section 1500.45(d) proposes that each Board member would be entitled to one vote, and that a motion would carry if supported by one vote more than 50 percent of the total votes represented by the Board members participating. There is one exception, however, as the Act requires that a two-thirds majority of the voting members of the Board is required

<sup>3</sup> Statement by the President, Oct. 5, 2018, available at <https://www.whitehouse.gov/briefings-statements/statement-by-the-president-5/>.

to approve a change in the assessment rate. 15 U.S.C. 8705(c)(2)(A).

Section 1500.45(e) proposes that the Board may form committees, and that such committees may consist of individuals other than Board members. Committee members would serve without compensation.

Sections 1500.45(f) through (i) address voting, and propose that votes may take place electronically outside of convened Board meetings only if members are given 14 days prior notice and if a majority of voting Board members participate prior to the established deadline; that all votes shall be recorded in Board minutes; that there shall be no voting by proxy; and that all Board members shall have one vote. Alternate members would not vote. The Chair and all other Board officers would be elected from voting members of the Board.

Section 1500.45(j) proposes that the organization of the Board and procedures for conducting meetings would be in accordance with bylaws that are established by the Board and approved by the Secretary.

Section 1500.45(k) proposes that meetings of the Board and committees may take place by electronic means, provided that all Board and committee members are given prior written notice 14 days before the meeting and have the opportunity to participate.

#### Section 1500.46—Compensation and Reimbursement

This section reflects the requirements in the Act found at 15 U.S.C. 8704(b)(8). Section 1500.46(a) proposes that Board members and alternates shall serve without compensation. 15 U.S.C. 8704(b)(8)(A). Section 1500.46(b) proposes that, if approved by the Board, members or alternates shall be reimbursed for reasonable travel expenses, which may include a per diem allowance or actual subsistence incurred while away from their homes or regular place of business in performance of services for the Board. 15 U.S.C. 8704(b)(8)(B).

#### Section 1500.47—Powers and Duties

This section largely reflects the provisions contained in 15 U.S.C. 8704(c), which states that the order shall specify the powers and duties of the Board, and contains a list of powers and duties that shall be included in the order.

Section 1500.47(a) proposes that the Board shall have the power and duty to administer the proposed order in accordance with its terms and conditions, and to collect assessments. *See* 15 U.S.C. 8704(c)(1).

Section 1500.47(b) proposes that the Board shall have the power and duty to develop and recommend to the Secretary such bylaws as may be necessary for the functioning of the Board. *See* 15 U.S.C. 8704(c)(2).

Section 1500.47(c) provides that the Board shall have the power and duty to make such rules as may be necessary to administer the order, including activities to be carried out under the order. *See* 15 U.S.C. 8704(c)(2).

Section 1500.47(d) proposes that the Board shall have the power and duty to meet, organize, and select from the Board members a Chair, Vice-Chair, Secretary-Treasurer and other officers, committees, and subcommittees, and to vest in such committees and subcommittees such responsibilities and authorities as the Board determines to be appropriate. *See* 15 U.S.C. 8704(c)(3).

Section 1500.47(e) proposes that the Board shall have the power and duty to establish regional committees to administer regional initiatives. *See* 15 U.S.C. 8704(c)(4).

Section 1500.47(f) proposes that the Board shall have the power and duty to recommend to the Secretary modifications to the Geographic Regions described in § 1500.11 of the proposed order. *See* 15 U.S.C. 8705(f)(3).

Section 1500.47(g) proposes that the Board shall have the power and duty to establish working committees of persons other than Board members, *see* 15 U.S.C. 8704(c)(5), and § 1500.47(h) proposes for the employment of persons other than Board members, as the Board considers necessary to assist the Board in carrying out its duties, *see* 15 U.S.C. 8704(c)(6).

Section 1500.47(i) proposes that the Board shall have the power and duty to prepare a budget and to submit the budget to the Secretary for approval, *see* 15 U.S.C. 8704(c)(7), and § 1500.47(j) proposes for the borrowing of funds necessary for the startup expenses of the proposed order, *see* 15 U.S.C. 8704(c)(8).

Section 1500.47(k) proposes that the Board shall have the power and duty to develop and carry out research, education, and promotion programs and projects relating to concrete masonry products, and to pay the costs of such programs and projects with the assessments collected under § 1500.51, as well as other income of the Board. *See* 15 U.S.C. 8704(c)(9).

Section 1500.47(l) proposes that the Board shall have the power and duty to enter into contracts or agreements which must be approved by the Secretary before becoming effective, for the development and carrying out of programs or projects of research,

education, and promotion relating to concrete masonry, including with manufacturer associations or other entities as considered appropriate by the Secretary. *See* 15 U.S.C. 8704(c)(10) & (e)(1)(A).

Section 1500.47(m) proposes that the Board shall have the power and duty to develop programs and projects, and enter into related contracts or agreements related thereto, which must be approved by the Secretary before becoming effective, targeted specifically toward the Geographic Regions described in § 1500.11. Such programs and projects are to be recommended by the relevant regional committees for marketing and research projects to benefit manufacturers in their respective Geographic Regions. The contracts or agreements related to these regional programs and projects would be subject to the same requirements for contracts and agreements described above, in § 1500.47(l). *See* 15 U.S.C. 8704(c)(4) & (e)(1)(A); 15 U.S.C. 8705(f)(1). The Department envisions regional groupings providing their regional-specific recommendations for research, education, and promotion programs and projects to the Board.

Section 1500.47(n) proposes that the Board shall have the power and duty to keep minutes, books, and records that reflect the actions and transactions of the Board, and to promptly report the minutes of each Board meeting to the Secretary. *See* 15 U.S.C. 8704(c)(11).

Section 1500.47(o) proposes that the Board shall maintain such records and books, and prepare and submit reports and records to the Secretary as required; to make records available to the Secretary for inspection and audit; to account for the receipt and disbursement of funds; and to keep records that accurately reflect actions and transactions of the Board. *See* 15 U.S.C. 8704(f)(1). This requirement is the source of the Department's second request for approval by OMB of a new ICR. The Department will restrict the information request to that information needed to determine the amount of assessment and will include: the number and type of concrete masonry units manufactured; the number and type of concrete masonry units on which an assessment was paid; the name and address of the manufacturer; manufacturer employee identification number; and the date of assessment payment on each concrete masonry unit sold; and similar assessment accounting information.

Section 1500.47(p) proposes that the Board have its books audited by a certified public accountant at the end of each fiscal year and at other times as

requested by the Secretary, and to submit a report of the audit to the Secretary. *See* 15 U.S.C. 8704(f)(2).

Section 1500.47(q) proposes that the Board shall have the power and duty to give the Secretary the same notice of Board and committee meetings as given to members so that the Secretary's representative(s) may attend, and report minutes of all such meetings to the Secretary. *See* 15 U.S.C. 8704(c)(11) & (15).

Section 1500.47(r) proposes for the Board to furnish any requested information or records to the Secretary. *See* 15 U.S.C. 8704(c)(13).

Section 1500.47(s) proposes that the Board shall have the power and duty to receive, evaluate, and report to the Secretary all complaints of violations of the proposed order. *See* 15 U.S.C. 8704(c)(12).

Section 1500.47(t) proposes the Board recommend to the Secretary amendments to the order as the Board considers appropriate. *See* 15 U.S.C. 8704(c)(14).

Section 1500.47(u) proposes the Board be allowed to recommend adjustments to the assessments as provided in the order. *See* 15 U.S.C. 8704(c)(7) & 15 U.S.C. 8705(c)(2).

Section 1500.47(v) proposes that the Board shall have the power and duty to notify manufacturers of all Board meetings through press releases or other means. While the Act does not specifically require such notice, it will increase transparency of the Board's operations.

Section 1500.47(w) proposes that the Board shall have the power and duty to invest assessments collected, in accordance with § 1500.50 of the proposed order, and as authorized by 15 U.S.C. 8705(e).

Finally, § 1500.47(x) proposes that the Board shall have the power and duty to periodically prepare and make available reports of its activities to the public and to the manufacturers. Additionally, at least once each fiscal period, the Board would make public an accounting of funds received and expended. This section helps to increase transparency of the Board's operations and to implement 15 U.S.C. 8704(j), which requires the Board to prepare and make publicly available a comprehensive biennial report.

#### Section 1500.48—Prohibited Activities

Section 1500.48(a) contains a list of prohibited activities that is identical to the prohibited activities listed in the Act at 15 U.S.C. 8704(g)(1). Specifically, the Board shall not engage in any program or project to, or use any funds to: (1) Influence legislation, elections, or

governmental action; (2) engage in an action that would be a conflict of interest; (3) engage in advertising that is false or misleading; (4) engage in any promotion, research, or education that would be disparaging to other construction materials; or (5) engage in any promotion or project that would benefit any individual manufacturer.

Section 1500.48(b) contains a number of exceptions, which are identical to those found in the Act at 15 U.S.C. 8704(g)(2). Section 1500.48(a) does not preclude: (1) The development and recommendation of amendments to the order; (2) communication to appropriate government officials regarding activities under the order that is not intended to influence legislation, elections, or governmental action; or (3) any lawful action designed to market concrete masonry products directly to a foreign government.

#### Section 1500.50—Budget and Expenses

Section 1500.50(a) proposes that prior to the beginning of each fiscal year, and during the fiscal year as may be necessary, the Board shall prepare and submit to the Secretary for approval a budget for the upcoming fiscal year covering its anticipated expenses and disbursements. *See* 15 U.S.C. 8704(d)(2)(A) & (B). The budget would be deemed approved if the Secretary fails to approve or reject it within 60 days of receipt, unless the Secretary provides a reasonable justification for the delay to the Board and Congress, along with a reasonable date for approval or disapproval. *See* 15 U.S.C. 8704(d)(2)(C). The Department may provide such justification in any written format. Each budget shall include: (1) A statement of objectives and strategy for each program, plan, or project, *see* 15 U.S.C. 8704(i); (2) a summary of anticipated revenue, with comparative data for at least one preceding year (except for the initial budget); (3) a summary of proposed expenditures for each program, plan or project; and (4) staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget). *See* 15 U.S.C. 8704(c)(7) & (d)(2)(A).

Section 1500.50(b) proposes that each budget shall provide adequate funds to defray its proposed expenditures.

Section 1500.50(c) proposes that, subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program or project to another. However, a *de minimis* shift of funds from one approved category to another, and not exceeding 10% of the funds in either

category, which does not cause an increase in the Board's approved budget and which is consistent with governing bylaws, need not have prior approval by the Secretary. These provisions provide the Board with operational flexibility in light of the requirements to submit budgets to the Secretary for approval contained in 15 U.S.C. 8704(c)(7) & (d)(2)(A), and are consistent, for example, with the 10% threshold for certain transfers of fund permitted in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards found at 2 CFR part 200. As noted earlier, the budget will be deemed approved if the Secretary fails to approve or reject it within 60 days of receipt, unless the Secretary provides a reasonable justification for the delay to the Board and Congress, along with a reasonable date for approval or disapproval. *See* 15 U.S.C. 8704(d)(2)(C). The Department may provide such justification in any written format.

Section 1500.50(d) proposes that the Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of the order. Such expenses are to be paid from funds received by the Board. *See* 15 U.S.C. 8704(d)(3).

Section 1500.50(e) implements the provisions contained in 15 U.S.C. 8715, Limitations on Obligation of Funds. It proposes that:

(1) In each fiscal year, through fiscal year 2030, the Board may not obligate an amount greater than the sum of—

(a) 73 percent of the amount of assessments estimated to be collected under 1500.51 in such fiscal year (except for fiscal years 2028 and 2029, for which the amounts estimated to be collected shall be 62 percent of the amount of assessments actually collected in the most recent fiscal year for which an audit report has been submitted as of the beginning of the fiscal year for which the amount be obligated is being determined);

(b) 73 percent of the amount of assessments actually collected under 1500.51 in the most recent fiscal year for which an audit report has been submitted as of the beginning of the fiscal year for which the amount that may be obligated is being determined, less the estimate made pursuant to paragraph (1) for such most recent fiscal year; and

(c) amounts permitted in preceding fiscal years to be obligated that have not been obligated.

(2) Assessments collected in excess of the amount permitted to be obligated in a fiscal year shall be deposited in an escrow account until the end of fiscal year 2030.

(3) Prior to the end of fiscal year 2030, the Board may not obligate, expend, or borrow against amounts deposited in the escrow account. Any interest earned on such amounts shall be deposited in the escrow account and shall be unavailable for obligation until the end of fiscal year 2030.

Section 1500.50(f) proposes that, with approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget and audit controls as other funds of the Board. Any funds borrowed by the Board, however, shall be expended only for startup costs and capital outlays. *See* 15 U.S.C. 8704(d)(3)(B).

Section 1500.50(g) proposes that the Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration and supervision of the order, including all referendum costs in connection with the order. *See* 15 U.S.C. 8704(d)(3)(D).

Section 1500.50(h) proposes that, following the third fiscal year of operation of the Board, the total cost of collection of expenses and administrative staff incurred by the Board during any fiscal year shall not exceed 10 percent of the projected total assessments to be collected and other income received by the Board for that fiscal year after any fees owed to the Department are paid. Reimbursements to the Secretary required under paragraph (g) are excluded from this limitation on spending. *See* 15 U.S.C. 8704(d)(3)(C).

Section 1500.50(i) proposes that the Board may invest assessments and other revenues collected 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 interest by the United States. 15 U.S.C. 8705(e).

Section 1500.50(j) clarifies that investment income and revenue earned under the previous paragraph are earnings obtained from assessment that are subject to budget approval by the Secretary.

#### Section 1500.51—Assessments

Section 1500.51(a) of the proposed order proposes that the collection of assessments on concrete masonry units will be the responsibility of the manufacturer who sells the concrete masonry units. The Act specifies that assessments shall be remitted by manufacturers to the Board in the manner prescribed by the order. 15 U.S.C. 8705(b)(1). Further, there will only be an assessment on the first sale of concrete masonry units, and not on the subsequent sale of concrete masonry units already assessed. As required by the Act, manufacturers will be required to collect and remit assessments no less than quarterly. 15 U.S.C. 8705(b)(2). Also, as required by the Act, manufacturers are directed to 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. 15 U.S.C. 8705(b)(3). In order to help implement these provisions, the Board is directed to provide a proposed compliance program for review and approval by the Secretary within 180 days of their initial meeting. A proposed compliance program and its plan to verify compliance with the Act will outline the way the Board will receive assessments, how they will verify compliance, determine the best method to track sales, and how to document all actions.

Section 1500.51(b) sets forth the initial rate of assessment of \$0.01 per concrete masonry unit sold by a manufacturer as specified in the Act. 15 U.S.C. 8705(c)(1). The Board may make assessments effective as of the effective date of the proposed order. Manufacturers would submit funds to the Board within 60 days of the end of the first quarter after the Board is established; thereafter submission of funds would be made to the Board within 60 days of the end of each quarter.

Section 1500.51(c) proposes that, upon the affirmative vote of two-thirds of the voting members of the Board, the Board may modify the assessment rate. 15 U.S.C. 8705(c)(2)(A). This is subject to the provision that the rate may be raised to a maximum of \$0.05 cents per unit, 15 U.S.C. 8705(c)(2)(B), that only one increase or decrease may be implemented in any one-year period, 15 U.S.C. 8705(c)(2)(D), and that each individual increase may not exceed \$0.01, 15 U.S.C. 8705(c)(2)(C).

Section 1500.51(d) proposes 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. This requirement is taken directly from the Act. 15 U.S.C. 8705(f)(1).

Section 1500.51(e) proposes that assessment payments and reports will be submitted to the Board quarterly. *See* 15 U.S.C. 8705(b)(2). All quarterly payments are to be received no later than 60 days after the conclusion of each quarter. A late payment charge will be imposed on manufacturers who fail to submit payment by the due date established by the Board. *See* 15 U.S.C. 8705(d)(1). In addition to the late payment charge, there will be an interest charge on the outstanding amount. *See* 15 U.S.C. 8705(d)(1). In accordance with the Act, the rate of interest and late payment charges shall be specified by the Secretary. *See* 15 U.S.C. 8705(d)(2).

Section 1500.51(f) explains that manufacturers failing to remit total assessments due in a timely manner may also be subject to actions under Federal debt collection procedures.

Section 1500.51(g) proposes that the Board may authorize other organizations to collect assessments on its behalf, subject to approval of the Secretary.

Finally, § 1500.51(h) proposes that the Board shall provide manufacturers with the opportunity to apply for rebates on assessments remitted to the Board for concrete masonry units not covered by this order, and for assessments remitted to the Board for concrete masonry units sold to a purchaser that subsequently failed to remit payment due to bankruptcy, bad debt, or other reasons. Those requesting rebates will have to provide all necessary documentation as determined by the Board.

#### Section 1500.60—Programs and Projects

Section 1500.60(a) proposes that the Board shall receive and evaluate, or on its own initiative develop, any program or project authorized under the proposed order. This section further proposes that the Board will submit any such program or project to the Secretary for approval. *See* 15 U.S.C. 8704(d)(1). Such programs or projects shall provide for: (1) the establishment, issuance, effectuation and administration of appropriate programs for research, education, and promotion with respect to concrete masonry; and (2) the establishment and conduct of research with respect to the image, desirability, use, marketability, quality or production of concrete masonry products, to the end that the marketing and use of concrete masonry products may be encouraged, expanded, improved or made more acceptable, and to advance

the image, desirability or quality of concrete masonry product. *See* 15 U.S.C. 8701(a).

Section 1500.60(b) proposes that the Board will not implement a program or project prior to receiving approval from the Secretary. *See* 15 U.S.C. 8704(d)(1). Once the Secretary approves a program or project, the Board will take appropriate steps to implement it. A contract or agreement for a program or project will be deemed approved if the Secretary fails to approve or reject it within 60 days of receipt, unless the Secretary provides a reasonable justification for the delay to the Board and Congress, along with a reasonable date for approval or disapproval. *See* 15 U.S.C. 8704(e)(3). The Department may provide justification in any written format.

Any such contract or agreement shall provide that: (1) The contractor or agreeing party shall develop and submit to the Board a program or project together with a budget or budgets that shall show the estimated cost to be incurred for such program or project, *see* 15 U.S.C. 8704(e)(2)(A). Further, the contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, *see* 15 U.S.C. 8704(e)(2)(B) & (D); submit accounting for funds received and expended, *see* 15 U.S.C. 8704(e)(2)(C); and make such other reports as the Secretary or the Board may require, *see* 15 U.S.C. 8704(e)(2)(E). This section also proposes that the Secretary may audit the records of the contracting or agreeing party periodically; that any subcontractor who enters into a contract with a Board contractor and who receives Board funds will be subject to the same provisions as the contractor; and that the contract or agreement shall become effective on the approval of the Secretary.

Section 1500.60(c) proposes that programs or projects implemented under the proposed order will be reviewed or evaluated periodically by the Board to ensure that they contribute to an effective program of research, education, or promotion. If the Board finds that a program or project does not contribute to an effective program of research, education, or promotion, then the Board will terminate that program or project, subject to the approval of the Secretary.

Section 1500.60(d) proposes that 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. 15 U.S.C. 8704(d)(1)(B).

Finally, § 1500.60(e) proposes that, every two 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 two years, as well as those planned for the subsequent two years. The report will detail the allocation or planned allocation of Board resources for each program or project, and will also include: (1) The overall financial condition of the Board; (2) a summary of the amounts obligated or expended during the two 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 § 1500.50(a)(1). *See* 15 U.S.C. 8704(j).

#### Section 1500.61—Independent Evaluation

Section 1500.61 proposes that the Board shall authorize and fund an independent evaluation of the effectiveness of the proposed order and other programs conducted by the Board beginning five years after October 5, 2018 and every three years thereafter. The Board will submit to the Secretary, and make available to the public, the results of each periodic independent evaluation. *See* 15 U.S.C. 8704(h).

#### Section 1500.62—Patents, Copyrights, Trademarks, Information, Publications, and Product Formulations

Section 1500.62 proposes that ownership and allocation of rights to patents, copyrights, inventions, or publications, developed through the use of non-Federal funds remitted to the Board under the proposed order shall be determined by written agreement between the Board and the party(ies) receiving funds for the development of such inventions, patents, copyrights, or publications. The Department believes that “trademarks” were inadvertently left off of this list, as they are included in the heading, and intends to include them in the final order, subject to public comment.

#### *Reports, Books, and Records*

##### Section 1500.70—Reports

Section 1500.70(a) proposes that manufacturers subject to the proposed order may be required to periodically provide such information as required by the Board, with the approval of the Secretary. This information may include but is not limited to: The number and type of concrete masonry units manufactured; the number and type of concrete masonry units on which an

assessment was paid; the name and address of the manufacturer; manufacturer employee identification number; the date of assessment payment on each concrete masonry unit sold; and similar assessment accounting information. The previously noted ICR regarding assessments also supports this requirement. The Department is seeking approval for these ICRs.

Section 1500.70(b) proposes that all of the reports described above are due to the Board 60 days after the end of each quarter, and

Section 1500.70(c) proposes that all such reports and information submitted shall be subject to confidentiality restrictions in § 1500.72.

##### Section 1500.71—Assessments

Section 1500.71 proposes that each manufacturer subject to the proposed order shall maintain and make available for inspection by the Secretary, or the Board when acting on behalf of the Secretary, such books and records as are necessary to carry out the provisions of the order and the regulations issued thereunder, including such records as are necessary to verify any reports required. *See* 15 U.S.C. 8704(k)(1). Such records shall be retained for at least seven years beyond the fiscal period of their applicability. *See* 15 U.S.C. 8704(k)(2).

##### Section 1500.72—Confidential Treatment

Section 1500.72(a) proposes that trade secrets and commercial or financial information that is privileged or confidential obtained from books, records, or reports under the Act, the proposed order, and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members or manufacturers. Only those persons having a specific need for such information to effectively administer the provisions of the proposed order shall have access to such information. *See* 15 U.S.C. 8704(k)(3)(A). In accordance with the Act, such information may be disclosed only if (1) the Secretary considers the information relevant; and (2) 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. 15 U.S.C. 8704(k)(3)(B). Also in accordance with



the Act, any officer, employee, or agent of the Department of Commerce or any officer, employee, or agent of the Board who willfully violates the above provisions of the proposed order shall be fined not more than \$1,000 and imprisoned for not more than 1 year, or both. 15 U.S.C. 8704(k)(3)(D). However, nothing in this section shall be deemed to prohibit: (1) The issuance of general statements based upon the reports of the number of persons subject to the proposed order or statistical data collected therefrom, as long as the statements do not identify the information furnished by any person; and (2) the publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated the proposed order and the specific provisions that were violated. *See* 15 U.S.C. 8704(k)(3)(C).

Section 1500.72(b) would clarify that, for any officer, employee, or agent of the Department of Commerce, these provisions are consistent with and do not supersede, conflict with, or otherwise alter any obligations, rights, or liabilities created by existing statute or Executive Order relating to classified information, communications to Congress, the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or any other whistleblower protection.

#### Miscellaneous

##### Section 1500.80—Right of the Secretary

Section 1500.80 proposes that all fiscal matters, programs or projects, rules or regulations, reports, or other actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

##### Section 1500.81—Referenda

Section 1500.81(a) proposes that a referendum will be held to determine whether manufacturers favor enactment of the proposed order. *See* 15 U.S.C. 8706(a)(1). The proposed referendum procedures are being published in a separate notice in the **Federal Register**. *See* 15 U.S.C. 8706(c)(1) (“Referenda conducted pursuant to this section shall be conducted in a manner determined by the Secretary.”) A manufacturer will be considered eligible to vote if the manufacturer has manufactured concrete masonry products during a period of at least 180 days prior to the first day of the period during which voting in the referendum will occur. 15 U.S.C. 8706(b)(2). The Act directs the Secretary to conduct the referendum

“among [eligible] manufacturers . . . subject to assessments under section 8705 of this title.”

The Act does not define the phrase “subject to assessment” and therefore, the Secretary must interpret the statute to determine whether all manufacturers of concrete masonry products should participate in the referendum, or whether only manufacturers of concrete masonry units should participate. The phrase “subject to assessment” could mean: (1) Meeting only the eligibility requirement described above (that is, having manufactured concrete masonry products during the 180-day period prior to voting), or (2) both meeting the eligibility requirement *and* being subject to the initial rate of assessment. Under interpretation (1), the referendum would be conducted among all manufacturers who had manufactured concrete masonry products during the 180-day period prior to voting. Under interpretation (2), because the initial rate of assessment is applied only to concrete masonry units sold, the referendum would be conducted among all manufacturers who had manufactured concrete masonry units during the 180-day period prior to voting. Under the Act, “concrete masonry products” refers to a broader class of products than concrete masonry units, including hardscape products such as concrete pavers and segmental retaining wall units.

Where a statute leaves a gap or is ambiguous, courts will typically look to see whether the agency’s interpretation was reasonable in light of the text, nature, and purpose of the statute. *See, e.g., Cuzzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2134 (U.S. June 20, 2016). In the absence of a statutory definition, courts “construe a statutory term in accordance with its ordinary or natural meaning.” *FDIC v. Meyer*, 510 U.S. 471, 476 (1994). The most relevant definition of “subject to” is “affected by or possibly affected by” something.<sup>4</sup> Only manufacturers of concrete masonry units will actually have to pay, or be affected by, the initial rate of assessment. The Department believes, therefore, that the most natural reading of the statute is that only concrete masonry unit manufacturers are “subject to” assessment and therefore eligible to participate in the referendum.

This reading is also consistent with the stated purpose of the Act as described in 15 U.S.C. 8701. Senate Report 115–218 includes the

Congressional Budget Office’s (CBO) estimate concerning the Act’s impacts, and notes the following assumption:

The bill [S. 374] would apply to producers of both concrete block and concrete pavers, but CBO expects that only producers of concrete block would participate in the referendum. Because there is little differentiation among concrete blocks across manufacturers, all producers of concrete blocks would benefit from an industry-wide research and promotion program. Manufacturers of concrete pavers, on the other hand, are able to distinguish their products in ways that allow consumers to recognize individual brands. Consequently, those producers have little incentive to participate in an industry-wide marketing effort. Based on information from manufacturers of concrete pavers, CBO expects that those producers would not participate in the referendum.

Senate Report 115–218, at 4 (Mar. 22, 2018).

Based upon both the language and the overarching purpose of the statute, and because concrete masonry unit manufacturers are currently the only manufacturers who have an incentive to participate in this program, the Department interprets the Act to mean that only manufacturers subject to the initial rate of assessment are “subject to assessment,” in accordance with interpretation (2). Therefore, for the initial referendum, an eligible person would be a manufacturer of concrete units that is subject to the initial rate of assessment. Further, the proposed order protects the interests of concrete masonry product manufacturers by leaving open their eligibility for Board membership, as well as the possibility that future orders could have a broader scope rather than being limited to concrete masonry unit manufacturers.

Therefore, for the initial referendum, an eligible person would be a manufacturer of concrete units that is subject to the initial rate of assessment in § 1500.51, that is, \$0.01 per concrete masonry unit sold by a manufacturer. *See* 15 U.S.C. 8705(c)(1). Each manufacturer eligible to vote in the referendum shall be entitled to one vote. 15 U.S.C. 8706(b)(1). For the order to go into effect, there must be a majority “yes” vote by both: (1) The total number of concrete masonry unit manufacturers voting; and (2) manufacturers who operate a majority of the machine cavities operated by the manufacturers voting in the referendum. 15 U.S.C. 8706(a)(2).

Section 1500.81(b) proposes that, after the initial referendum, the Secretary shall conduct a referendum upon the request of the Board, or effective beginning on the date that is five years after the date of approval of the

<sup>4</sup> “Subject to.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/subject%20to>. Accessed 20 Jun. 2020.

proposed order, and at five-year intervals thereafter, by petition from not less than 25% of manufacturers eligible to vote. For any new proposed order, voter eligibility will be based on the scope of such proposed order. Each manufacturer eligible to vote in subsequent referenda shall be entitled to one vote. The proposed order shall continue if it meets the same requirements for a majority “yes” vote described above.

#### Section 1500.82—Suspension or Termination

Section 1500.82(a) proposes that the Secretary shall suspend or terminate an order or a provision of an order if the Secretary finds that an order or provision of an order obstructs or does not tend to effectuate the purpose of the Act, or if the Secretary determines that the order or a provision of an order is not favored by a majority of all votes cast in the referendum as provided in § 1500.81. See 15 U.S.C. 8706(e) & 8710. If the Secretary suspends or terminates a provision of an order, the order remains in effect minus the suspended or terminated provision.

Section 1500.82(b) proposes that if, as a result of a referendum conducted under § 1500.81 of the proposed order, the Secretary determines that the order is not approved, the Secretary shall: (1) Not later than 180 days after making the determination, suspend or terminate collection of assessments under the proposed order; and (2) as soon as practical, suspend or terminate activities under this order in an orderly manner. 15 U.S.C. 8710(b).

#### Section 1500.83—Effect of Termination or Amendment

Section 1500.83 proposes that, unless otherwise expressly provided by the Secretary, the termination of the proposed order, or the issuance of any amendment to either thereof, shall not: (a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of the proposed order or any regulation issued thereunder; (b) release or extinguish any violation of the proposed order or any regulation issued thereunder; or (c) affect or impair any rights or remedies of the United States, or of the Secretary or of any other persons, with respect to any such violation. The Department believes that the intended language of this provision was likely “. . . issuance of any amendment,” rather than “. . . issuance of any amendment to either thereof,” and intends to edit this text following public comment.

#### Section 1500.84—Notice and Advance Registration

Section 1500.84 proposes that, as required by the Act, not later than 30 days before a referendum is to be conducted under the proposed order, the Secretary shall notify all manufacturers of the period during which the referendum will occur through publication in the **Federal Register**. To clarify this statement, the Secretary interprets that notice can occur 30 or more days in advance of the referendum start date (*i.e.*, notice cannot be less than 30 days). 15 U.S.C. 8706(c)(4). The notice will explain any registration and voting procedures. See 15 U.S.C. 8706(c)(3). A manufacturer who chooses to vote in a referendum conducted under the proposed order shall register with the Secretary prior to the voting period. 15 U.S.C. 8706(c)(2).

#### Section 1500.85—Personal Liability

Section 1500.85 proposes that no member, alternate member, or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

#### Section 1500.86—Separability

Section 1500.86 proposes that if any provision of the proposed order, or its applicability to any person or circumstance, is declared invalid, the validity of the remainder of the proposed order or its applicability will not be affected.

#### Section 1500.87—Amendments

Section 1500.87 proposes that the Secretary may, from time to time, amend an order. 15 U.S.C. 8703(c). Amendments to the proposed order may be proposed from time to time by the Board or by any interested person affected by the provisions of the Act, including the Secretary. See 15 U.S.C. 8704(c). The provisions of the Act applicable to an order shall be applicable to any amendment to an order. 15 U.S.C. 8703(c) & 8711.

#### Section 1500.88—OMB Control Number

If the ICRs in the proposed order are approved by OMB under the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, this section would include the OMB control number.

## Classification

#### *Executive Order 12866*

This rulemaking is not a significant regulatory action under Executive Order 12866.

#### *Executive Order 13771*

This rule is not subject to the requirements of Executive Order 13771 because it is not a significant regulatory action under Executive Order 12866.

#### *Executive Order 13132*

This proposed rule does not contain policies with Federalism implications as defined in Executive Order 13132.

#### *Regulatory Flexibility Act: Initial Regulatory Flexibility Analysis*

The Regulatory Flexibility Act (RFA), first enacted in 1980 and codified at 5 U.S.C. 600–611, was intended to place the burden on the government to review all new regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization can have a bearing on its ability to comply with Federal regulations. Major goals of the RFA are: (1) To increase agency awareness and understanding of the impact of their regulations on small business; (2) to require that agencies communicate and explain their findings to the public; and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

The RFA emphasizes predicting significant adverse impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts, while still achieving the stated objective of the action. When an agency publishes a proposed regulatory action, it must either: (1) Certify that the action will not have a significant adverse impact on a substantial number of small entities, and support such a certification declaration with a factual basis, demonstrating this outcome, or, (2) if such a certification cannot be supported by a factual basis, prepare and make available for public review an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact of the proposed rule on small entities.

The following paragraphs are a summary of the IRFA for the proposed order:

#### *Basis and Purpose of the Rule*

This action is taken under the authority of the Act, which authorizes a research, education, and promotion

program for concrete masonry products, also known as a checkoff program. The checkoff program would be established by an order issued by the Secretary that is subject to approval by an industry referendum. The program would then be carried out by a Board, which would develop research and education programs as well as efforts to promote concrete masonry products in domestic markets. Board activities would be funded by assessments on manufacturers of concrete masonry products, based on the number of masonry units sold each quarter. A proposed order submitted by industry to

the Department on April 15, 2020, triggered a referendum deadline of approximately 8 months from submission, and the proposed order must be published in the **Federal Register** within 90 days of receipt. A succinct statement of the objectives of, and legal basis for, the proposed rule is contained elsewhere in the preamble and is not repeated here.

#### *Number of Affected Entities*

The proposed order applies to products manufactured on concrete block machines and used for construction. As indicated by the data

below and confirmed by industry experts, the industry is dominated by small entities.

The U.S. Small Business Administration size standard to qualify as a small business in this industry is 500 or fewer employees.<sup>5</sup> According to Census data, there were 430 firms and 686 establishments engaged in concrete block and brick manufacturing in 2017.<sup>6</sup> Of these, 401 firms, or 93 percent, employed fewer than 500 employees, and these small firms accounted for 514 establishments, or 75 percent of all establishments, and about 62 percent of industry employment.<sup>7</sup>

**Table 3: Block and Brick Manufacturers 2017 by Business Size**

Size of business by number of employees	Number of firms	Number of establishments	Employment	Estimated receipts (\$mils)	Annual payroll (\$mils)
<b>Total</b>	<b>430</b>	<b>686</b>	<b>16,575</b>	<b>4,682</b>	<b>814</b>
0-4	92	92	173	56	9
5-9	66	66	432	97	19
10-19	83	87	1,168	277	56
20-99	116	152	3,851	922	185
100-499	44	117	4,607	1,506	251
500+	29	172	6,344	1,823	293

Source: U.S. Census Bureau 2017 County Business Patterns and 2017 Economic Census, Table US\_6digitnaics\_2017, released 03/06/2020

Large firms represent about 7 percent of all firms and account for 25 percent of plants, about 38 percent of employment, and 39 percent of estimated receipts. This appears to be consistent with the information from industry experts that roughly 5 percent of manufacturers account for 40 percent of production capacity measured by machine cavities.<sup>8</sup> Based on these estimates of share of establishments and machine cavities, we estimate that large employers (500 or more employees) account for 25 to 40 percent of industry production of concrete masonry units and, conversely, that small firms (fewer than 500 employees) account for 60 to 75 percent of production of concrete masonry units.

#### *Costs to Affected Entities*

**Assessment costs**—Under the proposed order, concrete masonry unit manufacturers would be required to pay assessments to the Board to fund the research, education, and promotion programs of the Board. Assessment rates are dictated by the Act, which specifies assessments of \$0.01 per unit sold, up to a maximum of \$0.05 per unit sold, with assessments increasing by no more than \$0.01 per year.

To estimate the costs to businesses, the Department estimates a range of assessment revenues, with the lower bound calculated using assessments of \$0.01 with no increases in future years and the upper bound calculated using the maximum assessment rates permitted under the Act—\$0.01 in the first year, increasing by \$0.01 in

subsequent years to the maximum of \$0.05 in the fifth year and thereafter.

To estimate the number of units sold by small entities, the Department relies on industry reports that show there were 1.15 billion concrete masonry units produced in 2018. Assuming small businesses produced 60 to 75 percent of overall production, we estimate that between 690 and 862.5 million units would be produced by small businesses in the first year of the program. Based on these estimates, total estimated assessments on small businesses based on \$0.01 per unit produced would be \$6.90 million to \$8.63 million in the first year.

To estimate a lower bound on expected annual assessment costs, we assume assessments remain constant at \$0.01 for 10 years and industry

Business Patterns methodology on the Census website.

<sup>8</sup>Manufacturers use block machines to produce concrete block. A block machine uses vibration and compaction to form the concrete masonry product from a cement mixture poured into a mold. The term “cavity” is the open space in the mold and equates to a single block.

<sup>5</sup> See “Table of Small Business Size Standards Matched to North American Industry Classification System Codes” on the U.S. Small Business Administration website.

<sup>6</sup> A firm is a business organization consisting of one or more domestic establishments in the same state and industry that were specified under common ownership or control and an establishment

is a single physical location at which business is conducted or services or industrial operations are performed. See “Statistics of U.S. Businesses Glossary” on the U.S. Census Bureau website.

<sup>7</sup> See “2017 SUSB Annual Data Tables by Establishment Industry” on the U.S. Census Bureau website. For more information, see the County

production grows with inflation. Therefore, total assessments on small businesses over the next 10 years is expected to be \$6.90 million to \$8.63 million per year. The midpoint of this range, \$7.76 million, is the Department's lower bound estimate of annual costs to small businesses. This amounts to \$19,358 per firm each year.

To estimate an upper bound estimate of costs, we assume the Board institutes the maximum assessment authorized under the legislation, resulting in a \$0.01 per unit assessment in year 1, \$0.02 in year 2, \$0.03 in year 3, \$0.04 in year 4, and \$0.05 in years 5 through 10. Again, assuming industry production grows with inflation, total assessments on small businesses over the next 10 years would be expected to average \$27.60 million to \$34.50 million per year. The midpoint of this range, \$31.05 million, is the Department's upper bound estimate of annual costs to small businesses. This amounts to an average of \$77,431 per firm each year.

Applying the Department's upper bound cost estimate to the receipts estimated by the Census Bureau for this industry, total costs on small businesses represent about 1.1 percent of small business receipts (shown in "Table 3: Block and Brick Manufacturers 2017 by Business Size," employment size less than 500). Again, this would be the average over the 10-year period. Assessments would be lowest in year 1 and highest in years 5 through 10.

These estimated assessment costs are based on the limited information available for the concrete and brick manufacturers industry. For this analysis, the Department relies on industry estimates for annual unit production. Because unit production is not available by business size, we estimate a range of unit production using establishment data from the U.S. Census Bureau for NAICS industry 327331. Because the number of firms estimated by industry experts differs from the number of firms under NAICS industry 327331, we request comments regarding the number and size of entities covered under the proposed order, including whether production occurs among businesses not classified under NAICS industry 327331.

**Reporting costs**—In addition to assessments paid on concrete masonry units, there are reporting costs associated with adoption of the proposed order. Under the proposed order, each manufacturer may be required to periodically provide to the Board such information as may be required by the Board, with the approval of the Secretary, which may

include, but not be limited to, the following:

1. Number and type of concrete masonry units manufactured;
2. Number and type of concrete masonry units on which an assessment was paid;
3. Name and address of the manufacturer; and
4. Date assessment was paid on each concrete masonry unit sold.

We expect these reporting costs to be incurred with the quarterly assessments paid by manufacturers. We estimate that managers would spend 60 minutes per quarterly report. According to the Bureau of Labor Statistics, the median pay for industrial production managers is \$50.71 per hour.<sup>9</sup> Thus, we estimate that firms will pay, on average, \$202.84 for reporting costs per year.

#### *Benefits for Affected Entities*

Even if the order results in a significant cost for a substantial number of small businesses, these costs are expected to result in benefits to businesses that are at least commensurate with these costs. The assessments pay for investments in product research, education, and promotion programs that are intended to yield direct benefits to concrete product manufacturers in the form of new markets and increased consumer demand.

#### *Alternatives: Consideration of a De Minimis Exemption*

The Department recognizes that some small businesses with minimal production in the industry may not have the resources to comply with the requirements imposed by the proposed order, and therefore, the Department may consider a *de minimis* exemption for these small businesses. A *de minimis* exemption would exclude from the order some small businesses with minimal production, based on measures of unit production, employment, receipts, machine cavities, or other relevant criteria.

A possible *de minimis* exemption would exclude companies with fewer than five employees. According to Census Bureau data (see "Table 3: Block and Brick Manufacturers 2017 by Business Size"), these firms represent 13 percent of establishments in the industry, 1 percent of industry employment, and 1 percent of annual receipts for the industry.

Another possible *de minimis* exemption would exclude companies with fewer than ten employees.

<sup>9</sup> See the *Occupational Outlook Handbook* on the Bureau of Labor statistics website.

According to Census Bureau data (see "Table 3: Block and Brick Manufacturers 2017 by Business Size"), these firms represent 23 percent of establishments in the industry, 4 percent of industry employment, and 3 percent of annual receipts for the industry.

The Department requests comments regarding a possible *de minimis* exemption.

#### *Request for Comments*

The Department requests comments on the Initial Regulatory Flexibility Act Analysis. Specifically, comments regarding:

1. Information about concrete masonry unit production, including:
  - a. Estimated annual production of concrete masonry units for the industry as a whole and by business size;
  - b. The number and size of entities covered under the proposed order, including whether production occurs among businesses not classified under NAICS industry 327331; and
  - c. An estimated sales price for concrete masonry units.
2. Whether to include a *de minimis* exemption and what criteria to use for an exemption; and
3. The approach used to estimate the impact of the proposed order on industry and small businesses and suggestions for alternative approaches.

#### *Paperwork Reduction Act*

The ICRs in this proposed rule are being submitted for approval to OMB under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* This section contains the new ICRs and the estimated time to fulfill each requirement. There are two new ICRs associated with the proposed order—one dealing with the Board nomination process and a second with the assessment and reporting requirements.

In order to make an informed decision on appointments of members and alternate members to the Board as well as obtaining an appropriate balance on the Board, the Secretary will need adequate information on all candidate nominees. The Department will restrict the information request to that information needed to determine requisite expertise of potential nominees and will include biography, experience, status as a current manufacturer, type of products manufactured, place of business, size of business, statement of interest, and similar background information.

**Estimated burden:** Public recordkeeping burden for this collection of information is estimated to average 1.0 hour per application.

*Respondents:* Manufacturers and others associated with the concrete masonry products industry.

*Estimated Number of Respondents:* 50.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 50 hours.

## (2) Background Statement

To fulfill the requirement to oversee assessment collection as well as the requirement to maintain adequate records the Secretary will need information to support adequate oversight in these areas. The Department will restrict the information request to that information needed to determine the amount of assessment and will include: The number and type of concrete masonry units manufactured; the number and type of concrete masonry units on which an assessment was paid; the name and address of the manufacturer; manufacturer employee identification number; and the date of assessment payment on each concrete masonry unit sold; and related assessment accounting information. All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information.

*Estimated burden:* Public recordkeeping burden for this collection of information is estimated to average 1 hour per quarterly report.

*Respondents:* Manufacturers of concrete masonry products.

*Estimated Number of Respondents:* 690.

*Estimated Number of Responses per Respondent:* 4 per year.

*Estimated Total Annual Burden on Respondents:* 2760 hours.

As part of its continuing effort to reduce paperwork and respondent burden, the Department invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act. The Department solicits comments concerning: Whether these ICRs are necessary for the proper performance of the functions of the Department, including whether the information has practical utility; the accuracy of the Department's estimates of the burden of the ICRs; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. The ICR may be

viewed on the Reginfo.gov website. Organizations and individuals desiring to submit comments on the collection of information requirements should see the **ADDRESSES** section of this document. The final rule will respond to any public comments on the ICRs contained in this proposal. Notwithstanding any other provision of the law, no person is required to respond to, and no person will be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

### *National Environmental Policy Act*

This proposed rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

### **List of Subjects in 15 CFR Part 1500**

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Concrete masonry promotion, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, under the authority at 15 U.S.C. 8701–8717, the Office of the Under-Secretary for Economic Affairs, Department of Commerce proposes to establish Chapter XV, consisting of 15 CFR part 1500 as set forth below:

### **CHAPTER XV—OFFICE OF THE UNDER-SECRETARY FOR ECONOMIC AFFAIRS**

#### **PART 1500—CONCRETE MASONRY PRODUCTS RESEARCH, EDUCATION, AND PROMOTION**

##### **Subpart A—Concrete Masonry Products Research, Education, and Promotion Order**

###### Definitions

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1500.2	Block Machine.
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1500.4	Cavity.
1500.5	Concrete Masonry Products.
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<b>Concrete Masonry Products Board</b>	
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1500.61	Independent evaluation.
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<b>Reports, Books, and Records</b>	
1500.70	Reports.
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1500.87	Amendments.
1500.88	OMB control number.

**Authority:** 15 U.S.C. 8701–8717.

### **Definitions**

#### **§ 1500.1 Act.**

*Act* means the Concrete Masonry Products Research, Education, and Promotion Act of 2018 (15 U.S.C. 8701 *et seq.*; Public Law 115–254, 1301, 132 Stat. 3469–3485 (2018)), and any amendments thereto.

#### **§ 1500.2 Block Machine.**

*Block machine* means a piece of equipment that utilizes vibration and compaction to form concrete masonry products.

#### **§ 1500.3 Board.**

*Board* means the “Concrete Masonry Products Board” established under § 1500.40 of this Order.

#### **§ 1500.4 Cavity.**

*Cavity* means the open space in the mold of a block machine capable of forming a single concrete masonry unit having nominal plan dimensions of 8 inches by 16 inches.

#### **§ 1500.5 Concrete Masonry Products.**

*Concrete masonry products* means a broader class of products, including concrete masonry units as well as hardscape products such as concrete pavers and segmental retaining wall units, manufactured on a block machine using dry-cast concrete.

**§ 1500.6 Concrete Masonry Unit.**

*Concrete masonry unit* means a concrete masonry product that is a manmade masonry unit having an actual width of 3 inches or greater and manufactured from dry-cast concrete using a block machine. Such term includes concrete block and related concrete units used in masonry applications.

**§ 1500.7 Conflict of Interest.**

*Conflict of interest* means with respect to a member or employee of the Board, a situation in which such member or employee has a direct or indirect financial or other interest in a person that performs a service for, or enters into a contract with, for anything of economic value.

**§ 1500.8 Department.**

*Department* means the United States Department of Commerce.

**§ 1500.9 Dry-Cast Concrete.**

*Dry-cast concrete* means a composite material that is composed essentially of aggregates embedded in a binding medium composed of a mixture of cementitious materials (including hydraulic cement, pozzolans, or other cementitious materials) and water of such a consistency to maintain its shape after forming in a block machine.

**§ 1500.10 Education.**

*Education* means programs that will educate or communicate the benefits of concrete masonry products in safe and environmentally sustainable development, advancements in concrete masonry product technology and development, and other information and programs designed to generate increased demand for commercial, residential, multi-family, and institutional projects using concrete masonry products and to generally enhance the image of concrete masonry products.

**§ 1500.11 Geographic Regions.**

*Geographic Regions* means the groupings of states as delineated in § 1500.40(c) of this Order, for the purpose of supporting research, education, and promotion plans and projects.

**§ 1500.12 Machine Cavities.**

*Machine cavities* means the cavities with which a block machine could be equipped.

**§ 1500.13 Machine Cavities in Operation.**

*Machine cavities in operation* means those machine cavities associated with a block machine that have produced concrete masonry units within the last six months of the date set for

determining eligibility and is fully operable and capable of producing concrete masonry units.

**§ 1500.14 Manufacturer.**

*Manufacturer* means any person engaged in the manufacturing of commercial concrete masonry products in the United States.

**§ 1500.15 Masonry Unit.**

*Masonry unit* means a noncombustible building product intended to be laid by hand or joined using mortar, grout, surface bonding, post-tensioning or some combination of these methods.

**§ 1500.16 Order.**

*Order* means this Concrete Masonry Products Research, Education, and Promotion order, including all subparts.

**§ 1500.17 Person.**

*Person* means any individual, group of individuals, partnership, corporation, association, cooperative or any other entity.

**§ 1500.18 Promotion.**

*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.

**§ 1500.19 Research.**

*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.

**§ 1500.20 Secretary.**

*Secretary* means the Secretary of the United States Department of Commerce.

**§ 1500.21 United States.**

*United States* means the several states and the District of Columbia.

**Concrete Masonry Products Board**

**§ 1500.40 Establishment and membership.**

(a) The Board is hereby established to carry out a program of generic promotion, research, and education regarding concrete masonry products. The Board shall consist of manufacturers and of not fewer than 15 and not more than 25 members appointed by the Secretary, from nominations submitted as set forth in § 1500.41. No employee of an industry trade organization exempt from tax under paragraph (3) or (6) of section

501(c) of the Internal Revenue Code of 1986 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.

(b) The initial Board and all subsequent Boards, unless modified by the Board as provided in § 1500.40(d), shall be subject to the following:

(1) To ensure fair and equitable representation of the concrete masonry products industry, 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.

(2) No company or its affiliates shall have more than two members on the Board.

(c) To the extent possible, dependent on the nominees submitted, the Secretary will strive to appoint at least two members from each region. Similarly, the Secretary will strive to appoint at least one member from each of the following districts:

TABLE 1 TO PARAGRAPH (C)

Region	District	States
1 .....	1	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
	2	New York.
	3	Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, and West Virginia.
2 .....	4	North Carolina, South Carolina, and Virginia.
	5	Alabama, Georgia, Mississippi, and Tennessee.
3 .....	6	Florida.
	7	Indiana, Kentucky, and Ohio.
	8	Illinois, Michigan, and Wisconsin.
4 .....	9	Iowa, Minnesota, Nebraska, North Dakota, and South Dakota.
	10	Arkansas, Kansas, Missouri, and Oklahoma.
	11	Louisiana, and Texas.
5 .....	12	Arizona, and New Mexico.
	13	Colorado, Utah, and Wyoming.
	14	Alaska, Idaho, Montana, Oregon, and Washington.
	15	California, Hawaii, and Nevada.

(d) Three years after the assessment of concrete masonry units commences pursuant to implementation of this Order, and at the end of each three-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, including but not limited to modifying the regions and districts set forth in 1500.40(c), and the allocation of Board members to reflect changes in the geographical distribution of the manufacture of concrete masonry products and the types of concrete masonry products manufactured.

**§ 1500.41 Nominations and appointments.**

(a) For the initial Board, nominations shall be made and submitted to the Secretary by manufacturers. The Secretary shall consider the nominations submitted and other manufacturers for appointment, as the Secretary may deem appropriate. The Secretary shall appoint the members and alternate members of the initial Board.

(b) From the nominations, the Secretary shall appoint the 15–25 members of the Board and six alternate members of the Board within a reasonable time after receiving nominations. If a voting member vacates the appointment, the Secretary will appoint one of the alternate members to fill the unexpired term. The Secretary will provide the Board an opportunity to offer a nominee as successor to fill the term of the alternate member. In any case in which the Board fails to submit nominations for any open position, the Secretary shall appoint a member qualifying for the position under the criteria set forth in § 1500.40.

(c) Nominations by manufacturers for Board members, including self-nominations will be submitted to the Board. The Board will evaluate the nominations received, verify the willingness of nominees to serve, and then will submit to the Secretary at least three nominees for each vacant position. The Secretary may also receive nominations and may forward them to the Board for their consideration. From the nominees not appointed, the Secretary will appoint six alternate members for the Board. Alternate members will be non-voting members of the Board.

**§ 1500.42 Term of office.**

Board members and any alternates will serve for a term of three years, except for the initial members as described below. Board members and any alternates will be able to serve a

maximum of two consecutive three-year terms and may serve additional terms, of up to two consecutive three-year terms, after rotating off the Board. When the Board is first established, the initial members will be assigned initial terms of two, three and four years. Initial terms will be staggered to assure continuity. Each term of office will end on December 31, with new terms of office beginning on January 1. Members serving the initial terms of two and three years will be eligible to serve a second term of three years.

Thereafter, each of the positions will carry a full three-year term. Notwithstanding the limitations on consecutive terms, a Board member or alternate Board member may continue to serve until a successor is appointed by the Secretary.

**§ 1500.43 Vacancies.**

Should any Board member position become vacant, an alternate will be appointed by the Secretary for the remainder of the term. Successors to fill the unexpired terms of the former alternate member shall be appointed in the manner specified in § 1500.41.

**§ 1500.44 Disqualification.**

(a) In the event that any Board member or alternate Board member ceases to qualify as a manufacturer, such Board member or alternate Board member shall be disqualified from serving on the Board.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. All members serve at the pleasure of the Secretary.

**§ 1500.45 Procedure.**

(a) The Board will meet at least annually. A Board meeting will be conducted only when a quorum is present. A majority of the Board members will constitute a quorum. If participation by telephone or other means is permitted, members participating by such means shall count as present in determining quorum or other voting requirements set forth in this section.

(b) At the start of each fiscal period, the Board will select a Chair, Vice-Chair, Secretary-Treasurer and other officers as appropriate who will serve in leadership roles throughout that period.

(c) The Board will provide members and manufacturers a minimum of 14 days advance notice of all Board meetings.

(d) Each Board member will be entitled to one vote on any matter put to vote, and the motion will carry if supported by one vote more than 50 percent of the total votes represented by the Board members participating, with the exception of the affirmative vote of two-thirds of voting members required to change the assessment rate as specified in § 1500.51(c).

(e) The Board may form committees as necessary. Committees may consist of individuals other than Board members. Committee members shall serve without compensation.

(f) When the Board Chair determines that a vote outside a convened Board meeting is necessary, such vote may take place via electronic means only if members are given fourteen days prior notice, and if a majority of the voting Board members participate prior to the established deadline. Any action so taken shall have the same force and effect as though such action had been taken at a regularly convened meeting of the Board.

(g) All votes shall be recorded in Board minutes.

(h) There shall be no voting by proxy.

(i) Board members shall each have one vote. Alternate members shall not vote. The Chair and all Board officers shall be elected from voting members of the Board.

(j) The organization of the Board and the procedures for the conducting of meetings of the Board shall be in accordance with its bylaws, which shall be established by the Board and approved by the Secretary.

(k) Meetings of the Board and committees may be conducted by electronic communications, provided that each member and committee member, if such committee member is not a member of the Board, is given prior written notice of the meeting and has the opportunity to be present either physically or by electronic connection.

**§ 1500.46 Compensation and reimbursement.**

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

(b) 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.

**§ 1500.47 Powers and duties.**

The Board shall have the following powers and duties:

(a) To administer this Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board;

(c) To make such rules as may be necessary to administer this Order, including activities to be carried out under this Order;

(d) To meet, organize, and select from among the members of the Board a Chair, Vice Chair, Secretary-Treasurer and other officers, committees, and subcommittees, and to vest in such committees and subcommittees such responsibilities and authorities as the Board determines to be appropriate;

(e) To establish regional committees to administer regional initiatives;

(f) To recommend to the Secretary modifications to the geographical regions as described in § 1500.40(c);

(g) To establish working committees of persons other than Board members;

(h) To employ persons, other than the members, as the Board considers necessary to assist the Board in carrying out its duties and to determine the compensation and specify the duties of such persons;

(i) To prepare and submit for the approval of the Secretary a budget as described in § 1500.50(a);

(j) To borrow funds necessary for the startup expenses of this Order;

(k) To develop and carry out 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 § 1500.51 and other income of the Board as provided under § 1500.50(j) and § 1500.62;

(l) To enter into contracts or agreements which must be approved by the Secretary before becoming effective, for the development and carrying out of programs or projects of research, education, and promotion relating to concrete masonry, including with manufacturer associations or other entities as considered appropriate by the Secretary;

(m) To develop programs and projects, and enter into contracts or agreements related thereto, which must be approved by the Secretary before becoming effective, targeted specifically toward the Geographic Regions described in § 1500.40(c) to be recommended by the relevant regional committees for marketing and research projects to benefit manufacturers in such Geographic Regions pursuant to the goals of any programs or projects as set forth under this Order. The contracts or agreements related to such programs

and projects as described in this § 1500.46(m) shall be subject to the requirements of all contracts or agreements described in § 1500.46(l);

(n) 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;

(o) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe and to make the records available to the Secretary for inspection and audit; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(p) To cause its books to be audited by a certified public accountant at the end of each fiscal year and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(q) To give the Secretary the same notice of meetings of the Board and committees as is given to members, including committee members if committee members are not members of the Board, in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Board and all committees to the Secretary;

(r) To furnish to the Secretary any information or records that the Secretary may request;

(s) To receive, evaluate, and report to the Secretary all complaints of violations of this Order;

(t) To recommend to the Secretary such amendments to this Order as the Board considers appropriate;

(u) To recommend adjustments to the assessments as provided in this Order;

(v) To notify manufacturers of all Board meetings through press releases or other means;

(w) To invest assessments collected under this Order in accordance with § 1500.50; and

(x) To periodically prepare and make available to the public and manufacturers reports of its activities and, at least once each fiscal period, to make public an accounting of funds received and expended.

#### **§ 1500.48 Prohibited activities.**

(a) The Board shall not engage in any program or project to, nor shall any funds received by the Board under the Act be used to:

(1) Influence legislation, elections, or governmental action;

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

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

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

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

(b) Paragraph (a) does not preclude:

(1) The development and recommendation of amendments to the Order;

(2) 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 (a)(1); or

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

#### **Expenses and Assessments**

##### **§ 1500.50 Budget and expenses.**

(a) Prior to the beginning of each fiscal year, and during the fiscal year as may be necessary, the Board shall prepare and submit to the Secretary for approval a budget for the fiscal year covering its anticipated expenses and disbursements in administering this Order. Such budget shall be deemed approved if the Secretary fails to approve or reject the budget within 60 days of receipt, unless the Secretary proposes to the Board and to Congress, reasonable justification for the delay and provides a reasonable date by which approval or disapproval will be made. The Department may provide such justification in any written format.

(b) Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data for at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program or project to another. A de minimis shift of funds from one



approved category to another, and not exceeding 10% of the funds in either category, which does not cause an increase in the Board's approved budget and which is consistent with governing bylaws need not have prior approval by the Secretary. If the Secretary fails to approve or reject a budget, or an amendment or addition to an approved 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. The Department may provide such justification in any written format.

(d) The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this Order. Such expenses shall be paid from funds received by the Board.

(e) Limitations on obligation of funds:

(1) In each fiscal year, through fiscal year 2030, the Board may not obligate an amount greater than the sum of—

(i) 73 percent of the amount of assessments estimated to be collected under 1500.51 in such fiscal year (except for fiscal years 2028 and 2029, for which the amounts estimated to be collected shall be 62 percent of the amount of assessments actually collected in the most recent fiscal year for which an audit report has been submitted as of the beginning of the fiscal year for which the amount be obligated is being determined);

(ii) 73 percent of the amount of assessments actually collected under 1500.51 in the most recent fiscal year for which an audit report has been submitted as of the beginning of the fiscal year for which the amount that may be obligated is being determined, less the estimate made pursuant to paragraph (e)(1) of this section for such most recent fiscal year; and

(iii) amounts permitted in preceding fiscal years to be obligated that have not been obligated.

(2) Assessments collected in excess of the amount permitted to be obligated in a fiscal year shall be deposited in an escrow account until the end of fiscal year 2030.

(3) Prior to the end of fiscal year 2030, the Board may not obligate, expend, or borrow against amounts deposited in the escrow account. Any interest earned on such amounts shall be deposited in the escrow account and shall be unavailable for obligation until the end of fiscal year 2030.

(f) With approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for startup costs and capital outlays.

(g) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration and supervision of this Order, including all referendum costs in connection with this Order.

(h) Following the third fiscal year of operation of the Board, the total cost of collection of expenses and administrative staff incurred by the Board during any fiscal year shall not exceed 10 percent of the projected total assessments to be collected and other income received by the Board for that fiscal year after any fees owed to the Department are paid. Reimbursements to the Secretary required under paragraph (g) of this section are excluded from this limitation on spending.

(i) Pending disbursement of assessments and all other revenue under a budget approved by the Secretary, the Board may invest assessments and all other revenues 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 interest by the United States.

(j) Investment income and revenue earned under paragraph (i) are earnings obtained from assessments that are subject to budget approval under paragraph (a).

#### **§ 1500.51 Assessments.**

(a) The collection of assessments on concrete masonry units will be the responsibility of the manufacturer who sells the concrete masonry units. There shall be an assessment on the first sale of concrete masonry units only and not on subsequent sales of concrete masonry units already assessed. The manufacturer will be required to collect and remit its individual assessments no less than quarterly. 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. Within 180 days of their initial meeting, the Board will provide for review and approval by

the Secretary a proposed compliance program and its plan to verify compliance with the Act. The compliance program will outline the way the Board will receive assessments, how they will verify compliance, determine the best method to track sales, and how to document all actions.

(b) Such assessments shall be levied at a rate of \$0.01 per concrete masonry unit sold by a manufacturer. The Board may make assessments effective as of the effective date of this Order. Submission of funds may be made to the Board within 60 days of the end of the first quarter after the Board is established; thereafter submission of funds will be to the board within 60 days of the end of each quarter.

(c) At any time following the conduct of the initial referendum conducted pursuant to this Order, the assessment rate will be reviewed by the Board and, upon the affirmative vote of two-thirds of voting members of the Board, may be modified; provided that the assessment rate may be raised to a maximum of \$0.05 cents per unit, that only one increase may be implemented in any one-year period, and each individual increase may not exceed \$0.01.

(d) 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.

(e) All assessment payments and reports will be submitted to the office of the Board quarterly. All quarterly payments are to be received no later than 60 days after the conclusion of each quarter. A late payment charge shall be imposed on any manufacturer who fails to remit to the Board the total amount for which any such manufacturer is liable on or before the due date established by the Board. In addition to the late payment charge, an interest charge shall be imposed on the outstanding amount for which the manufacturer is liable. The rate of interest and late payment charges shall be specified by the Secretary.

(f) Manufacturers failing to remit total assessments due in a timely manner may also be subject to actions under Federal debt collection procedures.

(g) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

(h) The Board shall provide manufacturers submitting assessments under this Order with the opportunity to apply for rebates on assessments remitted to the Board for concrete masonry units not covered by this Order

and for assessments remitted to the Board for concrete masonry units sold to a purchaser that subsequently failed to remit payment due to bankruptcy, bad debt or other reasons causing the money intended to be collected from such sale to be uncollectible. Those requesting rebates in such circumstances must provide all necessary documentation as the Board shall determine.

**§ 1500.60 Programs and projects.**

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program or project authorized under this Order. Such programs or projects shall provide for:

(1) The establishment, issuance, effectuation and administration of appropriate programs for research, education, and promotion with respect to concrete masonry; and

(2) The establishment and conduct of research with respect to the image, desirability, use, marketability, quality or production of concrete masonry products, to the end that the marketing and use of concrete masonry products may be encouraged, expanded, improved or made more acceptable and to advance the image, desirability or quality of concrete masonry product.

(b) No program or project shall be implemented prior to its approval by the Secretary. Once a program or project is so approved, the Board shall take appropriate steps to implement it. If the Secretary fails to approve or reject a contract or agreement for a program or project 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. The Department may provide such justification in any written format. Any such contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program or project together with a budget or budgets that shall show the estimated cost to be incurred for such program or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically;

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor; and

(5) The contract or agreement shall become effective on the approval of the Secretary.

(c) Each program or project implemented under this Order shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of research, education, or promotion. If it is found by the Board that any such program or project does not contribute to an effective program of research, education, or promotion, then the Board shall, with the approval of the Secretary, terminate such program or project.

(d) 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.

(e) 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 § 1500.50(a)(1).

**§ 1500.61 Independent evaluation.**

The Board shall authorize and fund an independent evaluation of the effectiveness of this Order and other programs conducted by the Board beginning five 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 periodic independent evaluation conducted under this paragraph.

**§ 1500.62 Patents, copyrights, trademarks, information, publications, and product formulations.**

Ownership and allocation of rights to patents, copyrights, inventions, or publications, developed through the use of non-Federal funds remitted to the Board under the Order shall be determined by written agreement

between the Board and the party(ies) receiving funds for the development of such inventions, patents, copyrights or publications.

**Reports, Books, and Records**

**§ 1500.70 Reports.**

(a) Each manufacturer subject to this Order may be required to provide to the Board periodically such information as may be required by the Board, with the approval of the Secretary, which may include but not be limited to the following:

(1) Number and type of concrete masonry units manufactured;

(2) Number and type of concrete masonry units on which an assessment was paid;

(3) Name and address of the manufacturer; and

(4) Date assessment was paid on each concrete masonry unit sold.

(b) All reports required under this § 1500.70 are due to the Board 60 days after the end of each quarter.

(c) All reports or information submitted pursuant to this paragraph shall be subject to the confidentiality restrictions in § 1500.72.

**§ 1500.71 Books and records.**

Each manufacturer subject to this Order shall maintain and make available for inspection by the Secretary such books and records as are necessary to carry out the provisions of this Order and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least 7 years beyond the fiscal period of their applicability.

**§ 1500.72 Confidential treatment.**

(a) Trade secrets and commercial or financial information that is privileged or confidential obtained from books, records, or reports under the Act, this Order, and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members or manufacturers. Only those persons having a specific need for such information to effectively administer the provisions of this Order shall have access to such information. Such information may be disclosed only if the Secretary considers the information relevant; and 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. 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. Nothing in this section shall be deemed to prohibit:

(1) The issuance of general statements based upon the reports of the number of persons subject to this Order or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(2) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this Order, together with a statement of the particular provisions of this Order violated by such person.

(b) For any officer, employee, or agent of the Department of Commerce, these provisions are consistent with and do not supersede, conflict with, or otherwise alter any obligations, rights, or liabilities created by existing statute or Executive Order relating to classified information, communications to Congress, the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive Orders and statutory provisions are incorporated into this Order and are controlling.

#### Miscellaneous

##### § 1500.80 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

##### § 1500.81 Referenda.

(a) A referendum will be held to determine whether manufacturers favor enactment of this Order. A manufacturer shall be considered eligible to vote if the manufacturer has manufactured concrete masonry products during a period of at least 180 days prior to the first day of the period during which voting in the referendum will occur. For the initial referendum, an eligible person is a manufacturer of concrete units that is subject to the initial rate of assessment in § 1500.51. Each manufacturer eligible to vote in the referendum shall be entitled to one vote.

This Order shall become effective if 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.

(b) After the initial referendum, the Secretary shall conduct a referendum upon the request of the Board, or effective beginning on the date that is 5 years after the date of approval of this Order and at 5-year intervals thereafter, by petition from not less than 25% of manufacturers eligible to vote. Each manufacturer eligible to vote in subsequent referenda shall be entitled to one vote. For any new proposed order, voter eligibility will be based on the scope of such proposed order. This Order shall continue if 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.

##### § 1500.82 Suspension or termination.

(a) The Secretary shall suspend or terminate an order or a provision of an order if the Secretary finds that an order or provision of an order obstructs or does not tend to effectuate the purpose of the Act, or if the Secretary determines that the order or a provision of an order is not favored by a majority of all votes cast in the referendum as provided in § 1500.81. If the Secretary suspends or terminates a provision of an order, the order remains in effect minus the suspended or terminated provision.

(b) If, as a result of a referendum conducted under § 1500.81 of this Order, the Secretary determines that the Order is not approved, the Secretary shall:

(1) Not later than 180 days after making the determination, suspend or terminate collection of assessments under this Order; and

(2) As soon as practical, suspend or terminate activities under this order in an orderly manner.

##### § 1500.83 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this Order, or the issuance of any amendment to either thereof,<sup>1</sup> shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this Order or any regulation issued thereunder;

(b) Release or extinguish any violation of this Order or any regulation issued thereunder; or

<sup>1</sup> As noted previously, the Department intends to clarify this language in any final order.

(c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any other persons, with respect to any such violation.

##### § 1500.84 Notice and advance registration.

Not later than 30 days before a referendum is to be conducted under this Order, the Secretary shall notify all manufacturers of the period during which the referendum will occur through publication in the **Federal Register**. The notice shall explain any registration and voting procedures. A manufacturer who chooses to vote in any referendum conducted under this Order shall register with the Secretary prior to the voting period.

##### § 1500.85 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

##### § 1500.86 Separability.

If any provision of this Order is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this Order or the applicability thereof to other persons or circumstances shall not be affected thereby.

##### § 1500.87 Amendments.

The Secretary may, from time to time, amend an order. Amendments to this Order may be proposed from time to time by the Board or by any interested person affected by the provisions of the Act, including the Secretary. The provisions of the Act applicable to an order shall be applicable to any amendment to an order.

##### § 1500.88 OMB control number.

The control numbers assigned to the information collection request in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number [To be added upon OMB approval of the associated information collection request].

Dated: August 6, 2020.

**Kenneth White**,  
Senior Policy Analyst, Under Secretary for  
Economic Affairs.

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