



U.S. Department of Commerce

Frequently Asked Questions

1. Is the 50% obligation back to the regions before or after expenses?

The Concrete Masonry Products Research, Education, and Promotion Act of 2018 (the Act), (see 15 USC 8705(f)(1)) specifies that the "order shall provide that ***not less than 50 percent*** of the assessments (***less administration expenses***) paid by a manufacturer shall be used to support research, education, and promotion programs and projects in support of the geographic region of the manufacturer." (Emphasis added). The Board will provide 50% back to the regions after expenses.

2. How soon can we register our EIN company?

Company information can be sent now to Michael.Thompson@trade.gov. Information should include:

- Name of the company representative who will cast the ballot for the company.
- Official title/position of company representative.
- Phone # of company representative.
- e-mail of company representative.
- COMPLETE mailing address where the eligibility and ballot forms should be sent.

Please **DO NOT e-mail** your company **Employer Identification Number (EIN)** at this time. The Department plans in September/October to send and make available the registration and eligibility forms for the referendum. Eligible companies will provide their EINs on the registration forms they submit.

3. Is the assessment \$0.01 per 8-inch equivalent?

The initial rate of assessment is \$0.01 per concrete masonry unit sold by a manufacturer. The term "concrete masonry unit" –

(A) 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; and

(B) includes concrete block and related concrete units used in masonry applications.

Congress did not set the assessment on an equivalent unit basis, but rather a per unit basis. Manufacturers pay \$.01 per unit sold.



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4. I would like to know what the date of publication of the order will be.

The Department of Commerce is working to publish the proposed order soon.

5. Is the Board established?

At this time the Department has not established the Board. If the referendum results in an affirmative vote, a nomination process for board members would begin after the Department announces the final results of the referendum and issues the final order.

6. How many seats on the Board?

The Act, in section 8704, sets forth the composition of the Board. The Act provides that "the Board shall consist of manufacturers of concrete masonry products, and shall have not fewer than 15 and not more than 25 members." The Secretary of Commerce (Secretary) appoints Board members.

7. If established who are the representatives?

Section 8704(b)(1)(iii) of the Act provides for the Secretary to use the following selection criteria for appointments to the concrete board:

- No employee of an industry trade organization.
- No company or its affiliates shall have more than two members on the Board.
- The board shall reflect the geographical distribution of the manufacture of concrete masonry products, the types of products manufactured, and the range in size of manufacturers.

8. Will hardscape products be assessed under the Order? Will clay brick be assessed under the Order?

Section 8705(c) of the Act establishes the assessment rate and states that such assessments shall be at a rate of \$0.01 per concrete masonry unit sold. The kinds of materials subject to assessment depend on whether the material meets the definition of "concrete masonry unit." A concrete masonry unit, as set forth in the Act –

1. 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; and
2. includes concrete block and related concrete units used in masonry applications.

The following non-exhaustive list of products are included in the definition of a concrete masonry unit:

1. Concrete Block, including:
 - (A) Gray
 - (B) Architectural
 - (C) Prefaced
 - (D) Those joined by any method in masonry construction:



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- (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
 - (E) Sound wall block
 - (F) Fence block
 - (G) Lintel Block – while lintels designed to span an entire opening are excluded, those concrete masonry units joined to create a lintel are included.
 - (H) Chimney, Pilaster, or Column Block
 - (I) Screen Block – these architectural units are included if their widths are greater than 3 inches if they are made on a block machine.
 - (J) 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.
 - (K) Concrete Block formed with concrete masonry face shells and other materials to create a masonry unit used in masonry construction.
2. Concrete Brick (Architectural only)
 3. Concrete Masonry Veneer Units (greater than 3 inches in width).

9. If a Checkoff program is enacted, how can you eliminate it if it does not work or is no longer desired?

Section 8706(d) of the act provides for Subsequent referenda. Pursuant to that section, if an order is approved in a referendum, the Secretary shall conduct a subsequent referendum—

1. at the request of the Board, to ascertain whether eligible manufacturers favor suspension, termination, or continuance of the order; or

2. effective beginning on the date that is 5 years after the date of the approval of the order, and at 5-year intervals thereafter, at the request of 25 percent or more of the total number of persons eligible to vote. Section 8706(e) provides that if, as a result of the subsequent referendum, the Secretary determines that suspension or termination of the order is favored by a majority of all votes cast in the referendum, the Secretary shall—

(A) not later than 180 days after the referendum, suspend or terminate, as appropriate, collection of assessments under the order; and

(B) suspend or terminate, as appropriate, programs and projects under the order as soon as practicable and in an orderly manner.



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10. Did I see in the presentation that the Secretary must approve all projects and programs? I would think these decisions would be deferred to the Board.

Section 8704(d) of the Act sets forth the procedures for program development and implementation. The Act requires the Board to submit to the Secretary for approval any program or project of research, education, or promotion relating to concrete masonry products. The Secretary's review and approval will help ensure projects and programs comply with the Act and the order.

11. Can we help encourage suppliers/distributors who have not been interested in the CMU Check-off program as well as distributors who are not willing to help promote our products submit comments during the 30-day public comments period?

The 30-day public comments period is open to the public; anyone may submit comments and we encourage all to do so.

12. Can you clarify the percentage of companies that have less than 5 or 10 employees?

We use 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 a brick, prestressed concrete blocks or bricks, and slumped brick. We believe this NAICS classification most closely corresponds to manufacturers of concrete masonry products.

See Statistics of U.S. Businesses, Table: U.S. 6-digit NAICS. Using this data, companies with fewer than 5 employees represent 21% of firms and 13% of establishments. Companies with fewer than 10 employees represent 37% of firms and 23% of establishments.

13. Where did that potential exclusion originate from, it was never in the order? Would companies with fewer than 5 or 10 employees that would fall under the De Minimis clause be able to vote in the referendum?

We are requesting comments on the proposed de minimis exemption. The Department has not made any decision on whether to include a de minimis exemption. There are exemptions in other Checkoff programs administered by USDA. Please feel free to let us know what you think.

14. Can you re-state what was stated earlier – assessments may begin on December 1 if Order is approved in the referendum but will not actually start until the Board is seated – is that correct?

The proposed order authorizes the Board to make assessments effective as of the effective date of the proposed order. The December 1 date was an example to help explain the potential retroactive nature of assessments. The date the Department publishes the final results of the referendum and issues the final order will be the effective date of the order. Hence, the Board will decide when assessments will commence, but it



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will not be before the effective date of the 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.

15. What happens if a manufacturer does not pay the assessment? Who would perform an audit of producers to confirm amount due?

Section 8705(d) of the Act sets forth the policies and procedures related to assessments. A very short answer to this question is that the Act allows for late-payment and interest charges if a person subject to an implementing order fails to remit an assessment. The implementing order and the Board would provide further details regarding compliance.

16. Will the person who fills in the information on the ballot and signs it be doing so under the pains and penalties of perjury?

To participate in the referendum each registrant will sign (attest and affirm) his or her eligibility.