

A BILL

To enable ready mixed concrete producers to establish, finance, and carry out a coordinated program of research, education, and promotion to improve, maintain, and develop markets for ready mixed concrete.

1 *Be it enacted by the Senate and House of Representatives of*
2 *the United States of America in Congress assembled,*

3 **SEC. 1. SHORT TITLE.**

4 This Act may be cited as the “Ready Mixed Concrete
5 Research, Education, and Promotion Act”.

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

7 (a) Congress finds that –

8 (1) The production of ready mixed concrete plays a
9 significant role in the Nation’s economy;

10 (2) Ready mixed concrete is produced by thousands of
11 producers and used by millions of people throughout the
12 United States;

13 (3) Ready mixed concrete moves in the channels of
14 interstate commerce, and ready mixed concrete that does
15 not move in such channels of commerce directly burden or
16 affect interstate commerce of ready mixed concrete;

17 (4) Ready mixed concrete plays a vital role in
18 environmentally-sustainable development as a highly

1 efficient, versatile and innovative building solution that
2 conserves non-renewable resources.

3 (5) The ready mixed concrete industry is responsible
4 for hundreds of thousands of jobs, and the maintenance and
5 expansion of markets for ready mixed concrete is vital to
6 maintain such jobs and create additional jobs; and

7 (6) The maintenance and expansion of existing markets
8 for ready mixed concrete and the development of new
9 markets is vital to the welfare of producers, consumers
10 using ready mixed concrete, as well as to the general
11 economic welfare of the nation.

12 (b) Therefore, it is the declared policy of the Congress
13 that it is in the public interest to authorize the establishment of
14 an orderly procedure for the financing, through assessments on
15 ready mixed concrete produced in the United States for
16 commercial use, and the carrying out of an effective and
17 continuous coordinated program of research, education, and
18 promotion designed to strengthen the ready mixed concrete
19 industry's competitive position, to maintain and expand
20 domestic markets for ready mixed concrete, and to enhance and
21 promote the ready mixed concrete industry's role in
22 environmentally-sustainable development.

23 **SEC. 3. DEFINITIONS.** For the purposes of this Act:

1 (a) The term “Board” means the Ready Mixed
2 Concrete Research, Education, and Promotion Board
3 established under Section 5.

4 (b) The term “Department” means the United States
5 Department of Commerce.

6 (c) The term “education” means programs that will
7 educate and inform the public and industry participants about
8 the role of ready mixed concrete in environmentally-
9 sustainable development, advances in ready mixed concrete
10 technology and development, operations and other information
11 and programs designed to generate increased understanding of
12 ready mixed concrete operations and demand for commercial,
13 residential, multi-family, agricultural and institutional projects
14 using ready mixed concrete in structural applications, and to
15 generally enhance the image of the ready mixed concrete
16 industry.

17 (d) The term “geographically fixed” means anchored in
18 place and capable of production for a period greater than
19 twelve months.

20 (e) The term “geographical regions” shall comprise and
21 refer to the following: the “Eastern Region” shall comprise
22 Connecticut, Maine, Massachusetts, New Hampshire, New
23 York, Rhode Island, and Vermont; the “Atlantic Region” shall

1 comprise Delaware, the District of Columbia, Maryland, New
2 Jersey, Pennsylvania, Virginia, and West Virginia; the “Lower
3 Atlantic Region” shall comprise Georgia, Kentucky, North
4 Carolina, South Carolina, and Tennessee; the “Gulf Coast
5 Region” shall comprise Alabama, Florida, Louisiana, and
6 Mississippi; the “Great Lakes Region” shall comprise Illinois,
7 Indiana, Michigan, and Ohio; the “North Central Region” shall
8 comprise Iowa, Minnesota, Nebraska, North Dakota, South
9 Dakota, and Wisconsin; the “South Central Region” shall
10 comprise Arkansas, Kansas, Missouri, Oklahoma, and Texas;
11 the “Rocky Mountain Region” shall comprise shall comprise
12 Colorado, Nevada, and Utah; the “Southwest Region” shall
13 comprise Arizona, California, Hawaii, and New Mexico; and
14 the “Northwest Region” shall comprise Alaska, Idaho,
15 Montana, Oregon, Washington, and Wyoming.

16 (f) The term “order” means a ready mixed concrete
17 research, education, and promotion order issued under Section
18 4.

19 (g) The term “permitted” means in receipt of all
20 necessary licenses issued by the relevant government
21 authority(ies) to produce ready mixed concrete.

1 (h) The term “person” means any individual, group of
2 individuals, partnership, corporation, association, cooperative,
3 or any other entity.

4 (i) The term “plant” means a distinct and
5 geographically-fixed and permitted ready mixed concrete
6 production facility.

7 (j) The term “producer” shall mean any person
8 engaged in the production of ready mixed concrete.

9 (k) The term “promotion” means any action, including
10 paid advertising, to advance the image and desirability of ready
11 mixed concrete in applications other than controlled access
12 roads, with the express intent of improving the competitive
13 position and stimulating sales of ready mixed concrete in the
14 marketplace.

15 (l) The term “ready mixed concrete” means a
16 composite material produced in a plant that is composed
17 essentially of aggregates embedded in a binding medium
18 composed of a mixture of cementitious materials which, upon
19 hydration, hardens and gains strength to maintain its shape into
20 a rock-like mass to be used in structural applications, and
21 which is in a plastic state delivered by a revolving mixer or
22 agitator truck.

1 (m) The term “research” means studies testing the
2 effectiveness of market development and promotion efforts,
3 studies relating to the improvement of ready mixed concrete,
4 studies on new uses, applications, constituent ingredients and
5 studies documenting the performance of ready mixed concrete.

6 (n) The term “Secretary” means the Secretary of the
7 United States Department of Commerce.

8 (o) The term “United States” means the fifty States and
9 the District of Columbia.

10 **SEC 4. ISSUANCE OF ORDERS.**

11 (a) To effectuate the declared purposes of this Act, the
12 Secretary shall, subject to the provisions of this Act, issue and
13 from time to time amend orders authorizing the collection of
14 assessments on ready mixed concrete production in the United
15 States under the provisions of this Act, and authorizing the use
16 of such funds to provide research, education, and promotion of
17 ready mixed concrete in a manner prescribed in this Act.

18 (b) During the period beginning on the enactment into
19 law of this Act and ending sixty days after receipt of a proposal
20 for a ready mixed concrete research, education, and promotion
21 order, the Secretary shall publish such proposed order and give
22 thirty days’ notice and opportunity for public comment on such

1 proposed order. Such proposal may be submitted by any
2 interested person, including the Secretary.

3 (c) After notice and opportunity for public comment
4 are given, as provided for in Subsection 4(b), the Secretary
5 shall issue a ready mixed concrete research, education, and
6 promotion order. The order shall become effective not later
7 than one hundred twenty days following publication of the
8 proposed order, subject to the provisions of Subsection 6(a).

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

10 Any order issued under Subsection 4(c) shall contain the
11 following terms and conditions:

12 (a) The order shall provide for the establishment of a
13 Ready Mixed Concrete Research, Education, and Promotion
14 Board. The Board shall number thirty directors comprising ten
15 directors each from each of the following classes, with one
16 director from each class representing each geographical region
17 described in Subsection 3(e): (i) companies with less than six
18 permitted plants nationwide; (ii) companies with between six
19 and twenty-five permitted plants nationwide; and (iii)
20 companies with twenty-six or more permitted plants
21 nationwide. No company shall have more than one director
22 serving on the Board at the same time. Such directors shall be
23 appointed by the Secretary from nominations submitted as

1 follows: (i) industry associations representing a majority of
2 ready mixed concrete producers in the United States shall send
3 nomination requests to all ready mixed concrete producers, (ii)
4 state associations representing ready mixed concrete producers
5 shall solicit nominations from producers, (iii) all nominations
6 are submitted to a nominating committee of the Board; (iv) a
7 nominating committee shall confirm the willingness of
8 individuals to serve if appointed; (v) a nominating committee,
9 upon approval of the full Board, shall submit a slate of two
10 nominees for each director position described in this
11 Subsection to the Secretary; and (vi) within thirty days of the
12 receipt of nominations the Secretary shall appoint directors for
13 each director position as described in this Subsection. If the
14 Secretary fails to announce appointments within thirty days
15 from the submission of nominations, the primary nominees
16 shall be considered appointed. If the Board fails to select
17 nominees for appointment to the Board, the Secretary may
18 appoint persons as provided for in the order.

19 (b) The order shall define the powers and duties of the
20 Board and shall include the following powers:

21 (1) To administer the order in accordance with its terms
22 and provisions.

1 (2) To make rules and regulations to effectuate the
2 terms and provisions of the order.

3 (3) To submit budgets to the Secretary for the approval
4 or disapproval of the Secretary. Said budgets shall be
5 deemed approved if not acted upon by the Secretary within
6 thirty days of submission by the Board.

7 (4) To contract with and employ appropriate persons to
8 implement and carry out the activities authorized by this
9 Act.

10 (5) To recommend to the Secretary amendments to the
11 order.

12 (6) To receive, investigate, and report to the Secretary
13 complaints of violations of the order.

14 (c) The order shall provide that the term of appointment
15 to the Board shall be three years with no director serving more
16 than two consecutive terms, provided that any director having
17 served two consecutive terms shall be eligible for
18 reappointment to the Board following a full three-year term's
19 absence from service on the Board, except that initial
20 appointments shall be proportionately for one-year, two-year
21 and three-year terms; that all terms be staggered so that ten
22 directors are appointed each year; and that directors shall serve
23 without compensation, but shall be reimbursed for their

1 reasonable expenses incurred in performing their duties as
2 directors of the Board.

3 (d) The order shall provide that the Board meet at least
4 twice annually and that all directors must attend at least one
5 board meeting annually or vacate the seat.

6 (e) The order shall provide that the Board may name
7 other individuals to advise the Board to provide expanded or
8 additional perspectives; provided, however, that such
9 individuals shall serve in an ex-officio, non-voting capacity.

10 (f) The order shall provide for the creation and
11 selection of the following officers of the Board: a chair, a vice
12 chair and a secretary-treasurer, to be elected by the Board, with
13 each officer eligible to serve a one-year term in such office.

14 (g) The order shall provide for the creation of an
15 executive committee comprising the three officers and four
16 additional directors elected by the Board, with each member of
17 the executive committee eligible to serve a one-year term in
18 such position. The executive committee shall have such
19 responsibilities as shall be delegated to it by the board.

20 (h) The order shall provide for the creation of a
21 nominating committee to be chaired by the chair and further
22 comprising two directors each from each class described in
23 Subsection 5(a). The role of the nominating committee shall

1 be to present a slate of nominations for various positions
2 described in this Act as described in Subsection 5(a) and shall
3 have such responsibilities as shall be delegated to it by the
4 Board, including the authority to nominate directors for
5 vacated seats on the Board to be appointed by the Secretary.

6 (i) The order shall grant the Board the authority to
7 create and appoint members to other committees, including but
8 not limited to advisory committees, at the discretion of the
9 Board.

10 (j) The order shall provide that following the second
11 fiscal year of operations of the Board, the total cost of
12 collection of expenses and administrative staff incurred by the
13 Board during any fiscal year shall not exceed 10 percent of the
14 projected total assessments to be collected by the Board for
15 such fiscal year.

16 (k) The order shall grant the Board authority to borrow
17 funds required to establish the Board and the program
18 described in this Act which may be repaid from assessments
19 collected during the first year of assessments collected under
20 the order. Such start-up funds may be provided by commercial
21 lending entities or any entity which has been granted tax
22 exempt status by the Internal Revenue Service under Section
23 501(c)(3) or 501(c)(6) of the Internal Revenue Code, including

1 but not limited to the National Ready Mixed Concrete
2 Association; provided, however, that all such start-up funds
3 advanced to the Board must be fully reimbursed.

4 (l) The order shall provide that the Board shall
5 recommend to the Secretary and the Secretary shall fix the
6 assessment rate at 15 cents per cubic yard of ready mixed
7 concrete sold by a producer. Upon a two-thirds vote of the
8 Board, the Board may recommend to the Secretary an increase
9 in the assessment rate up to a maximum of 30 cents per cubic
10 yard; provided, however, that (i) only one increase may be
11 implemented annually, (ii) each increase may not exceed 5
12 cents, and (iii) once the maximum assessment rate is achieved,
13 the maximum assessment rate will be indexed annually against
14 the core consumer price index. Ready mixed concrete produced
15 at plants to be used solely for the purpose of controlled access
16 road paving shall be exempt from assessment.

17 (m) The order shall provide that all assessments
18 required under the order shall be remitted to the Board by
19 producers no less than quarterly.

20 (n) The order shall require the Board to establish
21 appropriate audit procedures as it shall determine to ensure
22 compliance related to the payment of assessments.

1 (o) Following the second fiscal year of operations of
2 the Board, the order shall require a minimum of 45% of
3 assessments collected under the order each year go toward
4 research, educational, or promotional programs to be
5 conducted at the regional, state or local level, provided such
6 programs comport with the policy of this Act as determined by
7 the Board and the Secretary.

8 (p) The order shall provide that, to ensure coordination
9 and efficient use of funds, the Board shall enter into contracts
10 or agreements for implementing and carrying out the activities
11 authorized by this Act; provided, however, that when
12 practicable, such contracts or agreements for programmatic
13 research, education and promotion activities shall be with
14 entities or derivatives thereof, legally created at least five years
15 prior to the implementation of the order, or have been in
16 existence for at least five years after implementation of the
17 order, with a primary mission to advance the ready mixed
18 concrete industry and which have been granted tax exempt
19 status by the Internal Revenue Service under Section 501(c)(3)
20 or 501(c)(6) of the Internal Revenue Code for projects whose
21 purpose comports with the policy of this Act. Any such
22 contract or agreement shall provide that:

1 (1) The person entering the contract or agreement shall
2 develop and submit to the Board an plan or project together
3 with a budget or budgets that shows estimated costs to be
4 incurred for the plan or project;

5 (2) The contract or agreement shall become effective
6 on the approval of the Secretary;

7 (3) The person entering the contract or agreement shall
8 keep accurate records of all its transactions, account for
9 funds received and expended and make periodic reports of
10 activities conducted, and such other reports as the Secretary
11 or the Board may require.

12 (q) The order shall require the Board to:

13 (1) Maintain such books and records, which shall be
14 available to the Secretary for inspection and audit, as the
15 Secretary may prescribe;

16 (2) Prepare and submit to the Secretary, from time to
17 time, such reports as the Secretary may prescribe; and

18 (3) Account for the receipt and disbursement of all
19 funds entrusted to it.

20 (r) The order shall provide that the Board, with the
21 approval of the Secretary, may invest, pending disbursement,
22 funds collected through assessments only in obligations of the
23 United States or any agency thereof, in general obligations of

1 any State or any political subdivision thereof, in any interest-
2 bearing account or certificate of deposit of a bank that is a
3 director of the Federal Reserve System, or in obligations fully
4 guaranteed as to principal and interest by the United States.

5 (s) The order shall prohibit any funds collected by the
6 Board under the order from being used in any manner for the
7 purpose of influencing governmental action or policy, with the
8 exception of recommending amendments to the order.

9 (t) The order shall require that each producer of ready
10 mixed concrete who pays assessments under the order to
11 maintain and make available for inspection such books and
12 records as may be required by the order and file reports at the
13 time, in the manner, and having the content prescribed by the
14 order. Such information shall be made available to the
15 Secretary as is appropriate to the administration or enforcement
16 of this Act, the order, or any regulation issued under this Act.
17 All information so obtained shall be kept confidential by all
18 officers and employees of the Department and the Board, and
19 only such information so obtained as the Secretary deems
20 relevant may be disclosed by them and then only in a suit or
21 administrative hearing brought at the request of the Secretary,
22 or to which the Secretary or any officer of the United States is

1 a party, and involving the order. Nothing in this paragraph may
2 be deemed to prohibit:

3 (1) the issuance of general statements, based on the
4 reports, of the number of persons subject to the order or
5 statistical data collected therefrom, which statements do not
6 identify the information furnished by any person; or

7 (2) the publication, by direction of the Secretary, of the
8 name of any person violating the order, together with a
9 statement of the particular provisions of the order violated
10 by the person.

11 (u) The order may require that 20% of producers of
12 ready mixed concrete which pay assessments under the order
13 shall be audited by a third party auditor as shall be determined
14 by the Board each year for the first five years of the program so
15 that all producers which have paid assessments during the first
16 year of the program will be audited once within the first five
17 years of the program. The intent of the audit will be to ensure
18 compliance with the order. The Board shall develop and
19 implement an auditing policy to ensure compliance with the
20 order for the time period beyond the first five years of the
21 program.

22 (v) No information obtained under the authority of this
23 Act may be made available to any agency or officer of the

1 United States for any purpose other than the implementation of
2 this Act and any investigatory or enforcement act necessary for
3 the implementation of this Act. Any person violating the
4 provisions of this paragraph shall be subject to a fine of not
5 more than \$10,000, or to imprisonment for not more than one
6 year, or both, and if an officer or employee of the Board or the
7 Department, shall be removed from office.

8 (w) The order shall contain terms and conditions, not
9 inconsistent with the provisions of this Act, as necessary to
10 effectuate the provisions of the order.

11 **SEC 6. REQUIREMENT OF REFERENDUM.**

12 (a) Within the period immediately following the
13 publication of the order described in Subsection 4(c), the
14 Secretary shall conduct a referendum among persons who have
15 been actively engaged as producers to ascertain whether the
16 order shall go into effect, with each plant receiving one vote
17 each. The order shall be effective only if the Secretary
18 determines that it has been approved by not less than a majority
19 of plants voting in the referendum.

20 (b) The Secretary shall conduct a referendum five years
21 following the initial referendum among producers who have
22 paid assessments under the program, with each plant receiving
23 one vote each. The Secretary shall suspend or terminate

1 collection of assessments under the order within six months
2 after the Secretary determines that suspension or termination of
3 the order is favored by a majority of the plants voting in the
4 referendum and shall terminate or suspend the order in an
5 orderly manner as soon as practicable after such determination.

6 (c) After the referendum to be conducted five years
7 following the initial referendum, the Secretary may conduct a
8 referendum on the request of the Board, or on 5-year intervals
9 by petition from 25% of producers who have paid assessments
10 under the program; provided, however, that no more than 30%
11 of producers from any one state shall, for the purpose of
12 initiating a referendum by petition, be counted toward the 25%
13 of producers. The referendum will be conducted among
14 producers who have paid assessments under the program, with
15 each plant receiving one vote each. The Secretary shall
16 suspend or terminate collection of assessments under the order
17 within six months after the Secretary determines that
18 suspension or termination of the order is favored by a majority
19 of the plants voting in the referendum and shall terminate or
20 suspend the order in an orderly manner as soon as practicable
21 after such determination.

22 (d) The Department shall be reimbursed from
23 assessments collected by the Board for any expenses incurred

1 by the Department in connection with conducting any
2 referendum under this Section, except for the salaries of
3 Government employees. Any referendum conducted under this
4 Section shall be conducted on a date established by the
5 Secretary, whereby ready mixed concrete producers shall
6 certify that they were engaged in the production of ready mixed
7 concrete during the representative period and, during such
8 representative period, shall be provided an opportunity to vote
9 in the referendum.

10 (e) In the event the order is terminated, the Secretary
11 shall suspend the collection of assessments as provided herein,
12 and all remaining assessment funds shall be returned on a pro-
13 rata basis to producers who have paid assessments under the
14 order in the calendar year prior to termination, following the
15 payment of all non-cancellable obligations incurred by the
16 Board and all costs related to terminating the order and
17 winding down the Board in an orderly manner.

18 **SEC. 7. ENFORCEMENT.**

19 (a) If the Secretary believes that the administration and
20 enforcement of this Act or an order would be adequately served
21 by such procedure, following an opportunity for an
22 administrative hearing on the record, the Secretary may:

1 (1) Issue an order to restrain or prevent a person from
2 violating an order; and

3 (2) Assess a civil penalty of not more than \$5,000 for
4 violation of such order.

5 (b) The district courts of the United States are vested
6 with jurisdiction specifically to enforce, and to prevent and
7 restrain a person from violating, an order or regulation made or
8 issued under this Act.

9 (c) A civil action authorized to be brought under this
10 Section shall be referred to the Attorney General for
11 appropriate action.

12 **SEC. 8. INVESTIGATION AND POWER TO SUBPOENA.**

13 (a) The Secretary may make such investigations as the
14 Secretary deems necessary for the effective administration of
15 this Act or to determine whether any person subject to this Act
16 has engaged or is about to engage in any act that constitutes or
17 will constitute a violation of this Act, the order, or any rule or
18 regulation issued under this Act. For the purpose of such
19 investigation, the Secretary may administer oaths and
20 affirmations, subpoena witnesses, compel their attendance, take
21 evidence, and require the production of any records that are
22 relevant to the inquiry. The attendance of witnesses and the

1 production of records may be required from any place in the
2 United States.

3 (b) In case of contumacy by, or refusal to obey a
4 subpoena to, any person, the Secretary may invoke the aid of
5 any court of the United States within the jurisdiction of which
6 such investigation or proceeding is carried on, or where such
7 person resides or carries on business, in requiring the
8 attendance and testimony of the person and the production of
9 records. The court may issue an order requiring such person to
10 appear before the Secretary to produce records or to give
11 testimony regarding the matter under investigation. Any failure
12 to obey such order of the court may be punished by such court
13 as a contempt thereof. Process in any such case may be served
14 in the judicial district in which such person is an inhabitant or
15 wherever such person may be found.

16 **SEC. 9. SEPARABILITY.**

17 If any provision of this Act or the application thereof to any
18 person or circumstances is held invalid, the validity of the
19 remainder of this Act and of the application of such provision
20 to other persons and circumstances shall not be affected
21 thereby.

22 **SEC. 10. ADMINISTRATIVE PROVISIONS.**

1 (a) Nothing in this Act shall be construed to require the
2 Board to disclose information or records under Section 552 of
3 Title 5, United States Code.

4 (b) The provisions of this Act applicable to the order
5 shall be applicable to amendments to the order.

6 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

7 There are authorized to be appropriated such sums as may
8 be necessary to carry out this Act. Sums appropriated to carry
9 out this Act shall not be available for payment of the expenses
10 or expenditures of the Board in administering any provisions of
11 the order issued under Section 4(c) of this Act.