



December 1, 2016

The Honorable John Thune  
Chairman, Committee on Commerce, Science, and Transportation  
United States Senate  
Washington, D.C. 20510-6275

Dear Mr. Chairman,

This letter provides the Department of Commerce's (Department) views on H.R. 985, the Concrete Masonry Products Research, Education, and Promotion Act of 2015, as passed by the House of Representatives on November 14, 2016. The Department opposes the bill and strongly believes that it is not an appropriate federal responsibility to create and administer a commodity research and promotion program, also known as a check-off program, for the concrete industry. The Department does not believe that creating a check-off program, with its associated enforcement and oversight activities, is in the best interest of the industry, the Department, or the public, and recommends instead that the industry achieve its research, education, and promotion priorities through voluntary mechanisms. In addition, the Administration believes the legislation raises antitrust concerns. We also have a number of technical concerns, primarily with regard to how funding and reimbursement of the costs of setting up and administering the program would be handled.

The bill would establish the Concrete Masonry Products Board (Board), upon approval of a referendum by producers of masonry products made from concrete. The Board would develop research and education programs as well as programs to promote concrete masonry products (CMP) in domestic and foreign markets. Funding for those activities would be derived from mandatory assessments on CMP manufacturers. The bill directs the Secretary of Commerce to organize and hold the referendum and would require the Secretary to assume a significant ongoing oversight and enforcement role.

While the Department supports the efforts of the masonry industry to coordinate research, education, and promotion activities for the industry, we believe these efforts can be undertaken most efficiently by the private sector. Thus, rather than Congress directing the Department of Commerce to oversee marketing, education, and research by the concrete masonry industry, the industry should instead organize voluntary cooperative arrangements to encourage these activities.

In addition, the Administration has concerns that, if enacted, the bill may create a risk of anticompetitive effects. By imposing a uniform per-unit assessment on concrete masonry products manufacturers to fund an industry-operated program of research and promotion of concrete masonry products, the bill may reduce manufacturers' incentives to compete independently in research and promotion. Furthermore, the creation of a Board consisting of industry-nominated representatives to manage the program may create undue opportunities for



the formation of anticompetitive agreements among manufacturers, such as collusion or coordination with respect to output, price, or customers served. The bill also contains overly broad confidentiality provisions that could prohibit appropriate disclosures to law enforcement agencies for law enforcement purposes, as well as in law enforcement proceedings.

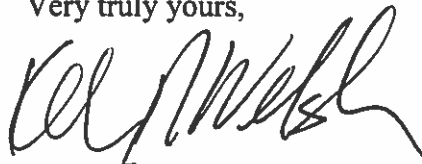
We also note that other competing construction material producers might be concerned about creation of such a program that could be viewed as unfairly favoring one type of construction material over others. This would likely lead to requests from other competing construction material producers to establish their own check-off programs resulting in an ever-expanding number of check-off programs that could end up housed within the Department.

Moreover, we have identified a number of challenges to implementation of this program within the Department of Commerce. First, the Department does not have the expertise, staff, or the resources to establish and administer a check-off program. There are no bureaus within the Department that currently administer commodity check-off or similar programs, or have the relevant expertise to do so. Nor does such a program fit within the current mandates or missions of any of our bureaus. The oversight and enforcement responsibilities proposed by the bill would be extensive and would detract from the core work of the Secretary of Commerce to promote job creation, economic growth, sustainable development and improved standards of living for all Americans.

In addition, although the legislation provides that the cost of the Department's activities in setting up and carrying out this program are intended to be reimbursed using assessments collected by the Board, it is unclear how that process would work in practice. For example, the legislation does not provide for reimbursement of the Department's costs if the proposed order fails to be approved by a majority of the votes cast in the referendum and no assessments are collected.

We appreciate the opportunity to present these views on H.R. 985. The Office of Management and Budget has advised that there is no objection to the transmittal of these views from the standpoint of the Administration's program. If you have any further questions, please call me or Steve Haro, Assistant Secretary for Legislative and Intergovernmental Affairs, at (202) 482-3663.

Very truly yours,



Kelly R. Welsh

cc: The Honorable Bill Nelson  
Ranking Member