

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
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MEMORANDUM

July 26, 2017

To: Committee on Energy and Commerce Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Full Committee Markup of H.R. 767, the “Stop, Observe, Ask and Respond (SOAR) to Health and Wellness Act of 2017;” H.R. 772, the “Common Sense Nutrition Disclosure Act of 2017;” H.R. 880, the “Military Injury Surgical Systems Integrated Operationally Nationwide to Achieve ZERO Preventable Deaths Act (MISSION ZERO);” H.R. 931, the “Firefighter Cancer Registry Act of 2017;” H.R. 2422, the “Action for Dental Health Act of 2017;” H.R. 3387, the “Drinking Water System Improvement Act;” and H.R. 3388, the “Designating Each Car’s Automation Level Act”

On **Thursday, July 27, 2017, at 10:00 a.m. in room 2123 of the Rayburn House Office Building**, the Committee will hold a markup of seven bills: H.R. 767, the “Stop, Observe, Ask and Respond (SOAR) to Health and Wellness Act of 2017;” H.R. 772, the “Common Sense Nutrition Disclosure Act of 2017;” H.R. 880, the “Military Injury Surgical Systems Integrated Operationally Nationwide to Achieve ZERO Preventable Deaths Act (MISSION ZERO);” H.R. 931, the “Firefighter Cancer Registry Act of 2017;” H.R. 2422, the “Action for Dental Health Act of 2017;” H.R. 3387, the “Drinking Water System Improvement Act;” and H.R. 3388, the “Designating Each Car’s Automation Level Act.”

I. H.R. 767, SOAR TO HEALTH AND WELLNESS ACT OF 2017

Rep. Cohen (D-TN), Rep. Cardenas (D-CA), Rep. Kinzinger (R-IL), and Rep. Wagner (R-MO) introduced H.R. 767, the SOAR to Health and Wellness Act on January 31, 2017. This bill directs the Department of Health and Human Services (HHS) to establish a pilot program to train health care providers to identify potential human trafficking victims and provide such victims with coordinated care tailored to their circumstances. This bill would promote the implementation of the “Stop, Observe, Ask, and Respond to Health and Wellness Training”

(SOAR) program in order for health care and social service providers to better recognize and respond to victims of human trafficking, develop protocols for referring potential victims to other providers, and support training in diverse health care settings. The program would be authorized through Fiscal Year 2022.

II. H.R. 772, COMMON SENSE NUTRITION DISCLOSURE ACT OF 2017

Introduced by Rep. McMorris Rodgers (R-WA), H.R. 772, the Common Sense Nutrition Disclosure Act of 2017, would make a number of changes to the final rule by the Food and Drug Administration (FDA) to clarify certain menu labeling disclosure requirements for restaurants and similar retail food establishments. In the 114th Congress, the full Committee marked up and ordered this legislation to be reported to the House. An amended version of that bill, H.R. 2017, later passed the House by a vote of 266-144, with one member voting Present on February 12, 2016.

The menu labeling requirements were promulgated pursuant to Section 4205 of the Affordable Care Act (ACA), which required national nutrition labeling for standard menu items at restaurants and retail food establishments with 20 or more locations, doing business under the same name, and offering the same menu items.¹ Section 4205 also required FDA to issue regulations to carry out the menu labeling provision and establish standards for determining and disclosing nutrition information for standard menu items, as well as other requirements. On May 1, 2017, FDA extended the compliance date for the final menu labeling rule from May 5, 2017 to May 7, 2018.

H.R. 772 would change how restaurants and retail food establishments are to provide calorie information. The bill would allow certain establishments to provide calorie information on a remote-access menu such as through a website. It also defines “menu” or “menu board” as the one listing of items which the restaurant or similar retail food establishment believes to be, or designates as, the primary listing from which customers make a selection. Additionally, the bill would permit restaurants and retail food establishments to provide calorie information for variable menu items² in ranges, averages, individual labeling of flavoring or components, or labeling of a present standard build (the version of a menu item most commonly ordered by customers). H.R. 772 would also require FDA to issue new proposed regulations within one year. The regulations promulgated under the bill or the clause of the Federal Food, Drug and Cosmetic Act amended by the bill could not take effect earlier than two years from when the regulations are made final.

III. H.R. 880, MISSION ZERO ACT

¹ The Affordable Care Act, Section 4205, Nutrition Labeling of Restaurant Menus and Food Sold in Vending Machines, (online at <https://www.gpo.gov/fdsys/pkg/PLAW-111publ148/pdf/PLAW-111publ148.pdf>).

² Variable menu items are defined as items that come in different flavors, varieties, or combinations, but are listed as a single menu item (i.e. ice cream, pizza, doughnuts).

Rep. Burgess (R-TX), Rep. Green (D-TX), Rep. Castor (D-FL), and Rep. Hudson (R-NC) introduced H.R. 880, the Military Injury Surgical Systems Integrated Operationally Nationwide to Achieve ZERO Preventable Death or MISSION ZERO Act on February 6, 2017. This bill will promote the development of partnerships between civilian trauma centers and our military to increase the number of trauma care providers available in civilian settings, maintain the combat readiness of military trauma teams and providers, and ensure a learning health system where knowledge is shared between civilian and combat trauma settings. This bill would create a grant program that awards funding to trauma centers to offset costs associated with integrating trauma care teams and providers into awardees' care teams.

IV. H.R. 931, FIREFIGHTER CANCER REGISTRY ACT

Rep. Collins (R-NY) and Rep. Pascrell (D-NJ) introduced H.R. 931, the Firefighter Cancer Registry Act of 2017 on February 7, 2017. The purpose of this bill is to improve our understanding of the causes of elevated cancer risks associated with the firefighting occupation, and inform interventions that help reduce such risks. This bill would require the Centers for Disease Control and Prevention (CDC) to develop and maintain a voluntary cancer registry of firefighters.

V. H.R. 2422, ACTION FOR DENTAL HEALTH ACT OF 2017

Rep. Kelly (D-IL) and Rep. Simpson (R-ID) introduced H.R. 2422, the Action for Dental Health Act on May 15, 2017. The bill would reauthorize and add new authorities to the CDC's Oral Health Promotion and Disease Prevention grants at \$18 million for each of fiscal years 2018 through 2022. It would permit eligible entities, such as nonprofit dental societies, state programs, or dental schools, to apply for CDC funding to develop or implement initiatives to reduce barriers to care and improve oral health for underserved populations. For example, eligible entities could establish oral health education programs or community dental health coordinator programs to help connect patients to dental care.

The bill would also reauthorize and add new authorities to the Health Resources and Services Administration's (HRSA) Grants to States to Support Oral Health Workforce Activities. It would permit states and territories to apply for grant funding through HRSA for initiatives to advance the provision of dental care for underserved populations. For example, states could apply for HRSA funding to establish dental homes for vulnerable groups such as children or the disabled, provide dental care to nursing home residents, or establish emergency room referral programs so that patients can receive dental care in a more appropriate setting.

VI. H.R. 3387, DRINKING WATER SYSTEM IMPROVEMENT ACT

H.R. 3387 was introduced on July 25, 2017 following an Environment Subcommittee markup on July 13, 2017 and a legislative hearing on May 19, 2017. The introduced bill is expanded slightly from the discussion draft that was voted out of Subcommittee, and is described in detail below.

At the Subcommittee markup, several bipartisan amendments were adopted to address shortcomings with the draft legislation. These amendments added prevailing wage requirements, a minimum set aside for disadvantaged communities, and provisions to reduce lead contamination in drinking water through replacement of lead-containing school drinking fountains and an assessment of costs to replace lead service lines. There was also bipartisan agreement to continue working on several unresolved issues prior to the Committee markup. In keeping with that agreement, a new provision for improving the effectiveness and frequency of consumer confidence reports has been added to the bill.

At the full Committee markup, a manager's amendment is expected that will address the remaining outstanding issues that were discussed at the Subcommittee markup - expanded monitoring for unregulated contaminants, improving drinking water system security and resiliency, and promoting consolidation or restructuring of frequently non-compliant public water systems.

A. The Drinking Water State Revolving Fund

The Safe Drinking Water Act (SDWA) Amendments of 1996 created the Drinking Water State Revolving Fund (SRF), which is the primary mechanism for federal drinking water infrastructure assistance.³ The SRF provides grants to states, which in turn provide loans and grants for water systems. Funds from the SRF are allotted to the states based on need, with no state receiving less than one percent of the fund.⁴ Each state then administers its fund according to an approved intended use plan.

The statute sets three priorities for the use of these funds - addressing the most serious risks to human health, ensuring compliance with SDWA requirements, and assisting systems most in need on a per-household basis. The statute also confers discretionary authority on the states to provide additional assistance to disadvantaged systems, including zero interest loans and principal forgiveness.⁵

The Environmental Protection Agency's (EPA's) most recent needs assessment for drinking water infrastructure estimated that \$384 billion will be necessary for infrastructure repairs through 2030.⁶ This amount grew significantly since EPA's last assessment, demonstrating that investment has not kept pace with need.⁷ Nevertheless, the SRF has not been reauthorized since it expired in 2003.

B. Section by Section of the Drinking Water Systems Improvement Act

³ Safe Drinking Water Act Amendments of 1996, Pub. L. No. 104-182 (1996).

⁴ Safe Drinking Water Act §1452, 42 U.S.C. 300j-12.

⁵ Safe Drinking Water Act §1452(d).

⁶ U.S. Environmental Protection Agency, Drinking Water Infrastructure Needs Survey and Assessment, Fifth Report to Congress (Apr. 2013) (EPA-816-R-13-006) (water.epa.gov/grants_funding/dwsrf/index.cfm).

⁷ Id.

The Drinking Water Systems Improvement Act would reauthorize the Drinking Water SRF, and contains other important provisions to address critical water infrastructure needs. A brief summary of the draft's provisions follows.

Section 1. Short Title.

Section 2. Improved Consumer Confidence Reports. This section, added since the Subcommittee markup, requires the Administrator to revise the regulations governing consumer confidence reports to improve their readability and accuracy and to require twice yearly reports for large water systems. The section also requires that the new regulations explicitly require reporting of corrosion control efforts.

Section 3. Contractual Agreements. This section broadens slightly the types of restructuring that can qualify a water system for a safe harbor from enforcement actions. The section does not introduce new incentives or requirements for restructuring.

Section 4. Improved Accuracy and Availability of Compliance Monitoring Data. This section would require the EPA Administrator to develop a strategic plan for improving the accuracy and availability of compliance monitoring data submitted by public water systems and states. This section responds to concerns raised by Democratic members at the legislative hearing.

Section 5. Asset Management. This section draft adds references to asset management in a section of the SDWA on state capacity development strategies, which already exist. In response to questions for the record of the legislative hearing, the EPA stated that this section would not require states to amend those strategies to reflect the changes, but that some states might do so. This section also requires EPA to review and update its guidance on asset management every five years.

Section 6. Authorization for Grants for State Programs. This section authorizes \$150 million for each of fiscal years 2018 through 2022 for Public Water System Supervision grants. This is an increase over the prior authorization level of \$100 million annually from 1997 to 2003.

Section 7. State Revolving Loan Funds.

Subsection (a) Use of Funds. This subsection expands the use of state revolving loan funds (SRF) to include replacing or rehabilitating aging treatment, storage and distribution facilities. A similar provision was included in the Assistance, Quality, and Affordability (AQUA) Act and the Safe Drinking Water Act Amendments of 2017.

Subsection (b) American Iron and Steel Products. This subsection requires the use of American iron and steel products on all SRF projects for the duration of the bill's authorization. A similar provision was included in the AQUA Act and the Safe Drinking Water Act Amendments of 2017, although those bills made the requirement permanent.

Subsection (c) Evaluation. This subsection would block large water systems from receiving SRF loans, unless they certify that they have considered the costs and effectiveness of their planned projects. This language mirrors changes made to the Clean Water SRF in 2014.

Subsection (d) Prevailing Wages. This section, added as a bipartisan amendment at the Subcommittee markup, requires that laborers and mechanics employed under a project financed with funds from the SRF are paid at a rate not less than the prevailing wage in the area. A similar provision was included in the AQUA Act and the Safe Drinking Water Act Amendments of 2017.

Subsection (e) Assistance For Disadvantaged Communities. This subsection increases the amount of loan subsidies states can provide to disadvantaged communities from 30 to 35 percent. It also includes a minimum funding level of 6% for assisting these communities, a requirement that was added through a bipartisan amendment at the Subcommittee markup. A similar provision setting a minimum level was included in the AQUA Act and the Safe Drinking Water Act Amendments of 2017.

Subsection (f) Types of Assistance. This subsection increases the time period over which principal and interest payments on a loan can be deferred, from 12 to 18 months, and extends the deadline by which the loan must be paid back in full, from 30 to 35 years. This deadline is extended further to 40 years for disadvantaged communities.

Subsection (g) Needs Survey. This subsection, added through a bipartisan amendment at the Subcommittee markup, will require future drinking water needs assessments to include costs associated with lead service line replacement.

Subsection (h) Other Authorized Activities. This subsection reauthorizes a provision in SDWA that allows states to use a portion of their SRF capitalization grants to assess source water protection.

Subsection (i) Authorization for Capitalization Grants to States for State Drinking Water Treatment Revolving Loan Funds. This subsection authorizes funding for SRF capitalization grants at a total of \$8 billion over fiscal years 2018 through 2022.

Subsection (j) Best Practices For Administration of State Revolving Loan Funds. This subsection requires the Administrator to collect and disseminate information on best practices for administration of SRF programs. This includes efforts to streamline the process of applying for loans, programs to assist with completion of application, incentives for partnerships with small public water systems, and practices that promote the timely use and effective management of SRF funds. A similar provision was included in the AQUA Act and the Safe Drinking Water Act Amendments of 2017.

Section 8. Authorization for Source Water Petition Programs. This section authorizes \$5 million for each of fiscal years 2018 through 2022 for the Source Water Petition Program. This program allows public water systems to submit petitions to enter into partnership with their

State to assist in source water quality protection, but is limited to contaminants with national drinking water standards.

Section 9. Review of Technologies. This section requires the Administrator to review available methods and technologies for water system maintenance and operation, including corrosion control technologies. The section authorizes \$10 million in fiscal year 2018 for this review. A similar provision was included in the AQUA Act and the Safe Drinking Water Act Amendments of 2017.

Section 10. Drinking Water Fountain Replacement for Schools. This section, added through a bipartisan amendment at the Subcommittee markup, creates a grant program to help reduce lead in school drinking water. It authorizes \$5 million for each of five years for monitoring and reporting of lead levels in school drinking water and for the replacement of drinking water fountains that were manufactured prior to 1988. This provision was included in several Democratic bills introduced this Congress.

Section 11. Source Water. This section amends the Emergency Planning and Community Right-to-Know Act of 1986 to require notification to community water systems following a chemical release into their source water. No information would be provided for planning purposes, before a release occurs.

Section 12. Report on Federal Cross-Cutting Requirements. This section, added through a bipartisan amendment at the Subcommittee markup to replace a problematic provision in the original discussion draft, commissions a GAO report to identify instances where demonstration of compliance with a State or local environmental law may be equivalent to compliance with a Federal cross-cutting requirement.

VII. H.R. 3388, DESIGNATING EACH CAR'S AUTOMATION LEVEL ACT

The DECAL Act was one section of the discussion draft that was marked up at the Subcommittee markup on July 19, 2017. However, it is expected that the DECAL Act will be replaced with an amendment in the nature of substitute that is similar to the draft unanimously passed out of subcommittee on voice vote with changes reflecting ongoing negotiations on the overall draft bill.

A summary of the expected substitute amendment follows:

Section 1. Table of Contents.

Section 2. NHTSA Authority and State Preemption for Autonomous Motor Vehicles. This section preempts state laws or regulations regarding the design and construction of highly automated vehicles (HAVs). It protects States' authority to regulate, among other things, vehicle registration, licensing, insurance, congestion management, and traffic laws unless the law or regulation is effectively an unreasonable restriction on the design or construction of HAVs. This section remains under discussion at this time.

Section 3. Updated or New Federal Motor Vehicle Safety Standards for Highly Automated Vehicles.

Subsection (a). This subsection directs the Secretary of Transportation to complete a rulemaking to require automakers and other entities developing HAVs or automated driving systems to submit safety assessment certifications regarding how they are addressing safety. Until the final rule is issued, safety assessment letters are required as contemplated by the Federal Automated Vehicles Policy issued in September 2016, or any successor guidance issued on HAVs that includes a safety assessment letter.

Subsection (b). This subsection directs the Secretary to review current Federal Motor Vehicle Safety Standards (FMVSS) and research possible new FMVSS to accommodate the deployment of HAVs and to ensure safety and security.

Subsection (c). This subsection directs the Secretary to make available to the public a rulemaking and safety priority plan that details the safety priorities of the National Highway Traffic Safety Administration (NHTSA) with regard to HAVs and other safety initiatives. The plan must be updated at least every two years.

Subsection (d). This subsection directs the Secretary to initiate the first rulemaking proceeding within 18 months of the enactment of the Act and to continue rulemaking in accordance with the rulemaking and safety priority plan.

Section 4. Cybersecurity of Automated Driving Systems. Under this section, a manufacturer may not sell or import any HAVs, vehicles that perform partial driving automation, or automated driving systems unless the person has developed a cybersecurity plan. The plan must include a written cybersecurity policy that includes a process for identifying and mitigating reasonably foreseeable vulnerabilities and a process for taking preventive and corrective action to mitigate against vulnerabilities; the identification of an employee with responsibility for the management of cybersecurity; a process for limiting access to automated driving systems; and a process for employee training and supervision.

Section 5. General Exemptions. This section authorizes automakers to obtain exemptions from FMVSS to make easier the development or field evaluation of an HAV, or a feature of an HAV if the vehicle or the feature provides a safety level at least equal to the standard for which exemption is sought, or has an overall safety level at least equal to nonexempt vehicles. This section expands the number of cars permitted to be exempted under certain conditions from 2,500 to 100,000 per manufacturer for all exemptions in a year. Additionally, this section expands the number of years for which exemptions may be granted from two years to five years. Both the number of vehicles and the number of years are still under discussion as the draft moves forward. With some exceptions, exemptions from crashworthiness standards would be prohibited under this section until one year after the Secretary issues both the rule on the safety assessment certification and the rulemaking and safety priority plan. Manufacturers granted an exemption under this section must also submit information about crashes involving exempted vehicles.

This section further requires the Secretary to publish in the Federal Register a notice that details the process and analysis used for consideration of exemption or renewal applications.

Section 6. Motor Vehicle Testing or Evaluation. This section expands permissions created in the Fixing America's Surface Transportation Act (FAST Act), signed into law in the 114th Congress, for testing vehicles not in compliance with FMVSS to equipment manufacturers, suppliers, universities, and new entrants to the HAV market.

Section 7. Information On Highly Automated Driving Systems Made Available To Prospective Buyers. This section directs the Secretary to conduct research to determine the most effective method and terminology for informing consumers of the capabilities of Level 2 through Level 5 automated vehicles. After the completion of the research, the Secretary is directed to initiate a rulemaking proceeding to require manufacturers to inform consumers of the capabilities and limitations of a vehicle's driving automation system.

Section 8. Highly Automated Vehicles Advisory Council. This section directs the Secretary to establish a Federal Automated Vehicle Advisory Council in accordance with the Federal Advisory Committee Act. Membership of the Council would include a diverse group representative of all interests. The Council may form subcommittees as needed to present best practices or recommendations to the Secretary regarding the effects of the development and deployment of HAVs with respect to: (1) mobility access for the disabled community; (2) mobility access for senior citizens and other underserved populations; (3) cybersecurity for HAVs; (4) the sharing of certain relevant information regarding HAV testing and deployment that does not risk public disclosure of proprietary information; (5) labor and employment issues; (6) environmental issues; (7) privacy and security of information collected by HAVs; (8) the safety of passengers in HAVs as cabin seating changes over time, and (9) the evaluation of operational limitations in rural, remote, mountainous, or unmapped areas. The Council would be required to submit its recommendations to Congress. The draft terminates the Council after six years.

Section 9. Rear Seat Occupant Alert System. This section directs the Secretary to issue a final rule within three years requiring all new cars to be equipped with a system for alerting the driver to check the backseat for children or others before leaving the car.

Section 10. Headlamps. This section directs the Secretary to conduct research regarding the development of updated safety standards for headlights. If the Secretary determines that revision to the standards is necessary, a rulemaking proceeding must be initiated after completion of the research. If the Secretary determines that revision to the standards is not necessary, the Secretary shall submit a report to Congress describing the reasons for not revising the standards.

Section 11. Definitions. The term highly automated vehicle is defined as a vehicle with an automated driving system, which is Level 3 or higher, as defined by SAE International. Other definitions in the bill of the terms 'automated driving system,' 'dynamic driving task,' and 'operational design domain' mirror definitions of terms established by SAE International in Recommended Practice Report J3016 published in September 2016. The definition provides for

revision of definitions through rulemaking if SAE International revises those definitions and notifies the Secretary of the revisions.