

ONE HUNDRED ELEVENTH 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  
Minority (202) 225-3641

**MEMORANDUM**

**May 21, 2010**

**To: Members of the Committee on Energy and Commerce**

**Fr: Committee on Energy and Commerce Democratic Staff**

**Re: Full Committee Markup of H.R. 847, the “James Zadroga 9/11 Health and Compensation Act”; H.R. 4805, the “Formaldehyde Standards for Composite Wood Products Act”; H.R. \_\_\_\_, the “Motor Vehicle Safety Act of 2010”; and H.R. 5320, the “Assistance, Quality, and Affordability Act of 2010”**

On Tuesday May 25, 2010, at 10:00 a.m., continuing to Wednesday, May 26, 2010, in room 2123 Rayburn House Office Building, the Committee on Energy and Commerce will meet in open markup session to consider the following bills:

- **H.R. 847**, the “James Zadroga 9/11 Health and Compensation Act of 2010”, as amended by the Subcommittee on Health on March 15, 2010;
- **H.R. 4805**, the “Formaldehyde Standards for Composite Wood Products Act”;
- **H.R. 5320**, the “Assistance, Quality, and Affordability Act of 2010”, as amended by the Subcommittee on Energy and Environment on May 19, 2010; and
- **H.R. \_\_\_\_**, the “Motor Vehicle Safety Act of 2010”.

## **I. H.R. 847, THE “JAMES ZADROGA 9/11 HEALTH AND COMPENSATION ACT”**

H.R. 847, the “James Zadroga 9/11 Health and Compensation Act”, was forwarded to the full Committee by the Subcommittee on Health on March 16, 2010. The Committee on Energy and Commerce has exclusive jurisdiction over Title I, which would authorize health programs to provide monitoring and treatment of first responders and community residents who were affected by exposure to the toxic plume resulting from the September 11, 2001, attacks on the World Trade Center. Title II of the bill, which would revise the Victims Compensation Fund (VCF) established after the September 11 attacks, is under the exclusive jurisdiction of the Committee on the Judiciary, which ordered the bill reported, as amended, on July 29, 2009.

### **A. Background**

#### **1. First Responder Program**

Soon after the September 11 attacks on the World Trade Center (WTC), the City of New York Fire Department (FDNY) and Mount Sinai School of Medicine received federal funding to perform medical screening and surveillance of first responders (e.g., firefighters, police, and emergency medical personnel) living in the New York City/New Jersey Metropolitan Area. In addition, the New York City Department of Health and Mental Hygiene (NYC DoHMH) began the World Trade Center Health Registry, a list of the individuals at risk for possible near- and long-term physical and mental health effects from the disaster.

The registry was initially established with funding from the Agency for Toxic Substances and Disease Registry (ATSDR). In FY2009, the administration of the WTC Health Registry was transferred within the Centers for Disease Control and Prevention (CDC) from ATSDR to the National Institute for Occupational Safety and Health (NIOSH). By the 2004 deadline for new registrants, the WTC Health Registry had enrolled more than 70,000 residents, workers, students, and responders.

In FY2003, Congress began appropriating funds for what is now called the WTC Medical Monitoring and Treatment Program. The FY2003 appropriation provided funds for medical monitoring of WTC responders. This program provided and collected data on periodic physical and mental health assessments designed to identify acute and latent health effects that are related to response efforts. In FY2006, Congress appropriated additional funds to expand the program to include treatment, as well as monitoring, of conditions related to response efforts. Until that point, treatment for first responders had been funded by FDNY and the American Red Cross.

There are six centers of excellence in the NYC/NJ metropolitan area where first responders receive treatment and monitoring under the WTC Medical Monitoring and Treatment Program. The health conditions for which treatment is provided include

upper- and lower-respiratory illnesses, sinus and gastrointestinal problems, musculoskeletal conditions, and mental health conditions such as Post Traumatic Stress Disorder, anxiety, and depression. These centers are: Bellevue/New York University; City of New York/Queens College; FDNY; Mt. Sinai; State University of New York at Stony Brook; and University of Medicine and Dentistry of New Jersey. In addition to the six clinical centers, FDNY and Mt. Sinai each host a data and coordination center for patient tracking.

As of September 30, 2009, 55,331 responders throughout the United States had met the eligibility criteria for the program and had enrolled on the rosters for the WTC Medical Monitoring and Treatment Program. Most of the enrolled responders reside within the greater New York/New Jersey metropolitan vicinity. However, 4,491 enrolled responders reside across the United States. Of the 55,331 responders, 44,754 have received an initial monitoring examination.

## **2. Community Program**

In September 2006, the City of New York established the WTC Environmental Health Center at Bellevue Hospital to provide comprehensive physical and mental health treatment to all individuals with suspected WTC-related health problems. The program absorbed a pre-existing WTC-related program that was started in 2005 with a grant from the American Red Cross. In September 2007, the Center was expanded to two additional locations at Gouverneur Healthcare Services in Lower Manhattan and Elmhurst Hospital Center in Queens.

On September 30, 2008, CDC awarded a three-year grant (\$10 million per year) to the New York City Health and Hospitals Corporation (HHC), which oversees Bellevue Hospital and Gouverneur Healthcare Services, to provide screening, monitoring, referral, and treatment for lower Manhattan workers, residents, students, and others in the community directly affected by the September 11 attacks. These people are suffering from conditions similar to the conditions described above affecting the first responders. At the time federal funding began, there were 2,759 people enrolled in the community program. There were 4,500 people enrolled in the community program as of February 12, 2010.

The President's FY2011 Budget requests \$150.1 million for these programs, an increase of \$69.4 million from the FY2010 funding level of \$ 70.7 million.

### **B. Summary of the Legislation**

While funds have been appropriated for one or more of the WTC health programs since FY2003, there is no statutory authorization for this program. On February 4, 2009, Reps. Maloney and Nadler introduced H.R. 847. Title I of the bill would amend the Public Health Service Act to establish a World Trade Center Health Program within NIOSH. Title II would modify and extend the September 11 Victim Compensation Fund of 2001.

The Subcommittee on Health held a hearing on H.R. 847 on April 22, 2009, at which testimony was heard from several of the bill's sponsors, a participant in the responder program, physicians treating patients in the responder and community programs, a union representative, and the Office of the Mayor of New York City. The Subcommittee on Health held a markup of this legislation on March 16, 2010, and approved by a vote of 25-8 to forward the bill, amended, to the full Committee.

As approved by the Subcommittee on Health, the bill would establish a World Trade Center Health Program within NIOSH. The program is divided into three components: a first responder program, a survivor program, and a national program.

The first responder program is designed for first responders who worked at the World Trade Center site in the immediate aftermath of the attack. First responders are eligible for an initial health screening, medical monitoring, and treatment of World Trade Center-related health conditions.

The survivor program is designed for residents and people who worked in the direct vicinity of the World Trade Center site. This program provides an initial health screening, medical monitoring for survivors who have symptoms of World Trade Center-related conditions, and treatment for World Trade Center-related conditions.

The national program is designed for first responders and survivors who would be eligible for either the first responder or the survivor program, but who do not live in or near New York City.

Monitoring and treatment for all three programs would be provided through Centers of Excellence. Responders and survivors who are eligible for the program would not be required to pay any co-pays or other costs associated with monitoring and treatment. The WTC Health Program would generally be secondary payer in the case of individuals with private or public health insurance coverage.

The WTC Health Program will provide monitoring and treatment for World Trade Center-related conditions, which are identified in the legislation. The bill also establishes an administrative process to add new conditions to the list as the science develops. In addition, the bill establishes a program to conduct research into World Trade Center-related conditions.

The bill would provide permanent, mandatory funding for the WTC Health Program through a WTC Health Program Fund. For the initial 10-year period of the Fund, FY2011 through FY2020, funding would be capped at a total of \$5.1 billion. Of the amount spent by the Fund, 90% would be paid by the federal government and 10% by New York City. The federal contribution over this period could not exceed \$4.59 billion; the New York City contribution could not exceed \$500 million. In FY2021 and thereafter, the total amount paid out by the Fund could not exceed \$700 million per year, adjusted annually by CPI.

## II. H.R. 4805, THE “FORMALDEHYDE STANDARDS FOR COMPOSITE WOOD PRODUCTS ACT”

Formaldehyde is a chemical known to have adverse effects on human health. For example, inhalation of formaldehyde can cause nose and throat irritation, difficulty breathing, burning sensations in the eyes and throat, chest pains, bronchitis, nausea, and severe allergic reactions.<sup>1</sup>

Despite its known harmful effects, formaldehyde is widely used in a variety of applications. The primary sources of formaldehyde in the air inside homes are composite wood products.<sup>2</sup> Many of these products — including cabinets, furniture, shelving, and doors — are made with adhesives that contain formaldehyde, which can be released into the home.<sup>3</sup> High levels of airborne formaldehyde have been detected inside homes, particularly in those with significant amounts of new composite wood products.<sup>4</sup> One well-known example of toxicity caused by formaldehyde emissions from composite wood products occurred following Hurricane Katrina in the trailers provided by the Federal Emergency Management Agency as temporary housing to victims of the storm.<sup>5</sup>

The State of California has limits on formaldehyde emissions in most composite wood products. In 2008, after several years of scientific review and rulemaking, the California Air Resources Board finalized rules establishing the standards, the first phase of which went into effect on January 1, 2009.<sup>6</sup> However, with the exception of outdated regulations for manufactured homes, formaldehyde emissions from composite wood products are not currently regulated by the federal government.<sup>7</sup>

H.R. 4805 establishes national limits on formaldehyde emissions from most composite wood products. It does so by requiring the Environmental Protection Agency (EPA) to issue regulations, not later than January 1, 2012, to apply the California standards to hardwood plywood, medium-density fiberboard, and particleboard that is sold, supplied, offered for sale, or manufactured anywhere in the United States. EPA’s

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<sup>1</sup> U.S. Environmental Protection Agency, *Indoor Air Quality: Formaldehyde* (online at: [www.epa.gov/iaq/formalde.html#Health%20Effects](http://www.epa.gov/iaq/formalde.html#Health%20Effects)) (accessed Mar. 15, 2010).

<sup>2</sup> U.S. Environmental Protection Agency, *Formaldehyde Emissions from Pressed Wood Products*, 73 Fed. Reg. 73620, 73622 (Dec. 3, 2008).

<sup>3</sup> *Id.*

<sup>4</sup> U.S. Environmental Protection Agency, *Indoor Air Quality: Formaldehyde* (online at: [www.epa.gov/iaq/formalde.html#Health%20Effects](http://www.epa.gov/iaq/formalde.html#Health%20Effects)) (accessed Mar. 15, 2010).

<sup>5</sup> See generally U.S. Centers for Disease Control, *Final Report on Formaldehyde Levels in FEMA-Supplied Travel Trailers, Park Models, and Mobile Homes* (July 2, 2008) (online at [www.cdc.gov/nceh/ehhe/trailerstudy/assessment.htm#final](http://www.cdc.gov/nceh/ehhe/trailerstudy/assessment.htm#final)).

<sup>6</sup> California Environmental Protection Agency Air Resources Board, *Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products* (online at [www.arb.ca.gov/regact/2007/compwood07/compwood07.htm](http://www.arb.ca.gov/regact/2007/compwood07/compwood07.htm)) (Apr. 2008).

<sup>7</sup> 24 C.F.R. 328049.

regulations must ensure that compliance with the federal standards is equivalent to compliance with the California standards, and must include provisions relating to labeling, chain of custody requirements, laminated products, third-party testing and certification, and other matters of implementation.

H.R. 4805 also requires that the U.S. Department of Housing and Urban Development update its regulations to reflect the standards established by EPA. Under the bill, the new limits will go into effect 180 days after EPA issues its regulations. Finally, EPA would have authority to make further limitations at any time subsequent to the initial rulemaking.

A companion bill was introduced in the Senate on September 10, 2009, by Senator Amy Klobuchar (D-MN), along with Senator Mike Crapo (R-ID). That bill, S. 1660, was considered by the Senate Committee on Environment and Public Works on December 10, 2009, and ordered to be reported favorably, with an amendment in the nature of a substitute. H.R. 4805, introduced by Reps. Doris Matsui (D-CA) and Vernon Ehlers (R-MI), reflects the changes made in that Senate substitute amendment.

The Subcommittee on Commerce, Trade, and Consumer Protection held a legislative hearing on H.R. 4805 on March 18, 2010. H.R. 4805 was initially slated for Subcommittee markup on March 24, 2010. At the request of the minority during markup, consideration of the legislation was postponed to allow for further discussion of several of the bill's provisions. Based on discussions since that time, Chairman Waxman is expected to offer a manager's amendment at the markup that makes several changes to the bill to address minority concerns. It is also expected that the minority will offer several amendments on issues where agreement has not been reached.

### **III. H.R. \_\_\_\_, THE "MOTOR VEHICLE SAFETY ACT OF 2010"**

The National Highway Traffic Safety Administration (NHTSA) has broad jurisdiction relating to motor vehicles. The agency was established in 1970 with a mission to save lives, prevent injuries, and reduce the economic cost of crashes through education, research, safety standards, and enforcement of laws, regulations, and standards. NHTSA conducts crash data analysis, research, and rulemaking for vehicle safety, and is responsible for overseeing issues related to fuel economy, child car seat performance, and tire safety. NHTSA is also responsible for collecting consumer complaint data, investigating potential vehicle defects, and overseeing recalls of vehicles with safety defects. In addition, the agency administers grants to states to enforce laws requiring seat belts and prohibiting drunk driving.

Over the past several months, increasing public attention has been paid to NHTSA's enforcement role. Following several recalls of Toyota vehicles due to concerns about unintended acceleration, the Subcommittee on Oversight and Investigations and the Subcommittee on Commerce, Trade, and Consumer Protection held hearings. During these hearings, members raised concerns about whether NHTSA has the resources and the capability to conduct in-depth investigations into new and

complex systems in vehicles, and to evaluate manufacturers' claims about the operations of their vehicles. The Motor Vehicle Safety Act of 2010 was drafted to address these and other concerns about the ability of NHTSA to ensure the safety of vehicles on the road.

H.R. \_\_\_\_, the Motor Vehicle Safety Act, aims to improve auto safety and strengthen NHTSA by (1) increasing the agency's expertise in vehicle electronics, and requiring new safety standards for cars run largely by electronic systems; (2) increasing transparency and accountability in auto safety; and (3) providing additional funding to the agency for its vehicle safety mission. The Subcommittee on Commerce, Trade, and Consumer Protection held a legislative hearing on the Motor Vehicle Safety Act on May 6, 2010, and held a markup on May 20, 2010.

#### **A. Vehicle Electronics and Safety Standards**

The legislation would strengthen NHTSA's expertise in electronics by creating a new Center for Vehicle Electronics and Emerging Technologies within NHTSA, to build, integrate, and aggregate the agency's expertise in new technologies across all vehicle safety components, including research and development, defects investigation, and rulemaking. It would also encourage engineering students interested in vehicle safety to work in government by establishing a fellowship program and encourage the Secretary to recruit from colleges and universities that serve primarily minority students.

The legislation would also mandate new safety standards related to electronics and unintended acceleration, including: a standard that vehicles be able to stop using normal braking pressure, even when the throttle is open; a standard that would ensure redundancies in electronic throttle controls; and a standard for electronic systems performance. The bill would also direct NHTSA to consider issuing a rule to prevent the accelerator pedal from being trapped under floor mats or other obstructions.

The legislation would further require that all vehicles be equipped with event data recorders that record crash information. The legislation would require that NHTSA issue a rule requiring such recorders be more robust, store data from a longer time period before and after a crash, store more data elements as appropriate, and make the information easily accessible to investigators.

#### **B. Transparency and Accountability**

The legislation would increase transparency by requiring that more "Early Warning Reporting" data be made available to the public. This data is submitted by the vehicle manufacturer to NHTSA every quarter. The legislation would further improve public accessibility to information on the NHTSA website, and would encourage consumers as well as manufacturer, dealer, and auto repair and mechanic personnel to report potential defects to the agency.

The legislation would enhance oversight of NHTSA's investigations by enabling a citizen who files a petition to NHTSA requesting a defect investigation to seek judicial review if the petition is rejected.

The legislation would also increase manufacturers' responsibility for information supplied to NHTSA by requiring a senior executive responsible for safety within the United States to certify the accuracy of information submitted to NHTSA in response to investigations.

### **C. Funding**

The legislation would establish a vehicle safety user fee paid by the vehicle manufacturer for each vehicle certified to meet the federal motor vehicle safety standards for sale in the United States. This fee, which would supplement appropriations, would support the agency's vehicle safety programs. In addition, the legislation would double the current authorization level for NHTSA's vehicle safety programs over three years.

### **D. Anticipated Amendments**

Several amendments were introduced and withdrawn at that Subcommittee markup session. It is expected that some of these amendments may be introduced again at full Committee. In addition, there may be a manager's amendment offered that includes provisions to increase NHTSA's enforcement authority by enhancing its ability to seek civil penalties and by providing NHTSA with the ability to force an immediate recall in the case of an imminent hazard.

## **IV. H.R. 5320, THE "ASSISTANCE, QUALITY, AND AFFORDABILITY ACT OF 2010"**

The Assistance, Quality, and Affordability (AQUA) Act of 2010 will reauthorize the drinking water state revolving fund (SRF) and amend the Safe Drinking Water Act (SDWA) to increase assistance to states, water systems, and disadvantaged communities, encourage good financial and environmental management of water systems, strengthen Environmental Protection Agency enforcement authority, reduce lead in drinking water, and strengthen the Endocrine Disruptor Screening Program (EDSP).

Our nation's water systems serve more than 272 million people and, according to the most recent needs survey carried out by EPA, are facing infrastructure bills with the potential to climb to \$334 billion over the next 17 years as our existing infrastructure ages. The drinking water SRF provides an important funding source to help meet those needs. Funds from the SRF are allotted to the states based on a needs survey, with no state receiving less than 1% of the fund.<sup>8</sup> Each state then administers its fund according to an approved intended use plan, providing loans to public water systems at below-market interest rates. The priorities for these funds under existing law are addressing the

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<sup>8</sup> 42 U.S.C. 300j-12.

most serious risks to human health, ensuring compliance with SDWA requirements, and assisting systems most in need on a per household basis.

The Subcommittee on Energy and Environment held a legislative hearing on the AQUA Act on May 13, 2010. At this hearing, witnesses representing rural and metropolitan water systems, and state administrators, expressed support for SRF provisions of the AQUA Act. The Subcommittee also received testimony on the provisions related to the Endocrine Disruptor Screening Program from Sarah Janssen, representing the Natural Resources Defense Council, and Terry Quill, of Quill Law Group. Cynthia Dougherty, Director of EPA's Office of Ground Water and Drinking Water, offered testimony on all provisions of the bill, stressing the Administration's commitment to ensuring safe drinking water and implementing the EDSP.

On May 19, 2010, the Subcommittee on Energy and Environment considered H.R. 5320 in markup session and approved by a vote of 18-13 to forward the bill, amended, to the full Committee.

#### **A. History of the Drinking Water State Revolving Fund**

The drinking water SRF was created by the SDWA Amendments of 1996 to finance projects necessary for protection of public health and compliance with drinking water standards.<sup>9</sup> The fund was modeled on the clean water state revolving fund already in existence. In 1997, appropriations for the drinking water SRF were \$1.275 billion, and by 1999, more than 100 projects had been completed using SRF funds. By 2007, more than 3,500 projects had been completed with SRF funds.<sup>10</sup>

The American Recovery and Reinvestment Act of 2009 (ARRA) directed \$2 billion to states through the drinking water SRF, in addition to the 2009 SRF appropriation. Those funds were required to be obligated within one year of passage of ARRA. All states met that deadline and had their portion of the ARRA funds under contract by February 17, 2010, demonstrating the significant need for funds.

ARRA included a requirement that 20% of the funds be used for "green" projects. This introduced environmental sustainability concerns into the SRF for the first time, and directed funds toward water efficiency and energy efficiency measures. ARRA also included a requirement for the provision of extra assistance to systems serving disadvantaged communities. Since its inception, the SRF has provided states with the authority to give extra assistance to disadvantaged communities in the form of extended loan terms, lower interest rates, or principal forgiveness. Until the enactment of ARRA, such assistance was completely discretionary.

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<sup>9</sup> P.L. 104-182.

<sup>10</sup> United States Environmental Protection Agency, *Drinking Water State Revolving Fund: 2007 Annual Report* (Mar. 2008).

The 1996 amendments to SDWA also created a technical assistance grant program to assist small systems. That provision does not include priority criteria for the selection of grant applications, and no competitive grants have ever been awarded under that authority.

### **B. “Lead Free” under SDWA**

Since 1986, SDWA has prohibited the installation or repair of plumbing providing water for human consumption that does not meet the statutory definition of “lead free”.<sup>11</sup> The 1996 amendments additionally prohibited the introduction into commerce of any pipe or plumbing fitting or fixture that does not meet the definition. At all times since 1986, the definition of “lead free” under SDWA for pipes and pipe fittings has been 8% lead.<sup>12</sup>

### **C. The Endocrine Disruptor Screening Program**

The Endocrine Disruptor Screening Program (EDSP) was also created in 1996, by provisions in the SDWA amendments and provisions in the Food Quality Protection Act (FQPA).<sup>13</sup> Under the EDSP, EPA is required to test all pesticides that may come into contact with food for their ability to interfere with the body’s hormonal system, but authority to test substances that might be found in drinking water is left to the discretion of EPA.

Upon issuance of a test order by EPA, chemical manufacturers are responsible for screening a chemical to determine its potential to produce effects in humans that mimic or interfere with hormone action in the body. The FQPA authorizes EPA to take appropriate action to protect public health under existing statutory authority if substances are found to have endocrine effects in humans.

The selection of testing protocols and the decision of which chemicals to test first were not finalized until October 2009, 11 years after the program’s official establishment. Between October 2009 and February 2010, EPA issued test orders for 67 pesticide chemicals. EPA has never exercised its discretionary authority to issue test orders for non-pesticide chemicals found in sources of drinking water.

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<sup>11</sup> 42 U.S.C. 300g-6.

<sup>12</sup> 42 U.S.C. 300g-6(d).

<sup>13</sup> P.L. 104-170.

**D. Summary of the AQUA Act**

The Assistance, Quality, and Affordability Act of 2010, as amended during Subcommittee markup, would reauthorize the SRF and amend SDWA to do the following:

- Reauthorize the drinking water SRF.
- Establish that projects designed to improve the sustainability and long term viability of water systems should get priority for funding through the SRF.
- Encourage public water systems to improve their managerial capacity and reduce their environmental impact.
- Ensure that technical assistance funds for small water systems are awarded through a competitive process to non profits that are qualified and effective, and provide the type of technical assistance preferred by communities.
- Increase the funds available to states for technical assistance activities.
- Establish that the first priority for SRF funds should be water systems serving disadvantaged communities that cannot afford to comply with new drinking water standards.
- Require states to provide additional assistance to water systems serving disadvantaged communities and struggling to comply with existing drinking water standards.
- Strengthen the endocrine disruptor screening program by requiring testing of chemicals in drinking water and outlining transparent procedures for testing and updating methods.
- Change the legal definition of “lead-free” for pipes and fixtures from 8% lead to 0.25% lead in wetted surfaces, effective 36 months after enactment.
- Strengthen enforcement of the SDWA by clarifying requirements for technical assistance and follow up inspections.
- Require a study of pharmaceuticals and personal care products in sources of drinking water.