

RESPONSE ACT OF 2016

NOVEMBER 14, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SHUSTER, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

[To accompany S. 546]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (S. 546) to establish the Railroad Emergency Services Preparedness, Operational Needs, and Safety Evaluation (RESPONSE) Subcommittee under the Federal Emergency Management Agency’s National Advisory Council to provide recommendations on emergency responder training and resources relating to hazardous materials incidents involving railroads, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “RESPONSE Act of 2016”.

**SEC. 2. RAILROAD EMERGENCY SERVICES PREPAREDNESS, OPERATIONAL NEEDS, AND SAFETY EVALUATION SUBCOMMITTEE.**

Section 508 of the Homeland Security Act of 2002 (6 U.S.C. 318) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

“(d) RESPONSE SUBCOMMITTEE.—

“(1) ESTABLISHMENT.—Not later than 30 days after the date of the enactment of the RESPONSE Act of 2016, the Administrator shall establish, as a subcommittee of the National Advisory Council, the Railroad Emergency Services Preparedness, Operational Needs, and Safety Evaluation Subcommittee (referred to in this subsection as the ‘RESPONSE Subcommittee’).

“(2) MEMBERSHIP.—Notwithstanding subsection (c), the RESPONSE Subcommittee shall be composed of the following:

“(A) The Deputy Administrator, Protection and National Preparedness of the Federal Emergency Management Agency, or designee.

“(B) The Chief Safety Officer of the Pipeline and Hazardous Materials Safety Administration, or designee.

“(C) The Associate Administrator for Hazardous Materials Safety of the Pipeline and Hazardous Materials Safety Administration, or designee.

“(D) The Director of the Office of Emergency Communications of the Department of Homeland Security, or designee.

“(E) The Director for the Office of Railroad, Pipeline and Hazardous Materials Investigations of the National Transportation Safety Board, or designee.

“(F) The Chief Safety Officer and Associate Administrator for Railroad Safety of the Federal Railroad Administration, or designee.

“(G) The Assistant Administrator for Security Policy and Industry Engagement of the Transportation Security Administration, or designee.

“(H) The Assistant Commandant for Response Policy of the Coast Guard, or designee.

“(I) The Assistant Administrator for the Office of Solid Waste and Emergency Response of the Environmental Protection Agency, or designee.

“(J) Such other qualified individuals as the co-chairpersons shall jointly appoint as soon as practicable after the date of the enactment of the RESPONSE Act of 2016 from among the following:

“(i) Members of the National Advisory Council that have the requisite technical knowledge and expertise to address rail emergency response issues, including members from the following disciplines:

“(I) Emergency management and emergency response providers, including fire service, law enforcement, hazardous materials response, and emergency medical services.

“(II) State, local, and tribal government officials.

“(ii) Individuals who have the requisite technical knowledge and expertise to serve on the RESPONSE Subcommittee, including at least 1 representative from each of the following:

“(I) The rail industry.

“(II) Rail labor

“(III) Persons who offer oil for transportation by rail.

“(IV) The communications industry.

“(V) Emergency response providers, including individuals nominated by national organizations representing State and local governments and emergency responders.

“(VI) Emergency response training providers.

“(VII) Representatives from tribal organizations.

“(VIII) Technical experts.

“(IX) Vendors, developers, and manufacturers of systems, facilities, equipment, and capabilities for emergency responder services.

“(iii) Representatives of such other stakeholders and interested and affected parties as the co-chairpersons consider appropriate.

“(3) CO-CHAIRPERSONS.—The members described in subparagraphs (A) and (B) of paragraph (2) shall serve as the co-chairpersons of the RESPONSE Subcommittee.

“(4) INITIAL MEETING.—The initial meeting of the RESPONSE Subcommittee shall take place not later than 90 days after the date of enactment of the RESPONSE Act of 2016.

“(5) CONSULTATION WITH NONMEMBERS.—The RESPONSE Subcommittee and the program offices for emergency responder training and resources shall consult with other relevant agencies and groups, including entities engaged in federally funded research and academic institutions engaged in relevant work and research, which are not represented on the RESPONSE Subcommittee to consider new and developing technologies and methods that may be beneficial to preparedness and response to rail hazardous materials incidents.

“(6) RECOMMENDATIONS.—The RESPONSE Subcommittee shall develop recommendations, as appropriate, for improving emergency responder training and resource allocation for hazardous materials incidents involving railroads after evaluating the following topics:

“(A) The quality and application of training for State and local emergency responders related to rail hazardous materials incidents, including training for emergency responders serving small communities near railroads, including the following:

“(i) Ease of access to relevant training for State and local emergency responders, including an analysis of—

“(I) the number of individuals being trained;

“(II) the number of individuals who are applying;

“(III) whether current demand is being met;

“(IV) current challenges; and

“(V) projected needs.

“(ii) Modernization of training course content related to rail hazardous materials incidents, with a particular focus on fluctuations in oil shipments by rail, including regular and ongoing evaluation of course opportunities, adaptation to emerging trends, agency and private sector outreach, effectiveness and ease of access for State and local emergency responders.

“(iii) Identification of overlap in training content and identification of opportunities to develop complementary courses and materials among governmental and nongovernmental entities.

“(iv) Online training platforms, train-the-trainer, and mobile training options.

“(B) The availability and effectiveness of Federal, State, local, and nongovernmental funding levels related to training emergency responders for rail hazardous materials incidents, including emergency responders serving small communities near railroads, including—

“(i) identifying overlap in resource allocations;

“(ii) identifying cost savings measures that can be implemented to increase training opportunities;

“(iii) leveraging government funding with nongovernmental funding to enhance training opportunities and fill existing training gaps;

“(iv) adaptation of priority settings for agency funding allocations in response to emerging trends;

“(v) historic levels of funding across Federal agencies for rail hazardous materials incident response and training, including funding provided by the private sector to public entities or in conjunction with Federal programs; and

“(vi) current funding resources across agencies.

“(C) The strategy for integrating commodity flow studies, mapping, and rail and hazardous materials databases for State and local emergency responders and increasing the rate of access to the individual responder in existing or emerging communications technology.

“(7) REPORT.—

“(A) IN GENERAL.—Not later than 1 year after the date of the enactment of the RESPONSE Act of 2016, the RESPONSE Subcommittee shall submit a report to the National Advisory Council that—

“(i) includes the recommendations developed under paragraph (6);

“(ii) specifies the timeframes for implementing any such recommendations that do not require congressional action; and

“(iii) identifies any such recommendations that do require congressional action.

“(B) REVIEW.—Not later than 30 days after receiving the report under subparagraph (A), the National Advisory Council shall begin a review of the report. The National Advisory Council may ask for additional clarification, changes, or other information from the RESPONSE Subcommittee to assist in the approval of the recommendations.

“(C) RECOMMENDATION.—Once the National Advisory Council approves the recommendations of the RESPONSE Subcommittee, the National Advisory Council shall submit the report to—

“(i) the co-chairpersons of the RESPONSE Subcommittee;

“(ii) the head of each other agency represented on the RESPONSE Subcommittee;

“(iii) the Committee on Homeland Security and Governmental Affairs of the Senate;

“(iv) the Committee on Commerce, Science, and Transportation of the Senate;

“(v) the Committee on Homeland Security of the House of Representatives; and

“(vi) the Committee on Transportation and Infrastructure of the House of Representatives.

“(8) INTERIM ACTIVITY.—

“(A) UPDATES AND OVERSIGHT.—After the submission of the report by the National Advisory Council under paragraph (7), the Administrator shall—

“(i) provide annual updates to the congressional committees referred to in paragraph (7)(C) regarding the status of the implementation of the recommendations developed under paragraph (6); and

“(ii) coordinate the implementation of the recommendations described in paragraph (6)(G)(i), as appropriate.

“(B) SUNSET.—The requirements of subparagraph (A) shall terminate on the date that is 2 years after the date of the submission of the report required under paragraph (7)(A).

“(9) TERMINATION.—The RESPONSE Subcommittee shall terminate not later than 90 days after the submission of the report required under paragraph (7)(C).”.

#### PURPOSE OF LEGISLATION

S. 546, the “RESPONSE Act of 2016”, as amended, establishes the Railroad Emergency Services Preparedness, Operational Needs, and Safety Evaluation Subcommittee under the Federal Emergency Management Agency’s (FEMA) National Advisory Council to provide recommendations regarding emergency responder training related to hazardous materials incidents involving railroads.

#### BACKGROUND AND NEED FOR LEGISLATION

According to the Federal Railroad Administration (FRA), the volume of crude oil carried by rail increased 423 percent between 2011 and 2012. In 2013, the number of rail carloads of crude oil approached 400,000, reached approximately 450,000 carloads in 2014, and dropped to approximately 390,000 railroads in 2015, compared to just 9,500 carloads in 2008. Increased crude oil transportation by rail can increase the potential risks of derailments and accidents. In order to ensure the safety of communities around the country, there is a need to ensure that emergency responders receive the best training and coordination to properly respond to hazmat incidents on the national rail system.

Smaller, local communities, in particular, often lack the resources and capability to train emergency responders, however, local communities often find themselves responding to incidents before state and federal entities are able to arrive on the scene of an accident. The actions of emergency responders in these local communities are crucial in the initial hours of a derailment or accident,

and responders must be properly trained and prepared to handle hazmat incidents.

Despite most recent trends, movements of crude by rail are still well above 2008 rates, meaning many smaller, local communities are seeing an increase of trains carrying hazardous materials. Small communities can see as many as 9 trains a day, with each train having as many as 100 linked crude oil tank cars. In order to mitigate the risks to local communities in the event of a derailment or spill, emergency responders must be provided with proper training and resources.

The RESPONSE Act of 2016 establishes a temporary subcommittee under FEMA's National Advisory Council to address issues related to emergency responder training. The RESPONSE Subcommittee is comprised of individuals from the public and private sector, agencies, emergency responders, and technical experts. The Subcommittee will review training, resources, best practices, and unmet needs related to emergency responders to railroad hazardous materials incidents.

The RESPONSE Subcommittee is tasked with evaluating and providing recommendations on the quality and application of training for local emergency responders related to rail hazardous materials incidents; modernizing training course content related to rail hazardous material incidents; identifying any overlap in training content and opportunities to develop complementary courses and materials; determining the effectiveness of funding levels for training emergency responders; and developing a strategy for integration of commodity flow studies.

#### HEARINGS

There were no hearings related to this legislation in the House.

#### LEGISLATIVE HISTORY AND CONSIDERATION

On February 24, 2015, Senate Subcommittee on Regulatory Affairs and Federal Management Ranking Member Heitkamp introduced S. 546, the RESPONSE Act. A companion bill, H.R. 1043, was introduced by Congressman Ron Kind on the same date. On July 21, 2015, the Senate Committee on Homeland Security and Government Affairs reported the bill without amendment favorably. On May 9, 2016, Senate amendment 3889 was proposed by Senator Enzi for Senator Heitkamp and was agreed to by unanimous consent. On May 9, 2016, S. 546 passed the Senate by unanimous consent. On September 14, 2016, the Committee on Transportation and Infrastructure met in open session to consider S. 546. An amendment was offered in Committee by Representatives Michael Capuano and Jeff Denham, which was adopted by voice vote. The amendment clarifies the members of the subcommittee and makes changes to remove language duplicative of provisions in the Fixing America's Surface Transportation Act, which was signed into law on December 4, 2015. The Committee ordered S. 546, as amended, reported favorably to the House by voice vote with a quorum present.

## COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no recorded votes associated with this bill.

## COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974, included below.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for S. 546 from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 21, 2016.*

Hon. BILL SHUSTER,  
*Chairman, Committee on Transportation and Infrastructure,  
House of Representatives, Washington, DC.*

Dear MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 546, the RESPONSE Act of 2016.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robert Reese.

Sincerely,

KEITH HALL.

Enclosure.

*S. 546—RESPONSE Act of 2016*

S. 546 would establish the Railroad Emergency Services subcommittee under the Federal Emergency Management Agency's (FEMA's) National Advisory Council (NAC). The act would direct the subcommittee to evaluate several aspects of the ability of emergency personnel to respond to hazardous materials incidents involving trains. S. 546 would require the subcommittee to provide recommendations to the NAC on methods to improve response to such incidents within one year of enactment of S. 546. Under the legislation, the subcommittee would terminate within nine months

of submitting the recommendations to the NAC. Subsequently, the act also would require FEMA to provide to the Congress a report detailing the implementation of those recommendations in each of the following two years.

Based on an analysis of information provided by FEMA, CBO estimates that implementing S. 546 would cost less than \$500,000 over the 2017–2021 period to establish and staff the committee and to prepare the recommendations. Any such spending would be subject to the availability of appropriated funds.

Enacting S. 546 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 546 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

S. 546 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

On March 18, 2015, CBO transmitted a cost estimate for S. 546, the RESPOSE Act of 2015, as ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on March 4, 2015. That version of S. 546 also would establish the Railroad Emergency Services subcommittee and would permit it to operate for up to five years following enactment. Differences in CBO's estimates of spending subject to appropriation under the two versions of S. 546 reflect the difference in the length of time the subcommittee would be authorized to operate.

The CBO staff contact for this estimate is Robert Reese. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

#### PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of this legislation are to ensure that emergency responders are adequately trained to handle rail hazmat incidents. This bill, as amended, enhances safety by convening a Subcommittee to evaluate emergency responder training.

#### ADVISORY OF EARMARKS

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee is required to include a list of congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives. No provision in the bill, as amended, includes an earmark, limited tax benefit, or limited tariff benefit under clause 9(e), 9(f), or 9(g) of rule XXI.

#### DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee finds that no provision of S. 546, as amended, establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a

program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

#### DISCLOSURE OF DIRECTED RULE MAKINGS

Pursuant to section 3(i) of H. Res. 5, 113th Cong. (2015), the Committee estimates that enacting S. 546, as amended, does not specifically direct the completion of a specific rule making within the meaning of section 551 of title 5, United States Code.

#### FEDERAL MANDATE STATEMENT

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).

#### PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee states that S. 546, as amended, does not preempt any state, local, or tribal law. S. 546, as amended, preserves the rights and permitting authorities of states.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation, as amended.

#### APPLICABILITY OF LEGISLATIVE BRANCH

The Committee finds that the legislation, as amended, does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

#### SECTION-BY-SECTION ANALYSIS OF LEGISLATION

##### *Section 1. Short title; table of contents; references*

This section designates the short title of this bill as the “RESPONSE Act of 2016.”

##### *Section 2. Railroad Emergency Services Preparedness, Operational Needs, and Safety Evaluation Subcommittee*

This section establishes a Railroad Emergency Services Preparedness, Operational Needs, and Safety Evaluation (RESPONSE) Subcommittee (Subcommittee) under FEMA’s National Advisory Council (NAC) to evaluate and provide recommendations on the adequacy of emergency responder training related to hazardous materials incidents involving railroads.

Subcommittee membership includes the Deputy Administrator on Protection and National Preparedness of FEMA; the Chief Safety Officer of the Pipeline and Hazardous Materials Safety Administra-

tion (PHMSA); the Associate Administrator for Hazardous Materials Safety of PHMSA; the Director of the Office of Emergency Communications of the Department of Homeland Security; the Director for the Office of Railroad, Pipeline and Hazardous Materials Investigations of the National Transportation Safety Board; the Chief Safety Officer and Associate Administrator for Railroad Safety of the Federal Railroad Administration; the Assistant for Security Policy and Industry Engagement of the Transportation Security Administration; the Assistant Commandant for Response Policy of the Coast Guard; and, the Assistant Administrator for the Office of Solid Waste and Emergency Response of the Environmental Protection Agency. Members of the National Advisory Council that have the requisite technical knowledge and expertise to address rail emergency response issues, including emergency management and emergency response providers, as well as state, local and tribal government officials may be appointed to the Subcommittee as well.

Additionally, this section requires that the Subcommittee include at least one representative from the rail industry, rail labor, persons who offer oil for transportation by rail, the communications industry, emergency responders, emergency response training providers, representatives from tribal organizations, technical experts, and vendors, developers, and manufacturers of systems, equipment, and capabilities for emergency first responder services, and other stakeholders determined appropriate.

FEMA's Deputy Administrator for Protection and National Preparedness and PHMSA's Chief Safety Officer serve as co-chairs of the Subcommittee.

This section also requires that the Subcommittee's initial meeting take place no later than 90 days after the enactment of the RESPONSE Act of 2016. The Subcommittee is directed to consult with other relevant agencies and groups, including entities engaged in federally funded research and academic institutions engaged in relevant work and research, which are not represented on the RESPONSE Subcommittee.

This section requires the Subcommittee to develop recommendations for improving emergency responder training and resource allocation for hazardous materials incidents involving railroads after evaluating the quality and application of training for State and local emergency responders related to rail hazardous materials incidents, including training for emergency responders service small communities near railroads; modernizing training course content related to rail hazardous material incidents; identifying overlap in training content; identifying opportunities to develop complementary courses and materials; improving the availability and effectiveness of Federal, State, local, and nongovernmental funding levels related to training emergency responders for rail hazardous materials incidents; and, developing a strategy for integrating commodity flow studies, mapping, and rail and hazardous materials databases for State and local emergency responders.

This section requires the Subcommittee, not later than 1 year after the date of enactment of the RESPONSE Act, to submit a report to the NAC that includes the recommendations developed pursuant to the Act; specifies the timeframe for implementing any such recommendations that do not require congressional action;

and, identifies any such recommendations that require congressional action.

Not later than 30 days after receiving the report, the NAC must begin a review of the report. Once the NAC approves the recommendations of the RESPONSE Subcommittee, the NAC must submit the report to the co-chairpersons of the RESPONSE Subcommittee, the head of each agency represented on the RESPONSE Subcommittee, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Commerce, Science and Transportation of the Senate, the Committee on Homeland Security of the House of Representatives, and the Committee on Transportation and Infrastructure of the House of Representatives. The FEMA Administrator must provide annual updates to the congressional committees referred to above as well as coordinate the implementation of the recommendations. The Subcommittee will terminate 90 days after submission of the final report to the NAC (total duration: 1 year, 90 days).

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

### HOMELAND SECURITY ACT OF 2002

\* \* \* \* \*

## TITLE V—NATIONAL EMERGENCY MANAGEMENT

\* \* \* \* \*

#### SEC. 508. NATIONAL ADVISORY COUNCIL.

(a) ESTABLISHMENT.—Not later than 60 days after the date of enactment of the Post-Katrina Emergency Management Reform Act of 2006, the Secretary shall establish an advisory body under section 871(a) to ensure effective and ongoing coordination of Federal preparedness, protection, response, recovery, and mitigation for natural disasters, acts of terrorism, and other man-made disasters, to be known as the National Advisory Council.

(b) RESPONSIBILITIES.—

(1) IN GENERAL.— The National Advisory Council shall advise the Administrator on all aspects of emergency management. The National Advisory Council shall incorporate State, local, and tribal government and private sector input in the development and revision of the national preparedness goal, the national preparedness system, the National Incident Management System, the National Response Plan, and other related plans and strategies.

(2) CONSULTATION ON GRANTS.— To ensure input from and coordination with State, local, and tribal governments and emergency response providers, the Administrator shall regu-

larly consult and work with the National Advisory Council on the administration and assessment of grant programs administered by the Department, including with respect to the development of program guidance and the development and evaluation of risk-assessment methodologies, as appropriate.

(c) MEMBERSHIP.—

(1) IN GENERAL.— The members of the National Advisory Council shall be appointed by the Administrator, and shall, to the extent practicable, represent a geographic (including urban and rural) and substantive cross section of officials, emergency managers, and emergency response providers from State, local, and tribal governments, the private sector, and nongovernmental organizations, including as appropriate—

(A) members selected from the emergency management field and emergency response providers, including fire service, law enforcement, hazardous materials response, emergency medical services, and emergency management personnel, or organizations representing such individuals;

(B) health scientists, emergency and inpatient medical providers, and public health professionals;

(C) experts from Federal, State, local, and tribal governments, and the private sector, representing standards-setting and accrediting organizations, including representatives from the voluntary consensus codes and standards development community, particularly those with expertise in the emergency preparedness and response field;

(D) State, local, and tribal government officials with expertise in preparedness, protection, response, recovery, and mitigation, including Adjutants General;

(E) elected State, local, and tribal government executives;

(F) experts in public and private sector infrastructure protection, cybersecurity, and communications;

(G) representatives of individuals with disabilities and other populations with special needs; and

(H) such other individuals as the Administrator determines to be appropriate.

(2) COORDINATION WITH THE DEPARTMENTS OF HEALTH AND HUMAN SERVICES AND TRANSPORTATION.— In the selection of members of the National Advisory Council who are health or emergency medical services professionals, the Administrator shall work with the Secretary of Health and Human Services and the Secretary of Transportation.

(3) EX OFFICIO MEMBERS.— The Administrator shall designate 1 or more officers of the Federal Government to serve as ex officio members of the National Advisory Council.

(4) TERMS OF OFFICE.—

(A) IN GENERAL.— Except as provided in subparagraph (B), the term of office of each member of the National Advisory Council shall be 3 years.

(B) INITIAL APPOINTMENTS.— Of the members initially appointed to the National Advisory Council—

(i) one-third shall be appointed for a term of 1 year; and

(ii) one-third shall be appointed for a term of 2 years.

(d) *RESPONSE SUBCOMMITTEE.*—

(1) *ESTABLISHMENT.*— *Not later than 30 days after the date of the enactment of the RESPONSE Act of 2016, the Administrator shall establish, as a subcommittee of the National Advisory Council, the Railroad Emergency Services Preparedness, Operational Needs, and Safety Evaluation Subcommittee (referred to in this subsection as the “RESPONSE Subcommittee”).*

(2) *MEMBERSHIP.*— *Notwithstanding subsection (c), the RESPONSE Subcommittee shall be composed of the following:*

(A) *The Deputy Administrator, Protection and National Preparedness of the Federal Emergency Management Agency, or designee.*

(B) *The Chief Safety Officer of the Pipeline and Hazardous Materials Safety Administration, or designee.*

(C) *The Associate Administrator for Hazardous Materials Safety of the Pipeline and Hazardous Materials Safety Administration, or designee.*

(D) *The Director of the Office of Emergency Communications of the Department of Homeland Security, or designee.*

(E) *The Director for the Office of Railroad, Pipeline and Hazardous Materials Investigations of the National Transportation Safety Board, or designee.*

(F) *The Chief Safety Officer and Associate Administrator for Railroad Safety of the Federal Railroad Administration, or designee.*

(G) *The Assistant Administrator for Security Policy and Industry Engagement of the Transportation Security Administration, or designee.*

(H) *The Assistant Commandant for Response Policy of the Coast Guard, or designee.*

(I) *The Assistant Administrator for the Office of Solid Waste and Emergency Response of the Environmental Protection Agency, or designee.*

(J) *Such other qualified individuals as the co-chairpersons shall jointly appoint as soon as practicable after the date of the enactment of the RESPONSE Act of 2016 from among the following:*

(i) *Members of the National Advisory Council that have the requisite technical knowledge and expertise to address rail emergency response issues, including members from the following disciplines:*

(I) *Emergency management and emergency response providers, including fire service, law enforcement, hazardous materials response, and emergency medical services.*

(II) *State, local, and tribal government officials.*

(ii) *Individuals who have the requisite technical knowledge and expertise to serve on the RESPONSE Subcommittee, including at least 1 representative from each of the following:*

(I) *The rail industry.*

(II) *Rail labor*

(III) Persons who offer oil for transportation by rail.

(IV) The communications industry.

(V) Emergency response providers, including individuals nominated by national organizations representing State and local governments and emergency responders.

(VI) Emergency response training providers.

(VII) Representatives from tribal organizations.

(VIII) Technical experts.

(IX) Vendors, developers, and manufacturers of systems, facilities, equipment, and capabilities for emergency responder services.

(iii) Representatives of such other stakeholders and interested and affected parties as the co-chairpersons consider appropriate.

(3) CO-CHAIRPERSONS.— The members described in subparagraphs (A) and (B) of paragraph (2) shall serve as the co-chairpersons of the RESPONSE Subcommittee.

(4) INITIAL MEETING.— The initial meeting of the RESPONSE Subcommittee shall take place not later than 90 days after the date of enactment of the RESPONSE Act of 2016.

(5) CONSULTATION WITH NONMEMBERS.— The RESPONSE Subcommittee and the program offices for emergency responder training and resources shall consult with other relevant agencies and groups, including entities engaged in federally funded research and academic institutions engaged in relevant work and research, which are not represented on the RESPONSE Subcommittee to consider new and developing technologies and methods that may be beneficial to preparedness and response to rail hazardous materials incidents.

(6) RECOMMENDATIONS.— The RESPONSE Subcommittee shall develop recommendations, as appropriate, for improving emergency responder training and resource allocation for hazardous materials incidents involving railroads after evaluating the following topics:

(A) The quality and application of training for State and local emergency responders related to rail hazardous materials incidents, including training for emergency responders serving small communities near railroads, including the following:

(i) Ease of access to relevant training for State and local emergency responders, including an analysis of—

(I) the number of individuals being trained;

(II) the number of individuals who are applying;

(III) whether current demand is being met;

(IV) current challenges; and

(V) projected needs.

(ii) Modernization of training course content related to rail hazardous materials incidents, with a particular focus on fluctuations in oil shipments by rail, including regular and ongoing evaluation of course opportunities, adaptation to emerging trends, agency and private sector outreach, effectiveness and ease of access for State and local emergency responders.

(iii) Identification of overlap in training content and identification of opportunities to develop complementary courses and materials among governmental and nongovernmental entities.

(iv) Online training platforms, train-the-trainer, and mobile training options.

(B) The availability and effectiveness of Federal, State, local, and nongovernmental funding levels related to training emergency responders for rail hazardous materials incidents, including emergency responders serving small communities near railroads, including—

(i) identifying overlap in resource allocations;

(ii) identifying cost savings measures that can be implemented to increase training opportunities;

(iii) leveraging government funding with nongovernmental funding to enhance training opportunities and fill existing training gaps;

(iv) adaptation of priority settings for agency funding allocations in response to emerging trends;

(v) historic levels of funding across Federal agencies for rail hazardous materials incident response and training, including funding provided by the private sector to public entities or in conjunction with Federal programs; and

(vi) current funding resources across agencies.

(C) The strategy for integrating commodity flow studies, mapping, and rail and hazardous materials databases for State and local emergency responders and increasing the rate of access to the individual responder in existing or emerging communications technology.

(7) REPORT.—

(A) IN GENERAL.— Not later than 1 year after the date of the enactment of the RESPONSE Act of 2016, the RESPONSE Subcommittee shall submit a report to the National Advisory Council that—

(i) includes the recommendations developed under paragraph (6);

(ii) specifies the timeframes for implementing any such recommendations that do not require congressional action; and

(iii) identifies any such recommendations that do require congressional action.

(B) REVIEW.— Not later than 30 days after receiving the report under subparagraph (A), the National Advisory Council shall begin a review of the report. The National Advisory Council may ask for additional clarification, changes, or other information from the RESPONSE Subcommittee to assist in the approval of the recommendations.

(C) RECOMMENDATION.— Once the National Advisory Council approves the recommendations of the RESPONSE Subcommittee, the National Advisory Council shall submit the report to—

(i) the co-chairpersons of the RESPONSE Subcommittee;

(ii) the head of each other agency represented on the RESPONSE Subcommittee;

(iii) the Committee on Homeland Security and Governmental Affairs of the Senate;

(iv) the Committee on Commerce, Science, and Transportation of the Senate;

(v) the Committee on Homeland Security of the House of Representatives; and

(vi) the Committee on Transportation and Infrastructure of the House of Representatives.

(8) INTERIM ACTIVITY.—

(A) UPDATES AND OVERSIGHT.— After the submission of the report by the National Advisory Council under paragraph (7), the Administrator shall—

(i) provide annual updates to the congressional committees referred to in paragraph (7)(C) regarding the status of the implementation of the recommendations developed under paragraph (6); and

(ii) coordinate the implementation of the recommendations described in paragraph (6)(G)(i), as appropriate.

(B) SUNSET.— The requirements of subparagraph (A) shall terminate on the date that is 2 years after the date of the submission of the report required under paragraph (7)(A).

(9) TERMINATION.— The RESPONSE Subcommittee shall terminate not later than 90 days after the submission of the report required under paragraph (7)(C).

[(d)] (e) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—

(1) IN GENERAL.— Notwithstanding section 871(a) and subject to paragraph (2), the Federal Advisory Committee Act (5 U.S.C. App.), including subsections (a), (b), and (d) of section 10 of such Act, and section 552b(c) of title 5, United States Code, shall apply to the National Advisory Council.

(2) TERMINATION.— Section 14(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the National Advisory Council.

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