



**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION
WASHINGTON, DC 20590**

Docket No. FRA-2016-0002-N-21

On October 24, 2016, the Association of American Railroads (AAR) submitted comments to the Office of Management and Budget (OMB) in response to the Federal Railroad Administration's (FRA) request for regular OMB processing of an Information Collection Request (ICR) to collect information on railroads' implementation of positive train control (PTC) systems on an annual form entitled the Annual PTC Progress Report (Form FRA F 6180.166). *See* 81 Fed. Reg. 65702 (Sept. 23, 2016); 49 U.S.C. § 20157(c)(1). Below are AAR's comments and FRA's responses.

I. Chronology of Annual PTC Information Collection

- **March 7, 2016** – FRA submitted to OMB the Annual PTC Progress Report (Form FRA F 6180.166) for emergency processing. As required by 44 U.S.C. § 3506(c)(1)(B)(iii)(IV), the proposed form informed respondents that “All responses to this collection of information are mandatory.” 81 Fed. Reg. 11878, 11892 (Mar. 7, 2016). Section 12 described the Geographic Information System (GIS) shapefile requirement and also stated, “If a railroad chooses to submit **the required information** by means other than shapefile format, please inform FRA as to the railroad's preference prior to the March 31st annual reporting deadline.” 81 Fed. Reg. at 11891.
- **March 11, 2016** – During OMB's review period, AAR submitted comments to OMB, noting that AAR assumed completion of Section 12 was optional. On March 14, 2016, FRA responded that “Regarding AAR's comments on Section 12, yes, the GIS shapefile format is optional, but **submission of the specific geographical information is mandatory.**” See below for FRA's full response to this comment; FRA's responses to AAR's March 11th comments were also posted in the docket on regulations.gov, following OMB's approval of the form.
- **March 16, 2016** – OMB approved the Annual PTC Progress Report (Form FRA F 6180.166). The version of Section 12 that OMB approved ended with “A railroad may submit this information **by means other than shapefile format.**” (Emphasis added). The form provided the required notices, including that all responses to this collection of information are mandatory.
- **June 23, 2016** – FRA published a 60-day notice in the Federal Register seeking public comment on an updated version of the Annual PTC Progress Report, primarily revised to be as consistent with the newly approved Quarterly PTC Progress Report as possible at industry's request (where the questions overlap) but also providing more guidance in Section 12. 81 Fed. Reg. 40938 (June 23, 2016). Section 12 provided, in relevant part, that, “Alternatively, a railroad may submit this information by means other than shapefile format, provided that the information is sufficiently specific for FRA to update its own GIS Database.” 81 Fed. Reg. 40938 (June 23, 2016). The comment period closed on August 22, 2016, and FRA received no responsive comments.

- **September 23, 2016** – FRA submitted to OMB the Annual PTC Progress Report (with the same version of Section 12 as put out for public comment on June 23) for regular processing and provided requisite notice to the public. 81 Fed. Reg. 65702 (Sept. 23, 2016).
- **October 24, 2016** – AAR submitted comments to OMB, asserting, in part, that “FRA has neither explained why it now proposes to require the previously optional information nor provided guidance on what it would consider to be information ‘sufficiently specific for FRA to update its own GIS database.’” *But see* 81 Fed. Reg. 28140, 28142 (May 9, 2016) (eliminating the GIS requirement from the Quarterly PTC Progress Report and stating that “In the annual progress report, FRA intends to clarify that a railroad can provide, for track segments that are operational and complete only, either GIS shapefiles *or* updated, geographical information sufficiently specific to allow FRA to maintain its GIS Database”); 81 Fed. Reg. 40938 (June 23, 2016) (providing requisite notice of the proposed Information Collection Request).

II. AAR’s General Comment about Section 12 of the Annual PTC Progress Report Form

AAR’s Comment:

In the form approved by OMB on March 16, 2016, the information in Section 12 was optional, as the approved form stated that a railroad “*may* submit a geographic information system (GIS) shapefile to indicate where various rail segments that must have PTC are located.” (Emphasis added.) . . . In the revised form accompanying this ICR, however, FRA’s changes to Section 12 make the submission of updated GIS information mandatory. Section 12 of revised form FRA F 6180.166 instructs railroads to, “Submit a GIS shapefile identifying the track segments or route miles where a PTC system has been implemented and is operable.” FRA also states that the updated GIS information may be submitted in a shapefile format or by other than shapefile format if “the information is sufficiently specific for FRA to update its own GIS database.” FRA has neither explained why it now proposes to require the previously optional information nor provided guidance on what it would consider to be information “sufficiently specific for FRA to update its own GIS database.”

FRA’s Response:

A. Background on Section 12

In the first Federal Register notice FRA published on the Annual PTC Progress Report Form, FRA proposed “**to require**” railroads to submit the annual form and the information referenced therein and stated “each railroad **must submit** its . . . annual progress report[] using . . . Form FRA F 6180.166,” so FRA considered the annual form and the information the report described, including Section 12, mandatory. 81 Fed. Reg. 11878 (Mar. 7, 2016) (emphasis added). Moreover, on the final page of the OMB-approved Annual PTC Progress Report, FRA stated, “All responses to this collection of information are mandatory,” as required by 44 U.S.C. § 3506(c)(1)(B)(iii)(IV). *See also* Oakes v. Internal Revenue Serv., No. 86-2804, 1987 WL 10227, at*1 (D.D.C. 1987) (describing a federal agency’s obligation to inform respondents

whether responding to the information collection is voluntary, required to obtain a benefit, or mandatory). From the outset, when FRA published the proposed form in the Federal Register on March 7, 2016, submission of the information in Section 12 on the Annual PTC Progress Report Form was mandatory, and FRA expected all respondents to provide a response to Section 12. *See* 81 Fed. Reg. at 11891 (containing the first proposed version of Section 12). The only aspect of Section 12 FRA considered optional was the format of the information – not the information itself. *Id.* Indeed, FRA specifically stated that submitting the information was mandatory, but the format was optional. “If a railroad chooses to submit **the required information** by means other than shapefile format, please inform FRA as to the railroad’s preference prior to the March 31st annual reporting deadline.” 81 Fed. Reg. at 11891 (emphasis added). Although FRA changed the description of the information required in the version of Section 12 OMB ultimately approved on March 16, 2016, FRA did not change the fact that submission of the form and the information required on the form was mandatory. The word “may” was used only to convey that a railroad could respond to Section 12 in one of two ways.

In addition, in response to AAR’s March 11, 2016, comments on the first version of the Annual PTC Progress Report, inquiring whether Section 12 was optional, FRA responded:

FRA is requesting that each railroad provide updated information that FRA can use to maintain its geographic information system (GIS) database, and the [Positive Train Control Enforcement and Implementation Act of 2015] requires railroads to submit any additional information that FRA requests in the annual report. 49 U.S.C. § 20157(c)(1)(G); *see also* 49 C.F.R. § 1.89. **Regarding AAR’s comments on Section 12, yes, the GIS shapefile format is optional, but submission of the specific geographical information is mandatory.** *See* 49 U.S.C. § 20157(c)(1)(G). FRA needs accurate information about which lines are equipped with PTC to effectively perform its oversight role and its inspection activities. The boundaries of PTC do not necessarily fall within established, delineated points throughout the general railroad network. Therefore, FRA needs this specific geographical information to have a precise understanding of where PTC is in place, and FRA must have a means to easily convey this information to its staff and, most importantly, to its regional inspectors. If a railroad does not submit this information to FRA in a GIS shapefile, FRA will devote internal FRA resources and develop a plan for transcribing the data. However, for the geographical data to be useful to FRA, the railroad must provide enough specificity for FRA to have the ability to visualize and pinpoint the location.

FRA’s responses to AAR’s March 11th comments were posted in the docket on regulations.gov, following OMB’s approval of the form on March 16, 2016.

On June 23, 2016, subsequent to railroads’ submissions of the Annual PTC Progress Reports for 2015 (due March 31, 2016, by statute), FRA published in the Federal Register for 60 days of public comment an updated version of the Annual PTC Progress Report, primarily revised to be as consistent with the newly approved Quarterly PTC Progress Report as possible (where the questions overlap), as industry requested in written comments and at the public meeting on the proposed Quarterly PTC Progress Report on April 19, 2016. *See* 81 Fed. Reg. 28140–42 (May 9, 2016); 81 Fed. Reg. 40938–39 (June 23, 2016). In addition to making conforming changes to align with the quarterly form, FRA also revised the Annual PTC Progress Report to clarify Section 12 was only an annual requirement and provide more guidance about what the alternative format could be—that is, “Alternatively, a railroad may submit this information by

means other than shapefile format, provided that the information is sufficiently specific for FRA to update its own GIS Database.” 81 Fed. Reg. at 40952; *see* 81 Fed. Reg. 28140, 28142 (May 9, 2016). This version of Section 12 was published for public comment on June 23, 2016, and no responsive comments were received. Accordingly, on September 23, 2016, FRA submitted the updated version of the Annual PTC Progress Report to OMB for regular processing and provided requisite notice to the public. 81 Fed. Reg. 65702 (Sept. 23, 2016).

B. Clarification of Section 12 Requirements

To clarify the Section 12 requirements, as AAR requested in its October 24, 2016, comments to OMB, FRA informed OMB that it is amenable to taking one of the following actions:

- (1) Adding the following improved instructions to Section 12 to clarify the two ways in which a railroad could provide the information required under Section 12:

Your railroad must submit a Geographic Information System (GIS) shapefile identifying the installation/track segments and portions thereof (e.g., route miles) where a PTC system had been implemented and was operable by the end of the reporting period (i.e., the previous calendar year), including the following fields: (1) a PTC attribute field (coded with “Y” if line segment has PTC installed and operable, otherwise left blank) and (2) a SUBDIV attribute field (populated with subdivision name). The GIS shapefile must be uploaded directly to the SIR website.

If your railroad does not have the geographic information in a GIS shapefile format, your railroad must fulfill this requirement by submitting the required geographic information in a different format (e.g., Excel spreadsheet, a Word document, a drawing, etc.), and the information must be sufficiently specific for FRA to manually update its own GIS Database.

In its response to Section 12, regardless of the format in which it is submitted, the railroad must identify the installation/track segments and portions thereof (e.g., route miles) where a PTC system had been implemented and was operable by the end of the previous calendar year. The submission must also identify the precise milepost (MP) limits and/or control point (CP) limits of where a PTC system had been implemented and was operable within the installation/track segment (e.g., MP 100.25 to MP 150 and MP 155 to MP 190 in Subdivision X). Also, this submission must identify any miles of track, by MP or CP, that are excluded from PTC implementation under an FRA-approved exception (e.g., Main Line Track Exception (Terminal): MP 1.5 to MP 2 in Subdivision Y, and *De Minimis* Exception: MP 45 to MP 55 in Subdivision Z).

Or

- (2) Combining Section 4 and Section 12, which would clarify the type of information that respondents must submit and streamline and simplify the form. Specifically, under this proposed resolution, FRA would:

- Add a mandatory column to Section 4, which requires the type of information that Section 12 sought from the outset. The column would be entitled “Precise

Milepost (MP) Limits and/or Control Point (CP) Limits Where PTC was Implemented and Operable at End of Calendar Year” and include an explanatory footnote;

- Add the *option* to submit a GIS shapefile to Section 4; and
- Delete Section 12 entirely from the form.

III. AAR’s Comment about the Justification or Need for Section 12

AAR’s Comment:

Also, as the railroads will already be providing information on the status of PTC implementation by segment in Section 4 of the form, it is unclear what this additional information could add. . . . Finally, the PTC Enforcement and Implementation Act does not require that railroads submit any information to FRA in a GIS shapefile.

FRA’s Response:

Section 4, at a high-level, informs FRA of the overall status of each installation/track segment as a whole (be it a subdivision, district, territory, etc.). The status options in Section 4 are “Not Started,” “Installing,” “Testing,” or “Operational/Complete.” Section 12 (or another column added to Section 4) in the Annual PTC Progress Report would precisely identify the exact railroad tracks within the installation/track segment—with milepost limits and/or control point limits (depending on the railroad’s business practices and operations)—where a PTC system had been implemented and was operable by the end of the previous calendar year. In addition to obtaining milepost-specific data, Section 12 (or another column added to Section 4) would also capture incremental progress—for example, it would capture all of the *portions* of subdivisions where PTC had been implemented and was operable, whereas the existing higher-level Section 4 would not.

FRA cannot function properly as a safety agency without knowing the actual milepost and/or control point limits of where PTC systems have been implemented and are operable. FRA has an internal GIS database containing various maps of PTC implementation across the country, and FRA needs to maintain the database and ensure it depicts the accurate and precise status of railroads’ implementation progress. It would be unduly burdensome, and it would hinder effective, efficient investigations for FRA to contact the approximately 41 railroads implementing PTC on an individual basis, before inspections or after accidents occur or Congressional inquiries arise, to obtain this critical information about which railroad tracks in each installation/track segment (e.g., subdivision, district, territory, etc.) have been equipped with an operable PTC system.

Under the Positive Train Control Enforcement and Implementation Act of 2015 (PTCEI Act), FRA is required to conduct reviews at least annually to ensure each railroad is complying with its revised PTC implementation plan (PTCIP). 49 U.S.C. § 20157(c)(2). Congress required each railroad to provide detailed information about implementation progress such as end-of-year milestones for hardware implementation, separated by each major hardware category, in its revised PTCIP. 49 U.S.C. § 20157(a)(2)(A)(iii)(III). PTC systems are required to be implemented on approximately 60,000 miles of the over 140,000-mile U.S. rail network, and

FRA inspectors cannot feasibly inspect every mile at different points in time to know where the hardware of PTC systems has and has not been implemented. FRA needs to know between which mileposts or control points each railroad has implemented a PTC system, so FRA inspectors can, among other tasks, verify that the PTC system is implemented and is working as required on the track railroads report to FRA. Section 12 (or an additional column in Section 4) will enable FRA to independently audit the self-reported status of railroads' PTC implementation progress.

Also, by statute, railroads are required to provide FRA with any information FRA deems necessary to conduct its compliance reviews and **any information** FRA requests in the Annual PTC Progress Reports. *See* 49 U.S.C. § 20157(c)(1)(G), (c)(2) (emphasis added).

AAR's Comment about Confidential Treatment

AAR's Comment: "Additionally, this information is also contained in at least one AAR member railroad's PTC implementation plan and marked as Sensitive Security Information ('SSI'). FRA has not provided any assurance in the form that the information would be treated as SSI and redacted from any public release of the information."

FRA's Response: A railroad seeking confidential treatment of information must comply with the requirements under 49 CFR § 209.11, regarding redaction and submission of a supporting justification explaining why the particular information qualifies for protection by law. *See* 49 CFR § 209.11(c), (d). A mere graphical depiction of where a PTC system has been implemented is not SSI, under 49 CFR §§ 15.5 or 1520.5, because release of that high-level information would not be detrimental to transportation safety or security. In addition, to qualify as SSI, the information must fall under one of the fifteen specific categories defined in 49 CFR §§ 15.5(b) and 1520.5(b), or must be specifically designated as SSI by the Secretary of the U.S. Department of Transportation, the FRA Administrator, or the Transportation Security Administration. This information does not fall under one of those specific categories and has not been designated as SSI by an appropriate authority. Therefore, it also is not SSI under Departmental regulations or any other authority.