



U.S. Department
of Transportation

1200 New Jersey Avenue, SE
Washington, DC 20590

**Federal Railroad
Administration**

APR 19 2016

Mr. Gregory D. Straight
Eagle Project Director
Denver Regional Transportation District
1670 Broadway, Suite 2700
Denver, CO 80202

Re: Docket Number FRA-2016-0028

Dear Mr. Straight:

This reply is in response to Denver Regional Transportation District's (RTDC) April 7, 2016, petition to the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of Title 49 Code of Federal Regulations (CFR) Part 234. RTDC requests temporary waivers from 49 CFR Section 234.207—*Grade Crossing Safety; Adjustment, repair, or replacement of component*, and 49 CFR § 234.225—*Activation of warning system*. Specifically, RTDC seeks to temporarily operate passenger trains along the University of Colorado's A Line while the highway-rail grade crossings provide longer-than-designed warning times. This request has been assigned Docket Number FRA-2016-0028.

FRA's Railroad Safety Board (Board) reviewed the petition and determined that granting relief is in the public interest and consistent with railroad safety. Accordingly, the Board grants the requested relief, subject to the following conditions:

1. Relief is granted only for 49 CFR §§ 234.207 and 234.225 with regard to the inoperative Wireless Crossing Activation System (WCAS) and the corresponding long warning times at grade crossings on the University of Colorado's A Line. All other regulations must be complied with, and RTDC must ensure the proper functioning of other critical components in the grade crossing warning system.
2. Grade crossing attendants must be positioned as outlined in the enclosed April 7, 2016, RTDC Grade Crossing Attendant Plan (Plan) at the entrance to each highway-rail grade crossing to warn motorists, pedestrians, and cyclists of non-functioning warning equipment and to deter unsafe behavior from the general public.
 - a. In the event that one or more attendants is not in position for any reason, the railroad will comply with the operating requirements in 49 CFR Part 234, Appendix B for "False Activation":

Appendix B to Part 234—Alternate Methods of Protection Under 49 CFR 234.105(c), 234.106, and 234.107(c)

[This is a summary—see body of text for complete requirements]

	Flagger for each direction of traffic	Police officer present	Flagger present, but not one for each direction of traffic	No flagger/no police
False Activation	Normal Speed	Normal Speed	Proceed with caution—maximum speed of 15 mph	Proceed with caution—maximum speed of 15 mph.

3. Supervision, oversight, and job description of the attendants, coordinators, and supervisors must be as described in the Plan.
4. Attendants must meet the requirements of an appropriately-equipped flagger as defined in 49 CFR § 234.5.
5. Supervisors must ensure each crossing attendant has a reliable method of communication with his supervisor as outlined in the Plan.
6. An attendant's use of any electronic device must occur outside of the railroad right-of-way and only for business purposes.
7. This relief is only applicable along the corridor known as the University of Colorado A Line. No service performance demonstrations or passenger train (revenue) movements must be made along any other corridor until the highway-rail grade crossing warning systems are known to function as designed.
8. Grade crossing attendants, as outlined above and in the Plan, must be used until the grade crossing warning systems provide warning times within the designed time for all trains for 7 consecutive days.
9. Failure to comply with any restriction outlined here or within the RTDC Plan may subject the railroad to additional restrictions.
10. Nothing in this decision letter is meant to preempt any order or requirement from another regulatory agency such as the Colorado Public Utilities Commission.
11. RTDC must report immediately to FRA's Office of Railroad Safety any accident, incident, or injury that occurs at any grade crossing.

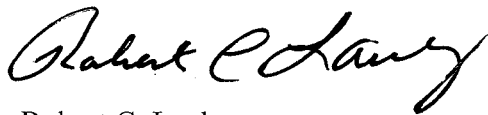
This docket is still open for public comment. FRA reserves the right to modify or rescind this waiver based on comments received. FRA also reserves the right to amend or revoke this waiver upon receipt of information pertaining to the safety of railroad operations or in the event of noncompliance with any condition of this waiver.

FRA reserves the right to extend this waiver if conditions warrant and RTDC has made a written request for an extension to FRA.

This waiver expires 90 days from the date of this letter. Any request for extension must comply with the filing requirements of 49 CFR §§ 211.7—*Filing requirements*, and 211.9—*Content of rulemaking and waiver petitions*, and must also be submitted via e-mail to FRAWaivers@dot.gov.

In any future correspondence regarding this waiver, please refer to Docket Number FRA-2016-0028. If you have any questions, please contact Mr. John Manutes, FRA Mechanical Engineer, at (720) 879-3225 or John.Manutes@dot.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert C. Lauby". The signature is written in a cursive, flowing style.

Robert C. Lauby
Associate Administrator for Railroad Safety
Chief Safety Officer

Enclosure

RTDC

Grade Crossing Attendant Plan

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1. Purpose

There are eleven grade crossings on the RTDC A Line (known as the east corridor during construction) that runs between DUS and DIA, mainly situated along the 40th Ave and Smith Road section of the rail corridor between 38th/Blake station and 40th/Airport station. The project is currently operating using conventional crossing approaches. The design intent is to use PTC wireless crossing functionality to provide the constant warning times for grade crossings. This will not be available until May 18th 2016. Until this time rail operations is with extended gate down times. FRA and PUC have expressed concern about these extended gate down times not being in compliance with 49 CFR Part 234.225. During testing they have required that the project have a person in attendance at the crossing to provide a visible presence, a deterrent from bad behaviors with respect to grade crossing traffic rules and pedestrians and to be a communication point to railroad operations until the crossings are compliant

This plan covers the specific training, monitoring and communication protocols that are required for the person in attendance at the crossings to be safe and effective.

2. Staffing

Generally we are utilizing staff from Rocky Mountain Flagging to provide general attendant staff, Uniformed Traffic Control (UTCs – Uniformed Police) under a subcontract with the cities (Denver and Aurora) and DTP provided rail supervisors as oversight. The work schedule is over a 24 hour period.

Typical arrangements are one UTC on the Smith Rd/ 40th street side and one crossing attendant on the opposite side at each crossing. The project will be compliant with 49 CFR Part 234 Appendix B for staffing requirements and how it relates to operating speeds.

Mobile supervision

Supervision of the Crossing Attendants is provided by two mobile teams of Two Traffic Control Supervisors (TCS) in the field. Job description is given in Section 3.

An OCC Grade Crossing Coordinator (OCCGCC) will be stationed at the OCC to monitor crossings and attendants at each crossing via CCTV and also be the communication interface between attendants and OCC. Typically using cell phones to communicate. (See section 5. Communications). The OCCGCC job description is in Section 3.

3. Job Description

General Description

Flaggers, Supervisors, and the OCCGCC are not “Roadway Workers” and have specific instructions to not foul the tracks.

General Crossing Attendant

- Attend the crossing and be visible as a project representative
- Deter bad behavior through visibility and availability to answer questions
- Observe and report bad behavior from pedestrians, bicyclists or vehicle drivers to OCCGCC
- Report unusual occurrences to the OCCGCC either with traffic build up, erratic driver behavior, railroad gate operation and warning devices, and traffic signals
- Be aware of train operations and receive information regarding train operations from OCCGCC
- Be aware of approaching trains by way of hearing the train horn, observing the warning devices (flashing lights)

Supervisors (TCS)

- Supervise the crossing attendants and UTC, including providing briefings, arranging the shift changes and providing relief breaks.
- Respond to reports from the OCCGCC
- Respond to issues reported by the crossing attendants and UTCs
- Communicate with OCCGCC

OCCGCC

- Monitor the crossings from the OCC via CCTV system
- Maintain an unusual event log
- Maintain the communications contact numbers list
- Keep up to date with rail operations and provide information on service disruptions to the field personnel.
- Contact point for attendants, UTCs and TCSs to report information and events pertaining to their duties.

Oversight

- DTP management will conduct regular checks to verify compliance and record these checks with the OCCGCC who will record them in the unusual event log noting any violations. The violations will be corrected or handled at time of occurrence.

4. Training/Briefing

All crossing attendants get the following training prior to arrival on job site:

- Rocky Mountain Orientation and safety expectations
- CDOT Flagging requirements training and a required test

- 100% are drug tested

At the start of each shift the attendants get a daily briefing on their duties, any rail operation anomalies at their crossing location and sign the briefing sheet. Communication details are confirmed at this time also.

UTC and crossing attendants will have all equipment as required in 49 CFR Part 234.5 *Appropriately equipped flagger definition.*

Daily briefing records and sign in sheets will be managed and kept by the TCSs. These will be provided back to the DTP offices for record keeping on a weekly basis.

5. Communication

Primarily communication will be by cellphone. Each crossing attendant and supervisor will confirm the personal cellphone number and availability to use for work purposes. If the personal cellphone is not available for use a company cellphone will be provided by the TCS to the crossing attendants. The TCS will carry a pool of cellphones for use by the crossing attendants. A temporary power socket is provided at each grade crossing for cellphone charging purposes.

All cell phone use is required to be made outside the railroad right of way and for business use only while performing attendant duties.

Communications is typically envisaged as below

For railroad related issues and emergencies – Crossing Attendant or UTC to OCCGCCs and OCCGCC to TCSs

Relief breaks and personnel issues - Attendants or UTC to TCS.

OCCGCC will keep a call log and will update attendees on changes to train services or operational issues outside of the normal pattern.