

April 7th, 2016

1670 Broadway, Suite 2700
Denver, CO 80202

Mr. Devin Rouse, P.E.
Office of Railroad Safety
Federal Railroad Administration
Room W35-322
1200 New Jersey Avenue, SE
Washington, DC 20590

Subject: Petition for Emergency Waiver of Safety Rule, 49 CFR Part 211.45

Dear Mr. Rouse:

The purpose of this letter is to request an emergency waiver from the FRA under 49 CFR Part 211.45, Petition for emergency waiver of safety rules. RTDC's new commuter rail system is designed to provide constant warning times for the at-grade crossings using a Positive Train Control ("PTC") based Wireless Crossing Activation System ("WCAS"). Unfortunately, the WCAS may not be available for the first 90 days of revenue service. The waiver requested is to allow RTDC to begin Revenue Service on the new University of Colorado A Line April 22, 2016, without WCAS being fully functional.

The requirements outlined in 49 CFR Part 211.45 state that the content required for the petition include the following:

- a) specifically address how the petition is related to the emergency, and to the extent practicable, address the information required under part 211.9 (a) and (b);
- b) describe how the petitioner or the public is affected by the emergency (including the impact on railroad operations);
- c) describe what FRA regulations are implicated by the emergency;
- d) describe how the waiver of the implicated regulations would benefit the petitioner during the emergency; and
- e) how long the petitioner expects to be affected by the emergency.

The requirements are addressed in the order listed above:

- a) The Wireless Crossing activation System is designed to provide constant warning times for the at-grade crossings on this system, but the WCAS will not be fully functional for the scheduled opening date of revenue service. However, the crossings are still protected using a traditional ATC signal system with approach and island circuits. During ATC operations, the system will provide extended crossing warning and gate-down times, due to station stops or long approach times. RTDC will have grade crossing attendants present at all at grade crossings to ensure that highway traffic, pedestrians, and cyclists are monitored to deter "gate run-arounds" until the PTC WCAS is fully tested and operational. The grade crossing attendants will meet the requirements established for an "Appropriately Equipped Flagger" pursuant to 49 CFR 234.5. Please refer to the attached "Grade Crossing Attendant Plan" for a more detailed description of the protection provided by the grade crossing attendants.

211.9 (a) & (b): The text or substance of the rule or standard that would best apply to the waiver request is described in 49 CFR Parts 234.207 and 234.225 – Under Grade Crossing Safety. 49



CFR Part 234 Appendix B, includes the definition of “False Activation” and/or “Activation Failure” which is most applicable, because the crossing warning time could start earlier than is absolutely necessary resulting in extended gate activations.

- b) The public will be impacted by this temporary waiver request, because they will be subject to longer than desirable gate-down times at the crossings until the WCAS is fully tested and commissioned.
- c) As described in the second paragraph of section (a) above, 49 CFR Part 234.207 and 234.225 – Grade Crossing Safety is impacted. RTDC expects to safely protect the intersections while maintaining normal commuter rail system operations, by using “Appropriately Equipped Flaggers” at all affected intersections.
- d) Approval of this waiver will allow the commuter rail system to meet the highly publicized and anticipated opening date of April 22nd, 2016. RTDC would not request this waiver if we were not confident that we will be able to operate the system safely and properly protect the public.
- e) As stated in the opening paragraph, this request is for 90 days. RTDC fully expects that the WCAS will be successfully tested and operational well before the end of June 2016, and RTDC will withdraw this waiver request as soon as the WCAS is safely operating. RTDC would welcome FRA witnesses for the regression testing, as well as the updated test cases for PTC WCAS when testing is ready to commence.

I trust this request for waiver meets the requirements of 49 CFR Part 211.45, and we look forward to your timely response. Please contact my office at 303.299.6906, or Walt Stringer at 303.299.3465 with any further requests for additional information or concerns.

Sincerely,



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Attachment: Grade Crossing Attendant Plan



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.