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ADOPTED TEMPORARY REGULATION OF THE  
PUBLIC UTILITIES COMMISSION OF NEVADA

(Effective January 9, 2001)

EXHIBIT A PUBLIC UTILITIES COMMISSION OF NEVADA

PUC Docket No. 98-7004

PARTICIPATING PARTIES' PROPOSED AMENDMENTS TO REGULATION

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CHAPTER 705

RAILROADS

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## GENERAL PROVISIONS

705.005 "Commission" defined. As used in this chapter, unless the context otherwise requires, "commission" means the public ~~service~~ *utilities* commission of Nevada.  
(Supplied in codification)

705.010 Application for exemption from provisions of chapter.

1. Any natural person, partnership, firm or corporation engaged in the business of operating a railroad within the State of Nevada, or any governmental agency, may apply to the commission for exemption from the provisions of this chapter, *except the regulations adopted under NAC 705.015*. The application must be in writing and must set forth the reasons for which the exemption is sought.

2. Each application must be accompanied by proof that a copy of the complete application was served on all railroads using the railroad lines upon which exemption is sought and upon the city or county in which the site of the proposed exemption is located.

3. The commission may dispense with a hearing and either grant or deny the application if no protest to the exemption is filed within 30 days by or on behalf of any interested party served with a copy of the application. Any exemption granted is limited to the particular case covered by the application.

*4. If as a result of an application filed in accordance with ~~to~~ this section the commission finds that any provision of the Nevada Administrative Code is in conflict with the railroad provisions of the Federal Railway Safety Act, Part A of Subtitle V of Title 49 of the United States Code, that provision shall be inapplicable to railroads to the extent of that conflict. In addition, if any provision in the Nevada Administrative Code applicable to railroads, or the application thereof to any person or circumstance, is found by the commission to be in conflict with Part A of Subtitle V of Title 49 of the United States Code, the remainder of the act or the application of the provision to other persons or circumstances shall be unaffected to the extent no conflict is found.*

[Pub. Service Comm'n, Railroad Gen. Order 11 § 13, eff. 6-21-76]

705.015 Authority to enforce federal laws and regulations Adoption of federal regulations by reference.

~~1.—The commission may enforce the federal laws and regulations as set forth in Title 49 USC § 20113. hereby adopts by reference the regulations contained in 49 C.F.R. Parts 212, 213, 214, 215, 216, 217, 281, 219, 220, 221, 223, 225, 228, 229, 231, 232, 233, 234, 236, and 240 as those regulations existed on (date to be inserted).~~

~~2.— A copy of a publication containing Title 49 of the Code of Federal Regulations may be obtained from the Superintendent of Documents, United States Government Printing Office Washington, D.C. 20402.~~

705.020 Overhead clearances.

1. The minimum overhead clearance above the top of rail of railroad tracks which are used or proposed to be used for transporting freight cars, for all overhead structures except as hereinafter prescribed, must be 22 feet.
2. The overhead clearance above top of rail of such tracks located inside of buildings which are entirely enclosed may be reduced to 18 feet. This clearance applies only to tracks terminating within the building. When an overhead clearance of less than 22 feet is established on tracks inside the building, all cars, trains, motors, engines or other equipment must be brought to a stop before entering the building.
3. Overhead clearances authorized in this section are applicable to tracks on which freight cars having a height to running board of 15 feet 1 inch or less are transported. On tracks over which freight cars of greater height are transported or proposed to be transported, minimum overhead clearances are increased by an amount not less than such additional height, except where the nature of the cars precludes the probability of employees getting on top of or passing over them. [Pub. Service Comm'n, Railroad Gen. Order 11 § 1, eff. 6-21-76]

705.030 Side clearances.

1. Minimum side clearances from center line of tangent standard gauge railroad tracks, which are used or proposed to be used for transporting freight cars, must be as follows:

Item Description	Minimum Side Clearance From Center Line of Track
(a) All structures, except those specifically mentioned below.	8 ft. 6 in.
(b) Platforms:	
(1) Eight inches or less above top of rail.	4 ft. 8 in.
(2) Four feet or less above top of rail.	7 ft. <del>8 in</del> <u>3</u> 8 in-
(3) Four feet six inches or less above top of rail when used principally for loading or unloading refrigerator cars or other cars used in lieu thereof. Stepped platforms combining two or more of the above platform clearances are not permitted. Existing platforms constructed before June 21, 1976,	

may be extended at the existing clearance, provided that the clearance, unless otherwise permitted by this chapter, may not be less than 6 feet 6 inches from the center line of the track.

- |     |  |  |
|-----|--|--|
|     |  | <u>8 ft. 0 in.</u>                           |
| (c) | Poles: All poles.  | 8 ft. 6 in.                                  |
| (d) | Through bridges supporting track affected and tunnels.   | 8 ft. 0 in.                                  |
| (e) | Block signals and switch stands:   |  |
|     | (1) Switch boxes, switch-operating mechanisms and accessories necessary for the control and operation of signals and interlocks projecting 4 inches or less above the top of rail.   | 3 ft. 0 in.                                  |
|     | (2) Block signals and switch stands 3 feet or less above top of rail and located between tracks where not practicable to provide clearances otherwise prescribed in the chapter.   | 6 ft. 0 in.                                  |
|     | (3) All other block signals and switch stands.   | 8 ft. 6 in.                                  |
| (f) | Water columns and oil columns.   | 8 ft. 0 in.                                  |
| (g) | Through bridges, handrails, water barrels and refuge platforms on bridges and trestles, water columns, oil columns, block signals, cattle guards and cattle chutes or portions thereof, 4 feet or less above top of rail may have clearances decreased to the extent defined by a line extending diagonally upward from a point level with the top of rail and 5 feet distant laterally from a center line of track; provided that the minimum clearance for such handrails is 7 feet 6 inches and the minimum clearance for fences of cattle guards is 6 feet 9 inches. |  |
| (h) | Walkways on designated and newly constructed bridges and trestles.   | 8 ft. 0 in. to<br>outside edge of<br>walkway |
| (i) | All other objects and articles.  | 8 ft. 6 in.                                  |

2. All minimum side clearances prescribed in this section are for tangent track. In general, all structures adjacent to curved track must have a minimum side clearance 1 foot greater than that required for tangent track. Where space is limited, the minimum side clearance for structures adjacent to tracks of not over 12 degree curvature must be the same as for tangent track, but if over 12 degree curvature, 1/4 inch must be added to the equivalent minimum side clearance required for tangent track for each degree of the curve. Where track contains superelevation, minimum side clearances will be increased as necessary to give the equivalent clearances based on tangent track.

3. Minimum side clearances authorized in this section are applicable to tracks on which freight cars having a maximum overall width not greater than 10 feet 10 inches are transported. On tracks over which freight cars of greater width are transported or proposed to be transported, the minimum side clearances will be increased not less than one-half of the additional width.

[Pub. Service Comm'n, Railroad Gen. Order 11 § 2, eff. 6-21-76]

705.040 Deviation from overhead and side clearance.

1. Any natural person, partnership, firm or corporation engaged in the business of operating a railroad within the State of Nevada, or any governmental agency, may apply to the commission for authority to deviate from the provisions of NAC 705.020 and 705.030.
  2. Any application must be in writing and must set forth the reasons relied upon by the applicant for the requested deviation. Except as provided in NAC 705.010, the commission will not authorize a deviation from the provisions of NAC 705.020 and 705.030, which would reduce the minimum overhead clearance to less than 20 feet 6 inches and the minimum side clearance to less than 8 feet 6 inches. In no event will the commission authorize a deviation without a hearing after notice to the operator of the railroad involved in the absence of the filing of a written consent of the operator of the railroad to the deviation.
  3. Except as provided in this subsection and subsection 4, no deviation, if authorized without a hearing having been held, will be allowed to continue for a period in excess of 6 months. At any time during the last 30 days of the 6-month period, the applicant may apply to the commission for authority to extend an authorized deviation for an additional 3-month period. Upon good cause shown, the commission will grant a requested extension for an additional 3 months. At any time during the last 30 days of the 3-month extension, the applicant may apply to the commission for authority to extend an authorized deviation for a second 3-month period. Upon good cause shown, the commission will grant a requested extension for a second 3-month period, but under no circumstances will a further extension be considered or granted.
  4. Nothing in this section prohibits authorization of exemptions or deviations for longer periods of time than specified in this section upon formal application, notice to affected parties and hearing.
  5. Upon receipt of authority to deviate from NAC 705.020 and 705.030, the applicant shall cause to be served upon all interested persons adequate and sufficient notice of its intention to deviate as authorized. Such notice must include but not be limited to the following:
    - (a) The location of the subject overhead or side structure;
    - (b) The contemplated duration of the deviation authorized;
    - (c) The actual overhead or side clearance, which will be in effect for the duration of the authorized deviation; and
    - (d) The date on which the authorized deviation is to be exercised.
- [Pub. Service Comm'n, Railroad Gen. Order 11 § 12, eff. 6-21-76]

705.050 Center line of track: Overhead and side clearances.

1. With respect to all points at or above a point 13 feet 6 inches directly above the center line of track, minimum overhead and side clearances as prescribed in NAC 705.020 and 705.030 may be decreased to the extent defined by the half circumference of a circle having a radius of 8 feet 6 inches and tangent to a horizontal line 22 feet above the top rail at a point directly above the center line of track. For tunnels and through bridges, the radius may be 8 feet. Subsection 3 of NAC 705.020 and subsection 3 of NAC 705.030 apply to this subsection.
  2. The overhead and horizontal clearances specified in this chapter do not apply to engine houses. In shops and buildings in which freight cars are moved for repairs, there must be a minimum side clearance of 7 feet 8 inches from the center line of track for doorways and entrances.
- [Pub. Service Comm'n, Railroad Gen. Order 11 § 3, eff. 6-21-76]

705.060 Clearance between parallel tracks.

1. Except as provided in this section, the minimum distance between the center lines of parallel standard gauge railroad tracks, which are used or proposed to be used for transporting freight cars, must be 14 feet.
2. The center line of any standard gauge track, except a main track, parallel and adjacent to a main track, must be at least 15 feet from the center line of the main track.
3. The center line of any standard gauge ladder track, constructed parallel to any other track, must have a clearance of not less than 20 feet from the center line of the other track.
4. Minimum clearance between center lines or parallel house or industry tracks must be 13 feet.
5. Minimum clearance between center lines of two parallel team tracks must be 11 feet 6 inches. Clearances otherwise prescribed in this chapter must be maintained on the opposite side of each track.
6. Minimum distances between parallel tracks authorized in this section are applicable only to tracks on which equipment having maximum overall width not in excess of 11 feet is transported. On tracks over which equipment of greater width is transported or proposed to be transported, minimum distances between parallel tracks must be increased not less than the increased width.
7. Existing tracks may be maintained, reconstructed or extended at centers in existence as of June 21, 1976.

[Pub. Service Comm'n, Railroad Gen. Order 11 § 4, eff. 6-21-76]

705.070 Clearances for electrical construction.

All clearances of electrical construction over, above, adjacent to, along or across railroads must conform to the requirements specified in the ~~“Rules for Overhead and Underground Lines for Electric Utilities”~~; *National Electrical Safety Code published by The Institute of Electrical and Electronics Engineers, Inc.*, in amendments thereto or supplements thereof, currently adopted by the commission pursuant to NAC 704.450, or in such other or further regulations as may be adopted by the commission, superseding or amplifying those rules, except with respect to the installations at lawful clearances when installed.

[Pub. Service Comm'n, Railroad Gen. Order 11 § 11, eff. 6-21-76]

705.080 Open-top cars: Excessive height or width.

No movement of open-top cars containing lading extending in excess of 15 feet 6 inches in height above the top of the rail or extending laterally in excess of 5 feet 5 inches from the center line of the car, may be made except under the following conditions:

1. The operation of cars, the lading on which extends laterally in excess of 5 feet 5 inches from the center line of the car is restricted to lading the size or dimensions of which cannot be reduced.
2. All open-top cars with lading extending laterally in excess of 5 feet 5 inches from the center line of the car or in excess of 15 feet 6 inches in height above the top of the rail, must be placarded on the load in a conspicuous place and each such car must be marked, stenciled or placarded at locations described in subsection 3 of NAC 705.090.
3. All open-top cars with lading extending laterally in excess of 5 feet 5 inches from the center line of the car, if the length of the train permits, must be at least five cars from the caboose.

4. All members of the crew of each train containing cars, the lading on which extends laterally in excess of 5 feet 5 1/2 inches from the center line of the car or in excess of 15 feet 6 inches in height above the top of the rail, must be informed by an appropriate train order or message that the train includes such cars. The information must also include the total number of such cars and notice that no member of the train crew is required to ride on any such cars.
  5. All members of the crews of trains whose operations may be affected by the presence or operation of other trains having loads as wide as those described in subsection 4 must be informed by an appropriate order or message advising them of that condition.
  6. Yard supervisors must be notified sufficiently in advance of the arrival of cars on which the lading extends laterally in excess of 5 feet 5 1/2 inches from the center line of the car to enable supervisors to take the necessary precautions to safeguard employees in the yard.
  7. Cars on which the lading exceeds 15 feet 6 inches in height above the top of the rail, if otherwise in compliance with requirements of this chapter as to width of lading, and the nature of which precludes the probability of employees getting on top of or passing over them, are exempt from the conditions of this section. If the train length permits, any such cars, except cars transporting highway trucks or trailers, without open-lading, multilevel freight cars either loaded or unloaded and automobile underframe cars, must be at least five cars from both the caboose and the engine, and a buffer car (any car not carrying a trailer or semitrailer with open-lading cargo) must be placed immediately ahead of the caboose or immediately behind the locomotive. For the purposes of this section, automobile underframe cars are either special flat cars upon which automobile underframes are stacked and firmly secured in a horizontal position or gondola cars in which such underframes are placed on end and firmly secured to the gondola cars.
- [Pub. Service Comm'n, Railroad Gen. Order 11 § 10, eff. 6-21-76]

705.090 Exemptions from clearances; cars marked for excessive ~~height and~~ width. Common carrier railroads operating in Nevada, are exempted from compliance with the requirements of subsection 3 of NAC 705.020 and subsection 3 of NAC 705.030 in the movement of freight cars ~~of a height exceeding 15 feet 1 inch but not greater than 15 feet 6 inches from the top of the rail to the top of the running board, and cars~~ exceeding 10 feet 8 inches but not greater than 10 feet 11 inches in width overall, subject to the following conditions:

- ~~1. Each car exceeding 15 feet 4 inches in height but not greater than 15 feet 6 inches from the top of the rail to the top of the running board, the movement of which is authorized, must be permanently marked, stenciled or placarded. The markings must be legibly maintained and read as follows: "This car EXCESS HEIGHT." The words "EXCESS HEIGHT," must be approximately 7 inches wide by 10 inches high.~~
- ~~2. 1. Each car exceeding 10 feet 10 inches in width overall, the movement of which is authorized, must be permanently marked, stenciled or placarded. The markings must be legibly maintained and read as follows: "This car EXCESS WIDTH." The words "EXCESS WIDTH," must be approximately 7 inches high and 10 inches wide.~~
- ~~3. 2. The words described in subsections 1 and 2 must be permanently marked on cars which are owned as soon as practicable with a 3/4 inch stripe outlining an area not less than 7 inches by 10 inches, such stripes and lettering of a color contrasting with the color of the body of the car.~~

Required ~~markings and~~ placarding must be placed on the side adjacent to the ladder or handholds near the floor line of the car at each of the four corners.

[Pub. Service Comm'n, Railroad Gen. Order 11 § 9, eff. 6-21-76]

705.100 ~~Repairs of equipment; defect and repair register~~ **Repair of End -of-train devices and visible markers.**

~~1. If a failure of required equipment or standards of maintenance occurs in a caboose or locomotive after it has begun to move, the railroad operating that caboose or locomotive shall not be deemed in violation of this chapter if the failure of equipment or deficiency in maintenance is corrected at the next terminal where the required maintenance may reasonably be performed.~~

~~2. The railroad must provide a defect and repair register for equipment on each caboose to permit the recording of defects noted in railroad equipment, the date repairs were made and the name of the person who makes those entries in the register. The register and the locomotive inspection report required by federal regulation must be available for inspection by a representative of the commission at any reasonable time.~~

**Every railroad operating in the state, other than government, industry, tourist/excursion and shortline railroads, shall designate a minimum of one northern trackage location and one southern trackage location to ~~repair~~, replace or maintain end of train telemetry devices and visible markers.**

[Pub. Service Comm'n, Railroad Gen. Order 11 § 21, eff. 6-21-76]

705.110 Railroad ~~cars~~ **caboose**s: Heating.

~~1. The standard set forth in 49 C.F.R. § 229.119(d) is hereby adopted by reference. Volume 200-399 is available from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402, at a price of \$7.50.~~

~~2.~~ **1.** A heating facility must be maintained capable of producing a temperature of at least 68 degrees Fahrenheit (19.8 degrees Centigrade) in a standard caboose. The temperature must be taken at the center of the caboose compartment under normal winter weather conditions with doors and windows closed.

~~3.~~ **2.** Weather stripping or weatherproof sash must be installed and maintained on all windows and doors in the caboose to seal openings against drafts, moisture and dust.

[Pub. Service Comm'n, Railroad Gen. Order 11 § 18, eff. 6-21-76]

705.120 Railroad ~~cars~~ **caboose**s: Safety requirements.

1. Wherever glass or alternate glazing materials are used in ~~any railroad car or coach~~ **a caboose** used to carry train crews, they must be of the safety glass type. They must be so constructed, treated or combined with other materials as to comply with the specifications or requirements established by the American National Standards Institute Safety Code Z26.1. Broken glass must be replaced and glass which has cracks more than 1 foot in length, intersecting cracks or cracks which distort vision must be replaced.

2. All doors must be equipped with latches or otherwise secured to prevent them from swinging under normal operating conditions.

3. Seats on chairs and benches in ~~locomotive and~~ **caboose**s must be padded or provided with cushioning of at least 3 inches in thickness.

4. Stanchions, grab handles or bars must be installed at entrances and exits and at other locations within the convenient reach of employees moving about the caboose while a train is in motion. A bar, commonly known as a "monkey bar," must be installed in a horizontal position in the cupolas of cabooses where possible.

[Pub. Service Comm'n, Railroad Gen. Order 11 § 19, eff. 6-21-76]



705.130 Railroad ~~cars~~ *caboose*s: Lighting.

An adjustable, shielded electric light must be provided for the illumination of the caboose desk, and a separate light must be provided to illuminate the remainder of the interior of ~~railroads cars and coaches~~ *caboose*s used to carry train crews.

[Pub. Service Comm'n, Railroad Gen. Order 11 § 20, eff. 6-21-76]

705.140 Movement of material for construction, operation of system. Nothing in this chapter prevents the movement of material which is necessary in the construction or operation of the railroad system over railroad tracks which are not used or proposed to be used for transporting freight cars, nor in the movement of special work equipment used in the construction or operation of that system, if the operation is carried on in a safe manner.

[Pub. Service Comm'n, Railroad Gen. Order 11 § 6, eff. 6-21-76]

#### *705.145 Bridge inspections*

*1. All bridges carrying railroad traffic shall be inspected as set forth in this chapter. This section shall apply until federal law is enacted requiring the periodic inspection of bridges carrying railroad traffic.*

*2. "Railroad bridge" means a structure supporting one or more railroad tracks above land or water with a span of 12 feet or more measured along the track centerline. The term applies to the entire structure between the faces of the back walls of abutments or equivalent components, regardless of the number of spans, and includes all such structures whether of timber, stone, concrete, metal or any combination thereof. The term does not apply to culverts or culvert-type structures.*

*3. Any railroad bridge carrying railroad traffic shall be inspected a minimum of once per calendar year. Inspections shall be performed, signed, and dated by a person competent and qualified in railroad bridge inspection.*

~~*4. No later than April 1st of each year, each railroad shall provide a summary or other listing indicating that all bridges located on the railroad within the state have been inspected within the last 1 year in accordance with the requirements of this chapter.*~~

~~*5. Inspections shall be performed and recorded with reference to the recommendations set forth in the current "Manual of Railway Engineering" as published by the American railway Engineering and Maintenance of Way Association.*~~

*6.4. The railroad shall keep the most recent two inspection reports for each bridge on file and available for review and inspection and, upon request, shall provide a copy to the commission inspectors. Nothing in this section precludes the railroad from maintaining its bridge inspection records in electronic form.*

~~*7. The commission may inspect any bridge using its own qualified inspectors or inspectors hired by it. "Qualified inspector" as used in this paragraph means a person having received railroad bridge inspection training from the Federal Railroad Administration and/or college level course(s) dealing with railroad bridge inspection and training offered through the American Railway Engineering and Maintenance of Way Association.*~~

*5. Should Commission Staff have a concern regarding the structural condition of a particular bridge structure, the affected railroad must respond to Staff's concerns by having its own bridge inspection personnel inspect the structure within one working day after receiving such notice, or take other steps to respond to Staff's concern.*

**6. This section shall not apply to the Nevada Department of Transportation.**

705.150 Construction, maintenance of walkways on structures.

1. Every railroad shall construct and maintain adjacent to at least one side of its tracks, walkways on all newly constructed bridges and trestles.
2. Every railroad shall construct and maintain adjacent to at least one side of its tracks walkways on all bridges and trestles designated by the commission after a hearing. Except as provided in subsection 3, walkways must be located so that they will provide a minimum side clearance of 8 feet from the center of the track to the outside edge of the walkway.
3. Compliance with the 8-foot requirement referred to in subsection 2 will be waived by the commission with regard to all designated bridges and trestles which presently have minimum side clearances of less than 8 feet if the common carrier railroads are able to show to the commission's approval that compliance with the 8-foot requirement is structurally or economically unfeasible.
4. All walkways must be kept free from obstacles which would render them unsafe or difficult to traverse on foot, except as to those facilities whose minimum clearances are prescribed by other sections of this chapter. *Any obstacle which a railroad knows or should have known would render a walkway unsafe or difficult to traverse on foot shall be removed promptly.*
5. Walkways must be equipped with a securely attached handrail located on the side of the walkway farthest from the track, except no handrails are required on through girder structures. Handrails must be located so as to comply with the clearance standards set forth in subsection (g) of NAC 705.030.
6. ~~Construction of walkways on all designated bridges and trestles must be completed at 2-year intervals in accordance with a time schedule established by the commission after a hearing.~~ *Walkways on structures must conform to standards for walkways along railroad roadbed, as found in NAC 705.160, as to width, surface and vertical placement with respect to standard, in and around switches, yards and other areas where employees have occasion to be on the ground, except, that the inside edge of walkways may be placed closer than 6 feet from the nearest rail when necessary.*
7. The provisions of this section do not apply to culverts.  
[Pub. Service Comm'n, Railroad Gen. Order 11 § 14, eff. 6-21-76]

~~705.160 Area adjacent to tracks.~~

- ~~1. Every railroad shall provide and maintain a cleared area adjacent to its tracks on both sides of all specified train inspection areas, including hot box locators, switching areas and sidings to provide ready access to the entire length of the train to railroad employees for inspection purposes. The cleared area must be level laterally and longitudinally to permit employees to walk without leaning or being forced to brace themselves. The area must be maintained and kept reasonably free from vegetation, standing water or similar obstacles, which would render the walkways unsafe or difficult for travel by foot.~~
- ~~2. The provisions of this section will be temporarily suspended during periods of heavy rain or snow, derailments, rock and earth slides and similar abnormal periods and for a reasonable time thereafter to permit restoration work, in the following manner:~~
  - ~~1. Applicability of rules~~
    - ~~(a) Walkway standards will apply to all existing railroad trackage operated at present.~~

~~(b) All trackage constructed after the adoption of this regulation shall not be placed in service until the walkways are in compliance.~~

~~(c) Upon investigation, the commission may require standard walkways to be maintained along one or both sides of railroad tracks in switching areas, yards, main line, branch line and short line trackage in the State of Nevada.~~

~~(d) The Commission, after a hearing, may order any person owning or operating railroad trackage in the state to eliminate any unsafe walkway condition and prescribe that improvement be made within 10 days.~~

## ~~2. Authorization of variance from prescribed standards~~

~~Authority to operate with walkway different from the prescribed:~~

~~(a) Will be considered by the commission upon proper application in the form specified by the commission, containing a full and detailed statement of the existing conditions and the reason for a request for variance;~~

~~(b) Is hereby granted during periods of heavy rain or snow, derailments, rock and earth slides, wash outs and like unforeseen conditions, including a reasonable time period after return to normal to permit necessary restoration;~~

~~(c) Is hereby granted where clearance standards have been established by the commission that would prohibit the walkway width standard from being met, or physical placement of trackage adjacent to buildings where impaired clearance has been granted, provided the available space for walkways is utilized.~~

## ~~3. Definitions~~

~~(a) "Person" is any person or company owning or operating railroad trackage in the State of Nevada.~~

~~(b) "Structure" is any bridge, trestle or tunnel in railroad service.~~

## ~~4. Walkway dimensions~~

~~(a) Walkway Standard No. 1 shall be the minimum walkway standard. Except where Standard Nos. 2, 3, 4 and 5 apply, all walkways shall comply with Standard No. 1 in such manner that the walkway surface will not be below the base of the ballast section of the roadbed. Walkways must be located as close as practical to the level of the ties.~~

~~(b) Walkways must provide a reasonable regular surface and may have a gradual slope not to exceed approximately one inch in eight inches, except where the railroad trackage grade is in excess.~~

~~(c) The minimum width of walkways along branch, main and short lines shall be two feet (See drawing of Standard No. 1).~~

~~(d) Walkways shall be surfaced with reasonably small gravel, concrete, asphaltic concrete, planking or other material to provide a surface that is smooth and safe to perform duties about trains. Walkway surfaces shall be kept reasonably free of spilled fuel, oil, sand, posts, rocks and other hazards and obstructions.~~

~~(e) Yards where switching is performed shall have walkways between tracks, as well as along tracks, bordering the yard or switching area. These walkways shall be continuous between tracks unless tracks are more than 20 feet apart.~~

~~(f) The outside edge of walkways in Standard Nos. 1, 2, 3, 4 and 5 shall not be more than 15 feet from the center line of the nearest adjacent track. Inside edge of walkways must not be closer to the rail than the maximum overhang of equipment operated on that track, and no more than 6 feet from the nearest rail.~~

~~(g) On curves, all walkways shall be at least one (1) foot wider than standard, where possible.~~

~~(h) The minimum width of walkways in the vicinity of each switch stand shall be governed by Standard No. 4 or 5, depending on the location and operations about that switch.~~

~~Standard No. 4:~~

~~Switches entering and in yards and serving industry tracks shall have a walkway with a minimum width of 6 feet for 125 feet on each side of the switch stand on both sides of the track. In addition, the area from the switch frog to a point at least 25 feet beyond the clearance point shall meet the walkway surface standards. An additional 3 feet of walkway shall extend at a minimum of 4 feet on each side of the switch stand and then angle back to the walkway on each side of the switch in a minimum distance of 20 feet. (See drawing of Standard No. 4).~~

~~Standard No. 5:~~

~~All other switches and all power operated switches shall have a walkway with a minimum width of 5 feet for 50 feet on each side of the switch stand on both sides of the track, and the area from the switch frog to the clearance point shall meet the walkway surface standard. An additional 3 feet of walkway shall extend a minimum of 4 feet on each side of the switch stand and then angle back to the walkway on each side of the switch in a minimum distance of 10 feet. (See drawing of Standard No. 5).~~

~~(i) Walkway Standard No. 2 shall apply to walkways along main line, branch and short line tracks at sidings where necessary. Standard No. 2 shall apply to both sides of the main and siding track where necessary and shall meet the dimensions of Standard No. 1. (See drawing of Standard No. 2).~~

~~(j) Walkway Standard No. 3 shall apply along both sides of all yard tracks and in advance thereof, where employees would normally be on the ground while working. (See drawing of Standard No. 3).~~

~~(k) At industry switches, except as provided by Standard Nos. 4 and 5, Standard No. 3 shall apply between a switch and the clearance point and in advance of a switch and beyond the clearance point on both tracks for a distance equal to a minimum of 50 feet for each car spot in the industry spur. At locations where employees are normally on the ground, walkways shall be maintained in compliance with Standard No. 3.~~

~~(l) At spotting areas, where practical, Standard No. 3 shall apply for the entire length of the spotting area, in advance thereof for a minimum of 50 feet for each spot on the track. At locations where employees are normally on the ground, walkways shall be maintained in compliance with Standard No. 3.~~

~~(m) Standard No. 3 shall be maintained at any point along tracks where employees are normally on the ground. This standard shall be maintained 50 feet in advance of and beyond any industry gates, manually activated crossing signals or any other devices operated by the crew and apply to points where crew members are required to flag, except where flagging is necessary because of emergency conditions.~~

~~5. Effective dates for walkway construction.~~

~~(a) No railroad track or structure constructed after January 1, 2000, 2002, except as approved by the commission, shall be placed into service until walkways have been provided that are in compliance with the applicable standard.~~

~~(b) For all other trackage, walkways conforming to the standards shall be constructed in accordance with the following:~~

~~(1) Walkways conforming to Standard No. 1 shall be constructed when and where determined necessary by the railroad or by the commission, and maintained thereafter.~~

~~(2) Walkways conforming to Standard Nos. 2, 3, 4 and 5 shall be constructed no later than January 1, 2000, 2002, and maintained thereafter.~~

## **Proposed NAC 705.160 Walkways Adjacent to Track**

### 1. Applicability of rules

(a) Walkway standards in Section 2 will apply to all new railroad trackage constructed after the adoption of this regulation.

(b) All trackage constructed after adoption of this regulation shall not be placed in revenue service until walkways conforming to the applicable standard are completed.

(c) Upon notice and hearing, the commission may require walkways to be constructed or maintained along one or both sides of railroad tracks in industry areas, yards, main line, branch line and short line trackage in the State of Nevada where needed and to the extent practicable to eliminate any unsafe walkway condition.

### 2. Walkway standards

(a) Standard No. 1 shall be the minimum walkway standard for mainline track. Standard No. 1 shall apply to both sides of the track ~~except where impractical.~~ (See drawing of Standard No. 1).

(b) Standard No. 2 shall be the minimum walkway standard for main line, and branch line track at sidings. Standard No. 2 shall apply to the outside of the main line and branch line track at sidings and shall meet the dimensions of Standard No. 1 (See drawing of Standard No. 2).

(c) Standard No. 3 shall be the minimum walkway standard for all yard tracks and in advance thereof, where employees would regularly be on the ground while working. Standard No. 3 shall also apply at industry turnouts and at spotting areas except as provided by Standard Nos. 4 and 5. In yards where substantial switching is performed, walkways shall be provided between tracks, as well as along tracks, bordering the yard or switching area. These walkways shall be continuous between tracks unless tracks are more than 17 feet apart. (See drawing of Standard No. 3)

(d) Standard No. 4 shall be the minimum walkway standard for mainline turnouts entering ~~and in~~ yards and serving industry tracks. Walkways shall have a minimum width of 6 feet and shall extend from 50 feet ahead of the switch stand to 25 feet behind the 12 foot 6 inch clearance point on the switch stand side, except as provided by Standard No. 6. (See drawing of Standard No. 4).

(e) Standard No. 5 shall be the minimum walkway standard for branch line turnouts and at all power operated turnouts. Walkways shall have a minimum width of 5 feet and shall extend from 50 feet ahead of the switch stand to the 12 foot 6 inch clearance point on the switch stand side, except as provided by Standard No. 6. (See drawing of Standard No. 5).

(f) Standard No. 6 shall be the minimum walkway standard for mainline turnouts used frequently for switching cars. Walkways shall have a minimum width of 6 feet and shall

extend from 125 feet ahead of the switch stand to 25 feet behind the 12 foot 6 inch clearance point on the switch stand side). (See drawing of Standard No. 6).

### 3. General walkway provisions

(a) Walkways shall provide a reasonably regular surface and may have a gradual slope not to exceed approximately one inch in eight inches, except where the railroad trackage grade is in excess.

(b) Walkways shall be surfaced with crushed material, asphaltic concrete, planking or other material to provide a surface that is smooth and safe to perform duties about trains, without compromising track drainage. When crushed material is used in yards, 40 to 75 percent of the material must be capable of passing through a three quarter inch square sieve opening and 100 percent of the material must be capable of passing through a one and one-half inch square sieve opening. When crushed material is used in turnouts, 60 to 90 percent of the material must be capable of passing through a one and one-half inch square sieve opening. Walkway surfaces shall be kept reasonably free of spilled fuel, oil, sand, posts, rocks and other hazards and obstructions.

(c) On curves exceeding 18 degrees, all walkways shall be at least one (1) feet wider than standard, except where impractical.

(d) Nothing in this section shall relieve the carriers of the obligation to provide a safe place for their employees to work.

### 4. Compliance

(a) Compliance with the walkway standards is hereby excused during periods of heavy rain or snow, derailments, rock and earth slides, washouts and like unforeseen conditions, including a reasonable time period after return to normal to permit restoration of walkways.

### 5. Exemptions for Small Businesses

(a) A small business as defined by NRS 233B.0382 is exempted from the application of the section, provided, however, the commission, after notice and hearing, and upon a showing by staff of a reasonable probability of substantial harm to the public safety may order a small business owning or operating railroad trackage in the State of Nevada to eliminate any unsafe walkway condition.

(b) The Commission may exempt any railroad from the requirements of this section for new construction upon a showing that conformance to the prescribed design standards is not required to ensure employee safety in performing tasks under the circumstances of the particular activity being undertaken.

705.170 Articles placed adjacent to tracks.

1. No merchandise, material or other articles may be placed either on the ground or on platforms adjacent to any track at a distance less than 8 feet 6 inches from the center line of the track.

2. A suitable line or other marker should be maintained on all platforms, except passenger platforms, at a distance of 8 feet 6 inches from the center line of the track to indicate minimum clearance for merchandise, material and other articles placed thereon.

[Pub. Service Comm'n, Railroad Gen. Order 11 § 5, eff. 6-21-76]

705.180 Tracks above public roads, highways, streets.

1. Where railroads cross above public roads, highways and streets, a minimum overhead clearance of 14 feet above the surface of the roads, highways or streets must be provided.
2. Where railroads cross above public roads, highways and streets, a minimum width of 20 feet must be provided for the public roads, highways or streets where only one span is used to support the railroad structure. Where two or more spans are used to support the railroad structure, a minimum width for each opening of 12 feet must be provided.
3. When the public road, highway or street is occupied by one or more tracks, minimum clearance dimensions will be determined by the commission for the case under consideration.  
[Pub. Service Comm'n, Railroad Gen. Order 11 § 7, eff. 6-21-76]

705.190 Public roads, highways and streets over tracks.

Where public roads, highways and streets cross above railroad tracks which are used or proposed to be used for transporting freight cars, minimum clearances as prescribed in NAC 705.020, 705.030, 705.050 and 705.060 must be provided, except that at the time of installation of the public road, highway or street, a minimum overhead clearance of 23 feet above the top of the rail must be observed.

[Pub. Service Comm'n, Railroad Gen. Order 11 § 8, eff. 6-21-76]

705.200 Emergency first-aid kit. An emergency first-aid kit required by NRS 705.370 must contain:

- |   |           |
|---|-----------|
| 1. Compressed roller bandages 2 inches x 6 yards (2)                                      | 1 package |
| 2. Gauze compress 24 x 72 inches (1)  | 1 package |
| 3. Bandage compress 4 x 4 inches with tails (1)   | 1 package |
| 4. Hexachlorophene antiseptic soap, one 2 oz. bottle, and four 2-inch x 2-inch gauze pads | 1 package |
| 5. Long band adhesive bandages 1 inch x 3-3/8 inches (band-aids -16)                      | 1 package |
| 6. Kip burn ointment (6, 1/8 oz. tubes)   | 1 package |
| 7. Bandage compress 2 inches x 2 feet (1)   | 1 package |
| 8. Triangular bandage (1)   | 1 package |
| 9. One A.A.R. first-aid pamphlet.   |           |

[Pub. Service Comm'n, Railroad Case 1322, eff. 9-12-65]

705.210 Drinking water.

1. Drinking water furnished pursuant to this chapter to meet the standards of the state board of health must be obtained from sources approved by that board. Cross connections between potable and unpotable water supplies are prohibited.
2. All locomotives and cabooses must have an adequate supply of sanitary drinking water.
3. Drinking water must be provided by railroads ~~in suitable, sanitary containers, conveniently placed for the use of employees, but not in toilet rooms. Each container must be equipped with either single service drinking cups or drinking fountains with a sanitary water supply~~ *to all employees, when necessary, in suitable bottled sanitary containers with an easily readable date, conveniently placed for the use of employees, but not in toilet rooms.*

4. All containers used to furnish drinking water must be thoroughly cleansed as often as necessary to assure a sanitary water supply.
  5. If ice is used for cooling water, the water container must be so constructed and arranged that the drinking water will not come in contact with the ice. *An adequate supply of ice will be provided when no other means of cooling is available.*
- [Pub. Service Comm'n, Railroad Gen. Order 11 § 16, subsecs. (a) & (b), eff. 6-21-76]

#### 705.220 Washing facilities.

1. A wash basin or lavatory of smooth finished material, impervious to moisture, must be provided in a location in or adjacent to the toilet room in each caboose. Mechanical drying facilities or individual towels, either paper or cloth, must be provided with a waste receptacle for the used paper towels. Soap or other suitable cleansing agent must be supplied at each wash basin.
  2. Locomotives must be provided with towels, an ample quantity of cleansing agent and a receptacle for used towels.
- [Pub. Service Comm'n, Railroad Gen. Order 11 § 16, subsec. (c), eff. 6-21-76]

#### 705.230 Toilet facilities.

1. Toilet facilities of flush chemical, incinerating, biodegradable or other equivalent acceptable design must be installed in each caboose and in each locomotive equipped to provide both motive power and control of the train. Toilet facilities must be in good operating condition.
  2. All chemical toilets installed must comply with applicable federal regulations regarding construction and completion deadline. Containers must be charged with a chemical solution of proper strength and the contents must be agitated daily. When containers are two-thirds full, the contents must be disposed of in a sanitary manner.
  3. The facilities must be cleaned as often as necessary to keep them in a clean and sanitary condition.
  4. In locomotives, every toilet space must be separate from the cab and enclosed by a door. Each toilet room must be adequately ventilated and lighted. ~~A holder for toilet paper must be installed in each toilet room and~~ (A)n adequate supply of toilet paper must be provided by the railroads.
  5. The provisions of this section do not apply to ~~switch engines locomotives~~ used ~~exclusively primarily~~ for yard service, *provided that alternative facilities meeting the standards in this section are readily available.*
- [Pub. Service Comm'n, Railroad Gen. Order 11 § 17, eff. 6-21-76]

## TRANSPORTATION OF HAZARDOUS MATERIAL BY RAIL

~~705.310 Definitions. As used in NAC 705.310 to 705.380, inclusive, unless the context otherwise requires:~~

- ~~1. "Commission" means the public service commission of Nevada.~~
- ~~2. "Hazardous material" means:~~
  - ~~(a) Low specific activity material as defined in 49 C.F.R. § 173.403(n);~~
  - ~~(b) Radioactive material as defined in 49 C.F.R. § 173.403(y);~~



~~(c) Material required to be labeled "Poison—Inhalation Hazard" by 49 C.F.R. § 172.203(k)(4) and subject to the requirements for placards and packaging of 49 C.F.R. §§ 172.505 and 173.3a; and~~

~~(d) The following materials which are subject to the requirements for placards in Table 1 of 49 C.F.R. § 172.504:~~

~~(1) Class A explosives as defined in 49 C.F.R. § 173.53;~~

~~(2) Class B explosives as defined in 49 C.F.R. § 173.88;~~

~~(3) Poison A as defined in 49 C.F.R. § 173.326;~~

~~(4) Flammable solids (DANGEROUS WHEN WET labels only) as defined in 49 C.F.R. § 173.150;~~

~~3. "Loading" and "unloading" includes placing or removing:~~

~~(a) A container of hazardous material, or a tank car or semitrailer containing hazardous material onto or from a flat car, trailer or other equipment owned by or under the control of a railroad to a sidetrack, truck or ramp for loading; or~~

~~(b) Hazardous material into or from a container, flat car, trailer or other equipment owned by or under the control of a railroad or a sidetrack, truck or ramp for loading;~~

~~"Loading" and "unloading" do not include any activities listed in paragraphs (a) and (b) that are conducted on a private track or private siding as those terms are defined in 49 C.F.R. § 171.8.~~

~~4. "Storage" means keeping any hazardous material for more than 48 hours.~~

~~(Added to NAC by Pub. Service Comm'n, eff. 1-2-86; A 1-2-86, eff. 4-1-86; 12-4-86)~~

~~705.320 Activities for which permit required.—A person shall not:~~

~~1. Load or unload hazardous material or containers carrying hazardous material onto or from railroad equipment on property owned by or under the control of a railroad;~~

~~2. Transfer hazardous material from property owned by or under the control of a railroad to another means of transportation; or~~

~~3. Store hazardous material on property owned by or under the control of a railroad, without a permit issued by the commission.~~

~~(Added to NAC by Pub. Service Comm'n, eff. 1-2-86; A 12-4-86)~~

~~705.330 Application for permit; fee.~~

~~1. An application for a permit must include:~~

~~(a) A map of the proposed site for loading, unloading, storage or transfer, including the indicators of its location on the track and all structures at the site;~~

~~(b) A report identifying each switch, siding, spur or branch of track at the site and its purpose;~~

~~(c) A copy of any report made by a federal or state inspector during the preceding 6 months on defects in the track and the remedial action taken;~~

~~(d) A summary of all major construction or other work on the track at the site during the preceding year;~~

~~(e) A summary of all hazardous material carried by the railroad during the preceding 12 months;~~

~~(f) A summary of all unintended releases of hazardous material during the preceding 12 months which were reported by the applicant pursuant to 49 C.F.R. §§ 171.16 and 171.17;~~

~~(g) An outline of the procedure to be used in the loading, unloading, transfer or storage of the hazardous material;~~

~~(h) A description of the measures to be used by the railroad to ensure that the hazardous material is safe from vandalism, theft or sabotage; and~~

~~(i) An outline of all plans to be used in the event of an accident.~~

~~2. The application must be accompanied by a fee of \$200.~~

~~(Added to NAC by Pub. Service Comm'n, eff. 1-2-86)~~

~~705.340 Evaluation of application. In evaluating an application for a permit, the commission will consider:~~

~~1. The topography of the proposed site;~~

~~2. The proximity of the proposed site to:~~

~~(a) Centers of population;~~

~~(b) Heavily traveled highways;~~

~~(c) Hospitals;~~

~~(d) Schools;~~

~~(e) Sources of water; and~~

~~(f) Other sites for the storage of hazardous material;~~

~~3. The expected duration of the operation at the site;~~

~~4. The availability of alternative sites;~~

~~5. The quality of the track;~~

~~6. The security at the site;~~

~~7. The plans to be used in the event of an accident at the site;~~

~~8. The equipment and resources available in the event of an accident at the site; and~~

~~9. Any other pertinent information requested by the commission.~~

~~(Added to NAC by Pub. Service Comm'n, eff. 1-2-86)~~

~~705.350 Expiration and renewal of permit.~~

~~1. A permit issued by the commission is valid for 1 year. Upon a showing of compelling need, the commission may issue a temporary permit which is valid while the application for an annual permit is pending.~~

~~2. An annual permit may be renewed if the applicant:~~

~~(a) Certifies that the information submitted in the original application is still correct, or he files such amendments to previously submitted information as are necessary to keep the information current; and~~

~~(b) Files a statement:~~

~~(1) Describing any relevant accident or release of hazardous material since the issuance or renewal of the permit, or if an accident or release has not occurred, a certification to that effect; and~~

~~(2) Summarizing the loading, unloading, transfer or storage conducted pursuant to the permit, as well as any incident involving the hazardous material.~~

~~3. An application for renewal must be submitted at least 60 days before the expiration of the permit and be accompanied by a fee of \$200.~~

~~4. If, at least 60 days before the expiration of the permit, the holder of a permit files an application for renewal which is complete and conforms with the requirements of this section, the permit does not expire until the application for renewal has been finally determined.~~

~~(Added to NAC by Pub. Service Comm'n, eff. 1-2-86)~~

~~705.360 Suspension or revocation of permit. A permit may be suspended or revoked by the commission if:~~

- ~~1. An activity is being performed in violation of the terms of the permit;~~
- ~~2. The suspension or revocation is necessary to protect against risks to life and property; or~~
- ~~3. The permit was issued on the basis of false, fraudulent or misleading representations or information.~~

~~(Added to NAC by Pub. Service Comm'n eff. 1-2-86)~~

~~705.370 Notice of application; dismissal of application for lack of information.~~

- ~~1. The commission will give notice of any application received by it for a permit or renewal of a permit at least 30 days before the date on which the commission intends to take action.~~
- ~~2. The commission will dismiss an application for a permit without prejudice if:  
(a) There is insufficient information upon which to issue a permit; or  
(b) Additional information is requested by the commission from the applicant but not submitted.~~

~~(Added to NAC by Pub. Service Comm'n, eff. 1-2-86)~~

~~705.380 Adoption of federal regulations by reference.~~

- ~~1. Every railroad subject to regulation by the commission shall comply with the provisions of ***The commission hereby adopts by reference the regulations contained in*** 49 C.F.R. Parts 171, 172, 173, and 174, 178, 179 and 180 as those parts regulations existed on November 1, 1985 ***(date to be inserted)***. Those parts are hereby adopted by reference.~~
- ~~2. A copy of a publication containing Parts 100 to 177, inclusive, of Title 49 of the Code of Federal Regulations may be obtained at a price of \$14 from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402.~~
- ~~***3. All rail carriers transporting hazardous materials through the State of Nevada shall comply with all applicable federal hazardous material regulations. In addition to the requirements set forth in Title 49 of the Code of Federal Regulations, no rail carriers shall allow a train carrying hazardous material to move within or through the State of Nevada without the documentation required by 49 CFR 174.26.***~~

~~(Added to NAC by Pub. Service Comm'n, eff. 1-2-86)~~

***705.320 Hazardous materials reporting.***

- 1. All rail carriers transporting hazardous materials through the State of Nevada shall adhere to certain reporting requirements and provide information regarding the type and quantity of hazardous materials transported within the state to the commission staff, Safety Division.***
- 2. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:  
(a) "Hazardous materials" means any product transported by railroad listed in Title 49, Code of Federal Regulations, section 172.101.***

*(b) "Reporting year" means the calendar year (January 1 through December 31) preceding the year the report is to be submitted.*

*3. A railroad that transports hazardous materials in or through the state shall file the following information with the Commission:*

*(a) A copy of the report of each hazardous materials incident occurring within the state that the railroad files with the Federal Department of Transportation in accordance with 49 Code of Federal Regulations, section 171.16 within 30 days of the date of discovery of such incident;*

*(b) A map delineating the geographical limits of the railroad operating divisions or districts and the principal operating officer for the railroad in each operating division or district in the state;*

*(c) A primary and secondary phone number, manned 24 hours a day, for the railroad dispatcher responsible for train operations in each operating division or district in the state;*

*(d) The name and address of the railroad employee in charge of managing hazardous materials transportation for the railroad; and*

*(e) An annual report listing all commodities having Standard Transportation Commodity Codes numbers 48 and 49, transported through the State of Nevada, listed by ~~major terminals~~ line points or segments.*

*4. Reports required by section 3 shall be filed with the commission not later than April 1 of each year.*

*5. A railroad required to file a report under this section shall file its first report not later than April 1, ~~1999~~ 2001.*

*6. If a railroad seeks to be excepted from any of the above requirements, a written application must be made to the commission. The commission may approve such application for exception for good cause shown. Any exception granted by the commission shall be valid for a period specified by the commission.*

*7. Railroads shall develop and implement emergency planning and response procedures for handling releases of hazardous materials in the state. These procedures shall address, at a minimum, initial notification procedures, response actions for the safe handling of releases of the various types of hazardous materials transported, identification of key contact personnel, conduct of emergency drills and exercises, and identification of the resources to be provided and the actions to be taken by the railroad and the community.*

**LCB File No. T001-01**

**NOTICE OF ADOPTION OF REGULATION**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA**

In re proposed rulemaking to adopt regulations concerning )  
the safety of railroads in Nevada pursuant to Senate Bill ) Docket No. 98-7004  
No. 291 (NRS 703.1545 and 704.307). )  
\_\_\_\_\_ )

At a general session of the Public Utilities  
Commission of Nevada, held at its offices  
on December 28, 2000.

PRESENT: Chairman Donald L. Soderberg  
Commissioner Richard M. McIntire  
Commission Secretary Crystal Jackson

**ORDER ADOPTING TEMPORARY REGULATION**

The Public Utilities Commission of Nevada ("Commission") makes the following  
findings of fact and conclusions of law:

1. On July 15, 1998, the Commission voted to open Docket No. 98-7004 to review, study and evaluate existing regulations concerning the safety of railroads in Nevada, the statutes and regulations of other states concerning the safety of railroads, and the statutes and regulations of the federal government concerning the safety of railroads.
2. The Commission's action in this matter is pursuant to Senate Bill No. 291 (codified in Chapters 703 and 704 of the Nevada Revised Statutes ("NRS") at 703.1545 and 704.307), which mandates that the Commission adopt regulations that incorporate the provisions of the statutes and regulations of other states and the federal government relating to railroad safety which the Commission determines are appropriate for this state. Also pursuant to NRS 704.307, the Commission has a general duty to perform such duties and functions as are necessary to ensure the safety of railroad equipment, facilities, rolling stock and operations in

this state.

3. Workshops in this matter were duly-noticed and held on December 10, 1998, February 25 and November 12, 1999, and December 15, 2000.

4. Hearings in this matter were-duly noticed and held on October 5, 1998, March 16, October 16, and December 15, 2000.

5. Appearances were made at the foregoing workshops and hearings by interested persons, including the Brotherhood of Locomotive Engineers, Burlington Northern and Santa Fe Railway, Dermody Properties, Nevada Conference of Police and Sheriffs, Nevada Department of Transportation, Nevada State AFL-CIO, Regulatory Operations Staff (“Staff”) of the Commission, Transportation Communications International Union, Union Pacific Railroad Company, and United Transportation Union. Some of the above persons also filed written comments and/or legal briefs. Transcripts of the workshops and hearings and copies of the comments are on file at the Offices of the Commission.

6. On October 20, 2000, Dermody Properties, Staff, Transportation Communications International Union, Union Pacific Railroad Company, and United Transportation Union filed a Stipulation with the Commission agreeing to certain amendments to the proposed draft regulation. The proposed regulation as amended is attached hereto as Attachment 1.

7. On December 1, 2000, Union Pacific Railroad Company filed copies of certain drawings that the participating persons had intended to incorporate into the proposed draft regulation, but had failed to do so. The drawings are attached hereto as Attachment 2.

8. At the hearing held on December 15, 2000, the participating persons agreed that the drawings were intended to be incorporated into the proposed draft regulation.

9. At a duly-noticed agenda meeting held on December 28, 2000, the Commission voted to adopt the proposed regulation as amended.

10. The Commission finds that the proposed regulation, attached hereto as Attachments 1 and 2, and incorporated herein by reference, should be adopted as a temporary regulation.

THEREFORE, based on the foregoing findings of fact and conclusions of law, it is hereby ORDERED that:

1. The proposed regulation, which is attached hereto as Attachments 1 and 2, and incorporated herein by reference, is ADOPTED in accordance with the provisions of Chapter 233B of the Nevada Revised Statutes.

2. The Commission retains jurisdiction for the purpose of correcting any errors that may have occurred in the drafting of this Order.

By the Commission,

\_\_\_\_\_  
DONALD L. SODERBERG, Chairman

\_\_\_\_\_  
RICHARD M. MCINTIRE, Commissioner and  
Presiding Officer

Attest: \_\_\_\_\_  
CRYSTAL JACKSON, Commission Secretary

Dated: Carson City, Nevada

\_\_\_\_\_  
(SEAL)

**LCB File No. T001-01**

**INFORMATIONAL STATEMENT**

**LEGISLATIVE REVIEW OF ADOPTED REGULATION  
AS REQUIRED BY THE ADMINISTRATIVE PROCEDURES ACT**

**NRS 233B.066**

**PUBLIC UTILITIES COMMISSION OF NEVADA**

**LCB FILE NO. \_\_\_\_\_**

**DOCKET NO. 98-7004**

The following statement is submitted for adopted amendments to Nevada Administrative Code (“NAC”) 704 and 705.

**1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

The regulations concerning the safety of railroads in Nevada in Public Utilities Commission of Nevada (“Commission”) Docket No. 98-7004 was noticed ten (10) times: August 2, 1998, November 17, 1998, January 22, 1999, October 11, 1999, February 11, 2000, March 21, 2000, May 26, 2000, August 21, 2000, September 14, 2000, and November 1, 2000, in the Elko Daily Free Press, Ely Daily Times, Humboldt Sun, Las Vegas Review Journal, Mineral County Independent, Nevada Appeal, Reno Gazette Journal, and Tonopah Times-Bonanza. Additionally, the notice was mailed to county clerks in Reno, Carson City and Las Vegas, Nevada, and all persons who requested inclusion on the Commission’s service list. There was no public response except from the affected organizations discussed in #3 below. A copy of the summary may be obtained by calling the Commission at (775) 687-6001 or (702) 486-2600, or by writing to the Commission at 1150 East William Street, Carson City, Nevada 89701 or 101 Convention Center Drive, Suite 250, Las Vegas, Nevada 89109.

**2. The number of persons who:**

**(a) Attended the workshop:**

December 10, 1998: 11  
February 25, 1999: 8  
November 11, 1999: 13  
December 15, 2000: 7

**(b) Testified at the workshop:**

December 10, 1998: 9  
February 25, 1999: 7  
November 11, 1999: 13  
December 15, 2000: 3

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(c) **Attended the hearing:**

October 5, 1998: 14  
March 16, 2000: 18  
August 1, 2000: 18  
October 16, 2000: 12  
December 15, 2000: 7

(d) **Submitted to the agency written comments:**

Written comments were submitted to the Commission by the Association of American Railroads, Brotherhood of Locomotive Engineers, Burlington Northern and Santa Fe Railway Company, Dermody Properties, Nevada Department of Transportation (“NDOT”), Regulatory Operation Staff (“Staff”) of the Commission, Transportation Communications Union, Union Pacific Railroad Company, and United Transportation Union.

The United Transportation Union also filed a legal brief.

Correspondence regarding this matter was received by the Commission from Anschutz Marketing & Transportation, Coastal Chem, Inc., Continental Lime Inc., Geon Engineered Films Group, Graymont Western US Inc., Hidden Valley Manufacturing, Kennecott Utah Copper, Martin Iron Works, Inc., Nevada State AFL-CIO, Nevada Cement Company, Nevada Manufacturers Association, ProFlame, Inc., RR Donnelley & Sons, Sierra Chemical Company, SMI Joist – Nevada, Sweetheart Cup Company, Timet, and Winnemucca Farms, Inc.

**3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected businesses by notices placed in the newspapers mentioned in the response to question 1 above, by direct mailings to interested persons on the Commission’s mailing list and by posting of notices at county libraries, courthouses and the Commission’s website.

Appearances were made at the foregoing workshops and hearings by interested persons, including the Brotherhood of Locomotive Engineers, Burlington Northern Santa Fe Railway Company (“Burlington”), Dermody Properties, Nevada Conference of Police and Sheriffs, NDOT, Nevada State AFL-CIO, Staff, Transportation Communication Union, Union Pacific Railroad Company (“Union Pacific”), and United Transportation Union.

Written responses were received as set forth in the response to question 2(d) above. Comments were filed by the various participating persons in six groupings in response to notices and procedural orders issued by the Commission.

The first group of comments were filed in response to a Request for Comments and Notice of Workshop issued by the Commission on August 12, 1998. Comments were received

from the Brotherhood of Locomotive Engineers, Staff, Union Pacific Railroad, and United Transportation Union.

The Brotherhood of Locomotive Engineers suggested that all the federal laws and regulations regarding railroads be incorporated into the Nevada state laws, and that Nevada provide additional regulations insuring a safe, sanitary, and healthy workplace for railroad workers. Staff proposed several amendments to NAC Chapter 705. Union Pacific Railroad argued that the most meaningful way for the Commission to promote railroad safety in Nevada would be through the federal-state participation program as provided by the Federal Railway Safety Act, and becoming involved in the Railroad Administration Safety Assurance and Compliance Program. Union Pacific maintained that because NRS 703.11545 authorizes the Commission to participate in the enforcement of federal railroad safety regulations, that no additional laws or regulations were required. United Transportation Union recommended revisions be made to accomplish more stringent state regulations.

The second group of comments were filed in response to a Notice of Workshop to Solicit Comments on Proposed Amendments to Regulations issued by the Commission on November 17, 1998. The notice asked participating persons to comment on eight specific questions posed by the Commission: (1) is the Commission precluded from adopting federal regulations by reference?; (2) is the repair and replacement of end-of-train devices and visible markers necessary to ensure safe railroad operation?; (3) are bridge inspections tantamount to public safety and/or covered by federal regulation?; (4) should walkway regulations be amended to include walkway standards from other jurisdictions?; (5) is the Commission precluded from applying the provisions of proposed regulations regarding toilet facilities, to locomotives used exclusively for yard service?; (6) does hazardous materials reporting conflict with federal regulations?; (7) what enforcement procedures for present and future regulations are available to the Commission?; and (8) is it appropriate and/or necessary for railroad safety inspectors to obtain peace officer status? Comments were received by Burlington, Staff, United Transportation Union and Union Pacific.

Staff and the United Transportation Union generally agreed that: (1) the Commission is permitted to adopt by reference any other state or federal regulation as well as create any new regulation; (2) repair and replacement of end-of-train devices and visible markers are necessary to ensure safe railroad operation; (3) bridge inspection is important to public safety; (4) public safety is indirectly affected with maintaining good railroad walkways and the Commission should adopt Staff's original proposal concerning this matter; (5) the Commission is not precluded from applying the provisions of proposed regulations regarding toilet facilities to locomotives used exclusively for yard service; and (6) the proposed hazardous material reporting does not conflict with federal regulations. Staff expressed its belief that questions (7) and (8) are Commission policy questions for which the Commission bears the final decision making responsibility. United Transportation Union maintained that: (7) a show-cause hearing was the only enforcement mechanism available to the Commission at that time; and that (8) it is appropriate and necessary for railroad safety inspectors to have peace officer status.

Union Pacific contended that: (1) the Commission is precluded from adopting federal regulations by reference; (2) any regulation adopted by the Commission regarding repair and replacement of end-of-train devices and visible markers would be preempted by federal law; (3) while the Federal Railway Administration maintains the authority over the safety of railroad facilities, that policy is not intended to change effective bridge management systems that already

exist; Union Pacific Railroad already has a bridge inspection program in place in Nevada and stated that it would be willing to make the results of its inspections available to the Commission; (4) rules governing walkways are preempted by federal law; (5) it is likely that any standard regarding sanitation facilities would be preempted by federal law; (6) it should be allowed to work with Staff to develop a reporting format consistent with what it provides in other states; (7) the U.S. Department of Transportation retains authority to disapprove of state enforcement actions, however, states may bring a civil action in federal court to enjoin a violation of a federal safety regulation if it follows certain procedures, and may also bring civil actions in federal court to collect civil penalties; and (8) further information was required in order to respond to the request, however, railroad safety inspectors should not be authorized to carry firearms.

Burlington concurred with Union Pacific's comments.

The third group of comments were filed in response to a Notice of Intent to Amend Regulation, Notice of Workshop and Notice of Hearing, issued by the Commission on January 22, 1999, asking interested persons to address whether the Commission should adopt proposed provisions regarding: (1) railroad fences; (2) train make-up; (3) hot box detectors; and (4) train crews; as well as any federal preemption issues and the extent to which each of the proposed amendments promotes and protects the public health, safety and welfare. Comments were received by the Association of American Railroads, Burlington, Staff, Union Pacific, and United Transportation Union.

The Association of American Railroads took the position that the proposed rulemaking was preempted by federal law.

Burlington offered no opinion on whether the Commission should adopt the proposed regulation regarding railroad fences, but urged the Commission not to adopt the other regulations. Burlington also expressed concern that the train crew regulation had no connection to safety concerns, the terms "train or locomotive" were not adequately defined, and the regulations were inconsistent.

Staff argued that: (1) the proposed regulation regarding railroad fences was unnecessary; (2) there was no demonstrated need for the Commission to adopt provisions regarding train make-up; (3) the proposed regulation regarding hot box detectors should not be adopted; and (4) the Commission should not adopt a regulation regarding train crews at that time, but instead monitor the legislative process on this issue.

Union Pacific maintained that: (1) the proposed regulations regarding railroad fences would usurp the authority conferred on local government by the legislature, that fencing in a railroad right of way will not necessarily always promote safety, and the proposed rule would have an adverse economic effect on the railroad; (2) the rules and regulations governing train make-up already in place satisfy the requirements for safe operation; (3) because it is in Union Pacific's interest to promptly remedy any deficiencies in hot box detectors, it was already doing so, and regulatory oversight would be unnecessary; and (4) the origin of the proposal regarding train crews is concern for jobs, not safety, and should be rejected by the Commission. Union Pacific also stated that the proposed adoption of rules that address the same safety concerns as federal regulations are prohibited by federal law, and that none of the proposed amendments promotes or protects that public health, safety and welfare.

United Transportation Union argued that the Commission should adopt provisions regarding: (1) railroad fences; (2) train make-up; (3) hot box detectors; and (4) train crews.

The fourth group of comments were filed in response to a Notice of Workshop to Solicit Comments on Proposed Amendments to Regulations, issued by the Commission on October 11, 1999. The notice requested that interested persons file comments in response to eight specific questions, which had been carried forward from the Commission's Notice of Workshop dated November 17, 1998. Comments were received by the Brotherhood of Locomotive Engineers, Burlington, NDOT, Staff, Transportation Communications Union, Union Pacific, and United Transportation Union.

Generally, Burlington, Staff, United Transportation Union and Union Pacific who had responded to the previous notice, took the same positions as they had previously.

The Brotherhood of Locomotive Engineers stated that the proposed regulations regarding the repair and replacement of end-of-train devices and visible markers, bridge inspections, toilet facilities, and hazardous materials reporting were preempted by federal law; and the proposed regulation regarding walkway regulations was unnecessary. The Brotherhood of Locomotive Engineers also filed comments rebutting Staff's recommendation against railroad inspectors having peace officer status.

NDOT addressed only the issue of bridge inspections, taking the position that there were currently thirty-one railroad bridges being inspected by NDOT, and it was unclear whether the proposed rule would require additional inspections.

Transportation Communications Union argued that the proposed amendments were general in nature, allowing the railroads to determine what minimal procedures apply to local governments, and did not adequately protect the public interest.

The fifth group of comments were filed in response to a Corrected Notice of Hearing for the Amendment of Regulations issued by the Commission on February 16, 2000. Comments were received by Burlington, Staff, Transportation Communications Union, Union Pacific, and United Transportation Union.

Burlington argued that the majority of the proposed regulations were preempted by federal law.

Staff expressed its continued support of proposed regulations.

Transportation Communications Union suggested that the Commission adopt rules and regulations regarding the transportation of hazardous materials, fencing, repair and replacement of end-of-train devices and construction and maintenance of walkways.

Union Pacific stated generally that many of the present rules and proposed amendments were preempted by federal law. Union Pacific also offered specific comments regarding a few selected rules.

United Transportation Union reiterated comments it had filed in the past.

The sixth group of comments were filed in response to a Notice of Change of Hearing Date for the Amendment of Regulations issued by the Commission on March 21, 2000 and Procedural Order No. 2 issued by the Commission on March 26, 2000. Comments were received by Burlington, Dermody Properties, Staff, Transportation Communications Union, Union Pacific, and United Transportation Union.

Burlington reiterated its previously filed comments.

Dermody Properties questioned the social and economic value of the proposed regulations, concluded that they would be overly burdensome, and objected to the adoption of the proposed amendments.

Staff concluded that most of the proposed amendments would not affect small businesses. Transportation Communications Union proposed changes to the amendment regarding the reporting of hazardous waste.

Union Pacific argued that the proposed walkway rules would be extremely burdensome for local industries served by the railroads; the proposed regulations were incomprehensible and in violation of NRS 233B.062; the Commission failed to recognize the significant regulatory cost involved if the proposed regulations were adopted; and the proposed regulation regarding the movement of hazardous materials was an attempt to “end-run” federal requirements. Union Pacific also challenged Staff’s conclusions regarding the proposed regulations impact on small business.

United Transportation Union filed a legal brief in support of its position that the Federal Railroad Safety Act explicitly provides for state regulation of rail safety, the legislative history of the Federal Railroad Safety Act evidences Congressional intent that states regulate railroad safety, and state laws are not preempted by federal laws unless the federal government has adopted regulations which substantially subsume the subject matter of the state law.

Correspondence regarding this matter was received by Anschutz Marketing and Transportation Company, Bender Warehouse Company, Coastal Chem, Inc., Continental Lime Inc., Geon Engineered Films Group, Graymont Western US, Inc., Hidden Valley Manufacturers Company, Kennecott Utah Copper, Martin Iron Works, Inc., Nevada Cement Company, Nevada Manufacturers Association, Nevada State AFL-CIO, ProFlame, Inc., RR Donnelley & Sons Company, Sierra Chemical Company, SMI Joist Nevada, Sweetheart Cup Company, Inc., Timet, United Transportation Union, and Winnemucca Farms, Inc.

Transcripts of the workshops and hearings, copies of the comments and this summary are on file and available for public viewing at the offices of the Commission. A copy of the summary may be obtained by calling the Commission at (775) 687-6001 or (702) 486- 2600, or by writing to the Commission at: 1150 East William Street, Carson City, Nevada 89701 and 101 Convention Center Drive, Suite 250, Las Vegas, Nevada 89109.

**4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

Substantive changes were made to the proposed regulation before it was adopted by the Commission as a temporary regulation on December 28, 2000 at a duly-noticed general session.

**5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:**

- (a) Both adverse and beneficial effects; and**
- (b) Both intermediate and long-term effects.**

At this time the Commission cannot quantify either the adverse or beneficial economic effects on the entities affected by the regulation, either immediate or long-term, which may result from the regulation.

No adverse economic effects, either immediate or long term, are expected to inure to the public. The public may experience beneficial economic effects in that railroad facilities and operations in Nevada will be required to maintain a greater degree of uniformity with those facilities and operations of other states and the federal government.

**6. The estimated cost to the agency for enforcement of the adopted regulation.**

The Commission does not anticipate any additional costs associated with the enforcement of this regulation.

**7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

The Commission is not aware of any overlap or duplication by this regulation of any regulation of any other local, state or federal government agencies.

**8. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

The Commission is not aware of any provision in this regulation that is more stringent than a federal regulation which regulates the same activity.

**9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

The Commission does not anticipate any new fees or an increase in any existing fees as a result of the adoption of this regulation.