

**ADOPTED REGULATION OF THE PUBLIC  
UTILITIES COMMISSION OF NEVADA**

**LCB File No. R051-01**

Effective December 17, 2001

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-27, NRS 703.1545 and 704.307.

**Section 1.** Chapter 705 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 14, inclusive, of this regulation.

**Sec. 2.** *The commission may, as set forth in 49 U.S.C. § 20113, bring a civil action in a district court of the United States to enjoin a violation of a railroad safety regulation or order or to impose and collect a civil penalty for the violation of a railroad safety regulation or order if the Secretary of Transportation fails to do so.*

**Sec. 3. 1.** *A railroad that owns or operates a railroad bridge that carries railroad traffic shall inspect that bridge:*

*(a) Not less than one time in each 12-month period; and*

*(b) Within 24 hours after receiving a request for an inspection from the commission or its designee.*

*2. Each inspection must be performed by a person qualified and competent in the inspection of railroad bridges who shall prepare, sign and date a written report of the results of his inspection.*

*3. The railroad shall:*

(a) *Retain, in written or electronic form, each inspection report of a railroad bridge for not less than 2 years;*

(b) *Make such reports available for review and inspection by the commission or its designee; and*

(c) *Upon request, provide a copy of a retained report to the commission or its designee.*

4. *As used in this section, "railroad bridge" means a structure supporting one or more railroad tracks above land or water with a span of not less than 12 feet measured along the center line of the track. 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 or metal, or any combination thereof. The term does not include culverts or culvert-type structures.*

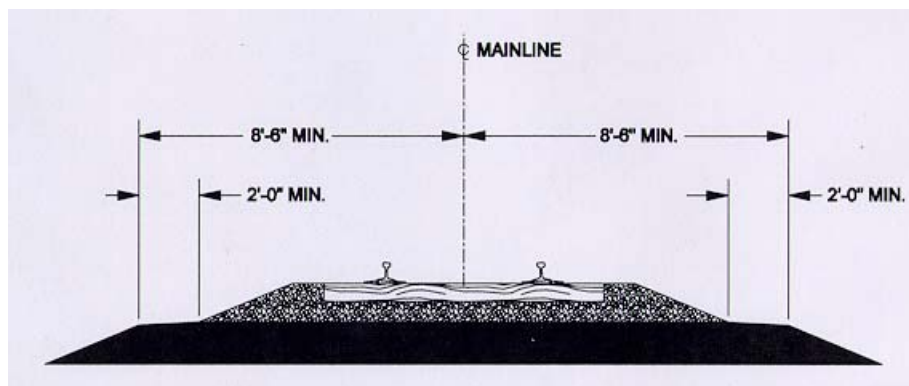
Sec. 4. 1. *Except as otherwise provided in sections 5, 7 and 9 of this regulation, walkways alongside main-line track, in addition to the requirements of NAC 705.160, must:*

(a) *Be present on each side of the track;*

(b) *Be not less than 2 feet in width; and*

(c) *Provide a minimum side clearance of 8 feet 6 inches from the center line of the track to the outside edge of the walkway.*

2. *The following diagram illustrates the requirements set forth in subsection 1:*



**Sec. 5. 1. Walkways alongside main-line and branch-line track at siding locations, in addition to the requirements of NAC 705.160, must:**

**(a) Be present:**

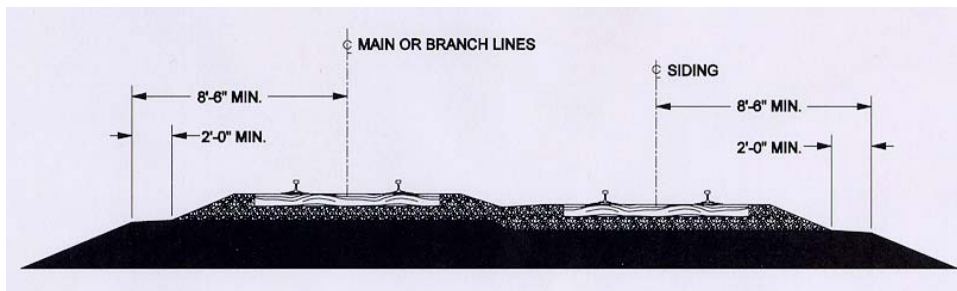
**(1) On the outside of the main-line or branch-line track; and**

**(2) On the outside of the siding track;**

**(b) Be not less than 2 feet in width; and**

**(c) Provide a minimum side clearance of 8 feet 6 inches from the center line of the track to the outside edge of the walkway.**

**2. The following diagram illustrates the requirements set forth in subsection 1:**



**Sec. 6. 1. Walkways alongside track in all yards and in advance thereof, wherever an employee's assigned duties regularly require him to be present on the ground in proximity to the track and, except as otherwise provided in sections 7 and 9 of this regulation, in industry turnouts and spotting areas, in addition to the requirements of NAC 705.160, must:**

**(a) Be present on each side of the track not less than 50 feet in advance of the turnout;**

**(b) Be not less than 2 feet in width;**

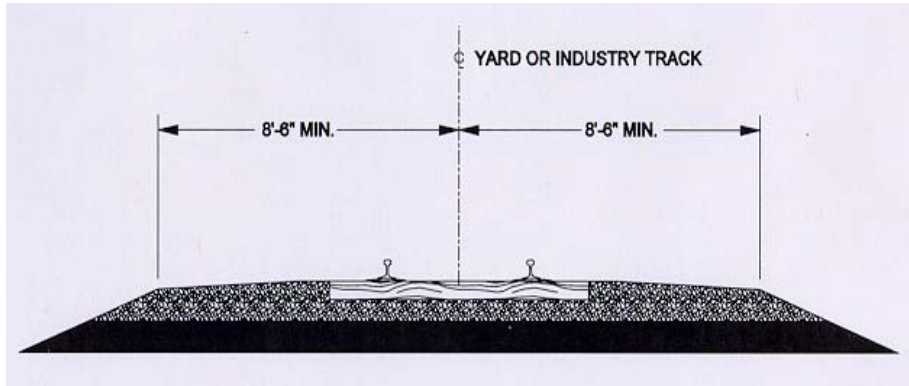
**(c) Provide a minimum side clearance of 8 feet 6 inches from the center line of the track to the outside edge of the walkway; and**

**(d) If the track is in a yard where substantial switching is performed, be:**

**(1) Present between tracks;**

- (2) Present alongside tracks bordering the yard or switching area; and
- (3) If the tracks are 17 feet apart or less, continuous between the tracks.

2. The following diagram illustrates the requirements set forth in subsection 1:



Sec. 7. 1. Except as otherwise provided in sections 8 and 9 of this regulation, walkways alongside track at main-line turnouts entering yards or serving industry tracks, in addition to the requirements of NAC 705.160, must:

(a) Be present on the switch stand side of the track from not less than 50 feet ahead of each switch stand to not less than 25 feet beyond the 12-foot-6-inch clearance point behind the switch stand;

(b) If 20 feet or more from the switch stand, be not less than 6 feet in width;

(c) If less than 20 feet, but more than 4 feet from the switch stand:

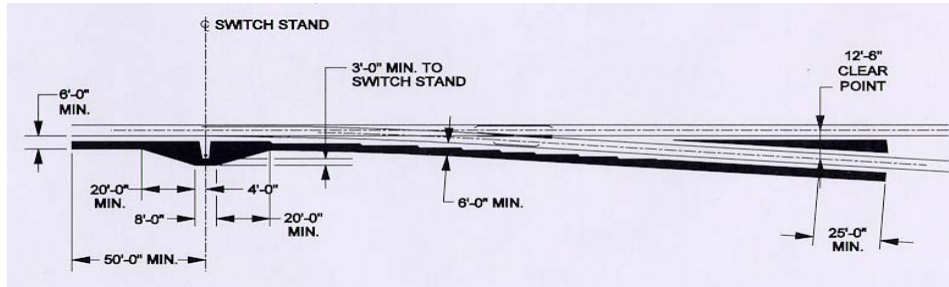
(1) Be not less than 6 feet in width;

(2) Have a straight outer edge; and

(3) Occupy a total area of not less than 120 square feet; and

(d) If 4 feet or less from the switch stand, be not less than 3 feet in width.

2. The following diagram illustrates the requirements set forth in subsection 1:



**Sec. 8. 1. Walkways alongside tracks at short-line and branch-line turnouts and, except as otherwise provided in section 9 of this regulation, at all power-operated turnouts, in addition to the requirements of NAC 705.160, must:**

*(a) Be present on the switch stand side of the track from not less than 50 feet ahead of the switch stand to not less than the 12-foot-6-inch clearance point behind the switch stand;*

*(b) If 10 feet or more from the switch stand, be not less than 5 feet in width;*

*(c) If less than 10 feet, but more than 4 feet from the switch stand:*

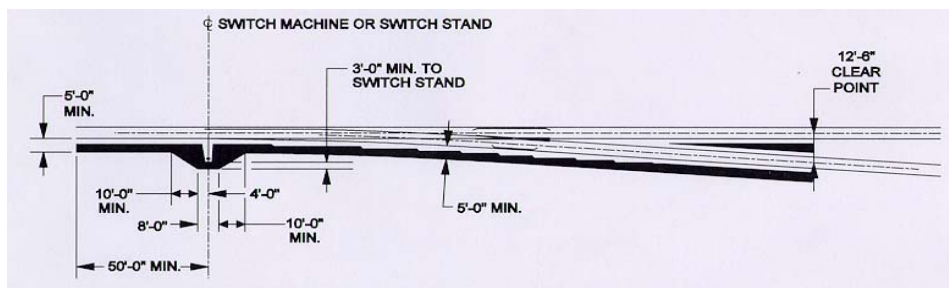
*(1) Be not less than 5 feet in width;*

*(2) Have a straight outer edge; and*

*(3) Occupy a total area of not less than 39 square feet; and*

*(d) If 4 feet or less from the switch stand, be not less than 3 feet in width.*

**2. The following diagram illustrates the requirements set forth in subsection 1:**



**Sec. 9. 1. Walkways alongside main-line track at turnouts used frequently for switching cars, in addition to the requirements of NAC 705.160, must:**

(a) *Be present on the switch stand side of the track from not less than 125 feet ahead of the switch stand to not less than 25 feet beyond the 12-foot-6-inch clearance point behind the switch stand;*

(b) *If 20 feet or more from the switch stand, be not less than 6 feet in width;*

(c) *If less than 20 feet, but more than 4 feet from the switch stand:*

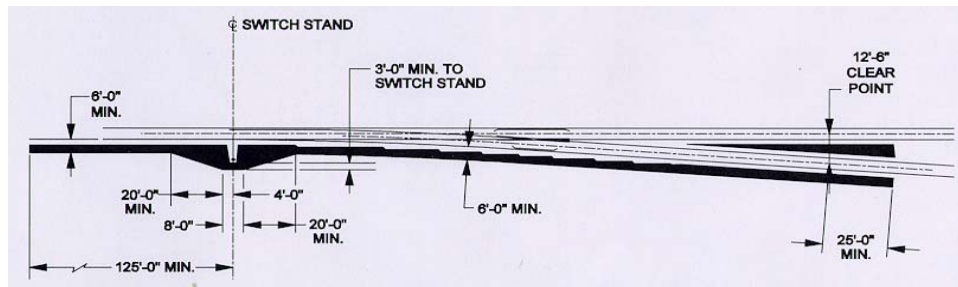
(1) *Be not less than 6 feet in width;*

(2) *Have a straight outer edge; and*

(3) *Occupy a total area of not less than 120 square feet; and*

(d) *If less than 4 feet from the switch stand, be not less than 3 feet in width.*

2. *The following diagram illustrates the requirements set forth in subsection 1:*



Sec. 10. 1. *Except as otherwise provided in subsection 2, the provisions of NAC 705.160 and sections 4 to 11, inclusive, of this regulation do not apply to track placed in revenue service before December 17, 2001.*

2. *If the commission determines, after notice and hearing, that the construction or maintenance of a walkway alongside any track placed in revenue service before December 17, 2001, is:*

(a) *Necessary to eliminate an unsafe condition; and*

(b) *Practicable,*

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*it will issue an order requiring the construction or maintenance of such a walkway alongside the designated track.*

**Sec. 11.** *1. Except as otherwise provided in subsection 2, a small business that owns or operates any track in this state is exempt from the provisions of NAC 705.160 and sections 4 to 11, inclusive, of this regulation.*

*2. If the commission determines, after notice and hearing, that exempting a small business that owns or operates any track in this state pursuant to subsection 1 poses an unreasonable threat of substantial harm to the public safety, it will order that business to eliminate any unsafe walkway condition.*

*3. As used in this section, “small business” has the meaning ascribed to it in NRS 233B.0382.*

**Sec. 12.** *As used in sections 13 and 14 of this regulation, unless the context otherwise requires, “hazardous material” means a material listed in 49 C.F.R. § 172.101.*

**Sec. 13.** *1. A railroad that transports hazardous materials by rail into, out of or through this state shall file with the commission a copy of each report of an incident involving a hazardous material that the railroad submits to the United States Department of Transportation pursuant to 49 C.F.R. § 171.16. The report must be received by the commission not later than 30 days after the discovery of the incident by the railroad.*

*2. A railroad that transports hazardous materials by rail into, out of or through this state shall, not later than April 1 of each year, file with the commission:*

*(a) A map delineating the geographical limits of the operating divisions or districts of the railroad in this state;*

*(b) A primary and secondary telephone number for each railroad dispatcher responsible for train operations in each operating division or district in this state;*

*(c) The name and address of the railroad employee responsible for managing the transportation of hazardous materials for the railroad; and*

*(d) A listing by line points or segments of each hazardous material that the railroad transported into, out of or through this state during the immediately preceding calendar year if that material carried a code number of 48 or 49 pursuant to the standard transportation commodity code numbering system published by the Association of American Railroads.*

*3. The commission will grant an application for an exemption from any provision of this section pursuant to NAC 705.010 only upon a showing of good cause.*

*Sec. 14. A railroad that transports hazardous materials by rail into, out of or through this state shall develop and carry out emergency planning and response procedures for handling releases of hazardous materials. These procedures must address, without limitation, the:*

*1. Safe handling of hazardous materials;*

*2. Conducting of emergency drills and exercises;*

*3. Specification of the resources to be provided and the actions to be taken by the railroad; and*

*4. Identification of:*

*(a) Federal, state and local emergency response agencies and other governmental entities to be notified;*

*(b) Contact persons in each such agency and entity; and*

*(c) Resources that may be provided and actions that may be taken by each such agency and entity.*



**Sec. 15.** NAC 705.010 is hereby amended to read as follows:

705.010 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 *any or all of* the provisions of this chapter. 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 , *except as otherwise provided in section 13 of this regulation and subsection 4 of this section*, 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.

*4. The commission will grant an exemption from the provisions of NAC 705.160 and sections 4 to 11, inclusive, of this regulation only if it determines that compliance is, under the totality of the circumstances, not necessary to ensure the safety of railroad employees and other persons who have duties in proximity to trains.*

5. Any exemption granted is limited to the particular case covered by the application.

*6. The commission will designate a reasonable duration for any exemption granted pursuant to this section.*

**Sec. 16.** NAC 705.030 is hereby amended to read as follows:

705.030 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. 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.	<i>8 ft. 0 in.</i>
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.

(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.

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|--|--|
| (h) Walkways on designated and newly constructed bridges and trestles. | 8 ft. 0 in. to outside edge of 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.

**Sec. 17.** NAC 705.070 is hereby amended to read as follows:

705.070 ~~{A}~~

*1. Except as otherwise provided in subsection 2, 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," in amendments thereto or supplements thereof, currently]~~ *National Electrical Safety Code* as 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.}~~*

*2. The provisions of subsection 1 do not apply to an installation at a clearance if that installation complied fully with the requirements for installations at the time it was installed.*

**Sec. 18.** NAC 705.090 is hereby amended to read as follows:

705.090 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.] 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]~~ *placarded. The placarding* 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.— The words prescribed 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]~~

2. *Required* 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.

**Sec. 19.** NAC 705.100 is hereby amended to read as follows:

705.100 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.]~~ *Except as otherwise provided in subsection 2, a railroad operating in this state shall operate not less than one facility in northern Nevada and one facility in southern Nevada for the maintenance or replacement of end-of-train telemetry devices and visible placarding.*

*2. Subsection 1 does not apply to a railroad operated in this state:*

*(a) By a government;*

*(b) By an industrial concern on its own property;*

*(c) As an excursion railroad for the sole purpose of transporting tourists on limited round trips that do not cross state lines; or*

*(d) As a short line railroad.*

**Sec. 20.** NAC 705.110 is hereby amended to read as follows:

705.110 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.]~~ A heating facility ~~[must be maintained]~~ capable of producing a temperature of at least 68 degrees Fahrenheit (19.8 degrees Centigrade) ~~[in a standard]~~ *must be maintained in each* 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.

**Sec. 21.** NAC 705.120 is hereby amended to read as follows:

705.120 1. ~~[Wherever]~~ *If* glass or alternate glazing materials are used in any ~~[railroad car or coach]~~ *caboose* used to carry train crews, ~~[they]~~ *the glass or alternate glazing materials* must

be of the safety glass type ~~[. They]~~ *and* 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]~~ cabooses 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.

**Sec. 22.** NAC 705.130 is hereby amended to read as follows:

705.130 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 ~~[railroad cars and coaches]~~ *any caboose* used to carry train crews.

**Sec. 23.** NAC 705.150 is hereby amended to read as follows:

705.150 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.

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~~ *paragraph (g) of subsection 1* 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 bridges and trestles must conform to the standards of width, surface and vertical placement as walkways alongside track set forth in NAC 705.160, except that the inside edge of such a walkway may be placed closer than 6 feet from the nearest rail when necessary.*

7. The provisions of this section do not apply to culverts.

**Sec. 24.** NAC 705.160 is hereby amended to read as follows:

705.160 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.]~~ *Except as otherwise provided in NAC 705.010 and subsection 4, a walkway alongside track that is required pursuant to the provisions of subsection 2 or sections 4 to 11, inclusive, of this regulation must be constructed and maintained in conformity to the standards set forth in this section and sections 4 to 11, inclusive, of this regulation.*

*2. A walkway alongside track that is required pursuant to this section or sections 4 to 11, inclusive, of this regulation must:*

*(a) Provide a reasonably regular surface that is smooth and safe for use by railroad employees and other persons who have duties in proximity to trains.*

*(b) Be surfaced with crushed material, asphaltic concrete, planking or other material that does not compromise track drainage.*

*(c) Unless the grade of the track is greater than 1 inch in 8 inches, have a grade that is less than 1 inch in 8 inches.*

*(d) If the walkway is alongside track with a curve greater than 18 degrees, be not less than 1 foot wider than otherwise required.*

*(e) Be kept reasonably free of hazards and obstructions, including, without limitation, fuel, oil, sand, posts and rocks.*

3. 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.

*4. Compliance with the provisions of this section and sections 4 to 11, inclusive, of this regulation is not a complete defense to any civil action brought pursuant to NRS 705.260 to 705.340, inclusive, or for the violation of a railroad safety regulation or order.*

**Sec. 25.** NAC 705.210 is hereby amended to read as follows:

705.210 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, *cool* 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.

4. All containers used to furnish drinking water must be thoroughly cleansed as often as necessary to assure a sanitary water supply.

5. *If no means of cooling water other than ice is available, a railroad shall provide a supply of ice adequate to cool the drinking water provided pursuant to this section.* 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.

**Sec. 26.** NAC 705.230 is hereby amended to read as follows:

705.230 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 an]~~ *An* adequate supply of toilet paper must be provided by the railroads.

5. The provisions of this section do not apply to ~~[switch engines used exclusively]~~ *locomotives used primarily* for yard service ~~[.]~~ *if alternative facilities meeting the standards of this section are readily available to employees of the railroad.*

**Sec. 27.** NAC 705.310, 705.320, 705.330, 705.340, 705.350, 705.360, 705.370 and 705.380 are hereby repealed.

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## TEXT OF REPEALED SECTIONS

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

1. “Commission” means the public utilities 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.

**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.

**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.

**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.

**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.

**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.

**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.

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

1. Every railroad subject to regulation by the commission shall comply with the provisions of 49 C.F.R. Parts 171, 172, 173 and 174, as those parts existed on November 1, 1985. 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.

**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. R051-01  
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
  
  - (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 Anshultz 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 Staffs 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 Staffs 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.