

Chapter 705 of NAC

LCB File No. T030-07

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

(Filed with the Secretary of State on July 16, 2007)

Docket No. 07-03011

EXPLANATION - Matter in italics is new; matter in brackets ~~omitted material~~ is material to be omitted

AUTHORITY: NRS 703.025, 704.210, 704.280

NAC 705.160 Alongside track: General standards.

1. Except as otherwise provided in subsection 3 and NAC 705.010, a walkway alongside track that is required pursuant to the provisions of NAC 705.160 to 705.187, inclusive, must be constructed and maintained in conformity to the standards set forth in NAC 705.160 to 705.187, inclusive.

2. A walkway alongside track that is required pursuant to NAC 705.160 to 705.187, inclusive, must:

(a) Provide a reasonably regular surface that is *reasonably* smooth and *reasonably* 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) 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.

(d) 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.

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

(f) 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 NAC 705.160 to 705.187, inclusive, 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.

**NOTICE OF ADOPTION OF TEMPORARY REGULATION
LCB File No. T030-07**

The Public Utilities Commission of Nevada, adopted regulations assigned LCB File No. T030-07, which pertain to chapter 705 of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

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

This matter involves the development of proposed revisions to NAC 705.160 of the Public Utilities Commission's ("Commission") regulations regarding standards for walkways for railroad tracks. A combined Notice of Intent to Adopt, Amend or Repeal Regulations, Notice of Workshop, and Notice of Hearing was issued on April 19, 2007. The notice was published in the Elko Daily Free Press, Las Vegas Review Journal, Nevada Appeal, Reno Gazette Journal, and Tonopah Times-Bonanza. Additionally, the notice was mailed to county clerks, county libraries and all persons who requested inclusion on the Commission's service list.

In addition to the public response from affected businesses discussed in #3 below, the following represents a summary of the public responses that were made to the Commission at the duly-noticed workshop held on May 14, 2007: The participants discussed what sections of the proposed regulation, which was previously adopted by the Commission as a temporary regulation on December 28, 2000, were inadvertently left out of the permanent regulation adopted by the Commission on November 21, 2001 in Docket No. 98-7004.

In addition to the public response from affected businesses discussed in #3 below, the following represents a summary of the public responses that were made to the Commission at the duly-noticed hearing held on May 29, 2007: The participants discussed the Regulatory Operations Staff's ("Staff") proposed changes to NAC 705.160. Staff, the Union Pacific Railroad, and the United Transportation Union agreed to adopt a new section 705.160(2)(c) creating a standard for maximum ballast size, and to add the word "reasonably" to modify "smooth" and to modify "safe" in subsection 705.160(2)(a).

A copy of the summary may be obtained by calling the Commission at (775) 684-6101 or (702) 486-7210, 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:**
May 14, 2007: 5
 - (b) Testified at the workshop:**
May 14, 2007: 3
 - (c) Attended the hearing:**
May 29, 2007: 4

- (d) **Testified at the hearing:**
May 29, 2007: 3
- (e) **Submitted to the agency written comments:**

Written Comments were submitted to the Commission by the Regulatory Operation's Staff of the Commission and the United Transportation Union.

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

Comments were solicited from affected businesses by the notice 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 workshop and hearing by interested persons, including the Regulatory Operation's Staff of the Commission; the Union Pacific Railroad; and the United Transportation Union.

Written responses were received as set forth in the response to question 2(e) above.

Written comments were filed with the Commission on April 30, 2007, May 7, 2007, and May 10, 2007.

The United Transportation Union stated in its written comments that from 1998 to 2001, the Commission held hearings regarding updating railroad regulations in Nevada. Parties to those proceedings arrived at a consensus agreement describing ballast size standards for walkways adjacent to railroad tracks. This agreement was sent to the Legislative Counsel Bureau for codification. For whatever reason, the final document left out the ballast size provision. The proposed regulation will remedy that omission.

A copy of the summary may be obtained by calling the Commission at (775) 684-6101 or (702) 486-7210, 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.

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.

All of the participants supported the proposed changes to NAC 705.160 outlined in a letter to the Commission dated May 25, 2007.

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 in each case must include:

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

The Commission has found that the regulation does not impose a direct and significant burden upon businesses in Nevada. The proposed regulation is prospective and does not require modification to existing facilities. The proposed regulation has more specific requirements regarding how the walkway alongside track should be constructed; therefore, the participants believe that both the railway and any business that owns or operates trackage would incur additional costs to comply with the regulation. However, the proposed regulation has an exemption at section 5 for a small business pursuant to NRS 233B.0382 that owns or operates trackage. Further, the participants believe that the additional incremental cost of compliance would be very minimal, such that it would not impose an economic burden. In addition, the participants believe that some safety benefits would arise from the walkways constructed in compliance with the proposed regulation, which could offset any minimal incremental costs.

The proposed regulation will not have an adverse economic effect upon the public. However, some safety benefits could arise from the walkways constructed in compliance with the proposed regulation

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

The Commission does not believe there will be any additional cost to the Commission to enforce the adopted 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 believe that the regulation provides for a new fee, or increases an existing fee.

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Rulemaking to amend NAC 705.160 or other associated)
regulations regarding standards for walkways for railroad) Docket No. 07-03011
tracks.)
_____)

At a general session of the Public Utilities
Commission of Nevada, held at its offices
on June 6, 2007.

PRESENT: Chairman Donald L. Soderberg
Commissioner Jo Ann P. Kelly
Commissioner Rebecca D. Wagner
Assistant Commission Secretary Donna Wickham

ORDER ADOPTING TEMPORARY REGULATIONS

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

1. On March 22, 2007, the Commission voted to open a rulemaking to amend Nevada Administrative Code (“NAC”) 705.160 or other associated regulations regarding standards for walkways for railroad tracks. The Commission has designated this matter as Docket No. 07-03011.
2. This matter comes within the purview of the Commission’s jurisdiction pursuant to Chapters 703 and 704 of the Nevada Revised Statutes (“NRS”) and the NAC.
3. The Commission issued a public notice of this matter in accordance with state law and the Commission’s Rules of Practice and Procedure.
4. On May 9, 2007, the Commission voted, pursuant to NRS 233B.0608, to accept the Regulatory Operations Staff (“Staff”) of the Commission’s recommendation and find that the proposed temporary regulations do not: (a) impose a direct and significant economic burden upon a small business; or (b) directly restrict the formation, operation or expansion of a small business.
5. On May 17, 2007, the Commission delivered the proposed temporary regulations to the Legislative Counsel Bureau.
6. A duly noticed workshop and hearing were held on May 14, 2007 and May 29, 2007, respectively.

7. Appearances were made at the foregoing workshop and hearing by interested persons, including Staff, Union Pacific Railroad, and the United Transportation Union.

8. The Commission finds that it is in the public interest to adopt the proposed temporary regulations attached hereto and incorporated herein as Attachment 1.

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

1. The proposed temporary regulations, attached hereto and incorporated herein as Attachment 1, are ADOPTED.

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

By the Commission,

DONALD L. SODERBERG, Chairman

JO ANN P. KELLY, Commissioner

REBECCA D. WAGNER, Commissioner

Attest: _____
CRYSTAL JACKSON, Commission Secretary

Dated: Carson City, Nevada

(SEAL) _____