

DEPARTMENT OF TRANSPORT

No. R. 105

18 February 2011

**NATIONAL RAILWAY SAFETY REGULATOR ACT, 2002 (ACT NO.16
OF 2002)****PENALTY FEE REGULATIONS 2011**

I, S'busiso Joel Ndebele, Minister of Transport acting in terms of section 45A of the National Railway Safety Regulator Act, 2002 (Act 16 of 2002), make the Regulations in the Schedule.

These Regulations are published for general information and compliance and will come into operation on the date of publication.



S'busiso J Ndebele
Minister of Transport

Date: 27 Jan 2011

SCHEDULE

Definitions

1. In these regulations any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned to it and, unless the context otherwise indicates –

"contravention" means failure to adhere to or comply with the Act;

"contravention notice" means a contravention notice contemplated in regulation 5;

"penalty" means a penalty imposed by the Regulator in accordance with these Regulations; and

"the Act" means the National Railway Safety Regulator Act, 2002 (Act No. 16 of 2002) as amended and includes Regulations, Standards and directives made under the Act.

Purpose

2. The purpose of these Regulations is to-

(a) promote, improve and achieve sustained compliance with the Act so that incidents where penalties are imposed will be reduced over a period of time; and

(b) promote safe railway operations.

Application of Regulations

3. These Regulations apply to operators.

Factors considered by the Regulator in imposing a penalty

4. (1) The Regulator may impose a penalty in accordance with Table A on an operator who contravenes the provisions of the Act as described in Table A.

(2) In the imposition of a penalty, the Regulator may consider various factors, including but not limited to the following-

- (a) proportionality in relation to the contravention or a series of contraventions giving rise to that penalty;
- (b) gravity of the contravention including-
 - (i) nature and seriousness of the contravention;
 - (ii) possible effect of the contravention on safe railway operations and the environment; and
 - (iii) damage, danger and loss caused to the environment and the public;
- (c) previous contraventions.

Contravention notice

5. (1) Subject to regulation 6, the Regulator must, prior to the imposition of a penalty in accordance with of regulation 4(1), serve a contravention notice on the operator.

(2) The contravention notice contemplated in subregulation (1) must specify-

- (a) the name of the operator who contravened the Act;
- (b) the description of the contravention;
- (c) the place where the contravention occurred;
- (d) the date when the contravention occurred;
- (e) the amount of the penalty intended to be imposed;
- (f) the manner in which the penalty must be paid; and
- (g) the time frame for the payment of the penalty.

Payment of Penalty by operator

6. If an operator who has been served with a contravention notice in writing-

(a) admits to a contravention of the Act; and

(b) agrees to abide by the decision of the Regulator,

that operator must pay to the Regulator the amount of the penalty and in the manner specified in the contravention notice.

Publication of contravention notice

7. (1) The Regulator may, despite the imposition of a penalty in accordance with regulation 4(1), publish a contravention notice in the *Gazette* or in the manner to be determined by the Regulator.

(2) In the event the Regulator publishes a contravention notice, the Regulator must be guided by factors contained in regulation 4(2).

Recovery of penalty

8. Where an operator is liable to a penalty under regulation 4(1), the Regulator may in writing demand payment from the operator of the amount due.

Service of contravention notice

9. A contravention notice referred to regulation 5 must be served in accordance with the provisions of section 59 of the Act.

Appeal

10. Where an operator is aggrieved by the decision of the Regulator in relation to the imposition of a penalty, the operator may appeal to the board in accordance with section 44 of the Act.

Annual review of schedule of contraventions and penalties

11. The Minister may annually review the contraventions and the amounts of penalties in Schedule A and publish the revised Schedule and penalties in the *Gazette*.

Short title and commencement

12. These Regulations are called the Penalty Fee Regulations, 2011 and come into operation on the date of publication in the *Gazette*.

Schedule A: Contraventions

CATEGORY 1: Contraventions that impact or potentially impact on operational safety: Maximum Penalty: R 5 000 000	CATEGORY 2: Contraventions that impact on Regulator's ability to administer the Act: Maximum Penalty :R 1 000 000
(a) Operating without a valid safety permit. (Contravention of section 22 (1) of the Act)	(a) Failure to notify and report a railway occurrence and security incidents to the detail and within the timeframes specified in SANS 3000-1 (2009).
(b) Failure to comply with conditions of a safety permit.	(b) Failure to conduct an investigation into a railway occurrence and to produce a report containing recommendations and findings within agreed timeframes.
(c) Failure to comply with a directive issued by a railway safety inspector.	(c) Failure to provide the Regulator with any information requested within the specified timeframes.
(d) Hindering a railway safety inspector in the exercise of his or her powers or performance of his or her duties.	(d) Failure to inform the Regulator of significant changes impacting on the operator's Safety Management System.
(e) Non-compliance proven in a board of enquiry or occurrence investigation.	(e) Failure to inform the Regulator of life cycle interventions such as significant new works or the introduction of new technologies.

(f) Failure to comply with any provision of the standards declared by the operator in his Safety Management System Report.	(f) Failure to submit an Annual Safety Improvement Plan (ASIP) by the specified deadline.
(g) Failure to comply, subject to item (i) of Category 2 of this Table with regulations made in terms of the Act.	(g) Failure to pay safety permit fees by the requested deadline.
(h) Failure to comply with agreed safety interventions arising from occurrence investigations, inspections, audits and annual safety improvement plans.	(h) Failure to provide information on time and in the format as requested by the Regulator.
	(i) Failure to comply with any other provision of the Act, the Regulations and the standards that inhibit or prevent the Regulator's ability to perform its mandate.