
GOVERNMENT NOTICE


DEPARTMENT OF TRANSPORT

No. R. 208

20 March 2013

NATIONAL RAILWAY SAFETY REGULATOR ACT, 2002 (ACT NO. 16 OF 2002)**PENALTY FEE AMENDMENT REGULATIONS 2013**

I Benedict Martins, Minister of Transport, hereby in terms of section 45A of the National Railway Safety Regulator Act, 2002 (Act No. 16 of 2002), makes the Penalty Fee Regulations 2013, as contemplated in the Schedule.



Mr. D. B. MARTINS, MP**MINISTER OF TRANSPORT**

DATE: 07.03.2013 .

SCHEDULE**Definitions**

1. In this Schedule "the Regulations" means the Regulations made under the National Railway Safety Regulator Act, (Act No. 16 of 2002) published under Government Notice No. R. 105 OF 18th February 2011.

Amendment of Regulation 4 of the Regulations

2. Regulation 4 of the Regulations is hereby amended-

- (a) by substitution for subregulation (1) of the following sub regulation-

"(1) The Regulator may impose a penalty in accordance with Annexure A

on an operator who contravenes the provisions of the Act as described in " Annexure A

(b) by the insertion after sub regulation (2) of the following sub – regulation:

"(3) In determining the severity of the penalty amount to be imposed in each circumstance, the Chief Executive Officer may take into account the following factors:

- (a) The degree of the operator's negligence;
- (b) the operators conduct prior to and after the incident or contravention;
- (c) the nature, duration, gravity, and the extent of the contravention;
- (d) the loss or damage suffered as a result of the contravention;
- (e) any repeat or recurrence of the contravention;
- (f) the period of the non-compliance;
- (g) the criminal sanction imposed, if any".

Amendment of Regulation 5 of the Regulations

3. Regulation 5 of the Regulations is hereby amended by the insertion after sub regulation (2) of the following sub regulation

" (3) The operator must within 21 days after being served with the contravention notice contemplated in sub regulation (1)

- (a) admit the liability for the contravention and the proposed penalty;
- (b) admit liability for the contravention but dispute the proposed penalty; or
- (c) dispute both the contravention and the penalty.

Amendment of Regulation 6 of the Regulations

4. The Regulations are hereby amended by the insertion after sub regulation (2) of the following sub regulation:

“Hearing preceding imposition of penalty

6A (1) In the event that the operator disputes the contravention and the penalty as contemplated in regulation 5(3)(c), the operator must be given a further fifteen (15) days to appear before the Chief Executive Officer to state its case

(2) At the hearing, the operator shall have the right to call witnesses, present documents and lead whatever relevant evidence that will enable the Chief Executive Officer to reach a just decision.

(3) After hearing the submissions made on behalf of the operator, the Chief Executive Officer shall make an appropriate finding on the contravention and provide the operator with a written record of the reasons made.

(4) The provisions of this regulation shall apply mutatis mutandis to an Operator who admits liability for the contravention but disputes the penalty payable as contemplated in regulation 5 (3)(b).

Amendment of regulation 10 of the Regulations

5. Regulation 10 of the regulations is hereby substituted by the following regulation:

“Appeal

10. Where an operator is aggrieved by the decision of the Chief Executive Officer in relation to the findings on the contravention, imposition of a penalty or amount imposed as a penalty, the operator may, appeal to the board in accordance with section 44 of the Act.”

Short title and Commencement

6. These Regulations are called the National Railway Safety Regulator Act, 2002 **(Penalty Fee Amendment Regulations) 2013** and come into operation on the date of publication in the Gazette.
-