



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 527 Cape Town

27 May 2009

No. 32265

THE PRESIDENCY

No. 615

27 May 2009

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 69 of 2008: National Railway Safety Regulator Amendment Act, 2008.



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Act No. 69, 2008

NATIONAL RAILWAY SAFETY REGULATOR
AMENDMENT ACT, 2008**GENERAL EXPLANATORY NOTE:**

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 20 May 2009.)

ACT

To amend the National Railway Safety Regulator Act, 2002, so as to amend certain definitions and to insert others; to extend the ambit of a threat to safety to include behaviour; to empower the Minister to include monorail systems, trams, systems running on pneumatic tyres and railways running on narrow gauges within the ambit of the Act; to empower the Regulator to exempt railways; to clarify that operators remain responsible for railway safety; to remove the duty to promote the use of rail directly from the Regulator's objects; to empower the Regulator to enter into informal arrangements with role players; to clarify the role of operator associations; to clarify the role of the Regulator in relation to the transportation of dangerous goods by rail; to revise the provisions regarding the terms and conditions of service of the chief executive officer; to require the Regulator's annual report to be submitted within five months after the financial year end; to provide for the appointment of staff members by the chief executive officer; to provide that the board approves the conditions of service of staff members; to empower the chief executive officer to delegate his or her powers and duties; to extend the Regulator's funds to include penalties and fees for providing services and other prescribed sources; to provide that the Regulator may charge fees for administering safety permits; to clarify the types of permits in connection with which standards may be imposed; to empower the Minister to make regulations to adopt and accept existing standards as well as to develop new ones; to provide that the chief executive officer appoints inspectors; to empower inspectors to audit, inspect and investigate the transportation of dangerous goods prior to their transportation by rail should a railway occurrence happens; to provide that operators investigate railway occurrences and to empower the Regulator to take steps if they fail to do so; to empower the board of the Regulator to subpoena witnesses and documents in connection with investigations; to clarify the circumstances in which the Regulator may request information; to empower the Minister to make regulations for the payment of penalties by operators who default; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 16 of 2002

1. Section 1 of the National Railway Safety Regulator Act, 2002 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the substitution for the definition of “**dangerous goods**” of the following definition:
 - (iii) “**dangerous goods**” means the commodities, substances and goods that are capable of posing a significant risk to health and safety of persons or damage to property or the environment that are listed in the appropriate standard specification of the South African Bureau of Standards [SABS 0228 “**The identification and classification of dangerous substances and goods**”] as identified by the Minister by notice in the *Gazette* [”];”
- (b) by the insertion after definition of “industry” of the following definition:

“(vA) “**integrity**” means a condition in which individual components of a system and the total system are unified, consistent and fit for purpose.”
- (c) by the substitution for the definition of “**network**” of the following definition:

“(vii) “**network**” means a system of railway infrastructure elements comprising track, civil infrastructure, train control and signalling systems and where applicable electric traction infrastructure which constitutes running lines, and any part of the following on which those elements are situated:

 - (a) railway yards [,];
 - (b) marshalling yards;
 - (c) sidings and private sidings;
 - (d) freight terminals;
 - (e) depots;
 - (f) stations; or
 - (g) any other matter that may be prescribed;”
- (d) by the substitution for the definition of “**network operator**” of the following definition:

“(viii) “**network operator**” means the person or persons who have the ultimate accountability for one or more of the following:

 - (a) the safety of a network or part thereof including the proper design, construction, maintenance and integrity of the network;
 - (b) ensuring compliance of rolling stock with the applicable standards of the network; or
 - (c) for the authorising and directing of the safe movement of rolling stock on [in control of railway traffic on the network, including the management of] the network;”;
- (e) by the substitution for the definition of “**station**” of the following definition:

“(xxv) “**station**” means a [railway station or] facility for passengers to enter or leave a train, including a railway passenger terminal and a passenger halt and may include facilities for passenger modal transfer and commercial activities forming part of the station and also includes any other place that may be prescribed, but excludes that part of the network running through the station;”;
- (f) by the substitution for the definition of “**train operator**” of the following definition:

“(xxvi) “**train operator**” means a person [in control of the movement and the management of rolling stock on a network] or persons who have the ultimate accountability for—

 - (a) the safe movement of rolling stock on a network;
 - (b) safety and integrity of rolling stock; and
 - (c) safety of freight or persons being conveyed;”;

(g) by the substitution for subsection (7) of the following subsection:

“(7) For the purposes of this Act, a threat to safety is a **[hazard or hazardous condition, or behaviour]**, that could reasonably be expected to develop into a situation in which illness or injury to, or death of, a person could occur or in which damage could be caused to the environment or property, and a threat to safety is immediate if such a situation already exists.”.

Amendment of section 3 of Act 16 of 2002

2. Section 3 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) the operation of any railway within, or partly within, the Republic with a track gauge equal to or wider than 600 mm, subject to paragraph (b); and”;

(b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) any other system designed to transport passengers or freight or both, declared by the Minister by notice in the *Gazette* to be a railway or railway operation, or both, for the purposes of this Act, including, but not limited to—

(i) a system running on a monorail or a magnetic levitation system;

(ii) a fixed rail or track system where the vehicles run on pneumatic tyres; or

(iii) a tramway or tram system.”; and

(c) by the substitution in subsection (2) for paragraph (d) of the following paragraph:

“(d) any railway exempted by the Regulator in consultation with the Minister by notice in the *Gazette* from compliance with this Act.”.

Amendment of section 5 of Act 16 of 2002

3. Section 5 of the principal Act is hereby amended by the substitution for paragraphs (a) and (b) of the following paragraphs:

“(a) oversee safety **[in the]** of railway transport **[industry]** while operators remain responsible for such safety within their areas of responsibility;

(b) promote improved safety performance in the railway transport industry in order to promote the use of rail as a mode of transportation [through improved safety performance in the railway transport industry];”.

Amendment of section 6 of Act 16 of 2002

4. Section 6 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The Regulator must conclude **[a]** an appropriate co-operative agreement or arrangement with every relevant organ of state to give effect to the co-operation contemplated in subsection (1).”.

Amendment of section 7 of Act 16 of 2002

5. Section 7 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) for purposes of this Act, **[act as the national competent authority in connection with]** oversee safety in relation to the transportation of dangerous goods by rail, including the conducting of audits, inspections and investigations.”;

(b) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) formally recognise **[an association]** associations representing operators, including other railway industry enterprises, **[to act on**

its behalf] to collaborate with it in respect of the development of standards or any other matter that the Regulator considers necessary;”; and

- (c) by the substitution for paragraph (n) of the following paragraph: 5
 (n) **[collect and disseminate information relating to safe railway operations]** oversee occupational health and safety matters that impact or have the potential to impact on the safety of railway operations;

Amendment of section 9 of Act 16 of 2002

6. Section 9 of the principal Act is hereby amended— 10

- (a) by the substitution in subsection (3) for paragraph (c) of the following paragraph:
 “(c) The terms and conditions of service of the chief executive officer are determined by the board **[and approved by]** after consultation with the Minister [in consultation with the Minister of Finance].”; and 15
 (b) by the substitution for subsection (6) of the following subsection:
 “(6) The board must forward the report referred to in subsection (5)(d), approved by it, to the Minister within **[three]** five months after the end of the financial year concerned.”.

Amendment of section 10 of Act 16 of 2002 20

7. Section 10 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

- “(1) **[Subject to the written instructions of the board, the]** The chief executive officer may appoint such staff members for the Regulator as are necessary to perform the work arising from or connected with the Regulator’s functions. 25
 (2) The terms and conditions of service of staff of the Regulator are determined by the board **[and approved by the Minister, in consultation with the Minister of Finance].**”.

Amendment of section 11 of Act 16 of 2002 30

8. Section 11 of the principal Act is hereby amended by the addition of the following subsection after subsection (5):

- “(6) (a) The chief executive officer may delegate any power or duty conferred or imposed on him or her to any staff member of the Regulator, subject to any conditions imposed by the board, and subsections (2) to (5) apply with the necessary changes to such a delegation. 35
 (b) A delegation under subparagraph (a) does not prevent the chief executive officer from exercising the power or performing the duty in question himself or herself.”.

Amendment of section 17 of Act 16 of 2002 40

9. Section 17 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The funds of the Regulator consist of—
 (a) money appropriated by Parliament;
 (b) fees paid to the Regulator in terms of section 23(2); **[and]** 45
(bA) penalties payable in terms of regulations made under section 45A(1);
(bB) fees for providing services as determined by the Minister in consultation with the Minister of Finance by notice in the Gazette;
 (c) donations or contributions received by the Regulator, with the approval of the board after consultation with the Minister, from any source; and 50
(d) any other fees or sources of income determined by the Minister by notice in the Gazette.”.

Amendment of section 22 of Act 16 of 2002

10. Section 22 of the principal Act is hereby amended—

- (a) by the substitution of subsection (1) of the following subsection:

“(1) A person may not undertake any railway operation or a component of a railway operation without being in possession of **[a] an applicable safety permit.**”
- (b) by the substitution in subsection (2) for paragraph (d) of the following paragraph:

“(d) any other categories of persons designated as **[being eligible for]** requiring a safety permit by the Minister by notice in the *Gazette*.”

Amendment of section 23 of Act 16 of 2002

11. Section 23 of the principal Act is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:

“(2) (a) The **[Regulator may]** Minister must annually determine fees that the Regulator must charge **[a fee for processing a safety permit application]** for safety permits, including a non-refundable application fee, which shall be published in the *Gazette*.
(b) The fees contemplated in 2(a) may differ from operators as determined by the Minister.”
- (b) by the substitution in subsection (3) for paragraph (c) of the following paragraph:

“(c) be accompanied by the **[processing] non-refundable application fee** and a safety management system report.”

Amendment of section 24 of Act 16 of 2002

12. Section 24 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The board may make standard conditions applicable to one or more types or categories of safety permit.”

Amendment of section 28 of Act 16 of 2002

13. Section 28 of the principal Act is hereby amended by the substitution of the following section:

“[Regulations regarding safety] Safety management systems and safety management system reports

28. The [Minister] Regulator must [make regulations on] determine—

- (a) the form and content of a safety management system that is required for the different categories and types of safety permit;
- (b) the form, content and manner of submission of a safety management system report; and
- (c) the circumstances under which the **[board]** Regulator may require the holder of a safety permit to revise or amend a safety management system or safety management system report.”

Amendment of section 29 of Act 16 of 2002

14. Section 29 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister must make regulations on the procedure to be followed by the board and any other person in the development, adoption or acceptance of standards for safe railway operations.”

Amendment of section 30 of Act 16 of 2002

15. Section 30 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) A new or proposed construction or operation which may impact on safe railway operations and which requires the approval of the Regulator, and the procedure for such approval, including the noting of objections;”.

Substitution of section 32 of Act 16 of 2002

16. The following section is hereby substituted for section 32 of the principal Act:

“Appointment of railway safety inspector

32. (1) The [Minister] chief executive officer may, in writing, appoint any suitably qualified person as a railway safety inspector to perform the functions contemplated in section 33.

(2) A railway safety inspector must be provided with a certificate of appointment signed by the [Minister, or by the] chief executive officer **[on behalf of the Minister, setting out the functions of the inspector].”.**

Amendment of section 33 of Act 16 of 2002

17. Section 33 of the principal Act is hereby amended by the addition of the following subsections after subsection (3):

“(4) In addition to the powers contemplated in subsections (1) to (3), a railway safety inspector may in the event of any railway occurrence, non-compliance with this Act or any other activity affecting the safe transportation of dangerous goods by rail, audit, inspect or investigate such occurrence, non-compliance or activity despite the fact that the events leading up to the occurrence may have taken place prior to the actual transportation by rail.

(5) The activities contemplated in subsection (4) include, but are not limited to, classification, packaging, marking, placarding, storage, loading, off-loading and documenting of dangerous goods.”.

Substitution of section 38 of Act 16 of 2002

18. The following section is hereby substituted for section 38 of the principal Act:

“Railway occurrence investigations

- 38.** (1) An operator must investigate every railway occurrence that takes place directly or indirectly in connection with that operator’s railway operations, among other things to identify the root cause or causes thereof, within a reasonable time after that occurrence. 5
- (2) The operator must, upon request, furnish any occurrence investigation report to the Regulator.
- (3) The Regulator may require the operator to assess the impact of the recommendations made in the operator’s occurrence investigation report in order to effect safety improvements. 10
- (4) The Regulator may, or upon receipt of a directive from the Minister must, investigate any railway occurrence for the purposes of preventing similar occurrences in the future. 15
- (5) In exercising its functions under this section, the Regulator may—
- (a) in its discretion allow any person affected by or interested in the relevant investigation or the duly authorised representative of such person, to appear before it and to— 20
- (i) give evidence or make oral or written representations relevant to such investigation;
- (ii) call witnesses and lead evidence on any question relevant thereto; or
- (iii) question any person who testified as a witness in such investigation; 25
- (b) summons any person who may reasonably be able to give material information concerning such investigation to appear before it to give evidence or to produce any document or object in their possession or custody or under their control which may reasonably have a bearing thereon; 30
- (c) call upon and administer an oath to or obtain an affirmation from any person present before it, who has been or might be summoned in terms of paragraph (b) or otherwise;
- (d) question any person who has been called upon under paragraph (c) or require such person to produce any document or object in their possession or custody, or under their control, which may reasonably have a bearing on the investigation. 35
- (6) The summons contemplated in subsection (5)(b) must be in the prescribed form, signed by the chairperson of the board or another person authorised by the board and served in the prescribed manner. 40
- (7) The law relating to privilege as applicable to a witness summoned to give evidence or produce any document or object before a court of law will apply in respect of the questioning of any person by, or the production of any document or object before the Regulator in terms of this section.

(8) The Regulator may appoint a suitably qualified person to carry out any investigation referred to in subsection (4).

(9) An investigator appointed in terms of subsection (8) must furnish a written report to the Regulator upon completion of the investigation.

(10) The Regulator or a person conducting the investigation into a railway occurrence may enter and inspect any infrastructure, network, rolling stock or any place, except for a dwelling, that is the object of the investigation.

(11) A person in control of the scene of a railway occurrence which the subject of an investigation must—

(a) allow the investigator to remove any articles or objects pointed out by the investigator or Regulator;

(b) allow the inspection of the documents requested by the investigator or the Regulator, including the making of copies thereof; and

(c) furnish the investigator or the Regulator with any information which is under that person's control.

(12) A person questioned by the investigator or the Regulator must answer each question to the best of his or her ability, but such person is not required to answer any question if the answer may be self-incriminating.”.

Substitution of section 40 of Act 16 of 2002

19. The following section is hereby substituted for section 40 of the principal

“Provision of information

40. The Regulator may require, in writing, that a person must, within a specified time or on a regular basis, provide the Regulator with data, information, documents, samples or materials required **[for the purposes of information or monitoring systems]** by the Regulator to perform its functions in terms of this Act.”.

Amendment of section 44 of Act 16 of 2002

20. Section 44 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Such **[appeal]** person must—

(a) **[be lodged within 60]** lodge the notice of intention to appeal within 21 days from the day on which the decision was made known by the chief executive officer or such later date as the board permits; and

(b) lodge the appeal and set out grounds of appeal within 30 days of the notice of intention to appeal. **[set out the grounds of appeal]**.”.

Insertion of section 45A in Act 16 of 2002

21. The following section is hereby inserted after section 45 of the principal Act:

“Penalties

- 45A.** (1) The Minister may make regulations to provide that persons who fail to comply with any provision of this Act or regulations or standards made or imposed thereunder, or any condition imposed in terms of section 24, must pay one or more penalties to the Regulator, and may provide that the Regulator may publish details of such non-compliance in the manner prescribed. 5
- (2) The making of such regulations and the imposition of such penalties are on the understanding that the Regulator will strive to improve compliance with this Act so that incidences where penalties are imposed will reduce over time. 10
- (3) Penalties imposed in terms of regulations made under subsection (1) may differ between operators according to criteria which the Regulator deems reasonable. 15
- (4) The Regulator may recover penalties imposed in terms of regulations made under subsection (1) by civil action.
- (5) Any person aggrieved by a decision of the Regulator to impose such a penalty may appeal against that decision to the board.”. 20

Short title and commencement

- 22.** (1) This Act is called the National Railway Safety Regulator Amendment Act, 2008, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 25
- (2) The President may fix different dates in respect of different provisions of this Act.