

DEPARTMENT OF TRANSPORT

NO. 617

30 JUNE 2017

THE NATIONAL RAILWAY SAFETY REGULATOR ACT, 16 OF 2002,**AS AMENDED****PUBLICATION FOR COMMENTS: DRAFT SECURITY MATTERS
REGULATIONS, 2017**

The Minister of Transport, in terms of section 50(3) (a) of the National Railway Safety Regulator Act, 2002 (Act No. 16 of 2002) as amended, hereby publishes for comments the draft Security Matters Regulations, 2017.

Interested persons are invited to submit written comments on these draft Regulations to the Acting Director-General, Department of Transport for the attention of Mr R Shivambu or Mr. S. Mokubane within 60 days after the date of publication of this notice:

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DEPARTMENT OF TRANSPORT**NATIONAL RAILWAY SAFETY REGULATOR ACT, 2002 (ACT NO.16 OF 2002) AS
AMENDED****DRAFT SECURITY MATTERS REGULATIONS, 2017**

The Minister of Transport under section 31 (h) of the National Railway Safety Regulator Act, 2002 (Act 16 of 2002) intends to make the Regulations set out in the Schedule:

SCHEDULE**1. Definitions**

In these Regulations any word or expression to which a meaning has been assigned in the Act has the meaning so assigned unless the context indicates otherwise:

“applicant” means an Operator who applies to the Regulator for a security compliance certificate in terms of these Regulations;

“certificate” means a security compliance certificate issued in terms of these Regulations;

“Minimum Security Requirements” means the minimum security standards as prescribed by the Regulator from time to time;

“NIMS” means the National Information and Monitoring System as stipulated in section 39 of the Act;

“operator” means an operator as defined in the Act;

“Penalty Fee Regulations” means the Penalty Fee Regulations, 2011 as amended;

“Regulator” means Railway Safety Regulator as defined in the Act;

“safety permit” means safety permit as defined in the Act;

“SANS 3000-1” means South African National Standard - Railway safety management, Part 1: General

“security manager” means a person who is delegated with the responsibility to safeguard persons, infrastructure and assets within the railway operational environment.

“Security Compliance Certificate” means a certificate issued to a railway operator by the Regulator in terms of regulation 9 of these Regulations;

“Security Compliance Plan” means a plan submitted by an Operator to the Regulator in terms of regulation 6 of these Regulations;

“the Act” means the National Railway Safety Regulator Act, 2002 (Act No. 16 of 2002) as amended;

2. Purpose

The purpose of these Regulations is to prescribe the minimum security requirements that must be met by operators.

3. Application

These Regulations apply to Operators as defined in section 1 of the Act unless exempted by the Chief Executive Officer of the Regulator.

4. Security Compliance Certificate to be obtained by operators

(1) Subsequent to these Regulations taking effect—

- (a) An Operator must apply for and obtain a security compliance certificate in terms of the provisions of these Regulations.

- (b) A person may not undertake a railway operation or a component of a railway operation unless such a person has set up, and is maintaining a security compliance system which meets all the requirements set out in regulation 6 of these Regulations.
 - (c) A person may not undertake a railway operation or a component of a railway operation unless such a person is in possession of a valid security compliance certificate issued by the Regulator in respect of such operation.
- (2) Upon these Regulations entering into force, a person who is responsible for developing or managing a railway infrastructure, or managing and operating a station on a railway, shall not manage and use it or permit it to be used for the operation of trains unless—
 - (a) Such a person has implemented and is maintaining a security compliance system which meets the requirements stipulated in these Regulations.
 - (b) Such a person using or permitted to use such facility for such operation has complied with regulation 6 of these Regulations.

5. Ownership of a Certificate

- (1) A certificate is only valid for the Operator to whom it is issued and is not transferrable.
- (2) The Regulator may amend or vary any condition in a certificate in consultation with the operator.

6. Requirements for obtaining a certificate

- (1) The Regulator may only issue a certificate to an Operator if the operator's security compliance plan is in accordance with SANS 3000-1 and adequately addresses security matters in respect of but not limited to the following:
 - (a) Security rules regarding Passenger and Freight operations;
 - (b) Responding to Incidents;

- (c) Site Perimeters, Entrances and Exits;
 - (d) Informal Surveillance;
 - (e) Visibility;
 - (f) Emergency response;
 - (g) Lighting;
 - (h) Surveillance;
 - (i) Security Personnel;
 - (j) Deployed technology and other innovative means of ensuring security;
 - (k) Other preventative measures of ensuring security;
 - (l) Procedures for carrying out regular risk assessment exercise in accordance with the relevant risk management standards; and
 - (m) Procedures for ensuring that operator's staff comply with laid down security standards.
- (2) The requirements referred to in regulation 6(1) shall take the format prescribed in Annexure A.
- (3) Notwithstanding the provisions in regulation 6(2), the Regulator may in its discretion determine on a case-by-case basis, how an operator may demonstrate compliance with regulation 6.

7. Application for a certificate

- (1) An application for a certificate may be lodged manually or electronically using the NIMS or any other application process prescribed by the Regulator.
- (2) The Regulator shall publish on its website procedures for:
- (a) Submitting an application for a certificate;
 - (b) Issuing of a new certificate;
 - (c) Renewal of a certificate;
 - (d) Replacement of a stolen, lost, damaged or destroyed certificate; and

(e) Obtaining a duplicate certificate.

(3) All applications must be submitted to the Regulator by the Operator and must be made in accordance with the published procedures.

8. Processing the application

(1) All applications for a certificate shall be processed and finalised by the Regulator within 1 (one) calendar month of receipt of the application, provided that the Operator meets all the requirements.

(2) Notwithstanding the provisions in regulation 8(1), in processing the application, the Regulator may—

(a) Request additional information;

(b) Require the Operator to comply with any outstanding requirements imposed by these Regulations;

(c) Accept the information provided by the applicant; and

(d) Consider any objections raised by any other person or entity against the application; and

(e) Extend the time within which to process the application.

9. Issuing certificates

(1) The Regulator shall issue a certificate to the Operator if the Regulator is satisfied that an applicant has complied with the requirements of the Act read together with these Regulations.

(2) The Regulator may, in its discretion and upon request from the operator, issue duplicates of the certificate at a cost to be determined by the Regulator.

10. Renewal of certificates

(1) A certificate shall be valid for the same period as a safety permit issued in terms of the Act.

- (2) A certificate ceases to be valid once it is suspended, withdrawn, or has expired.
- (3) An Operator may apply for the renewal of its certificate no later than 90 calendar days prior to the expiration of its existing certificate. Late applications shall be accompanied by suitable motivation indication reasons for late submissions.
- (4) An application for the renewal of a certificate contemplated in regulation 10(3) must be submitted to the Regulator in the prescribed format and in accordance with the procedure determined by the Regulator in terms of regulation 7(2).
- (5) The Regulator shall not renew a certificate unless the Regulator is satisfied that the Operator complies with regulation 6.

11. Suspension and revocation of certificates

- (1) If the Regulator considers that the Operator no longer satisfies one or more conditions upon which the certificate was issued, the Regulator may suspend or revoke the certificate.
- (2) If the Regulator suspends or revokes the certificate in terms of regulation 11(1), the Regulator shall inform the Operator of:
 - (a) The suspension and the period of such suspension;
 - (b) The revocation;
 - (c) The reason for the suspension or revocation;
 - (d) The availability of the appeal procedure; and
 - (e) Any procedure to be followed to seek reinstatement of the certificate.

12. Annual security reports

- (1) An Operator shall within three months after closure of its financial year, submit to the Regulator an annual security compliance report relating to the previous year. The report must contain the following information:

- (a) Security objectives and how these were achieved through the implementation of the operator's security compliance system;
 - (b) Detailed information on how the operator's security compliance has mitigated risks and ensured security;
 - (c) The findings of the security audits carried out in compliance with the requirements of the Act; and
 - (d) Detailed comments on any weaknesses, shortcomings or deficits impacting on the security matters.
- (2) The annual security compliance report referred to in regulation 12(1) shall form part of the permit application required to be submitted to the Regulator in terms of the Act.
- (3) The Regulator may carry out inspections of the security compliance system put in place by the operator in terms of these Regulations.

13. Appeals

- (1) An operator who is aggrieved by a decision made by the Regulator under these Regulations may appeal against that decision to the Regulator's board of directors.
- (2) The right to appeal shall be exercised in terms of the Act.

14. Penalties

An operator who contravenes these regulations will be subjected to the provisions of Penalty Fee Regulations, 2011 as amended.

15. Transitional Provisions

An operator has one year from the date of commencement of these Regulations to comply with the provisions of these Regulations.

16. Short title

These Regulations shall be called the Security Matters Regulations 2017 and are published for public comments.