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**CONTENTS • INHOUD***No.**Page  
No.    Gazette  
          No.***GENERAL NOTICE****Transport, Department of***General Notice*

647 National Railway Safety Regulator Act (16/2002): Draft Amendment of Penalty Fee Regulations, 2012.....	3	35594
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# GENERAL NOTICE

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## NOTICE 647 OF 2012

### DEPARTMENT OF TRANSPORT

#### NATIONAL RAILWAY SAFETY REGULATOR ACT, 2002 (ACT NO. 16 OF 2002)

#### DRAFT AMENDMENT OF PENALTY FEE REGULATIONS 2012

The Minister of Transport intends, in terms of section 45A of the National Railway Safety Regulator Act, 2002 (Act No. 16 of 2002) amends the regulations in the Schedule.

Interested persons are invited to submit their written comments on these draft amendment Penalty Fee Regulations, 2012 to the Director – General, Department Transport for the attention of T. H. M. Mphahlele within 60 days from publication thereof at:

The Department of Transport

Private Bag x193

Pretoria

0001

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**SCHEDULE****Amendment of Regulation 4 of Act No. 16 of 2002**

1. Regulation 4(1) of the Regulations is hereby amended by substitution for the following regulation-

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

(b) by addition of the following sub – regulation 3 after sub-regulation 2:

“(3) In determining the severity or otherwise of the penalty amount to be imposed in each circumstance, the Regulator may *inter alia* take into account the following factors:

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

**Amendment of Regulation 5 of Act No. 16 of 2002**

2. Regulation 5 of the regulations is hereby amended by the addition of the following sub- regulation 3 after sub-regulation 2:

“(3) upon receipt of the contravention notice, the operator must within 7 days of receipt thereof either:

- (a) admit both the liability for the contravention and the proposed penalty; or
- (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 Act 16 of 2002

3. Regulation 6 of the regulations is amended by addition of regulation 6A after regulation 6:

#### “Hearing Preceding the Imposition of the Penalty

- 6A (1) In the event that the operator disputes the contravention and the penalty as contemplated in Regulation 5(3)(c) above then 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 and the Regulator, the Chief Executive Officer shall make an appropriate finding on the contravention and provide the operator with a written record of the findings made.
- (4) the provisions of this regulation 6 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 Act 16 of 2002**

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

**“Appeal**

10. Where an operator is aggrieved by the decision of the Regulator in relation to the findings on the contravention, imposition of a penalty or amount imposed as a penalty, the Operator may upon payment of a prescribed fee, appeal to the board in accordance with section 44 of the Act.”

**Short title and Commencement**

5. The Regulations are called the Penalty Fee Regulations, 2012 and come into operation on the date of publication in the Gazette.

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