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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.
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No. R. 208

20 March 2013

TSEBISO YA MMUSO
LEFAPHA LA TERANSEPOROTO

MOLAO WA TAOLO YA BOIPOLOKO WA RELEWEI WA SETJHABA WA 2002
(MOLAO WA NO. YA 16 WA 2002)

MELAWANA YA PHETOLELO WA TEFELLO YA KOTLO YA 2013

Letona la Teranseporoto le ikemiseditse ho ya ka dipehelo tsa karolo ya 45A ya Molao wa Melawana ya Boipoloko ya Relewei ya Setjhaba wa 2002 (Molao wa No. wa 16 wa 2002) o fetola melawana Shejulong.



MONGHADI. B. MARTINS, SP

LETONA LA TERANSEPOROTO

MOHLA: 07.03.2013.

SHEJULU

Molawana wa 4 wa Phetolelo wa Molao wa No. ya 16 wa 2002

1. Molawana wa 4(1) wa Melawana e fetolelwa mona ka ho emelwa ke molawana o latelang-
 - (a) 4 (1) Mohlokomedi wa Molawana a ka tlisa kotlo ho ya ka **Theibole ya A** [Shejulu ya A] ho mkganni ya tloang dipehelo tsa Molao jwalo ka ha o balletswe **Theiboleng ya A** [Shejulu ya A.]
 - (b) ka ho eketsa molawana o monyenyanane wa 3 ka mora molawana o monyenyanane wa 2:

“(3) Ho lekanyetseng matla kapa ka mokgwa o mong oo tefello e ka behwang maamong a mang le a mang, Mohlokomedi wa Melawana, hara tse ding, a ka nahana tse latelang:

- (a) boholo ba ho se ele hloko ha mokganni;
- (b) boitshwaro ba bakganni pele ho le ka mora ketsahalo le tlolo ya molao;
- (c) sebopeho, bolelele ba nako, botebo ba taba le boholo ba tlolo ya molao;
- (d) tahlehelo kappa tshenyo e bileng teng ka lebaka la tlolo ya molao;
- (e) phethaphetho kapa ha tlolo ya molao e iphetha hape;
- (f) nako eo tlolo ya molao e etsahetseng ka yona;
- (g) boemo ba melemo e unnweng ka lebaka la tlolo ya molao, haeba e teng; le
- (h) thibelo ya bosenyi e behilweng, haeba e teng”.

Molawana wa 5 wa Phetolelo wa Molao wa No. ya 16 wa 2002

2. Molawana wa 5 wa melawana e fetolelwa mona ka ho eketswa ha melawana ya 3 ka mora molawana o monyenyanane wa 2:

“(3) ha ho amohelwa tsebiso ya tlolo ya molao, mokganni o tlameha hore matsatsing a 7 a ho amohela tsebiso eo a ka:

- (a) dumela tshitelo ya ho tlola molao le kotlo e sisintsweng; kapa
- (b) dumela tshitelo ya ho tlola molao, empa a hanane le kotlo e sisintsweng; kapa
- (c) hanana le ho tlola molao le kotlo ka bobedi ba tsona.

Molawana wa 6 wa Phetolelo wa Molao wa No. ya 16 wa 2002

3. Molawana wa 6 wa melawana e fetolelwa ka ho eketswa ka molawana wa 6A ka mora molawana wa 6:

“Ho Mamelwa ha Nyenwe Pele ho Dihwa Kotlo

6A (1) Ha ho ka etsahala hore mokganni a hanane le tlolo ya molao le kotlo jwalo ka ha ho hlalositse Molawaneng wa 5(3)(c) ka hodimo mona mokganni o tlameha hore a dumellwe matsatsi a leshome le metso e mehlano(15) pele a eya kgotla ho Mosebeletsi wa Mmuso wa Phethahatso ya ka Sehlohong ho beha nyewe ya hae

(2) Mono kgotla, Mokganni o tla ba le tokelo ya ho tla ka dipaki, a fane ka ditokomane le ho hlalosa bopaki bofe kapa bofe boo a nang le bona bot la thusa Mosebeletsi wa Mmuso wa Phethahatso ya ka Sehlohong hore a tsebe ho etsa qeto ya toka.

(3) Ha a se a utlwile dipehelo tse pakang Mokganni le Mohlokomedi wa Molawana, Mosebeletsi wa Mmuso wa Phethahatso ya ka Sehlohong o ka etsa phuputso e nepahetseng ka tlolo ya molao mme fe mokganni rekoto e ngotsweng ya diphuputso tse fumanweng.

(4) dipehelo tsa molawana ona wa 6 di tla sebediswa ho entswe dipheho tse loketseng tsa molawana wa 6 ho Mokganni ya dumelang tshetelo ya tlolo ya molao, empa a hanana le tefello ya kotlo jwalo ka ha e hlalositse Molawaneng wa 5 (3)(b).

Molawana wa 10 wa Phetolelo wa Molao wa No. ya 16 wa 2002

4. Molawana wa 10 wa melawana e emetswe mona ke molawana o latelang:

“Boipiletso

10. Moo e leng hore sitetswe ke qeto ya Mohlokomedi wa Molawana ho ya ka diphuputso tsa ho tlola molao, ho dihwa ha kotlo kapa tefello e ka behwang e le kotlo, Mokganni ha a lefa a ka nna a ipiletsa mabapi le tefello e balletsweng ya kotlo, a ka ipiletsa botong ho ya ka karolo ya 44 ya Molao.”

Sehloho se sekgutshwane le Ho Qala

5. Melawana e bitswa Melawana ya Tefello ya Kotlo ya 2013 mme e tla sebdiswa mohlang e phatlalatswang Koranteng ya Mmuso (Gazette).
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