

DEPARTMENT OF TRANSPORT

NO. R. 423

14 May 2021

CROSS-BORDER ROAD TRANSPORT ACT, 1998 (ACT NO. 4 OF 1998)

PUBLICATION FOR COMMENTS: DRAFT AMENDMENTS TO THE CROSS-BORDER ROAD TRANSPORT REGULATIONS, 2020

The Minister of Transport, in terms of section 51 of the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998) as amended, hereby publishes for comments the draft Amendment to the Cross-Border Road Transport Regulations, 2020.

Interested persons are invited to submit written comments on these draft Regulations to the Director-General, Department of Transport for the attention of Ms Lindiwe Twala or Ms Reniee Govender within 30 days after the date of publication of this notice:

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CROSS-BORDER ROAD TRANSPORT ACT, 1998 (ACT NO. 4 OF 1998)

DRAFT AMENDMENTS TO THE CROSS-BORDER ROAD TRANSPORT REGULATIONS, 2020

The Minister of Transport under sections 51 of the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998), section 27 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002) and section 75(4) of the National Land Transport Act, 2009 (Act No. 5 of 2009) as amended intends to make the Regulations set out in the Schedule:

SCHEDULE

Definitions

1. (a) 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
- (b) In this Schedule the term “**Regulations**” means the Cross-Border Road Transport Regulations published by Government Notice No. R464 of 3 April 1998 as amended by Government Notices R.988 of 13 August 1999, R. 682 of 7 July 2000, R.677 of 2 June 2003 and R.284 of 31 March 2011 and R.342 of 6 May 2014.

Amendment of regulation 1 of the Regulations

2. Regulation 1 of the Regulations is hereby amended by-

(a) the insertion of the following definition after the definition of “application fee” :

“**approved application**” means an application submitted on the digital platform for the issue of permits and the submission of consignment notes and passenger lists to the Regulatory Committee;”;

(b) the insertion of the following definition after the definition of “Department” :

“**digital platform**” means the software and hardware system of the Agency that enables the submission of applications, issuing of permits and other documents and all matters related thereto that is available on the website”; and

(c) by the insertion of the following definitions after the definition of “transport year” :

“**video-or voice-conferencing**” means a live, visual or audio connection between two or more persons located in different places for the purpose of communication between them;

“**website**” means the website of the Agency that hosts the digital platform at the web address www.cbrta.co.za.”.

Substitution of regulation 2 of the Regulations

3. Regulation 2 of the Regulations is hereby substituted for the following regulation:

“2.Applications”

(1) Subject to subregulation (1A), an application for a permit contemplated in section 25 of the Act must be done by the owner of the motor vehicle, as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996), or by a person who has leased a motor vehicle from another person in terms of a written agreement by—

(a) completing the relevant portions of the form provided by the Regulatory Committee and by handing the form in person or through a representative to the Regulatory Committee;

(b) posting or faxing it to the Regulatory Committee;

- (c) transmitting it by means of electronic mail, to the Regulatory Committee; or
- (d) completing the online application on the digital platform.

(1A) If an owner or lessee as contemplated in subregulation (1) makes use of a consultant or agent to submit an application in terms of the Act, such consultant or agent must be appointed by means of a written agreement in the format as provided in Form as shown in Schedule 6.

(1B) Where application is made by the same person for permits for more than one vehicle the application need only include one set of documents where they are common to all of the vehicles to which the application relates, when submitting an application in terms of sub-regulation (1).

(2) The applicant must furnish the following information, particulars and documents in respect of each application referred to in subregulation (1) on form CBRTA 1 as shown in Schedule 6—

- (a) in the case of a natural person, the full name and identity number, and a copy of the first page of the identity document of the applicant;
- (b) in the case of a partnership—
 - (i) the National Traffic Information System number of the partnership; and
 - (ii) the full name and identity number, and a copy of the first page of the identity document, of the partner responsible for the vehicle fleet;
- (c) in the case of a company or close corporation—
 - (i) the full name and the registration number of the body;
 - (ii) the original business registration certificate or a copy of it; and
 - (iii) the identity number, and a copy of the first page of the identity document, of the person responsible for the vehicle fleet;
- (d) a description of the type of business operated by the applicant;

- (e) the postal address, street address, telephone number, fax number and place for serving notices on the applicant;
- (f) in respect of the mechanically propelled vehicle to be used, the licence number, vehicle identification number, vehicle make, tare and gross vehicle mass in the case of freight transport, or the maximum number of passengers for which such a vehicle has been designed or adapted in the case of passenger transport;
- (fA) the information required to determine the status of the entity in terms of the Broad Based Black Economic Empowerment Act, 2003 (Act No. 54 of 2003) ;
- (fB) in the case of a leased vehicle, the lease agreement as contemplated in subregulation (1);
- (fC) in the case of a renewal application, the old permit or in the case of a permit issued on the digital platform, proof that the permit has been deleted from the electronic device on which it was stored;
- (g) the valid roadworthy and clearance certificate in respect of the mechanically propelled vehicle, or a copy thereof;
- (h) the type of transport, country of origin, country of transit, if applicable, country of destination and a route description of the journey or journeys, as the case may be;
- (i) the number of journeys required in the case of transport to Botswana, Lesotho, Namibia or Eswatini; and
- (j) any other information or document that the Regulatory Committee may require in relation to particulars furnished in the application.

(3) Information and documents submitted under sub-regulation (2) and stored on the digital platform in terms of sub-regulation (5B) need not be resubmitted where application is made for the renewal of a permit, a duplicate permit, additional authorisation or an amendment of the route, unless the information has changed since

the original application, but a current certificate referred to in subregulation (2) (g) must be submitted with every application.

(4) Each application must be accompanied by the application fee referred to in regulation 7, and such application fee is non-refundable regardless of whether the application is granted, refused or withdrawn.

(5) Where applications are lodged by electronic mail or on the digital platform, they must include a scanned version of the required documents, and where they are faxed all supporting documents must also be faxed.

(5A) Information submitted in terms of subregulation (2)(b), (f) and (g) must be verified by the Regulatory Committee on the National Traffic Information System as defined in regulation 1 of the National Road Traffic Regulations, 2000 made in terms of the National Road Traffic Act, 1996.

(5B) Information submitted by an applicant must be recorded and stored by the Regulatory Committee on the digital platform and may be used for future applications of an applicant if the applicant confirms that the information is still valid and current.

(6) The Regulatory Committee may reject an application where the application form is not fully and properly completed, or to which required documents have not been attached, or where the required fee has not been paid, and may require the applicant to submit the original of any document before accepting the application, if it has doubts about the validity or authenticity of the document.

(7) In the case of an application for a cabotage permit or a South African Carrier who loads passengers on the way to the border at a rank, stand or terminal, the Regulatory Committee must, by electronic mail, fax or on the digital platform notify every planning authority, as defined in the National Land Transport Act, 2009 (Act No. 5 of 2009), in whose area passengers will be picked up or set down, of the application, and those planning authorities must supply comments or representations to the Regulatory Committee by electronic mail fax or on the digital platform within the time specified in the notice.

(8) Where such a planning authority fails to respond to such a notice within the specified time, the Regulatory Committee may proceed to process and decide upon the application without its input.

Substitution of Regulation 3 of the Regulations

4. Regulation 3 of the Regulations is hereby substituted for the following regulation:

“3. Publication

(1) (a) For the purposes of section 33 (1) of the Act, the following particulars must be published in the *Gazette* at least four weeks prior to the application being heard as contemplated in regulation 4—

- (i) the name of the applicant and the name of the applicant’s representative, if applicable;
- (ii) the general route description on which the road transport is conducted or the proposed transport is to be conducted giving origin and destination points;
- (iii) the countries of departure, destination and, where applicable, transit;
- (iv) a statement that full particulars of the application are available at the offices of the Agency and on the website .

(2) The following information regarding each application must be available to any interested person at the Agency’s offices and on the website:

- (i) the applicant’s postal address or, in the case of a representative applying on behalf of the applicant, the representative’s postal address;
- (ii) the number and type of vehicles, including the carrying capacity of each vehicle; and
- (iii) the detailed route description on which the road transport is conducted or the proposed transport is to be conducted.

(3) Particulars concerning any existing authorisation of the applicant must be available for scrutiny at the offices of the Agency and on the website.

(4) If any interested party wants to object to an application being granted, he or she must do so by putting the reasons therefor in writing and handing them to the Regulatory Committee by hand or sending them electronically to the address provided by the Agency or by submitting them on the digital platform and handing or sending a copy thereof to the applicant or his or her representative in the same manner, within 21 days of the publication in the *Gazette*.

Amendment of regulation 4 of the Regulations

5. Regulation 4 of the Regulations is hereby amended by the substitution for the regulation of the following regulation:

“4. Hearings

(1) In the case of a public hearing, the Regulatory Committee must advise the applicant and objectors, if any, of the date of the hearing by the Regulatory Committee.

(1A) Where the applicant, witness or the objector does not reside in the area of the Regulatory Committee, that Committee may consent that a person may appear via a video – or voice-conferencing facility: Provided that the Committee may direct the applicant, witness or objector to appear in person before the Committee if it deems it necessary and provided further that the applicant, witness or objector may elect to appear in person if he or she so wishes.

(2) Any notice in terms of section 17 (1) (b) of the Act must be in the form provided by the Regulatory Committee.

(3) A notice referred to in subregulation (2) must be—

- (a) handed over in person;
- (b) posted by registered post;
- (bA) sent by electronic mail;

(bB) submitted via the digital platform: or

(d) faxed,

to the person to whom the notice applies.

(4) The Chief Executive Officer must verify the information provided by an applicant for a permit authorising freight transport, and present the information contemplated in section 27 of the Act to the Regulatory Committee.

(5) Without derogating from the provisions regarding the onus of proving the considerations in respect of an application for a permit authorising passenger transport, the Chief Executive Officer must verify the information provided by an applicant for a permit authorising transport, and present the information contemplated in section 28 of the Act to the Regulatory Committee.

(6) The person presiding at the hearing must allow the applicant to present his or her case first, whereafter the objectors must be afforded an opportunity to present their cases, and thereafter the applicant must be afforded an opportunity to respond to any allegations made by the objectors.

(7) After considering the application the Regulatory Committee may, subject to the provisions of these Regulations—

(a) grant the application in full or in part;

(b) grant the application subject to certain conditions or requirements; or

(c) refuse the application.

(8) The Regulatory Committee must, upon request, provide written reasons for each decision.

(9) In respect of passenger transport, the permit may be granted subject to certain conditions or requirements that may include, but which are not limited to—

(a) the determination of specific routes;

(b) the identification of specific loading or offloading points;

(c) service frequency;

- (d) specified ranking facilities; and
- (e) the affixing of distinctive logos.

(10) The procedure for the consideration of applications contemplated in section 32 (a) of the Act is that the Chief Executive Officer or another member of staff with delegated power must, subject to sections 26, 27 or 28, only ensure that the application complies with regulation 2, and no hearing is required.

Substitution of regulation 5 of the Regulations

6. Regulation 5 of the Regulations is hereby amended by the substitution for the regulation of the following regulation:

“5. Issuing_of permits

(1) Where the Regulatory Committee has granted an application for a permit or renewal of a permit and upon payment of the prescribed permit fee referred to in regulation 7(3) and the furnishing of documentation requested by the Regulatory Committee and proof of payment, a permit must be issued, which must be -

- (a) handed to the applicant or to his or her representative.;
- (b) posted to the applicant by registered post;
- (c) forwarded to the applicant by such other means as requested by the applicant; or
- (d) sent electronically to the applicant by means of the digital platform and the driver of the vehicle to which such permit relates must be keep it in that vehicle, either stored on an electronic device as provided for on the digital platform or in hard copy, as required by section 47(5)(a) of the Act.

(1A) An official from the Regulatory Committee must sign the permit before it is issued to the applicant and in the case of an electronic permit issued via the digital platform an electronic signature as defined in section 1 of the Electronic

Communications and Transactions Act, 2002 (Act No. 25 of 2002) must be applied to the permit.

(2) (a) If the applicant fails to pay the prescribed permit fee contemplated in subregulation (1) within 60 days after having been informed of the decision of the Regulatory Committee that the permit was granted, the authorization to issue the permit expires, subject to paragraph (b).

(b) The 60 days period mentioned in paragraph (a) may be extended where the applicant applies in writing within the 60 days period for an extension and application is approved by the Regulatory Committee.

(3) If the expiry date contemplated in subregulation (2) falls on a Saturday, Sunday or public holiday, the authorisation expires at the end of the first working day following that Saturday, Sunday or public holiday.

(4) A permit issued in accordance with subregulation (1) expires—

- (a) on the date specified on the permit; or
- (b) as soon as the permit holder has completed the journeys that he or she has been authorised to undertake.

(5) The holder of a permit valid for a period longer than one year must submit the documentation as required in terms of subsection 47 (6) of the Act on or before each annual anniversary date of the first issue of the permit.

(6) Where a permit is valid for a period of longer than one year, an annual compliance fee must be paid annually on or before the annual anniversary date of the first issue of the permit.

(7) The Regulatory Committee may not refuse to renew a permit unless –

(a) the Regulatory Committee is satisfied that the applicant is no longer a fit and proper person to provide cross-border road passenger transport or lacks the ability to do so for a reason contemplated in the Act;

(b) the applicant has failed to provide proof of registration, licensing, roadworthiness or leasing of the vehicle, as the case may be, as required by the Act by handing the documents to the Regulatory Committee, posting or faxing them,

transmitting them by means of electronic mail or submitting them via the digital platform to the Regulatory Committee;

(bA) where applicable, the applicant has failed to provide proof of the roadworthiness of the vehicle or other proof contemplated in section 47(6) of the Act;

(c) the services authorised by the permit have not been provided continuously for the previous 180 days, unless the holder has provided acceptable reasons for not doing so;

(d) the planning authority has directed the Regulatory Committee to refuse the application as a result of a lack of public transport facilities;

(e) the permit holder has not submitted the previous permit to the Regulatory Committee for destruction or, in the case of a permit issued on the digital platform, has not provided proof that the permit has been deleted from the electronic device on which it was stored; or

(f) there is any other reason in the Act not to grant the renewal.

(7A) The Regulatory Committee must cancel or delete a permit on or from the digital platform if the permit has not been used for a period of 12 months from the date of issue or if the permit has expired and is not returned to the Regulatory Committee.

(8) The Regulatory Committee may—

(a) recall a permit that is issued with errors by notice in the manner contemplated in regulation 4(3); and

(b) re-issue the permit as corrected in the manner contemplated in subregulation (1).

(9) A permit holder who receives a notice contemplated in subregulation (8) must return the permit by handing or posting it to the Regulatory Committee and in the case of an electronic permit provide proof that the permit has been removed from the storage of the electronic device on which it was stored.

Insertion of regulation 6A in the Regulations

1. The following regulation is hereby inserted in the Regulations after regulation 6.

“6A. Submission of roadworthy certificates

Where the National Road Traffic Regulations require vehicles to be submitted for roadworthy tests more frequently than annually, such as in the case of buses, the holders of permits contemplated in section 37(6) of the Act for such vehicles must submit a roadworthy certificate to the Regulatory Committee every six months upon expiry of the certificate.”

Substitution of regulation 9 of the Regulations

8. Regulation 9 of the Regulations is hereby amended by the substitution for the regulation of the following regulation:

“9. Consignment notes and passenger lists

(1) A consignment note, as prescribed by the South African Revenue Service and as provided by the Regulatory Committee, must be completed before commencement of a journey for the carriage of freight in terms of a permit.

(2) A passenger list, as provided by the Regulatory Committee, must be completed before the commencement of a journey for the conveyance of passengers in terms of a permit.

(4) In terms of section 27 of the Electronic Communications and Transactions Act, 2002 (Act, No. 25 of 2002) every consignment note and passenger list as contemplated in subregulations (1) and (2) may be submitted to the Regulatory Committee by submission on the digital platform despite section 49 of the Act or by email message.

9. Insertion of section 16A in the Regulations

The following regulation is inserted after regulation 16 in the Regulations

“16A. Requirements for the integrity, security and inter-operability of the electronic system

- (1) The Regulatory Committee must develop rules and procedures in terms of section 28 of the Electronic Communications and Transactions Act, 2002 (Act, No. 25 of 2002) to ensure the integrity and security of the digital platform.
- (2) The Regulatory Committee must ensure that the digital platform is inter-operable with the electronic Transport Registers and Information Platform System (TRIPS) being established by the Tripartite Transport and Transit Facilitation Programme once that System is operational.

Short title

10. These Regulations are called the 2019 Amendment to the Cross-Border Road Transport Regulations, 1998 and are published for comments

New Form ... to be inserted in Schedule 6

Form

CROSS-BORDER ROAD TRANSPORT AGENCY (“the Agency”)

CONSENT FOR APPOINTMENT OF CONSULTANT OR AGENT BY OPERATOR

I, the undersigned [operator/applicant]

Identity/registration number

hereby confirm that I have appointed

Identity/registration number

as my consultant/agent to represent me in making any application to the Agency and to appear on my behalf before the Regulatory Committee of the Agency in any proceedings as fully and effectively as if I had made the application or appeared in the matter myself.

Signed at on

.....

Operator/applicant

Signed at on

.....

Consultant/agent