

LEGAL NOTICE NO. 3

THE NATIONAL TRANSPORT AND SAFETY AUTHORITY ACT

(No. 33 of 2012)

THE NATIONAL TRANSPORT AND SAFETY AUTHORITY
(OPERATION OF COMMERCIAL VEHICLES) REGULATIONS,
2018

Arrangement of regulations.

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THE NATIONAL TRANSPORT AND SAFETY AUTHORITY ACT
(No. 33 of 2012)

IN EXERCISE of the powers conferred by section 54 of the National Transport and Safety Authority Act, 2012, the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development, in consultation with the Board, makes the following regulations—

THE NATIONAL TRANSPORT AND SAFETY AUTHORITY
(OPERATION OF COMMERCIAL VEHICLES) REGULATIONS,
2017

1. These regulations may be cited as the National Transport and Safety Authority (Operation of Commercial Vehicles) Regulations, 2017. Citation.
2. In these regulations, unless the context otherwise requires— Interpretation.
- “Appeals Board” means the Transport Licensing Appeals Board established under section 39 of the Act;
- “authorised officer” means
- “Authority” means the National Transport and Safety Authority established under section 3 of the Act;
- “Cabinet Secretary” has the meaning assigned to it under the Act;
- “carrier” means a corporate body or an individual with operational responsibility over a commercial vehicle on a day to day basis either as the registered owner of the vehicle or pursuant to a contract or franchise agreement with the registered owner of the vehicle but does not include the driver of the vehicle;
- “commercial vehicle licence” means a licence issued by the Authority under the Act, for the operation of a commercial vehicle;
- “commercial vehicle” has the meaning assigned to it under the Traffic Act; Cap 403.
- “corporate body” means a limited liability company registered under the Companies Act, and includes a cooperative society registered under the Cooperative Societies Act and a society registered under the Societies Act; No. 17 of 2015.
Cap 490.
Cap 108.
- “heavy commercial vehicle” has the meaning assigned to it under the Traffic Act; Cap 403.
- “off-duty time” means any period other than on-duty time;
- “on-duty time” means driving time;
- “owner” means the registered owner of a commercial vehicle;
- “public road” has the meaning assigned to it under the Public Roads and Roads of Access Act; Cap 399.
- “retro-reflective marking material” means a surface or a device from which, when directionally illuminated, a relatively large portion of the incident radiation is retro-reflected;

“Third Party Motor Vehicle Insurance” means an insurance policy by that name issued in respect to a public service vehicle pursuant to the provisions of the Insurance (Motor Vehicle Third Party Risks) Act; and

Cap 405.

“urban area” has the meaning assigned to it under the Urban Areas and Cities Act.

No. 13 of 2011.

3. These regulations shall apply to any commercial vehicle—

Application of these Regulations.

(a) whose tare weight is more than three thousand and forty eight kilograms; and

(b) operating on a public road in Kenya.

4. A carrier shall not operate a commercial vehicle if—

Safety responsibility.

(a) the vehicle does not comply with these regulations;

(b) the driver of the commercial vehicle fails or refuses to take any action required to be taken under these regulations;

(c) the cargo transported by the commercial vehicle is not contained, covered, immobilized or secured in accordance with these regulations; or

(d) the driver of the commercial vehicle is not licensed to drive a commercial vehicle.

5. (1) A carrier or a driver shall not operate a commercial vehicle without a valid commercial vehicle licence issued by the Authority in accordance with the provisions of regulation 6.

Commercial vehicle to be licensed.

(2) All commercial vehicles shall be fitted with a speed governor that conforms to the Kenyan Standard KS 2295 or as approved by the Authority.

(3) A commercial vehicle licence shall be valid for a period of one year and may be renewed annually.

6. (1) A carrier or a driver may apply for a commercial vehicle licence by submitting an application in the form set out in the First Schedule and the application shall be accompanied by—

Application for a commercial vehicle licence.

(a) the prescribed fee as set out in the Second Schedule;

(b) a certificate of incorporation if the applicant is a company incorporated under the Companies Act, 2015;

(c) a certificate of registration if the applicant is a co-operative society registered under the Co-operative Societies Act;

(d) a certificate of registration if the applicant is a society registered under the Societies Act;

No. 17 of 2015.

(e) a national identity card if the applicant is an individual;

(f) the certificate of ownership or other evidence of ownership of the vehicle in the name of the applicant or a contract or franchise agreement between the owner and the carrier or intended carrier of the vehicle;

Cap 490.

- (g) a valid certificate of roadworthiness issued by the Authority for each vehicle in respect to which an application is being made; Cap 108.
- (h) a valid insurance cover for the vehicle;
- (i) evidence showing that the commercial vehicle has been fitted with the prescribed speed governor; and
- (j) evidence of installation of a fleet management system accredited by the Authority for heavy commercial vehicles.

(2) The Authority may—

- (a) refuse to issue a commercial vehicle licence to an applicant who fails to comply with any of the requirements set out in subregulation (1); or
- (b) issue a licence on the condition that the applicant demonstrates compliance with the requirements set out in subregulation (1) within a stipulated period failure to which the licence shall be withdrawn upon the expiry of the stipulated period.

(3) The Authority shall make a decision on an application under this regulation within fourteen days of receiving the application.

7. A driver or a carrier shall ensure that any cargo transported by the commercial vehicle is contained, covered, immobilised or secured so that the cargo does not leak from, spill from, blow off, fall from, fall through or otherwise be dislodged from the vehicle.

Securing of cargo generally.

8. (1) Cargo that comprises of—

- (a) sand, gravel, crushed stone, ore or salt, or any mixture of sand, gravel, crushed stone, ore or salt or whole stones;
- (b) waste; or
- (c) shredded scrap metal, that is carried by a commercial vehicle on a public road and is not enclosed by the vehicle or a load container must be covered as provided for in subregulation (2).

Securing of certain cargo.

(2) The covering referred to in subregulation (1) shall be—

- (a) made of tarpaulin, canvas, wire mesh, netting or other material capable of containing the load within the vehicle or load container; and
- (b) secured to the vehicle or load container in such a manner that it cannot become separate from the vehicle or load container.

(3) The carrier shall be responsible for any damage caused to a public road by spilled cargo that should have been enclosed or covered in accordance under subregulation (1) and shall be responsible for the cost of any repairs that may be needed to the public road.

9. (1) A commercial vehicle shall be required to have retro-reflective contour markings that conform to the standard KS 1820:

Retro-reflective contour markings for commercial

2005, that identify as close as possible the entire length and width of the motor vehicle when viewed from the front, side or rear as illustrated in the Third Schedule. vehicles and trailers.

(2) The minimum width of the retro-reflective contour markings should be two inches.

10. (1) A carrier or driver shall ensure that a commercial vehicle is not parked in an undesignated parking area including road sides, road reserves, road ways, bridges and tunnels. Parking.

(2) A carrier or driver shall ensure that a commercial vehicle is parked at least five metres from the edge of the road so as not to block a pedestrian way, obstruct the view of other road users or affect the safe operation of the road.

11. (1) A carrier shall ensure that a commercial vehicle is not driven if— Daily driving and on-duty time.

(a) the driver has accumulated eight hours of driving time within twenty four hours; or

(b) has driven for a total of three hundred kilometres within a period of twenty four hours whichever is achieved first.

(2) A carrier shall ensure that a commercial vehicle is operated by two drivers where the vehicle—

(a) is to be driven for a distance of more than five hundred kilometres; or

(b) is to be driven for more than eight hours.

12. (1) A driver of a commercial vehicle shall rest for a period of at least one hour for each period of continuous driving of four hours. Mandatory rest time.

(2) A carrier shall ensure that every driver of a commercial vehicle rests as specified in subregulation (1).

13. (1) A driver of a heavy commercial vehicle shall prepare a daily log sheet accounting for the driver's on duty and off duty time in the form set out in the Fourth Schedule. Daily log sheet.

(2) A carrier shall ensure that the driver of the heavy commercial vehicle has completed the daily log sheet for the preceding day before allowing the driver to drive the vehicle.

(3) A driver shall—

(a) not keep more than one daily log sheet in respect of any day;

(b) keep in the vehicle, logs sheets for the preceding seven days; and

(c) not enter inaccurate information in the daily log sheet.

(4) An authorised officer from the Authority or a police officer may stop and inspect the daily log sheets and supporting documents of the commercial vehicles as stipulated in sub regulation (3).

(5) An authorized officer from the Authority or a police officer above the rank of superintendent of police may order the detention of the driver or the commercial vehicle where—

- (a) the driver refuses to produce the daily log sheet;
- (b) the driver has not completed the required log sheet; or
- (c) the officer suspects that a driver has entered inaccurate information in the daily log sheet.

14. (1) The Authority may conduct a safety audit of any carrier, owner or driver of a commercial vehicle.

Safety audits.

(2) A safety audit shall include—

- (a) an examination of the qualification of the driver of the commercial vehicle;
- (b) an examination of the duty status of the driver of the commercial vehicle; and
- (c) an examination of the maintenance records of the commercial vehicle.

15. (1) A carrier or driver shall keep, in electronic or written format—

Record and reporting requirements.

- (a) a maintenance record for a commercial service vehicle for a minimum period of one year;
- (b) the inspection report for the vehicle; and
- (c) a monthly record of the daily logs for a period of one year.

(2) A carrier shall—

- (a) where there has been an accident involving the vehicle that results in the death of a person, submit to the Authority within twenty-four hours a report of the accident which shall include the probable cause of the accident and any remedial action intended to be taken by the carrier; and
- (b) on the fifth day of each quarter beginning on the first day of January, submit to the Authority—
 - (i) a list of authorized drivers in the employment of the carrier; and
 - (ii) a copy of the monthly daily log sheets of each driver.

(3) The report under subregulation (2) (a) shall be in the form set out in the Fifth Schedule.

16. (1) The carrier or driver of a commercial vehicle shall—

Removal or towing of vehicles.

- (a) in case of a break-down or stalling of the commercial vehicle, ensure that the commercial vehicle is removed from the road as soon as possible; and
- (b) in case of a break-down or stalling of a heavy commercial vehicle and where specialized equipment is required to move

the vehicle, ensure that the vehicle is moved from the road within twenty four hours of the incident.

(2) The driver of a commercial vehicle shall, in case of a break-down, immediately place on the road not less than fifty metres from the commercial vehicle, two red reflecting triangles of such construction and dimensions as may be prescribed, one ahead of the vehicle and one behind it so that each reflecting triangle is clearly visible to drivers of vehicles approaching the commercial vehicle from ahead or behind as the case maybe.

(3) Subject to subregulation (1), the Authority may tow or remove a commercial vehicle that has stalled or broken down on a road or arrange for a third party to tow or remove such a vehicle at the carrier's cost if in the opinion of the Authority such vehicle poses a risk to the safety of other road users.

(4) The cost referred to in subregulation (3) shall be recoverable as a civil debt:

Provided that the Authority shall ensure that any person engaged to tow or remove stalled commercial vehicles on the road shall charge a standard fee that is reasonable and based on the distance travelled from the place where the commercial vehicle broke down or stalled to the place directed for delivery by the Authority.

(5) The Authority may prescribe the fees to be charged for the purposes of this regulation.

17. (1) The Authority may suspend or revoke a commercial vehicle licence where the carrier—

- (a) fails to keep any of the records required to be kept in accordance with the provisions of these Regulations;
- (b) fails to submit the records required to be submitted under these regulations to the Authority;
- (c) fails a safety audit under regulation 14;
- (d) permits an unqualified driver to drive a commercial vehicle;
- (e) provides inaccurate information to the Authority;
- (f) fails or refuses to settle any towing charges imposed by the Authority;
- (g) fails to equip the vehicle with two red reflecting triangles of the approved construction and dimensions; or
- (h) fails to properly secure cargo as required under these Regulations.

(2) The Authority shall, before suspending or revoking a commercial vehicle licence, give the licensee a reasonable opportunity to present his or her case.

18. The Authority may order the inspection of any commercial vehicle to establish the road worthiness of the vehicle.

Revocation or suspension of commercial vehicle licence.

Power of the Authority to order inspection.

19. A carrier shall take out, at the minimum, third party insurance cover for each of its commercial vehicles. Insurance.

20. A person aggrieved by any decision made by the Authority under these regulations may, within fourteen days of being notified of the decision, appeal to the Appeals Board against the decision. Appeals.

21. Any person who contravenes any provision of these regulations commits an offence and shall be liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months or to both. Offences and penalties.

FIRST SCHEDULE

(r. 6(1))



APPLICATION FOR COMMERCIAL SERVICE LICENCE

FOR OFFICIAL USE

Application Number

A. APPLICANT'S INFORMATION

Name of Registered Owner: _____ Address: _____

E-mail address _____ Mobile No. _____

B. TYPE OF VEHICLE.

Tick the type of vehicle.

Commercial Vehicle

Heavy Commercial Vehicle

C. DOCUMENTATION REQUIRED. (Applicant MUST provide copies of the listed documents).

DOCUMENT REQUIRED	TICK IF PROVIDED	FOR OFFICIAL USE
Certificate of incorporation as a company under the Companies Act if the applicant is a company or certificate of registration if the applicant is a cooperative society under the Cooperative Societies Act or if the applicant is a society or national identification card if the applicant is an individual.		

DOCUMENT REQUIRED	TICK IF PROVIDED	FOR OFFICIAL USE
The certificate of ownership or other evidence of ownership in the name of the owner of the vehicle or a contract or franchise agreement between the owner and the carrier or intended carrier of the vehicle.		
A valid certificate of roadworthiness issued by the Authority of each vehicle in respect to which an application is being made.		
Valid insurance cover.		
Evidence showing that all the commercial vehicles have been fitted with the prescribed speed governor.		
Evidence of installation of a fleet management system accredited by the Authority (for heavy commercial vehicles only).		

D. DECLARATION.

I declare that I have read all the answers I have given to the questions in this application and that the answers given by me are complete, true and correct in every detail.

I understand that if I have stated anything that is false or misleading, the licence granted to me as a result of this application may be absolutely void and have no legal effect whatsoever.

I understand that I may be prosecuted for giving or stating facts or misleading information or documents.

I also declare that I have read and understood the general duties and responsibilities of a transport operator and hereby agree to be bound by them.

Applicants' signature

Date _____

SECOND SCHEDULE

(r. 6 (1) (a))

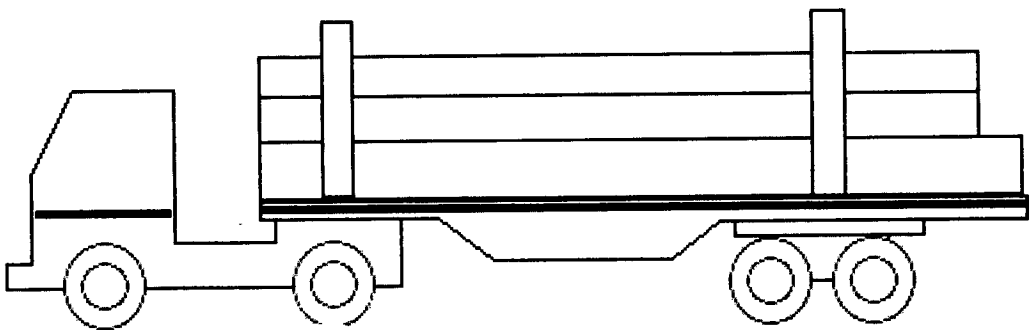
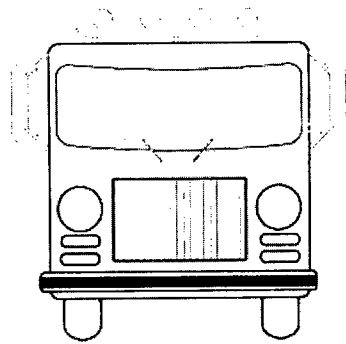
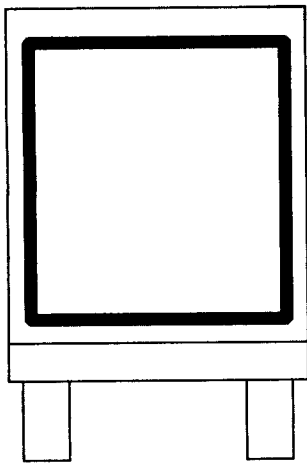
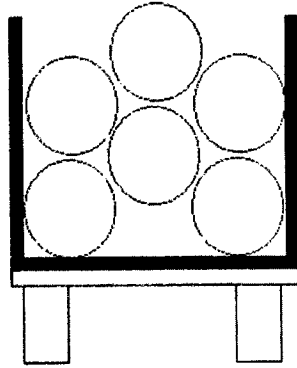
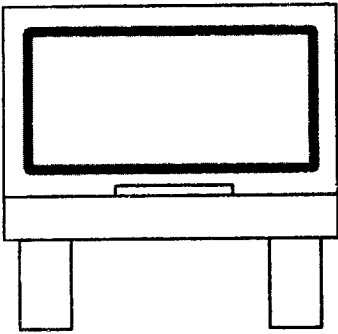
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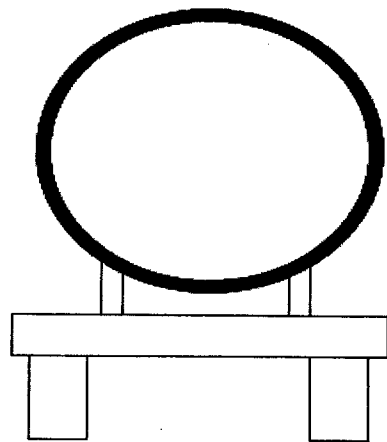
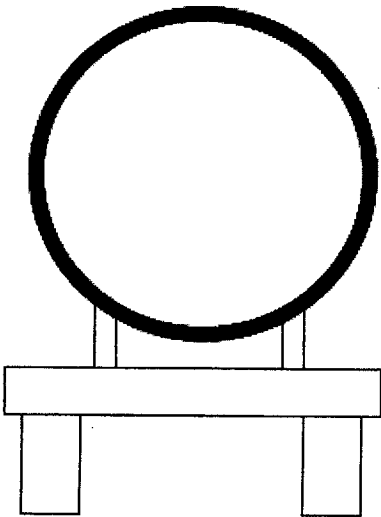
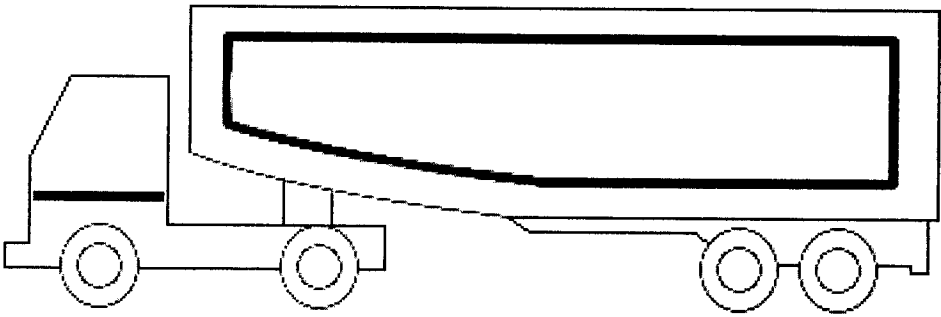
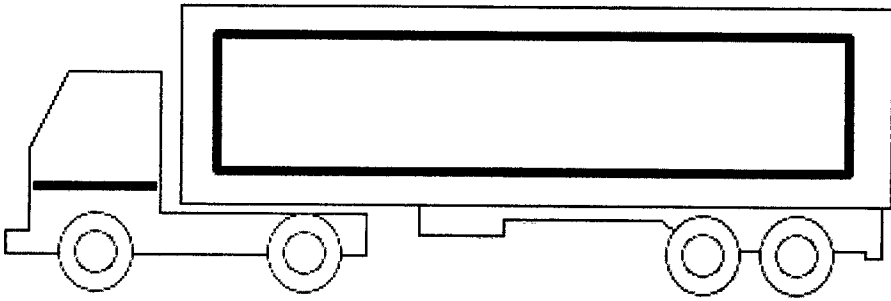
Application fee for a commercial licence (per vehicle).....	Kshs 2,000.
Renewal of licences.....	Kshs 1,500.
Replacement of damaged or lost licence.....	Kshs 1,500.

THIRD SCHEDULE

(r. 9 (1))

RETRO-REFLECTIVE MARKING FOR COMMERCIAL VEHICLES AND THEIR TRAILERS





FOURTH SCHEDULE

(r. 13(1))

DAILY LOG

DATE	START OF DRIVING TIME	END OF DRIVING TIME	REST PERIODS TAKEN (TIME)	LOCATION OF VEHICLE AT START OF JOURNEY AND MILEAGE READING	LOCATION OF VEHICLE AT END OF JOURNEY AND MILEAGE READING

Driver's name

Signature.....

Vehicle Registration No

ACCIDENT REPORT FORM

Name of Registered Owner of Commercial Vehicle:- _____

Date and location of accident: _____

Registration number of vehicles involved in accident:- _____

Licence Number of commercial vehicle:- _____

Driver's Name: - _____

Driving licence No. of driver of Commercial Vehicle:- _____

Number of confirmed fatalities: _____

Circumstances about the accident/ probable cause:- _____

Dated the 11th January, 2018.

JAMES MACHARIA,
*Cabinet Secretary for Transport,
Infrastructure, Housing and Urban Development.*