

CONSIGNOR / CONSIGNEE LEGISLATION



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introduction



- ❧ The Department of Transport developed a National Overload control strategy in 2003. An essential element of this strategy is the control of consignors and consignees of goods transported on public roads.
- ❧ The legislation enabling the control measures for consignors and consignees was already drafted in 2003 and was eventually promulgated as part of the National Road Traffic Amendment Act, 64 of 2008. The Act was implemented on 20 November 2010
- ❧ Section 74A and 74B of the Act as well as section 75(zB), (zC) and (zD) allows the Minister of Transport to regulate consignors and consignees.

Nrta, 93 of 1996



Sec 74A. Act or omission of manager, agent or employee of consignor and consignee

(1) Whenever any manager, agent or employee of a consignor or consignee, as the case may be, does or fails to do anything which, if the consignor or consignee had done or failed to do it, would have constituted an offence in terms of this Act, the consignor or consignee, as the case may be, shall be regarded to have committed the act or omission personally in the absence of evidence indicating—

- (a) that he or she did not connive at or permit such act or omission;
- (b) that he or she took all reasonable measures to prevent such act or omission; and
- (c) that such act or omission did not fall within the scope of the authority of or in the course of the employment of such manager, agent or employee, and be liable to be convicted and sentenced in respect thereof.

(2) In the circumstances contemplated in subsection (1) the conviction of the consignor or consignee shall not absolve the manager, agent or employee in question from liability or criminal prosecution.

Nrta, 93 of 1996



❧ **Sec 74B. Proof of certain facts**

- ❧ (1) In any prosecution under this Act, a goods declaration or any other document relating to the load of a vehicle and confiscated from such vehicle shall be proof of the matters stated in such document unless credible evidence to the contrary is adduced.
- ❧ (2) A copy of or extract from any document referred to in subsection (1), and certified as a true copy or extract by the officer in whose custody the original document is, shall, unless credible evidence to the contrary is adduced, be admissible as evidence and be proof of the truth of all matters stated in such document without the requirement of having to produce the original document from or of which such extract or copy was

Section 75 - powers



- ❧ (zB) the regulation of any person who offers goods for transportation on a public road or accepts goods after transportation, in relation to the mass of such goods, the documentation relating to such goods, the agreements that have to be concluded for such transportation, insurance in respect of the transportation of such goods and any other matter relating to the offering of goods for transportation or the acceptance of transported goods;
- ❧ (zC) the criteria in terms of which a person is classified as an habitual overloader, the offences to which such classification applies, the criteria for rehabilitation, if necessary and the sanctions for classification as an habitual overloader;
- ❧ (zD) the equipment to be used for law enforcement purposes, the certification of such equipment and requirements in respect of records obtained from the equipment;

Effect of section 74a and b



- ❧ Section 74A requires a consignor and consignee to take all reasonable steps to avoid overloading a motor vehicle and in the event of a prosecution the consignor or consignee must be able to show what steps he has taken to avoid the overloading of vehicles.
- ❧ Section 74B requires accurate documentation as it may be used as evidence in court cases

22ND NRT REGULATION

AMENDMENT



- Published on 31 October 2014
- Regulation 330A to D – implementation date 31 January 2015
- Regulation 1 – new definition of a consignor and a consignee – already implemented on 31 October 2014
- Regulations made in terms of section 75 – assigns duties to consignors and consignees

22ND REGULATION AMENDMENT



“consignee” in relation to goods transported or to be transported by a vehicle means the person excluding a consignee of dangerous goods in terms of regulation 273, who is named or otherwise identified as the intended consignee of more than 500 000 kilograms of goods in a month in the goods declaration for the consignment and who actually receives such goods after they are transported by road;

22ND REGULATION AMENDMENT



☞ “consignor” means a person excluding a consignor of dangerous goods in terms of regulation 273, who is named or otherwise identified as the consignor of goods in the goods declaration relating to the transportation of more than 500 000 kilograms of goods in a month by road or engages an operator of a vehicle, either directly or indirectly or through an agent or other intermediary, to transport the goods by road or has possession of, or control over, the goods immediately before the goods are transported by road or loads a vehicle with the goods, for transport by road, at a place where goods are stored in bulk or temporarily held but excludes a driver of the vehicle, or any person responsible for the normal operation of the vehicle during loading;

22ND REGULATION AMENDMENT



☞ Offering and acceptance of goods on overloaded vehicle prohibited

Reg 330A. (1) A consignor or consignee of goods shall not offer goods or accept goods if the vehicle in which it is transported is not loaded in terms of the provisions for the loading and transportation of goods as prescribed in this Act.

(2) A consignor shall require from the operator of the vehicle in which the goods he or she offers for transport and in which the goods will be transported, a **written submission as to the payload** of such vehicle **and the distribution of such load** on a vehicle.

(3) If a consignor is responsible for the loading of a vehicle of an operator, he or she shall take such steps as are necessary to ensure that the vehicle is loaded as contemplated in subregulation (1) and (2).

(4) A consignor or consignee shall not conclude a contract with the operator to transport goods on a vehicle, if the vehicle is overloaded when such load is transported on such vehicle.

22ND REGULATION AMENDMENT



∞ Consignor to have a method of determining mass

Reg 330B (1) A consignor shall use a method of establishing the mass of a vehicle and any axle or axle unit of such vehicle that is accurate as to ensure that such vehicle axle or axles are not overloaded in terms of Part IV of Chapter VI.

(2) A consignor shall keep a record of the mass of every load transported from his or her premises as contemplated in subregulation (1).

(3) The record as contemplated in subregulation (2) shall be put at the disposal of any traffic officer or person appointed as contemplated in section 50 or authorised as contemplated in section 82 of the Act.

Section 50 of the NRTA



- ❧ (4) The chief executive officer concerned may, in the exercise of his or her powers under this section –
 - ❧ (a) require any operator, subject to any lawful objection, to make discovery of documents by way of affidavit or by answering interrogatories on oath and to produce such documents for inspection;
 - ❧ (b) require any operator to allow inspection of any records and documents required to be kept by the operator in terms of this Act;
 - ❧ (c) appoint a commission to take the evidence of any person in the Republic or in a prescribed territory or in a foreign state and to forward such evidence to him or her in the same manner as if the commission were a commissioner appointed by a court; and
 - ❧ (d) at any time require that an inquiry be instituted into the operational activities of an operator by a person appointed by him or her for that purpose and, if such operator is a company, also into those of any other company in a group of companies to which the operator belongs or of which the operator is the controlling company.

Section 82 of the NRTA



☞ Inspections for ensuring that provisions of Act are given effect to

- (1) The Minister may authorise any person to carry out any inspection which the Minister deems necessary in order to ensure that the provisions of this Act are being complied with.
- (2) If the Minister delegates the power conferred upon him or her by subsection (1) to the MEC concerned, that MEC may authorise any person to carry out the inspection concerned.
- (3) No person shall obstruct or hinder any person in the carrying out of any inspection contemplated in subsection (1).

22ND REGULATION AMENDMENT

☞ Goods declaration to be carried on a motor vehicle

Reg 330C. A person operating on a public road a motor vehicle which carries goods shall be in possession of a declaration containing the following information:

- (a) the **licence number** of **each vehicle** in the combination of vehicles;
- (b) the **nature and quantity of goods** transported;
- (c) the **contact particulars** of the operator or in the case of a combination of vehicles, of every **operator** in the combination of vehicles;
- (d) the **particulars** of the **consignor** and **consignee** of the load or in the case of loads collected at and delivered to more than one consignor and consignee, the particulars of **every** consignor or consignee;
- (e) the name, residential and postal address of every **natural person** or in the case of a **juristic person**, the responsible director or member, an agent, consignor, consignee or operator listed in the declaration;
- (f) the consignor and operator shall conclude a **written agreement** for the transportation of goods stating-
 - (i) the **nature** of the agreement;
 - (ii) the **loading instructions**; and
 - (iii) the **responsibilities** of the parties.
- (g) schedule of **insurance** as contemplated in regulation 330D.

22ND REGULATION AMENDMENT



- ∞ **Consignor or Consignee to insure goods to be carried on a motor vehicle and the motor vehicle**
- ∞ Reg 330D A consignor or consignee of goods shall not transport goods on a public road or accept goods unless such transportation is **fully insured for damages that can occur as a result of an incident.**

Effect of legislation



- ❧ The effect of the legislation on consignors and consignees are practically–
 - ❧ In most transport industries the installation of weighbridges that are capable of measuring axles and axle units.
 - ❧ the issuing of documents reflecting the correct masses. This will obviously be controlled at weighbridges and if found to be wrong, consignors could be prosecuted for transgressing the regulations.
 - ❧ the control of the mass distribution on a vehicle. Currently most consignors only concern themselves with the total vehicle mass and do not really address load distribution.
 - ❧ Axle mass overloads are treated in the same manner as vehicle overloads.

Definitions



- **Important to understand terminology**
- **Loading instructions will contain legal terms**
- **Should correspond with terms used at weigh bridges and in legislation**
- **Note - haulage tractor/tractor definitions**

PUBLIC ROAD



- ❧ Any road, street or thoroughfare where the public or part of the public have common use or right of access,
- ❧ Includes culverts and bridges
- ❧ Whole road reserve is part of the public road
- ❧ Distinguish from “roadway”

loading INSTRUCTIONS



- ❧ The loading instructions must be in compliance with the National Road Traffic Regulations
- ❧ The relevant regulations relating to permissible maximum masses are reg 234 to 237
- ❧ Reg 238 controls tyre loadings
- ❧ Reg 239 controls gross masses determined by the manufacturer
- ❧ Reg 240 regulates road limits
- ❧ Reg 241 determines the bridge formula
- ❧ Reg 242 - regulates the steering axle and balance of the vehicle

Section 51



- ❧ Section creates presumption
- ❧ State cannot prove company procedures
- ❧ Operator must prove
 - ❧ That he did everything reasonable, to ensure that offences that may not committed under sec 49, have been done
 - ❧ That he did not connive with employee
 - ❧ That it was not part of job description

Section 50



- ❧ MEC has authority to investigate driver and vehicle records as well as overall performance of operator
- ❧ Record keeping has improved
- ❧ Possible to trace overloading offences of specific operator
- ❧ Future requests to be sent through to MEC
- ❧ Foreign vehicles - Request for revoking permits

mass ascertained by means of mass-measuring bridge or other mass-measuring instrument – sec 70



☞ Where in any prosecution for an alleged contravention of any provision of this Act, evidence to prove such contravention is tendered of any mass as ascertained by means of a mass-measuring bridge or other mass-measuring instrument, such mass shall be deemed to be correct in the absence of evidence to the contrary.

☞ GVM Presumption – sec 71

TOLERANCES



- ❧ All vehicles are limited to a 2% tolerance:
- ❧ 56 000 kg PMCM- 57 120 kg
- ❧ 30 000 kg PMCM- 30 600 kg
- ❧ 10 000 kg PMVM - 10 200 kg
- ❧ 2 500 kg PMVM - 2 550 kg
- ❧ Axles and axle-units are limited to a 5 % tolerance
- ❧ 9 000 kg PMAM - 9450 kg
- ❧ 18 000 kg PMAUM - 18 900 kg
- ❧ 24 000 kg PMAUM - 25 200 kg

Elements – LOAD CONTROL



- ❧ Reg 234 to 237 – Formulas for axle, axle-unit, vehicle and combinations
- ❧ Safety
 - ❧ Tyres: SANS 1550 or manufacturer specifications. Tyre overload will cause damage to tyre.
 - ❧ Manufacturer specifications: Plate on goods vehicles, buses and minibuses
 - ❧ 5 x drive axle mass
 - ❧ P/D x 240
- ❧ Infrastructure protection
 - ❧ Roads: reg 240
 - ❧ Bridges: reg 241

Guideline on mass measuring



œ Overloading control

- œ In cases where drivers are arrested the operator or owner, in the case of a bus, should also be prosecuted
- œ Suggested standard fines for overloading included
- œ Breakdown vehicles
 - œ Front axles that are overloaded when empty
 - œ Overloaded towed vehicles - driver of breakdown not to be prosecuted
- œ Dangerous goods vehicles
 - œ Escorted to designated off-load area - has to return to weigh bridge
- œ Abnormal vehicles
 - œ No faxed copies allowed
 - œ Non compliance with permit - prosecution as though no permit

Goods secure



- ❧ Reg 246
- ❧ All goods secure
- ❧ Covered
- ❧ Containers – twist locks
- ❧ May not dislodge or spill

Passengers on goods vehicles



- ❧ Enclosed to 350 mm for seated and 900 mm for standing passengers
- ❧ Passengers and goods must be separated
- ❧ Passengers and tools must be separated
- ❧ Reg 247



Offences

Offences



- ❧ Sec 89
- ❧ Reg 333
- ❧ One year imprisonment is equal to R 20 000
- ❧ Different provisions for different offences
- ❧ Overloading - R 120 000 or 6 years imprisonment or both

conclusion



- ❧ The new legislation will have a positive effect on the percentage overloaded vehicles on the road as the overload is stopped at the source
- ❧ Consignors and consignees will have to ensure they can comply with the requirements, as there will be costs involved in compliance with the legislation.
- ❧ No transitional provisions
- ❧ The Loading instructions need to comply with the NRT Regulations