

Regulatory Analysis Form

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REGULATORY
REVIEW COMMISSION

(1) Agency

Pennsylvania Liquor Control Board

(2) I.D. Number (Governor's Office Use)

#054-58

IRRC Number:

2286

(3) Short Title

Transporters-for-hire

(4) PA Code Cite

40 Pa. Code

(5) Agency Contacts & Telephone Numbers

Primary Contact: Jerry Danyluk (717) 705-2119

Secondary Contact: Faith Diehl (717) 783-9454

(6) Type of Rulemaking (check one)

Proposed Rulemaking

Final Order Adopting Regulation

Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

No

Yes: By the Attorney General

Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The regulation permits transporters-for-hire, licensed by the Board to transport liquor and/or malt or brewed beverages and/or alcohol (depending on the limitations of their licenses) to enter into agreements with and utilize unlicensed independent contractors and owner/operators. The regulation requiring transporters-for-hire to report to the Board vehicles that are no longer in service is also being deleted.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Pennsylvania Liquor Code, section 207(i) [47 P.S. § 2-207(i)].

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The regulation is not mandated by any federal or state law, court order or federal regulation.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The regulation will aid licensed transporters of alcoholic beverages to adjust to fluctuations in business volume without having to commit to large expenditures in vehicles and personnel by contracting with unlicensed transporters for use of their vehicles and personnel. An enforcement moratorium has been in effect since December 2000 regarding this issue. Therefore, the regulatory change will codify that which is already practiced by some transporters. Additionally, the regulations will be reflective of the actual policy of this agency towards transporters-for-hire by the deletion of a regulatory requirement that has not been adhered to for numerous years, namely notification of the Board as to vehicles that are no longer in service.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

No public health, safety, environmental or general welfare risks are associated with nonregulation.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Presently there are approximately 340 transporters-for-hire, some of whom use owner/operators. It is not possible to quantify how many more would engage in this practice. The regulation would allow all licensed transporters-for-hire to legally engage in a business practice that would enable them to adjust to variations in business volume without a major capital expenditure. It is also not possible to quantify the benefit of eliminating a reporting requirement from the regulations that has not been enforced in years, namely reporting to the Board vehicles that are no longer in service.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No adverse effects are associated with this regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Compliance with the regulation is not mandatory.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Pennsylvania Liquor Control Board received an inquiry from a license holder, Matusko Trucking, who had been warned by the Enforcement Bureau, that its practice of using owner/operators was not in compliance with the current regulation. A second inquiry was received from Kasser Laird Distilling Company, because their transporter-for-hire, Warren Sauers Co., had also received a warning from the Enforcement Bureau. Kasser Laird Distilling Company further indicated that the use of owner/operators was a common practice in the industry.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The regulated community will not experience any costs associated with this regulatory change. Savings that may occur are impossible to quantify because it cannot be determined to what extent the transporters will engage in contracting with unlicensed entities.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

This regulatory change will not affect local governments.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The regulatory change will not impose additional costs or result in savings to state government.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$ N/A	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings	N/A					
COSTS:	N/A					
Regulated Community						
Local Government						
State Government						
Total Costs	N/A					
REVENUE LOSSES:	N/A					
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	N/A					

(20a) Explain how the cost estimates listed above were derived.

Not Applicable.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
N/A				

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Not applicable.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

No nonregulatory alternatives were considered.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No nonregulatory alternatives were considered.

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

This regulatory change will not increase the stringency of the existing regulations, to the contrary, it will relax existing regulations.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

This regulation is aimed at helping licensed businesses and will not put them at a competitive disadvantage with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The regulation will not affect existing or proposed regulations of the promulgating agency other than to make the changes to 40 Pa. Code §§ 9.26 and 9.28 as specified in Annex A. No other state agencies will be affected.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No public hearings or informational meetings will be scheduled. However, notification was mailed to all licensees holding a transporter-for-hire license that this regulatory change was about to be made. A copy of Advisory Notice No.18 explaining the change, with a copy of Annex A, as mailed to the transporters, are attached to this Regulatory Analysis Form.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The regulation will eliminate a reporting requirement that was not adhered to for numerous years.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No special provisions are applicable to this rulemaking.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will become effective upon its publication in the *Pennsylvania Bulletin*.

(31) Provide the schedule for continual review of the regulation.

Review of the regulations is ongoing and any changes to the regulation will be through the rulemaking process.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

2286

2002 SEP -4 PM 3:17

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved
as to form and legality. Attorney General

BY _____
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL _____

Check if applicable
Copy not approved. Objections
attached.

Copy below is hereby certified to
be a true and correct copy of a
document issued, prescribed or
promulgated by:

Pennsylvania Liquor Control Board
(AGENCY)

DOCUMENT/FISCAL NOTE
NO. 054- 58

DATE OF ADOPTION: 8/21/02

BY: _____

TITLE: Chairman
(Executive Officer, Chairman or
Secretary)

Copy below is hereby approved
as to form and legality. Executive
or Independent Agencies:

BY: F.S. Diehl

DATE OF APPROVAL 8/14/2

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
(Chief Counsel, Independent
Agency)
(Strike inapplicable title)

Check if applicable. No
Attorney General approval or
objection within 30 days after
submission.

NOTICE OF FINAL RULEMAKING WITH PROPOSED RULEMAKING OMITTED

Title 40 – PENNSYLVANIA LIQUOR CONTROL BOARD REGULATIONS

Chapter 9. TRANSPORTATION, IMPORTATION, DISPOSITION AND STORAGE

§9.26. Issuance and replacement of emblems.

§9.28. Use of vehicles.

TITLE 40 - LIQUOR

LIQUOR CONTROL BOARD REGULATIONS

[40 PA CODE CHAPTER 9]

The Liquor Control Board (Board) amends Title 40 Pa. Code by amending sections 9.26 and 9.28 as set forth in Annex A.

The amendments are necessary in order to aid entities licensed by the Board as transporters-for-hire. Transporters-for hire are authorized to engage in the commercial transportation of liquor, malt or brewed beverages or alcohol to or from points located in the Commonwealth. The regulations currently require transporters-for-hire to own or lease their vehicles and employ the drivers of these vehicles. This regulatory change would permit these licensees to contract with unlicensed haulers for transportation services using the unlicensed transporters' vehicles and drivers. Such a regulatory change would enable transporters-for-hire to adjust to fluctuations in business volume without having to commit to large expenditures in vehicles and personnel. Moreover, persons who have contracted with and are performing transportation services for a transporter-for-hire would be considered agents of the licensee thus making the transporter-for-hire's license liable for any violation that may result. Additionally, the regulations require that transporters-for-hire notify the Board of vehicles that are no longer in service. The Board has not required this notification by its licensees as a matter of practice for numerous years; therefore, this requirement is being deleted.

Notice of proposed rulemaking is omitted under section 204(1) of the act of July 31, 1968 (P.L.769, No.240) (45 P.S. § 1204(1)) (CDL) since these regulatory amendments are related to agency practice and procedure and all affected licensees have been notified of these regulatory changes.

Fiscal Impact

These regulatory changes will impose no new costs upon transporters-for-hire, the Board or the public.

Paperwork Requirements

These amendments will not result in additional paperwork for the state or for the regulated community operating under transporter-for hire licenses issued by the Board.

Statutory Authority

The authority for these amendments is section 207(i) of the Liquor Code (47 P.S. § 2-207(i)).

Contact Person

Anyone requiring an explanation of these regulations or information related thereto should contact Jerry Danyluk, Room 513, Northwest Office Building, Harrisburg, PA 17124-0001.

Regulatory Review

Under section 5(f) of the Regulatory Review Act (71 P.S. §745.5(f)), on September 4, 2002, the Board submitted copies of these amendments with proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Liquor Control, and Senate Committee on Law and Justice. On the same date, the amendments were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§732-101—732-506). In accordance with section 5(c) of the Regulatory Review Act, these amendments were (deemed) approved by the House Liquor Control Committee on _____, 2002, (deemed) approved by the Senate Law and Justice Committee on _____, 2002, and approved by IRRC on _____, 2002.

Findings

The Board finds that:

- (1) The notice of proposed rulemaking is omitted under the authority of section 204(1) of the CDL since these regulatory amendments relate to Board policy, practice and procedure and all affected parties have been notified.
- (2) The amendment of the Board's regulations in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

The Board acting under the enabling statute orders that:

- (a) The regulations of the Board, 40 Pa. Code Chapter 9 is amended by changing sections 9.26 and 9.28 to read as set forth in Annex A.
- (b) The Board shall submit this Order and Annex A to the Office of Attorney General for approval as to form and legality as required by law.
- (c) The Board shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (d) That this Order shall take effect upon publication in the *Pennsylvania Bulletin*.

Jonathan H. Newman

Chairperson

CHAPTER 9. TRANSPORTATION, IMPORTATION, DISPOSITION AND STORAGE

Subchapter A. TRANSPORTATION OF LIQUOR, MALT OR BREWED BEVERAGES OR ALCOHOL

VEHICLES

§ 9.26. Issuance and replacement of emblems.

(a) Vehicle identification emblems will be used only for vehicles which are either owned **or leased** by the licensee or [possessed] **utilized** under [lease or agreement] **contract with an unlicensed transporter.** [which contains the following conditions:

(1) That the vehicle is in the possession of and under exclusive control of the licensee.

(2) That the vehicle is operated by the licensee or by a paid employe of that licensee.

(3) That the licensee shall pay expenses incurred in the operation of the hired vehicle, including gas, oil and repairs.]

(b) Vehicle identification emblems shall be affixed to the lower right corner of the windshield of each vehicle, as viewed from the inside of the vehicle.

(c) If the vehicle identification emblem becomes marred, defaced, damaged or is removed, application for a new emblem shall be made immediately, accompanied by a fee of \$10 and filed with the Board.

§ 9.28. Use of vehicles.

(a) A licensee engaged in the purchase or sale of liquor, malt or brewed beverages, or alcohol may not use or permit to be used a vehicle bearing his vehicle identification emblem for the transportation of a liquor, malt or brewed beverages, or alcohol other than that used in the operation of his licensed business. [Holders of transporter-for-hire licenses may, however, subject] **Subject** to the limitations of their respective licenses, **transporter-for-hire licensees may** transport[, for a person,] liquor, malt or brewed beverages[,] or alcohol in vehicles owned or [possessed] **leased** by the

licensees and operated by drivers employed by the licensees or operated by [them or] drivers employed by unlicensed transporters who are under [lease or agreement] contract with the licensees .

(b) [Vehicles shall be operated by the licensee or his paid employes.] Persons who have contracted with and are performing transportation services of alcoholic beverages for the transporter-for-hire licensees are considered agents of the transporters-for-hire for purposes of section 471 of the Liquor Code (47 P.S. §4-471).

(c) A licensee may not sell, lease or permit the use by another of a vehicle for which a vehicle identification emblem has been issued without first defacing the lettering on the vehicle as described in § 9.22 (relating to identification of vehicles), and removing and destroying the vehicle identification emblem affixed thereto [and notifying the Board of the sale, lease or disposition of the vehicle].



IN THE PUBLIC INTEREST

PENNSYLVANIA LIQUOR CONTROL BOARD

Harrisburg, Pennsylvania 17124-0001

February 27, 2002

ADVISORY NOTICE # 18**SUBJECT:** Proposed Regulatory Change**TO:** Holders of Transporter-for-Hire Licenses

Please be advised of a proposed change in the Pennsylvania Liquor Control Board's ("Board") Regulations regarding Transporter-for-Hire Licensees ("Transporter"). Currently, the Board's Regulations permit a Transporter to transport alcohol in vehicles owned by the Transporter or operated by the Transporter under a lease agreement. If the vehicle is being operated under a lease agreement, the operator of the vehicle must be the Transporter or one of its paid employees. The regulations do not allow a Transporter to contract with an owner/operator to transport alcohol because the owner/operator is typically not an employee of the Transporter.

The Board proposes to change the regulations to allow a Transporter to contract with an owner/operator to transport alcohol on behalf of the Transporter. A copy of the regulations that will be amended, sections 9.26 and 9.28, are attached. The new language is underlined; the language to be deleted is bracketed.

If you have any questions or comments as to this proposed regulatory change, please contact Jerry Danyluk, Regulatory Coordinator, at 717-705-2119.

BY ORDER OF:
THE PENNSYLVANIA LIQUOR CONTROL BOARD

JOHN D. W. REILEY
Secretary to the Board

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PENNSYLVANIA 17124-0001

September 4, 2002

JOHN D.W. REILEY
BOARD SECRETARY

(717) 787-5867

Honorable Robert E. Nyce
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harrisstown 2
333 Market Street
Harrisburg, PA 17101

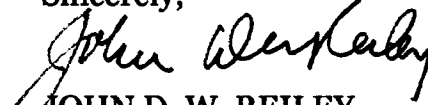
Dear Mr. Nyce:

In compliance with the Regulatory Review Act [71P.S. §745.5], final-omitted Regulation 54-58 is enclosed for review by the Senate Law and Justice Committee.

This regulation permits transporters-for-hire, licensed by the Board to transport liquor and/or malt or brewed beverages and/or alcohol (depending on the limitations of their licenses) to enter into agreements with and utilize unlicensed independent contractors and owner/operators. The requirement that transporters-for-hire report, to the Board, vehicles that are no longer in service is also being deleted.

This agency will provide any assistance you may require regarding this regulation.

Sincerely,



JOHN D. W. REILEY
Board Secretary

Enclosure

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT
TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: Regulation 54-58
SUBJECT: Transporters-for-hire
AGENCY: Pennsylvania Liquor Control Board

RECEIVED
 SEP 14 2004
 PENNSYLVANIA LIQUOR CONTROL BOARD

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
9/4	<i>Gene Muro</i>	HOUSE COMMITTEE ON LIQUOR CONTROL (Republican)
9-4	<i>Kathy Lane</i>	(Democrat)
9/4	<i>Marge Murphy</i>	SENATE COMMITTEE ON LAW & JUSTICE (Republican)
9/4	<i>C. Mark Heikel</i>	(Democrat)
9/4	<i>Eleana Pagan</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
9/4/02	<i>Mary Mummert</i>	ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU