

HOUSEHOLD MOVERS REGULATION WORKSHOP MINUTES
Thursday, February 7, 2019, 10:00 a.m. – 12:00 p.m.

Attendees

- Bureau Presenters:** Nicholas Oliver, Bureau Chief
Rita Wong, Deputy Bureau Chief
Yeaphana La Marr, Policy Manager
- Public Attendees:** Christian Cruz, Chipman Relocation
Tim Dewitt, Macy Movers
Chris Higdon, California Moving Systems
Joe Kaaekuahiwi, Big Island Movers
Tina Lands, Chipman Relocation
Brian Larson, Mother Lode Van & Storage
Tim McCarthy, McCarthy Transfer & Storage
Curt Olsen, Olsen & Fielding Moving Services
Mitch Nelson, CDS Moving, Inc.
Josh Shaw, Shaw, Yoder & Associates
Jane Springer, Chipman Relocation
Steve Weitekamp, California Moving and Storage Association
- Teleconference Attendees:** Mike Bryant
Jean Byer, Heritage 21st Century Movers
Jim Casey, Casey Moving Systems
Ben Durham, Express Moving
James Garelli, Bringpro
Jennifer Silva, Norcal Moving Services
Daniel England, OCD Moving Services
Martha Rodriguez, Casey Moving Systems
Kevin Ryan, BC Transportation
Aaron Stireman, The Moving Experience
Andy Zuker, Moving Crew
- Bureau Attendees:** Jacqueline Castro, Licensing Analyst
Diana Godines, Policy Manager
Winson Luong, Compliance Analyst
Margie McGavin, Compliance Analyst
Shalom Rojas, Compliance Analyst
Kelli Williams, Compliance Manager

Agenda Item 1: Welcome and Introductions

Chief Oliver opened the meeting at 10:01 a.m., thanked everyone for their attendance, and led introductions.

Agenda Item 2: Regulations Process Overview

Yeaphana La Marr introduced the rulemaking process for programs within the Department of Consumer Affairs (Department). Ms. La Marr stated the Public Utilities Commission's (Commission) process of adopting rules and orders is very different than the process the Bureau of Household Goods and Services (Bureau) must follow to adopt regulations, therefore this presentation is intended to provide a high-level overview for those not familiar with the Department's process. Ms. La Marr then gave the following high-level overview to inform stakeholders of the process, timelines, and many levels of review that regulatory proposals must complete.

The process begins with regulation development, which includes: holding workshops, convening stakeholders, research, drafting proposed language and the Initial Statement of Reasons (ISOR), and compiling all other package documents. The timeframe of this process can vary depending on whether the regulations are complex, controversial, and other factors. The Bureau's goal is to submit the first package by May 2019.

Once the Bureau completes a draft, the regulation is submitted to the Department for Legal Division and Budget Office review. The Legal Division ensures there is no conflict with current law, the Bureau has the authority to adopt the regulation, and the ISOR clearly states the need for the regulation. The Budget Office reviews to ensure all costs are accounted for on the Economic and Fiscal Impact Statement. This review averages 4-5 months.

The Department's Division of Legislative Affairs then reviews to ensure consistency with administration direction on policy and relevance to the law that is being implemented, clarified, or being made specific. The timeframe for this step is negligible.

The Business, Consumer Services, and Housing Agency (Agency) reviews for the same factors as the Department. This step can take 1-2 months.

The Bureau then submits the rulemaking package to the Office of Administrative Law (OAL), which reviews the proposal for completeness and grants authority to post. They have a 10-day review timeframe. Once approval is granted, the Bureau can publicly post the regulations for the 45-day public notice period. Also, the one-year clock to adopt the regulations begins.

The 45-day public notice allows the public to have input in the regulatory process. The Bureau must provide written responses to any opposition and include it in the final

regulation package. If comments warrant major changes, the Bureau will make amendments and issue another 45-day public notice. If comments warrant minor amendments, the Bureau must repost a 15-day public notice.

Once the public comment period is complete, the Bureau updates all documents and resubmits to the Department for final review. This review can take 3-4 months before the rulemaking package is submitted to Agency. Agency reviews again, which can take up to 30 days before being submitted to the OAL as a final rulemaking. The OAL's final review can take up to 30 days.

The total review process can be 12 months after submission to DCA for a best-case scenario. If the regulations are complex or there are a lot of public comments, the process can be longer.

Steve Weitekamp mentioned that if there are things they agree with, it seems it would be quicker in some cases to put language into a bill, which would become law January 1. Ms. La Marr clarified that while the legislative process is quicker, a bill would need to have a level of specificity that negates the need for regulations.

Agenda Item 3: Enforcement Regulations

Ms. La Marr presented agenda item 3. The Bureau has opened approximately 200 active investigations for unlicensed activity and 37 for hold hostage situations (of which 25 were resolved by the Bureau) since July 1, 2019. Tim Dewitt asked whether all of those are in California. Chief Oliver responded that some were interstate moves, but all goods recovered were in California.

Ms. La Marr explained that when household movers moved to the Bureau's jurisdiction, they also came under the Business and Professions Code (BPC), including the general BPC that applies to all Department programs. Business and Professions Code Section 125.9 requires Department programs to adopt regulations to establish a system for issuing administrative citations to licensees. In addition, BPC 148 requires Department programs to adopt regulations to establish a system for issuing administrative citations to unlicensed persons acting as a licensee. These systems can only be established through regulations. Based on the enforcement data and the lengthy regulatory process, the Bureau's priority is to submit a proposal to implement administrative citations.

Ms. La Marr clarified that certain elements are standard as required by the BPC. For example, citations must be in writing and there must be an appeal process. Ms. La Marr requested input regarding whether there are specific concerns that stakeholders would like the Bureau to consider when drafting the initial regulation proposal.

Mr. Weitekamp asked whether the Public Utilities Code is still effective and whether those need to be modified. Ms. La Marr responded there is no need for modifications –

the violations in the code are misdemeanors for which the Bureau would need to get assistance from law enforcement or the Department's Division of Investigation to enforce. Rather than rely on those entities to prioritize the Bureau's enforcement, an administrative citation system would be an enforcement tool that is quicker, cheaper, and more efficient than pursuing a misdemeanor. Mr. Weitekamp stated there should never be a fine for a licensed mover that is more than an unlicensed mover; that there should be incentive for an unlicensed mover to become licensed and anything that runs counter to that core value would be opposed. Ms. La Marr emphasized that decreasing unlicensed activity is a goal of all Department programs and is a priority of the Bureau.

Kevin Ryan stated there has been a surge in the amount of rogue and unlicensed movers on Yelp, Craigslist, and Thumbtack in San Francisco. Mr. Ryan asked what the Bureau's plan to address unlicensed activity is. Chief Oliver stated the Bureau takes a proactive approach to enforcement and has issued 30-40 cease and desist letters to unlicensed movers. In addition, the Bureau plans to incorporate additional enforcement strategies, such as stings, in the spring.

Mr. Weitekamp mentioned that small violations need less penal type enforcement, such as violations that are minor and do not warrant thousands of dollars of fines. He also said he would love to see paperwork simplified because many violations are centered around paperwork. For example, they would not want to see regulations that allow the Bureau to go into brick and mortar companies and pull months of files and issue a separate fine for each paperwork misstep. Ms. La Marr explained that BPC 125.9 requires citations to include an order of abatement so if the licensee complies, the fine could be lowered or eliminated in some cases. The Bureau must also implement criteria to determine fines, which would be based on the egregiousness of the violation, level of cooperation, history of compliance, etc. Rita Wong stated that a focus of the Bureau is education in general. Ms. Wong has received requests from licensees for assessments to determine whether they are complying with the law.

Mr. Stireman asked whether the Bureau works with the Division of Labor Standards Enforcement on unlicensed movers who do cash business. Chief Oliver stated the Bureau has participated in a sting in San Diego County, which was organized by the local District Attorney and was focused on workers' compensation violations. Mr. Stireman asked if stings result in people in handcuffs, administrative citations, or something else. Chief Oliver stated violations can result in up to a year in jail, a fine, and misdemeanor charge. Ms. La Marr clarified that nothing can be done in regulations to strengthen a misdemeanor that is in statute or make the civil penalties more severe.

Agenda Item 4: Fee Study

Ms. Wong presented information regarding the fee study, mandated by SB 19, which requires the Bureau to implement regulations to determine whether the Bureau should make changes to the fee schedule. Ms. Wong stated the Bureau is in the process of

recruiting a Research Data Specialist to complete the fee study, which will be conducted on data gathered between July 1, 2018 and June 30, 2020. The study will look at application, permit, reinstatement, delinquency, transfer, quarterly and other fees that may be needed or adjusted. Fees will need to cover costs of the Bureau to run the household mover program. Data is expected to be made publicly available after Fiscal Year 2020-21 then the Bureau will begin the regulatory process to update fees as necessary.

Mr. Weitekamp stated it is important that there continues to be a graduated fee, that a fee based upon revenue seems like the fairest approach. Also, Mr. Weitekamp suggested the Bureau may want to lower certain fees, such as reinstatement from suspension for insurance, which happens often. Ms. Wong stated there will be public workshops when the study is complete so there will be opportunity to comment at that time. A request was made to have a northern and southern workshop, to which Ms. Wong agreed.

Agenda Item 5: Household Mover Definitions

Ms. La Marr discussed the need for household mover definitions in regulations. Definitions can be found in the Act, the Max Rate 4 Tariff (Tariff), and Commission Orders, but terms are not used consistently throughout governing documents. Therefore, the Bureau believes defining terms should be a necessary component of the first regulatory proposal. Because regulations will likely include most terms used by the Act, the Bureau needs a comprehensive list of definitions and asked for feedback of whether there are terms that are not defined, are unclear, etc.

Mr. Weitekamp suggested adding a definition for who is required to have a permit. He would also like to see simplification and consistent use of terms.

Agenda Item 6: Public Comments

For comments on topics not on the agenda, the floor was opened to all stakeholders.

Mr. Weitekamp mentioned that while the Bureau has stated the updated Tariff would be issued on February 15, on Item 320 in the Tariff, it states Maximum Fixed Rates in Dollars Per Piece, but should read Maximum Fixed Rates in Dollars Per *Hour*.

Mr. Weitekamp also proposed a complete change of the pricing structure from a maximum rate tariff to a minimum/maximum rate tariff. There was a minimum rate tariff until 1992 when the Commission decided to change the format. A minimum rate would help to differentiate licensed from unlicensed movers and allow licensed companies to meet all legal requirements, such as insurance and overtime pay. Mr. Weitekamp argued a range of 30-35 percent would create a competitive marketplace where licensed movers could compete. He would also want movers to be able to exceed the

maximum or bid below the minimum if they come to an agreement with the shipper. He suggested the Tariff should focus on rates related to transportation.

Mr. Weitekamp recommended Note 10 of Item 340 of the Tariff also be applied to the distance tables (items 310 and 390) to allow for overtime to cover when jobs would require the household mover to pay overtime.

Mr. Weitekamp brought up the required nine-month claim period as being overly onerous on movers and proposed a three-month claim period instead.

Curt Olsen mentioned there should be a waiver for inventory on local moves because many consumers don't want to do an inventory on hourly rate, local moves. Ms. La Marr asked whether there is a waiver. Mr. Olsen said many movers come up with their own waivers so there needs to be a process when consumers refuse an inventory, but still want replacement value protection. Mr. Weitekamp clarified that if someone files a claim on a local move and has valuation protection, the mover would do an investigation to determine if they are at fault. Mr. Weitekamp stated perhaps there should be two levels of valuation – one if there is an inventoried shipment and another for non-inventoried shipments.

Mr. Weitekamp also brought up Item 475 of the Tariff, which refers to electronic documentation and requires movers and shippers to complete a form agreeing to use electronic forms. This form defeats the purpose of using electronic documents. Support for this suggestion was expressed by Andy Zuker.

Mr. Weitekamp suggested the mileage methodology, which references constructive miles, be updated to allow use of Google Maps, Mapquest, and other technology, which measures actual miles.

Mr. Ryan asked what the rules are for a local move, specifically about adding double-drive time. Mr. Weitekamp stated the Tariff has no price floor so movers are not *required* to charge double-drive time, which may further support the argument for a minimum/maximum tariff format. Mr. Ryan asked about a local move with flat rate fuel charge - he is interpreting the Tariff to mean a flat rate fuel charge cannot exceed the double-drive time amounts and wants to make sure this is correct. Mr. Ryan clarified he was asking whether the fuel charge would be in lieu of double-drive time, which is not used for local moves. Mr. Weitekamp stated that in discussions with the Commission, the Commission stated a flat rate fuel charge can be charged as long as the charge does not exceed double-drive time; however, surcharges, extra "fees", and other charges above the hourly rate should be avoided.

A teleconference attendee suggested simplifying hourly rates. Current rates and distance tables are confusing to consumers. Ms. La Marr stated that updates to the Tariff would require a stakeholder and review process, which cannot be done in the next

week, when the updated Tariff is projected to be published. Chief Oliver agreed that a Tariff workshop would be necessary to enact changes.

Tina Lands asked about enforcing a warehouseman's lien with auction houses. For example, if a customer does not pay their storage, they would go through the auction procedures. Currently, companies are asking the mover to take pictures to enable auction houses to sell items online. Mr. Weitekamp and Chief Oliver explained that this activity does not fall under the jurisdiction of the Bureau.

Mr. Kaaekuahiwi mentioned that when movers hire people, the Bureau should consider permitting people with experience. Chief Oliver explained applicants are required to pass an exam. Ms. La Marr stated that if he is suggesting an experience requirement similar to the Contractors State License Board's requirement, that would require legislation.

James Garelli asked if there can be an ultra-small load exemption for local moves for items such as sectionals. Chief Oliver pointed out Item 330, which outlines piece rates. Mr. Garelli stated the paperwork process can take longer than the actual move and asked if there is there a way to exempt the paperwork for those types of moves. Mr. Weitekamp stated that a simplified process would be better and more ideal than an exemption. Chief Oliver stated we can discuss this topic when working on updates to the Tariff.

Christian Cruz asked about time limitations for damages to property (not household goods). Mr. Weitekamp stated that would be an issue to be taken up with the mover's insurance company.

Mr. Cruz then asked if there's a way to add a deadline for customers to sign settlement letters to allow the file to be closed. The Bureau stated this does not fall within the Bureau's jurisdiction.

Agenda Item 7: Adjournment

Ms. La Marr reinforced that the Bureau's priority is submitting the enforcement regulatory proposal; however, the Bureau would consider all issues discussed. Mr. Weitekamp asked when the draft language would be available. Ms. La Marr responded it would be available after the Bureau receives approval to post the regulations during the 45-day notice period.

Chief Oliver thanked everyone for their participation and adjourned the meeting at 12:24 p.m.